

STATE OF MICHIGAN
COURT OF APPEALS

CHANEKKA JONES,

Plaintiff/Counterdefendant-Appellant,

v

DAYCO PRODUCTS, LLC,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED

September 15, 2022

No. 357428

Macomb Circuit Court

LC No. 2020-000270-NO

Before: RONAYNE KRAUSE, P.J., and JANSEN and SWARTZLE, JJ.

PER CURIAM.

Chanekka Jones operated a machine for Dayco Products, LLC, that cut springs. One of Jones’s fingers was partially amputated while operating the machine so she sued Dayco under the Worker’s Disability Compensation Act of 1969, MCL 418.101 *et seq.*, alleging that her injury was the result of an intentional tort. Dayco alleged in its amended answer that Jones caused her injury by failing to follow Dayco’s safety procedures and no similar injury had occurred with this machine as it was configured when Jones was injured. The trial court then granted summary disposition to Dayco, reasoning that Jones could not establish an intentional tort. We affirm.

The machine at issue in this case previously amputated part of a different worker’s finger approximately four years prior to this incident, but Jones worked at Dayco for about three months before her injury and had operated the machine for 45 shifts without issue. The day of her injury, Jones returned to the machine after taking a break. She pressed the two-handed controls to cycle the machine, but nothing happened so Jones reached into the “point of operation” while simultaneously turning on the machine. This caused the machine to “cycle,” amputating part of Jones’s finger that was in the point of operation.

Jones received worker’s compensation from Dayco as a result of the injury, but she also sued Dayco for an intentional tort. Dayco denied the allegations in Jones’s complaint and included affirmative allegations in its amended answer to which it demanded replies. Dayco alleged that Jones had safely operated the press for more than a month before her injury and that she had been trained in how to use the machine safely. Additionally, Jones’s actions that led to her injury violated Dayco’s safety procedures and no one else had been injured by the machine as it was

configured at the time of her injury. Finally, Dayco alleged that it had no knowledge of “any previous operator” using the machine in the manner that Jones did when she was injured and that it could not have known that Jones would not follow its safety procedures. Jones never responded to these allegations.

Dayco moved for summary disposition, arguing that Jones’s injury was not the result of an intentional tort and, therefore, her claim was barred by the Worker’s Disability Compensation Act. Jones responded, arguing that her injury fell under the Act’s intentional-tort exception because Dayco willfully disregarded the danger posed by the machine and knew an operator could be injured just like Jones was. The trial court disagreed, granting summary disposition to Dayco. This Court then granted Jones’s application for leave to appeal. *Jones v Dayco Prod LLC*, unpublished order of the Court of Appeals, entered September 22, 2021 (Docket No. 357428).

We review de novo a trial court’s decision to grant or deny a motion for summary disposition.” *Sherman v City of St Joseph*, 332 Mich App 626, 632; 957 NW2d 838 (2020) (citations omitted). This Court reviews a motion brought under MCR 2.116(C)(10) “by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). “Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Sherman*, 332 Mich App at 632.

The Act generally prohibits recovery by an employee against her employer for workplace injuries outside of the normal worker’s compensation process except for circumstances when the employee can prove that her injury was the result of an intentional tort. *Johnson v Detroit Edison Co*, 288 Mich App 688, 695; 795 NW2d 161 (2010). To establish an intentional tort, an employee must show that the injury was caused by the employer’s “deliberate act” and that the employer “had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge.” MCL 418.131(1).

Jones cannot meet that standard here because she admitted the allegations in Dayco’s amended answer by failing to deny them. Under MCR 2.108(A)(5) and MCR 2.110(B)(5), a party must respond to an answer demanding a reply within 21 days after service of the pleading or the allegations in the answer demanding a reply are deemed admitted. *McCracken v Detroit*, 291 Mich App 522, 526-527; 806 NW2d 337 (2011); MCR 2.111(E)(1). Jones admitted the allegations in Dayco’s amended answer by failing to respond within 21 days. Those admissions establish that Jones had been trained in how to operate the machine safely, she had safely operated it for more than a month before her injury, nobody had been injured by the machine as it was configured when Jones was injured, Dayco could not have known that Jones would disregard its safety procedures, and Jones did not follow Dayco’s safety procedures when she was injured.

These admissions are fatal to Jones’s claim. By admitting that Dayco could not have known that Jones would disregard its safety procedures, Jones admits that Dayco could not have known that the circumstances leading to her injury would have occurred. Without that knowledge, Dayco cannot have committed an intentional tort under MCL 418.131(1). Additionally, the lack of similar injuries shows that it is far from certain that Jones’s injury would occur. Thus, Jones

cannot establish that Dayco committed an intentional tort and the trial court did not err by granting summary disposition to Dayco.

Affirmed. Dayco, as the prevailing party, may tax costs under MCR 7.219.

/s/ Amy Ronayne Krause
/s/ Kathleen Jansen
/s/ Brock A. Swartzle