Circuit Court for Frederick County
Case No. 10-C-17-002423

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 116

September Term, 2018

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BREHON SWEENY, JR.,

v.

KEITH S. DAVIS, *et. al.*,

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Reed,
Friedman,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Friedman, J.

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Filed: July 30, 2019

With limited exceptions, the workers compensation system provides the sole remedy for workers injured on the job. So it is for Brehon Sweeny, Jr.

## BACKGROUND

At the time of his accident, Sweeny was employed by VSS, a company that provides temporary staffing. In that capacity, Sweeny was assigned by VSS to work as a laborer at NVR's building materials manufacturing plant in Thurmont, Maryland. While there, Sweeny suffered a work-related injury when a metal storage rack fell on him. Sweeny sought and obtained workers compensation benefits.

Later, Sweeny brought a tort suit against Keith S. Davis and John K. Grunza, employees of NVR who served as Sweeny's supervisors. The suit amounted to allegations that Davis and Grunza knew that the rack was dangerously unstable but failed to warn Sweeny of that dangerous condition. Davis and Grunza moved to dismiss the complaint or, in the alternative, for summary judgment. The Circuit Court for Frederick County granted summary judgment, and this timely appeal followed.[1]

[1] On appeal, Sweeny argues that the trial court erred by not permitting him to conduct discovery before it ruled on the motion for summary judgment. Sweeny, however, (1) was on notice from the caption of Davis' "Motion to Dismiss, or, in the Alternative Motion for Summary Judgment" that he was in fact dealing with a motion for summary judgment and (2) failed in response to that motion to file an affidavit identifying a genuine dispute of material facts or explaining why discovery was necessary. MD. RULE 2-501(b)-(d). Thus, the trial court did not err. Moreover, we fail to see how discovery would help here.

## DISCUSSION

The law governing Sweeny's claim was decided by the Court of Appeals in *Athas v. Hill*, 300 Md. 133 (1984). There, Judge Marvin H. Smith, writing for a unanimous Court, held that under Maryland's theory of workers compensation "supervisory coemployees may be subject to liability only for negligently breaching a duty of care which they personally owe to the employee." *Athas*, 300 Md. at 134. By contrast, the *Athas* Court held that supervisory coemployees cannot be subject to liability for breaching duties owed to the employer, including as here, the duty to maintain a safe workplace. *Id*. at 149. Our decision in *Hayes v. Pratchett* is not to the contrary. 205 Md. App. 459 (2012). In *Hayes*, a supervisory coemployee, Pratchett, injured his co-worker, Hayes, while driving a customer's car. *Hayes*, 205 Md. App. at 462-63. We found that

> in performing the task himself, Pratchett is no longer acting in his role as a supervisor, but instead he is acting as a coemployee. As a coemployee, he is not performing his employer's duty to provide a safe workplace. Rather, as the driver of a motor vehicle, he owes a *personal* duty of care to all other travelers, including Hayes.

*Id*. at 476 (emphasis added). Sweeny does not allege that Davis and Grunza violated any such personal duties they owed to him. Rather, Sweeny alleges that Davis and Grunza violated the duty they owed to their employer, NVR, to maintain a safe workplace. As such Davis and Grunza are not subject to tort liability.

**JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**