

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DOROTHY N. LYLE, Personal Representative of the  
Estate of DOROTHY ANN GRAVES, deceased,

UNPUBLISHED  
July 17, 1998

Plaintiff-Appellant,

v

No. 202377  
Wayne Circuit Court  
LC No. 95-531713 NO

AMERICAN AXLE AND MANUFACTURING,  
INC,

Defendant-Appellee.

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Before: Murphy, P.J., and Young, Jr. and Michael R. Smith\*, JJ.

MEMORANDUM.

Plaintiff appeals by right the order granting summary disposition to defendant on this intentional tort claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's decedent was killed in a fall from the roof of her employer's plant while she was attempting to close a roof vent louver. Plaintiff brought this action asserting that defendant committed an intentional tort which fell outside the exclusive remedy provision of the Worker's Disability Compensation Act. MCL 418.131(1); MSA 17.237(131)(1). Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), asserting that plaintiff failed to allege sufficient facts to bring her claim within that exception.

MCL 418.131(1); MSA 17.237(131)(1) provides:

The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury

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\* Circuit judge, sitting on the Court of Appeals by assignment.

was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under the law.

In *Travis v Dreis & Krump Mfg Co*, 453 Mich 149; 551 NW2d 132 (1996), the Supreme Court construed the intentional tort exception and outlined the proofs necessary to qualify under the exception. To prevail, a plaintiff must establish a deliberate act on the part of the employer, which encompasses acts and omissions, including situations in which the employer consciously fails to act. To specifically intend an injury, an employer must have had a conscious purpose to bring about specific consequences. *Palazzola v Karmazin Products Corp*, 223 Mich App 141, 149; 565 NW2d 868 (1997). In the alternative, a plaintiff can prove intent to injure by showing actual knowledge on the part of a supervisor or manager that an injury would follow from what the employer deliberately did or did not do. *Id.* Certainty that an injury would occur requires that an employer be aware that injury is certain to result from what the actor does. *Id.*, 150. Willful disregard requires that the employer must in fact disregard actual knowledge that an injury is certain to occur. *Id.*

Plaintiff has failed to meet these requirements. The fact that an employee in another building, owned by defendant's predecessor, suffered a similar injury is insufficient to establish that plaintiff's injury was certain to occur. *Id.*, 149. Plaintiff has not presented evidence from which it could be found that defendant had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. Where the discovery deadline had passed when defendant filed its motion, summary disposition was not premature. *Mackey v Dep't of Corrections*, 205 Mich App 330, 333; 517 NW2d 303 (1994). The trial court properly granted the motion based on plaintiff's failure to present sufficient evidence to support a finding that defendant committed an intentional tort.

Affirmed.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith