

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF FRANKLIN D. DAVIS, JR., by
CHRISTINA DAVIS, Personal Representative,

UNPUBLISHED
October 18, 2011

Plaintiff-Appellant,

v

No. 299112
Livingston Circuit Court
LC No. 08-024075-NO

KCS, INC., KCS ENERGY SERVICES, INC.,
f/k/a KCS ENERGY MARKETING, INC., KCS
ENERGY, INC., KCS CONSTRUCTION, INC.,
KCS ENTERPRISES, INC., KCS HOLDINGS,
L.L.C., KCS, L.L.C., KCS PARTNERS, L.L.C.,
KCS VENTURES, L.L.C., KCS GAS PLANT,
KCS DUNLEVY, MERIT ENERGY CO, L.L.C.,
PETRO-HAWK ENERGY CORP,

Defendants,

and

KCS RESOURCES, INC.,

Defendant-Appellee.

Before: SHAPIRO, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

In this negligence action, plaintiff, Estate of Franklin D. Davis, Jr., appeals as of right an order granting defendant KCS Resources, Inc.'s motion for summary disposition. We affirm.

Franklin D. Davis, Jr., worked as a derrick hand for Team Well Services. KCS Resources, Inc. ["defendant"] subcontracted Team Well Services to drill an oil well as part of an oil exploration project it was conducting on its property. Defendant hired Oil Ex, Inc. to act as a general contractor and oversee all the project work. Defendant also hired numerous other companies as subcontractors for different tasks. On January 4, 2006, while Davis was working

on Team Well Services' derrick, a cable upon which he was relying to prevent a fall snapped. Davis fell 20 to 25 feet and sustained serious injuries.¹ Plaintiff brought this negligence action. Defendant moved for summary disposition. The trial court granted the motion after finding that plaintiff could not satisfy all the elements of the "common work area doctrine" set forth in *Funk v Gen Motors Corp*, 392 Mich 91, 104; 220 NW2d 641 (1974), overruled in part on other grounds *Hardy v Monsanto Enviro-Chem Sys, Inc*, 414 Mich 29; 323 NW2d 270 (1982).

Plaintiff argues that summary disposition was not proper because defendant breached its common law duty not to act negligently. Plaintiff cites *Clark v Dalman*, 379 Mich 251; 150 NW2d 755 (1967), to support its argument that defendant is liable for Davis' injuries. Plaintiff misplaces its reliance on *Clark*. In *Clark*, the defendant and the plaintiff worked together closely and the defendant specifically applied a substance to the plaintiff's work area that caused the plaintiff to slip and injure himself. *Id.* at 256-257. In this case, defendant was not present at the work site and, instead, relied on other individuals to perform all the work. Further, Davis was injured as a result of a safety equipment failure, and the equipment at issue was owned and fully controlled by Davis' employer, not by defendant. There was no evidence presented to the trial court that defendant knew or should have known about the dangerous condition of the cable. The facts of this case do not support a conclusion that defendant acted negligently. Thus, *Clark* is factually distinguishable and does not support plaintiff's claim of liability on the part of defendant pursuant to common law negligence principles.

"At common law, property owners and general contractors generally could not be held liable for the negligence of independent subcontractors and their employees." *Ormsby v Capital Welding, Inc*, 471 Mich 45, 48; 684 NW2d 320 (2004). Nevertheless, liability can be imposed on a general contractor pursuant to the "common work area" doctrine. *Id.* at 55-56. In order to impose liability upon a general contractor, a plaintiff must prove four elements: "(1) that the defendant contractor failed to take reasonable steps within its supervisory and coordinating authority (2) to guard against readily observable and avoidable dangers (3) that created a high degree of risk to a significant number of workmen (4) in a common work area." *Id.* at 57. Liability may be extended to a property owner under the same standard, but only if plaintiff can show the owner retained control to the extent "that it had effectively stepped into the shoes of the general contractor and been acting as such." *Id.* at 54.

In this case, the undisputed facts demonstrate that plaintiff was injured while working on a derrick operated solely by Team Well Services, his employer. There was no evidence presented that any employees of the other subcontractors worked on, or would have reason to work on, the derrick. The other subcontractors were hired to perform different jobs; Team Well Services alone was hired to drill the oil well. Thus, the location where plaintiff was injured was "a situation where employees of a subcontractor were working on a unique project in isolation from other workers." *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 8; 574 NW2d 691 (1997). Therefore, plaintiff was not injured in a common work area. *Id.* at 8-9; see also *Ormsby*, 471

¹ Davis died after the accident for reasons unrelated to his injuries.

Mich at 57 n 9. “[P]laintiff’s failure to satisfy *any* one of the four elements of the ‘common work area doctrine’ is fatal to a *Funk* claim.” *Ormsby*, 471 Mich at 59 (emphasis in original).

Nor may plaintiff succeed under a theory of premises liability. Premises liability involves dangerous conditions on the land. See, e.g., *Richardson v Rockwood Center*, 275 Mich App 244, 246-247; 737 NW2d 801 (2007). However, plaintiff’s accident involved machinery owned by his employer, not a condition on the land.

Summary disposition in favor of defendant was appropriate under these circumstances. Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Jane M. Beckering