STATE OF MICHIGAN

COURT OF APPEALS

KENNETH PAGE,

Plaintiff-Appellant,

v

KLEIN TOOLS, INC., AMERICAN LINE BUILDERS APPRENTICESHIP TRAINING PROGRAM, and POWER LINE SUPPLY COMPANY,

Defendants-Appellees,

and

CONSUMERS POWER COMPANY,

Defendant.

UNPUBLISHED
June 5, 1998

No. 200788
Gratiot Circuit Court
LC No. 94-003300 NP

Before: Gribbs, P.J., and Murphy and Gage, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting summary disposition in favor of defendant American Line Builders Apprenticeship Training Program. We reverse in part, affirm in part, and remand.

Plaintiff enrolled in a three-week course offered by defendant for instruction on the use of utility line safety equipment and utility pole climbing. Following completion of the course, plaintiff purchased his safety equipment from defendant. Approximately one month later, plaintiff was injured when he fell from a utility pole. According to plaintiff, while descending the utility pole, he encountered an obstacle called a pick or a cross arm, which is a metal bar extending from the pole. Using the technique taught to him by defendant, plaintiff attempted to negotiate the obstacle by taking the line that was attached to his belt, unhooking it, and reattaching it once he maneuvered past the obstruction. Because this line, however, was the only line keeping plaintiff suspended, plaintiff plummeted sixty feet to the ground when he detached the line from his belt. Thereafter, plaintiff brought suit against Klein Tools, Inc., American

Line Builders Apprenticeship Training Program, Consumers Power Company, and Power Line Supply Company.[1] This appeal concerns only defendant American Line Builders Apprenticeship Training Program.

Plaintiff argues that the trial court erred in granting summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10) in favor of defendant. Our review of a lower court's ruling on a motion for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim on the pleadings alone to determine whether plaintiff has stated a claim upon which relief can be granted. *Id*. MCR 2.116(C)(10) tests the factual support for a claim on the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether there exists a genuine issue of material fact. *Id*.

We agree with the lower court that summary disposition is appropriate with respect to plaintiff's claim sounding in products liability. Plaintiff claims that defendant breached an implied warranty when it sold him defective lineman climbing equipment. Specifically, plaintiff alleges that the equipment was improperly designed and manufactured, that defendant sold the equipment without adequate warnings and instructions, and that defendant failed to supply the equipment with a fall arrest system which is designed to suspend a worker in the air in the event of a fall. Although Michigan courts recognize a claim against a product's seller for failure to warn purchasers about the dangers associated with the products intended use or foreseeable misuse, *Ross v Jaybird Automation, Inc*, 172 Mich App 603, 606; 432 NW2d 374 (1988), a seller's duty in this regard is no greater than that of the manufacturer, *Prentis v Yale Mfg Co*, 421 Mich 670, 693; 365 NW2d 176 (1985). In *Antcliff v State Employees Credit Union*, 414 Mich 624, 639-640; 327 NW2d 814 (1982), our Supreme Court held that a manufacturer of a component part could not be held liable for failing to instruct or warn that its product would be safer if used in conjunction with some other product. Here, defendant sold plaintiff a lineman's belt, without fall arrest equipment, manufactured by Klein Tools, Inc., which carried the warning "for positioning only," and defendant did not alter the product in any way before selling it. In other words, defendant sold plaintiff a component part, as opposed to a fully integrated system. Accordingly, plaintiff's products liability claim fails because defendant, as the seller of the product, did not have a greater duty than the manufacturer to warn plaintiff, and as *Antcliff* makes clear, there was no duty to warn that the product must be used in conjunction with another product. Further, we note that the lower court record respecting defendant Consumer Power Company's motion for summary disposition reveals that plaintiff admitted that the utility pole from which he fell had no fixtures to which independent fall arrest equipment could have been attached. Therefore, an independent fall arrest system would not have prevented plaintiff's fall.

The lower court also summarily dismissed plaintiff's claim that defendant was negligent for failing to provide adequate instruction regarding utility pole climbing because Michigan does not recognize a cause of action for educational malpractice. Here, we disagree. While *Nalepa v Plymouth-Canton Community Sch Dist*, 207 Mich App 580, 594; 525 NW2d 892 (1994), holds that a claim of educational malpractice is not cognizable in Michigan, we question the precedential value of the propositions set forth in that decision in light of the manner in which our Supreme Court affirmed it. See

Nalepa v Plymouth-Canton Community Sch Dist, 450 Mich 934; 548 NW2d 625 (1995) ("This action should not be construed as indicating its agreement with the reasoning set forth in the Court of Appeals opinion."). Nonetheless, we reverse the decision of the lower court because plaintiff's claim is one of simple negligence, not educational malpractice.

The essence of plaintiff's claim is that defendant neglected to instruct him on the proper method of maneuvering around the obstacle that he encountered on the utility pole on the day of the accident. This is not a claim of educational malpractice, a cause of action that has been disavowed by American courts for reasons of public policy. The refusal of American courts to recognize a cause of action for educational malpractice has its origins in the judiciary's disinclination to interfere with the statutory, and often constitutional, responsibility of public school administrative agencies to manage the school systems that they are charged to oversee. *Donohue v Copiague Union Free Sch Dist*, 47 NY2d 440, 444-445; 391 NE2d 1352 (1979). Understandably, the courts have been both reluctant to make judgments regarding the validity of broad educational policies and cognizant that judicial review of the day-to-day implementation of those policies would be impractical. *Id*. Moreover, education has been described as a collaborative process, requiring the meaningful participation and interaction of both teacher and student for success, thereby making proof or disproof of malpractice extremely difficult, if not impossible. See *Ross v Creighton University*, 740 F Supp 1319, 1328 (ND Ill, 1990), aff'd in part and rev'd and remanded in part on other grounds 957 F2d 410 (CA 7, 1992).

In this case, plaintiff's claim is one of negligence against a commercial job training entity that assumed a duty to train plaintiff in the proper methods and techniques of working on utility poles with equipment that it sold to plaintiff to perform such work. To summarily dispose of such a claim on the ground that it sounds in educational malpractice would represent a misapplication of the policy reasons supporting the nonrecognition of the tort. This is not a case in which a plaintiff has alleged a failure in the overall educational program of an educational entity. Plaintiff is not asking the court to interfere with the purely academic decisions of an educational entity, to make judgments about the quality of broad educational policies, or to evaluate the overall quality of his education. Instead, plaintiff has made a very precise claim against a commercial vocational training entity based upon that entity's alleged failure to instruct him on the proper methods and techniques of maneuvering around an obstacle on a utility pole, namely, a pick or a cross arm, with equipment sold to him by defendant. Plaintiff testified that the manner in which he attempted to negotiate the obstacle was the only method taught to him by defendant, and plaintiff's expert testified that plaintiff should have been instructed in the use of a second pole strap, which would have prevented the accident. In short, plaintiff has made a claim sounding in simple negligence, not educational malpractice, in which plaintiff must prove duty, breach of duty, proximate cause, and damages. The public policy considerations that have caused courts to conclude that educational malpractice claims are not cognizable are absent in this case.

Accordingly, we reverse the lower court's grant of summary disposition with respect to plaintiff's claim that defendant was negligent for failing to provide adequate instruction regarding utility pole climbing. The lower court's grant of summary disposition as to all other claims is affirmed.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ William B. Murphy

[1] Defendants Klein Tools, Inc. and Power Line Supply Co. were dismissed from this appeal by stipulation.