STATE OF MICHIGAN

COURT OF APPEALS

FILIPPO LABRUZZO,

Plaintiff-Appellant,

v

VIVA HOMES, INC.,

Defendant-Appellee,

and

NANCY INTERDONATI, SALVATORE INTERDONATI, JOHN AGAZZI, JOHN VITO ARATO, MAISON CONSTRUCTION, L.L.C., JOHN MAISON, and MICHAEL PERRY,

Defendants.

UNPUBLISHED
December 3, 2009

No. 285148
Macomb Circuit Court
LC No. 2006-001406-NO

Before: K. F. Kelly, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

In this personal injury action arising from a construction worksite accident, plaintiff appeals by right the trial court's grant of summary disposition in favor of defendant Viva Homes, Inc., pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff's complaint alleges that he was employed as a brick layer by V & P Construction Company, which was hired by Viva Homes, the general contractor on a project involving the construction of two homes in the same subdivision. Plaintiff alleges that while working on one of the homes, an employee of Maison Construction, L.L.C., a carpentry subcontractor that was working on the home next door, requested assistance from V & P Construction's workers in erecting a wall. Plaintiff assisted in the work and was injured when the wall collapsed. Plaintiff thereafter filed this action against Viva Homes, asserting that it was liable for his injuries. The trial court ruled that there was no basis for finding any active negligence by Viva Homes and that Viva Homes could not be held liable for any negligence by its subcontractors. Accordingly, the trial court granted Viva Homes's motion for summary disposition pursuant to MCR 2.116(C)(10).

This Court reviews de novo a trial court's decision with regard to a motion for summary disposition. *Trost v Buckstop Lure Co*, 249 Mich App 580, 583; 644 NW2d 54 (2002). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a motion under MCR 2.116(C)(10), this Court considers the available pleadings, affidavits, depositions, and other documentary evidence in a light most favorable to the nonmoving party to determine whether the moving party was entitled to judgment as a matter of law. *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000).

A plaintiff in a negligence case must establish four elements: (1) that the defendant owed the plaintiff a duty, (2) a breach of that duty, (3) an injury proximately resulting from the breach, and (4) damages. *Hughes v PMG Bldg, Inc*, 227 Mich App 1, 5; 574 NW2d 691 (1997). In the absence of its own active negligence, a general contractor is not typically liable for the negligence of its subcontractors or its subcontractors' employees. *Latham v Barton Malow Co*, 480 Mich 105, 112; 746 NW2d 868 (2008); *Ormsby v Capital Welding, Inc*, 471 Mich 45, 48; 684 NW2d 320 (2004). There are certain exceptions to this rule, including (1) the common work area doctrine, and (2) situations in which inherently dangerous work is involved. *Id*. at 49; *DeShambo v Anderson*, 471 Mich 27, 31; 684 NW2d 332 (2004).

As an initial matter, we reject plaintiff's argument that this is not a general contractor/subcontractor case and that it is therefore unnecessary to evaluate whether an exception to the broad rule of general contractor nonliability is applicable. The submitted evidence showed that plaintiff was an employee of V & P Construction, which was hired by Viva Homes, the general contractor for the construction project. Apart from asserting that V & P Construction was working under Viva Homes's license, plaintiff offered nothing to rebut the evidence that Viva Homes was the general contractor and that V & P Construction was a subcontractor on the project. Furthermore, plaintiff alleged in his complaint that Viva Homes and V & P Construction were separate entities, that "he was employed by V & P Construction," that the "general contractor/builder hired V & P Construction," and that he "was working in the capacity of a brick layer working for V & P Construction" when the accident occurred. Plaintiff also alleged that the accident occurred when an owner of Maison Construction requested assistance in erecting a wall, following which both Maison Construction's owner and "[p]laintiff's boss . . . of V & P Construction" asked plaintiff to assist in erecting the wall. A party is bound by its pleadings. *Angott v Chubb Group of Ins Cos*, 270 Mich App 465, 470; 717 NW2d 341 (2006). Quite simply, plaintiff's complaint alleges that his injuries were attributable to actions by his own employer, V & P Construction, and another subcontractor, Maison Construction. Plaintiff did not allege any direct negligence by the general contractor, Viva Homes, or submit any evidence supporting his claim that V & P Construction was not a subcontractor of Viva Homes. Consequently, we conclude that the trial court properly rejected plaintiff's attempt to analyze Viva Homes's liability independent of the principles governing a general contractor's liability for the negligence of its subcontractors.

Plaintiff next argues that Viva Homes is liable for his injuries under the common work area doctrine. We disagree. To impose liability on a general contractor under the common work area doctrine, a plaintiff must show that (1) the defendant failed to take reasonable steps within its supervisory and coordinating authority (2) to guard against readily observable dangers (3) that

created a high degree of risk to a significant number of workmen (4) in a common work area. *Latham*, *supra* at 109; *Ormsby*, *supra* at 57.

In this case, plaintiff argues that the common work area exception applies because the two homes were part of one single project, because employees of both Maison Construction and V & P Construction were involved in erecting the wall together, and because other tradesmen also worked on both homes. However, the mere involvement of different subcontractors does not establish liability under the common work area exception. Indeed, the evidence established that plaintiff's injuries did not arise from a hazardous or unsafe condition in a common work area, but rather from the manner in which a particular subcontractor performed its work. Moreover, the process of erecting the wall involved an isolated, discrete event. While there was evidence that other subcontractors performed work on the house at different times, there was no evidence that the risks involved in erecting the wall using manpower alone created a high degree of risk to a significant number of other workers in a common work area. *Id*. Therefore, the trial court did not err by finding that the common work area exception did not apply in this case.

We also reject plaintiff's claim that Viva Homes may be held liable under the inherently dangerous activity exception. Under this exception, an employer of an independent contractor may be liable in negligence if the independent contractor was engaged in an inherently dangerous activity when the injury occurred. *DeShambo*, *supra* at 31-35. The rule is designed to protect innocent third parties injured by the execution of an inherently dangerous undertaking. *Id*. at 36, 38. Thus, this exception only applies to injured third parties, and not to those involved in the dangerous activity, themselves. *Id*. at 40. Because it is undisputed that plaintiff was involved in erecting the wall when he was injured, the inherently dangerous activity exception does not apply. *Id*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald