

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL ROUSSIN,

Plaintiff-Appellant,

v

ALCAR ELECTRIC,

Defendant-Appellee.

UNPUBLISHED
February 26, 2002

No. 227138
Macomb Circuit Court
LC No. 99-005231-NO

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

We review de novo the trial court's ruling on a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). When reviewing a motion decided under MCR 2.116(C)(8), this Court accepts as true all factual allegations and any reasonable inferences drawn from them in support of the claim. Summary disposition for failure to state a claim should be upheld only when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and thus justify recovery. *Stott v Wayne Co*, 224 Mich App 422, 426; 569 NW2d 633 (1997), *aff'd* 459 Mich 999 (1999).

Generally, negligence is conduct involving an unreasonable risk of harm. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). To prove negligence, a plaintiff must establish a breach of duty owed by the defendant which is a proximate cause of the plaintiff's injuries. *Nolan v Bronson*, 185 Mich App 163, 169; 460 NW2d 284 (1990). Whether a duty exists to protect a person from reasonably foreseeable harm is a question of law for the court to decide. *Otero v Warnick*, 241 Mich App 143, 147; 614 NW2d 177 (2000). "Duty is essentially a question of whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Moning v Alfono*, 400 Mich 425, 438-439; 254 NW2d 759 (1977) (footnote omitted).

To the extent that plaintiff, the employee of a subcontractor on a construction site, asserted that defendant, as another subcontractor working on the same site, owed him a duty to provide a safe working environment or warn of safety hazards in general, he failed to state a claim upon which relief can be granted. *Hughes, supra* at 12-13; *Klovski v Martin Fireproofing*

Corp, 363 Mich 1, 5-6; 108 NW2d 887 (1961). The trial court therefore properly granted defendant's motion as to that aspect of the complaint. However, to the extent that plaintiff asserted defendant's negligence in leaving live wires exposed where they could cause injury to others on the premises, he alleged a breach of a legally cognizable duty. Independent contractors working on the same job site owe employees of other contractors the same duty to exercise ordinary care as they owe to the public generally, 65A CJS, Negligence, § 534, p 291, and one subcontractor may be held liable if the active negligence of his employee injures the employee of another subcontractor. *Shelton v Nat'l Valve & Mfg Co*, 300 Mich 170, 173; 1 NW2d 498 (1942). Therefore, the trial court erred in granting defendant's motion as to that aspect of the complaint.

Affirmed in part, reversed in part, and remanded for further proceedings on plaintiff's claim for active negligence against defendant. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens