STATE OF MICHIGAN

COURT OF APPEALS

EDDIE PLUMMER,

Plaintiff/Counter-Defendant-Appellant,

and

BLUE CROSS BLUE SHIELD,

Intervening Plaintiff,

v

D. J. MALTESE COMPANY,

Defendant-Appellee,

and

CORNERSTONE BUILDING COMPANY, L.L.C.,

Defendant/Counter-Plaintiff-Appellee,

and

BRUNT ASSOCIATES, RUSSELL PLASTERING, SHAW FIRE DETECTION, KALAJ PAINTING, IXL GLASS, SHETLAND PAINTING, GONZALEZ BROTHERS PAINTING, and HMC CONTRACTORS,

Defendants.

UNPUBLISHED
May 12, 2005

No. 243512
Wayne Circuit Court
LC No. 01-120255-NO

Before: Bandstra, P.J., and Fitzgerald and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting motions for summary disposition filed by defendant D. J. Maltese Company ("Maltese") and defendant Cornerstone Building Company, L.L.C. ("Cornerstone") in this negligence action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, two of his employees, his truck, and his equipment were locked into a work site when someone fastened the exit gates with a link chain and lock. When plaintiff could not reach the person in charge of the site, he attempted to cut off the lock and accidentally cut off the tip of his finger. Plaintiff was using a "cutoff saw," powered by a generator on his truck. He described the saw as about twelve inches long with a six-inch diameter, metal-abrasive, circular blade that was about a sixteenth of an inch thick. Plaintiff did not try to cut a link in the chain because it would have required two cuts instead of one. He explained that the lock was on the outside of a wrought iron fence and could not be twisted around to bring it inside. Moreover, although his explanation was not clear, plaintiff said that cutting a link in the chain on the inside of the fence would not have worked. Plaintiff described his attempt to cut the lock as follows:

> I put the cutoffs [saw] on in my left [non-dominant] hand, stuck it through the [approximate six-inch opening in the] gate, put my right arm through with a pair of pliers to hold the lock as I cut it, started cutting it. . . . The wheel must have hit the body of the lock, and it just jumped up and hit my finger before I knew it.

Plaintiff acknowledged that this was an awkward way to cut the lock.

Plaintiff claimed that an employee of Cornerstone, another subcontractor, locked him and the others inside. Plaintiff alleged that Cornerstone's employees were negligent, and that Maltese, the construction consultant, should have instituted rules and procedures to ensure that the lock up of the site was done more carefully, and should have ensured that no one remained locked inside.

The trial court granted defendants' motions for summary disposition pursuant to MCR 2.116(C)(10). In its opinion, under a subheading entitled "Proximate Cause," the trial court noted that there was an alternative pedestrian exit and that plaintiff could have telephoned for help. The court noted defendants' argument that plaintiff's failure to use these alternatives constituted a superceding cause; the court then held that plaintiff's failure established that he was "guilty" of contributory negligence. The court further stated that this was, in essence, a premises liability issue and that "in premises liability we do not allow a plaintiff to recover from knowingly encountering a danger unless he can show there was no realistic alternative route."

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

On appeal, plaintiff asserts that the trial court erred in determining as a matter of law that plaintiff was contributorily negligent. We note that the doctrine of contributory negligence has been abandoned in Michigan. *Placek v Sterling Heights,* 405 Mich 638, 650; 275 NW2d 511 (1979). Moreover, premises liability applies to actions against the possessors of land. See *Bertrand v Alan Ford, Inc,* 449 Mich 606, 609; 537 NW2d 185 (1995). Neither of these defendants was the possessor of the work site. The trial court's analysis appears under a heading of "proximate cause." Although it is not clear that the trial court based summary disposition on

the absence of this element, we conclude that there was no proximate cause as a matter of law. Accordingly, we conclude that it is appropriate to affirm even if the trial court granted summary disposition for an alternative reason. See *Coblentz v City of Novi,* 264 Mich App 450, 454; 691 NW2d 22 (2004).

In *Craig v Oakwood Hosp,* 471 Mich 67, 88-89; 684 NW2d 296 (2004), our Supreme Court stated:

> "Proximate cause" is a legal term of art that incorporates both cause in fact and legal (or "proximate") cause. We defined these elements in *Skinner v Square D Co*[, 445 Mich 153, 162-163; 516 NW2d 475 (1994)]:
>
> > The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause or "proximate cause" normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.

To establish proximate cause, a plaintiff must show "that the injury was a probable, reasonably anticipated, and natural consequence of the defendant's negligence." *Allen v Owens-Corning Fiberglass Corp,* 225 Mich App 397, 401; 571 NW2d 530 (1997). If reasonable minds could not differ, the question is one of law for the court. *Dep't of Transportation v Christensen,* 229 Mich App 417, 424; 581 NW2d 807 (1998).

Even if plaintiff could establish "but for" causation, he could not establish that his injury was a probable, reasonably anticipated, natural consequence of being locked into the work site. Once could assume that he would take reasonable steps to get himself and the equipment out of the site. If someone with a key could not be reached, it would be reasonable to assume that the person trapped would call a locksmith. It might even be reasonable to assume that he would try to break the lock in order to get out, or that he would try to cut the lock if he had the proper equipment and ability. However, it would not be probable or reasonably anticipated that a person in this situation would attempt to free himself by operating a power cutoff tool designed to cut through metal by holding it through the opening of a wrought iron fence with one hand, the non-dominant hand, in what was admittedly an awkward manner. Cutting off the tip of one's finger is not a natural consequence of being locked in. Accordingly, there was no proximate causation.

We decline Maltese's request that we impose sanctions on plaintiff for pursuing a vexatious appeal. MCR 7.216(C). Plaintiff's appeal was prompted by the trial court's reference to the now-abandoned doctrine of contributory negligence, and thus was not entirely unwarranted.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter