STATE OF MICHIGAN

COURT OF APPEALS

JOSHUA SPARKS,

Plaintiff-Appellant,

v

CENTURY TOOL & DIE, INC., SERVICE CORPORATION, HEIM & ROUSSELLE, HEIM GROUP, SERVICE MACHINE COMPANY, INC., HEIM PRESSES, INC., BEDFORD HEIM, INC., WILLIAM HEIM, ROUSSELLE PRESSES, INC., ROUSSELLE CORPORATION, PRESSES INC. ROUSSELLE DIVISION, MIAN MACHINING, MIAN MACHINE, MIAN, and INALFA ROOF SYSTEMS, INC.,

Defendants,

and

DAVID MIAN,

Defendant-Appellee.

UNPUBLISHED
November 1, 2011

No. 299696
Oakland Circuit Court
LC No. 2008-090485-NP

Before: WILDER, P.J., and CAVANAGH and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition in favor of defendant, David Mian, in this negligence action. We affirm.

Plaintiff, an underage employee of Century Tool & Die, Inc. (Century), severely injured his hands while operating a power press that did not have point of operation guards. Plaintiff sued defendant, alleging that defendant owned the power press and had a duty to ensure that the press had the proper point of operation guards. Eventually defendant filed a motion for summary disposition, arguing that he did not own the power press—he had given it to plaintiff's employer, and it was plaintiff's employer's duty, not defendant's, to ensure that the press had the proper point of operation guards. Plaintiff responded, arguing that defendant did own the power press, not plaintiff's employer and, as set forth in *Ghrist v Chrysler Corp*, 451 Mich 242; 547 NW2d

272 (1996), defendant had a duty to ensure proper guards were on the press. The trial court agreed with defendant, holding that (1) it was "undisputed" that defendant gave the press to plaintiff's employer and (2) plaintiff failed to establish that a former owner of a used product is liable if that product is defective. The trial court noted that the *Ghrist* case pertains to the liability of manufacturers and designers of a product, not former owners. Thus, defendant's motion was granted. This appeal followed.

Plaintiff argues that defendant was not entitled to summary disposition because genuine issues of material fact existed as to whether defendant was the owner of the press and whether defendant owed plaintiff a duty to provide a safe press. After de novo review, we disagree. See *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008).

First, we agree with plaintiff that the trial court erred when it improperly resolved a genuine issue of disputed fact by concluding that defendant gave the press to plaintiff's employer. See MCR 2.116(C)(10). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). Here, in light of the evidence presented, including the deposition testimony from several witnesses, reasonable minds could differ on the issue whether defendant owned the press at the time plaintiff sustained his injuries. The trial court may not make findings of fact in deciding a summary disposition motion. *Amerisure Ins Co v Plumb*, 282 Mich App 417, 431; 766 NW2d 878 (2009). However, this error was harmless. Regardless of whether defendant owned the press or had formerly owned the press, defendant did not owe plaintiff a duty to ensure that point of operation guards were in place.

Plaintiff relies on *Ghrist*, 451 Mich at 242, in support of his argument that defendant owed him such a duty. His reliance is misplaced. In *Ghrist* the issue before the Court was "whether the manufacturer of a die is subject to liability for injuries resulting from the defective design and manufacture of the die." The defendant manufacturer argued that it should not be liable to the plaintiff because its die was used by the plaintiff's employer in an unsafe manner and in violation of the Michigan Occupational Safety and Health Act (MIOSHA), MCL 408.1001 *et seq*. Our Supreme Court disagreed, holding that "MIOSHA does not abrogate the general duty of a manufacturer to exercise the degree of care necessary in the design and manufacture of a product to avoid all reasonably foreseeable injuries." *Ghrist*, 451 Mich at 250. The case before us, however, involves an owner or former owner of an allegedly defective product—not a manufacturer of an allegedly defective product.

The *Ghrist* Court did consider two cases that involved owners of allegedly defective products: *White v Chrysler Corp*, 421 Mich 192; 364 NW2d 619 (1984) and *Fredericks v General Motors Corp*, 411 Mich 712; 311 NW2d 725 (1981). In both of these cases, the plaintiffs were injured while working with dies that had been installed in an unguarded press. The dies were not owned by the plaintiffs' employers, but by the defendants who had loaned the dies to the plaintiffs' employers. In both cases, our Supreme Court denied recovery, holding that the owners of the dies could not foresee that their products would be used in an unsafe manner rendering them defective because each employer had a statutorily mandated duty to maintain safe working conditions. *Ghrist*, 451 Mich at 246. The *Ghrist* Court distinguished owners of products from manufacturers of products, noting that manufacturers (1) are especially

knowledgeable about their products and the foreseeability of harm, (2) are "in the best position to effectuate needed safety-related improvements," and (3) have a duty to design their products to eliminate "any unreasonable risk of foreseeable injury." *Id*. at 247-248 (citations omitted).

Here, if defendant was the owner of the press, he could not be held liable for plaintiff's injuries. That is, in light of plaintiff's employer's duties imposed by MIOSHA, it was not foreseeable to defendant that his press would be used in an unsafe manner rendering it defective. And, if defendant was the former owner of the press, he could not be held liable for the same reason—no duty was owed to plaintiff. Thus, whether defendant was the owner or former owner of the press, plaintiff failed to establish a genuine issue of fact showing that defendant owed him a duty imposed by law to ensure that the press had the proper point of operation guards. And, contrary to plaintiff's claims, the cases of *Hart v Ludwig*, 347 Mich 559; 79 NW2d 895 (1956) and *Smith v Allendale Mut Ins Co*, 79 Mich App 351; 261 NW2d 561 (1977) are inapposite. In short, defendant did not assume a duty to plaintiff as demonstrated by an affirmative action. Like the defendant in *Smith*, defendant did not voluntarily and actively undertake to assist plaintiff's employer in its obligation to provide a safe place to work for its employees. See *Smith*, 79 Mich App at 356.

In summary, no genuine issue of material fact existed regarding whether defendant owed plaintiff a duty to ensure the press had the proper guards; thus, defendant's motion for summary disposition was properly granted.

Affirmed. Defendant is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio