Circuit Court for Baltimore City
Case No. 24-C-16-0000006 CN

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2194

September Term, 2017

CHARLIE GONZALEZ, ET AL.,

v.

EASTMAN SPECIALTIES CORPORATION, ET AL.

Meredith,
Reed,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: May 12, 2020

On January 14, 2016, Charlie Gonzalez (hereinafter "Appellant") filed suit against (1) Eastman Specialties Corporation; (2) Eastman Chemical Company, a subsidiary of Eastman Specialties Corporation; and (3) Genovique Specialties Corporation, Eastman Specialties Corporation's prior corporate entity. Appellant alleged that he sustained injuries when he suddenly fell into a hidden trench at a manufacturing plant owned and operated by Eastman Specialties Corporation. Carmen Gonzalez, Appellant's spouse, was also a plaintiff in the suit under a theory of loss of consortium.

On October 21, 2016, Eastman Specialties Corporation (hereinafter "Appellee") brought a Third-Party Complaint against Kellogg, Brown & Root, LLC ("KBR") and Collett & Sons Welding & Manufacturing, Inc. ("Collett"), who were hired as independent contractors by Appellee to renovate a production building's trench system. Subsequently, Appellee filed a Motion for Summary Judgment on January 25, 2017. On February 10, 2017, Appellant opposed Appellee's Motion for Summary Judgment. Oral arguments on the Motion for Summary Judgment were held and the Circuit Court for Baltimore City granted Appellee's Motion for Summary Judgment. On March 30, 2017, Appellant filed a Motion to Alter or Amend and/or Reconsideration, which was denied by the circuit court on December 4, 2017. It is from this denial that Appellant files this timely appeal. In doing so, Appellant brings one question for our review, which we have rephrased for clarity:[1]

[1] Appellant presents the following question:

1. Did the trial court err in granting Appellees' Motion for Summary Judgment, and in denying Appellants' Motion Alter or Amend Judgment and/or Reconsideration, where genuine issues of material fact existed regarding whether Appellant's injuries arose from Appellee's failure to adhere to their own comprehensive safety protocols

I. Did the circuit court err in granting Appellees' Motion for Summary Judgment and denying Appellants' Motion to Alter or Amend Judgment and/or Reconsideration?

For the foregoing reasons, we answer in the negative and affirm the decision of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellee owned manufacturing plants and had to renovate the floor and trench system of a production room in one of its manufacturing plants (hereinafter the "Chestertown Facility"). Appellee hired two independent contractors, KBR and Collett to renovate the floor and trench system at the Chestertown Facility. KBR served as the construction manager at the Chestertown Facility's floor renovation project. KBR's responsibilities included "determining the engineering specifications for the project, handling day-to-day issues, and ensuring safety." KBR hired Collett as a subcontractor to renovate the Chestertown Facility's production room floor. Collett provided those services subject to an independent contractor contract Collett had already entered into with Appellee.

Appellant was employed by Collett to work at Appellee's Chestertown Facility for several weeks. Appellant had worked at the Chestertown Facility but his work was not in the area where the subject incident occurred. On January 8, 2013, when Appellant arrived at the Chestertown Facility Appellant's supervisor, John Collett, told him "to see 'Mike'",

over which Appellees retained control of the operative details and methods, and where the exclusivity provisions under worker compensation laws and not preclude the action?

an employee of Collett, in Building 9, which was located on the Chestertown Facility. Appellant never went into Building 9 and for the first time Appellant learned that the workers there were working on a center line trench. Once Appellant entered Building 9 he saw that Mike was struggling with a piece of plywood and went over to assist him lift and move the piece of plywood. Appellant bent down to pick up one end of the plywood and as he took two steps forward Appellant fell into a two-foot finger trench injuring himself.

On January 14, 2016, Appellant filed suit against (1) Appellee; (2) Eastman Chemical Company, a subsidiary of Appellee; and (3) Genovique Specialties Corporation, Appellee's prior corporate entity. Appellant's wife, Carmen Gonzalez, also added a claim to Appellant's complaint under a theory of loss of consortium. Appellant's wife alleged that Appellant "suffered physical injury from stepping into the finger trench and together they would suffer detriment to their marital relationship." On October 21, 2016, Appellee brought a Third-Party Complaint against KBR and Collett. Subsequently, Appellee filed a Motion for Summary Judgment on January 25, 2017. Appellant filed an Opposition to Appellee's Motion for Summary Judgment on February 10, 2017. On February 27, 2017, the circuit court held oral arguments on the Motion for Summary Judgment and the circuit court held the matter *sub curia*. The circuit court later granted Appellee's motion and on March 30, 2017, Appellant filed a Motion to Alter or Amend and/or Reconsideration, which was opposed by Appellee. Appellant's Motion to Alter or Amend and/or Reconsideration was ultimately denied by the circuit court on December 4, 2017.

STANDARD OF REVIEW

Appellate review of an order granting summary judgment is a two-step process. The

first is to decide whether there were disputes of material fact before the circuit court. *Koste v. Town of Oxford*, 431 Md. 14, 24-25 (2013). We perform this review de novo. *Id.* at 25.

In granting a party's motion for summary judgment, the circuit court must determine that the evidence is insufficient to generate an issue of material fact for the jury to decide. Summary judgment is proper where the trial court determines that there are no genuine disputes as to any material fact and that the moving party is entitled to judgment as a matter of law. *See* Md. Rule 2-501. The trial court should not resolve any issue regarding the credibility of witnesses as those matters are left to the trier of fact.

In reviewing the grant of a motion for summary judgment, appellate courts focus on whether the trial court's grant of a motion was legally correct. The parameter for appellate review is determining "whether a fair-minded jury could find for the plaintiff in light of the pleadings and the evidence presented, and there must be more than a scintilla of evidence in order to proceed to trial…" *Laing v. Volkswagen of Am., Inc*., 180 Md. App. 136, 152-53 (2008). Additionally, if the facts are susceptible to more than one inference, the court must view the inferences in the light most favorable to the non-moving party. An appellate court ordinarily may uphold the grant of summary judgment only on the grounds relied on by the trial court. *See Ashton v. Brown*, 339 Md. 70, 80 (1995).

DISCUSSION

A. Parties' Contentions

Appellant maintains that Appellee was directly involved in maintaining a safe environment for "persons inside Building 9, and for ensuring that proper warning and cautionary devices were in place to warn of the exact latent hazard at issue." Specifically,

Appellant argues that Appellee knew about the "latent defect or hazard" and even had a safety officer on the premises because of those defects. Appellant asserts that Robert Sweet, Appellee's designee, testified at trial that he visited Building 9 every day leading up to the accident to make sure that the safety protocols Appellee implemented were properly in place. Appellant maintains that Sweet even described in detail how Appellee insisted that "open trenches" be protected in several specific ways, which Appellee monitored daily. As such, Appellant contends that Appellee assumed a duty of care and Appellee breached this duty because Appellee's own safety requirements and daily monitoring were not properly implemented when Appellant was injured.

Appellant contends that Appellee "overlooks a basic tenet of Maryland law." Specifically, Appellant argues that as a general rule a landowner owes a duty of care to invitees on the landowner's premises to "use reasonable and ordinary care to keep his premises safe for the invitee and to protect him from injury caused by an unreasonable risk." *Rowley v. Mayor & City Council of Baltimore*, 305 Md. 456, 461 (1986). Appellant asserts that this rule also applies when a landowner entrusts work to an independent contractor but retains control of any part of the work and a landowner has a nondelegable duty to maintain safe premises for an invitee. As such, Appellee cannot avoid liability because Appellee had a nondelegable duty to keep the premises safe.

Appellant asserts that as a general rule an "employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his employees." *Rowley*, 305 Md. at 465. However, Appellant contends that the instant case falls under the general rule's three exceptions, which are:

> (1) negligence of [the independent contractor's] employer in selecting, instructing or supervising the contractor; (2) nondelegable duties of the employer, arising out of some relation toward the public or the particular plaintiff; and (3) work which is specially, peculiarly, or inherently dangerous.[2]

Rowley, 305 Md. at 461.

Additionally, Appellant argues that Appellee violated the safe workplace doctrine, "which stands for the proposition that, if an owner employs an independent contractor, he owes employees of the contractor the same duty he would owe to his own employees and [sic] furnish them with a safe place to work." Appellant contends that Appellee was aware of the hazardous conditions in Building 9 and failed to notify Appellants' employer of the risk or at the very least failed to exercise reasonable ordinary care to remedy that risk.

Finally, Appellant argues that "the crux of the error by the trial court stems from its determination that 'evidence must demonstrate [Appellee] controlled the very thing from which the injury arose.'" Specifically, Appellant argues that the circuit court conflated two separate arguments that Appellant was making in his Opposition to Appellee's Motion for Summary Judgment. Appellant maintains that his primary contention was that the injury arose not from '"control' over the construction activities of the floor but rather from

[2] Appellant maintain in his brief that this case falls under the three exceptions to the general rule because "the safety measures mandated were simply not there, and thus a jury could easily conclude that [Appellee] negligently supervised Collet-particularly since [Appellee] was in Building 9 every day for that specific purpose. Moreover, there was a nondelegable duty directly owed to [Appellants]. Further, no reasonable person could doubt this was an inherently dangerous worksite by the deposition testimony given."

[Appellee's] failure to exercise its proper and admitted 'control' over the safety procedures attendant to the activities in Building 9."

Appellee responds that the undisputed facts established that Appellee discharged any duty to Appellant to provide a safe workplace. Specifically, Appellee asserts that Appellee notified Collett about the conditions in Building 9. As such, Appellee did not breach any duty to maintain a safe workplace. In the alternative, Appellee argues "the duty to provide a safe workplace requires 'warn[ing] and instruct[ing]' others about 'the dangers of the work'", which Appellee complied with by warning Collett about the dangers in Building 9, therefore discharging Appellee's duty of due care. Appellee contends that it issued a safe work permit to Collett that identified the dangers of an open trench and Collett received the notice because Collett used "plywood to cover open trenches- including the finger trench into which [Appellant] stepped" in.

Appellee argues that "a landowner, [Appellee], who hires an independent contractor, [Collett], does not owe a legal duty of reasonable care to the independent contractor's employees." Appellee maintains that the circuit court did not explicitly rule on this issue in its summary judgment order but requests that this Court address this issue. Appellee requests that this Court hold that a landowner who hires an independent contractor does not owe a duty of care to the independent contractor's employees because the '"exclusive remedy for any employee who is injured during the course and within the scope of his employment' is the Maryland Workers' Compensation Act." *Johnson v. Mountaire Farms of Delmarva, Inc.,* 305 Md. 246. 253 (1986); In fact, Appellee contends that Appellant should recover under the Maryland Workers' Compensation Act.

Specifically, Appellee maintains that "[t]his Court should hold that an independent contractor employee's remedy for workplace injuries is exclusively under the Maryland Workers' Compensation Act." [App'e Br. 21].

Appellee contends that Appellant failed to present sufficient facts to establish the prerequisites for the duty of care Appellee allegedly owed Appellant. Specifically, Appellee maintains that the safe workplace doctrine establishes two conditions to a finding of duty: [1] "the injuries [must] arise out of the abnormally dangerous condition of the premises;" and [2] "the premises on which the stipulated work is done [must] remain under" the control of Appellant. *Le Vonas v. Acme Paper Board Co.,* 184 Md. 16, 20 (1944). Appellee contends that the work it hired Collett to do was not an abnormally dangerous activity because the finger trench was part of the work Appellee hired Collett to perform and the finger trench was open and obvious.

Moreover, Appellee argues that it retained no control over "the thing out of which the injury arose." Specifically, Appellee asserts that "the undisputed facts establish that [Appellee] had minimal involvement in the renovation project generally, and retained no control over moving the plywood off of trenches." Appellee contends that Appellant's argument that Appellee establishing safety procedures has no merit because "this Court has already held that having some safety roles is not 'the type of control' that establishes a duty.'"

Finally, Appellee argues that Appellant assumed the risk and was contributorily negligent. Specifically, Appellee contends that Appellant assumed the risk of stepping into an uncovered trench because Appellant knew about the risk of trenches within Building 9,

Appellant appreciated the dangers associated with a hole in the ground, and Appellant voluntarily confronted the danger because Appellant voluntarily helped move the plywood. Appellee also maintains that Appellant's own negligence contributed to his alleged injuries.

We hold that Appellee discharged its duty of due care by warning Collett about the dangers of open trenches. Thus, the judgment of the circuit court is affirmed.

B. Analysis

1. Duty of Care.

i. Did Appellee owe Appellant a Duty of Care and, If So, What Standard of Care Did Appellee Owe Appellant?

Appellant asserts that as a general rule an "employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his employees." *Rowley*, 305 Md. at 465. However, Appellant contends that the instant case falls under the general rule's exception. Specifically, Appellant argues that Appellee had a non-delegable duty to provide him a safe workplace, maintain control over Building 9, and was responsible for implementing safety protocols in Building 9. Appellant identifies several alleged failures on Appellee's part which he asserts entitles him to recover damages. Appellant maintains that "there [were] no warnings or devices whatsoever either outside or inside Building 9, or in or on the hazard itself to warn him about this latent hazard."

In *Rowley v. Mayor & City Council of Baltimore,* 305 Md. 456 (1986), the Mayor and City Council of Baltimore ("the City"), who owned the Baltimore Convention Center,

hired Facility Management Inc. of Maryland ("FMI") as an independent contractor to assume the management and operations of the Convention Center. Under the terms of FMI and the City's agreement, FMI had the responsibility to perform all routine maintenance and repairs at the Convention Center. *Id.* at 457. Catherine Rowley was employed by FMI as a security guard at the Convention Center. On August 22, 1980, Rowley was beaten, raped and robbed by an unknown assailant while working at the Convention Center. *Id.* The evidence showed that the unknown assailant gained entry through a defective door located near the security office. This defect had been reported to FMI on a number of occasions. Subsequently, Rowley brought action against the City "alleging that as owner of the Convention Center the City has a duty to 'to provide a safe and secure place for the general public and people working in the Convention Center'" and that this duty was a non-delegable duty. *Id.* at 461.

The Court of Appeals stated that "the general rule is that the employer of an independent contractor is not liable for the negligence of the contractor and his employees." *Rowley*, 305 Md. at 461. The Court of Appeals reasoned that since "the employer has no right of control over the manner in which the work is done" the employer should not be held liable. *Id.* The *Rowley* court observed that there are three exceptions to this general rule: "1) Negligence of the employer in selecting instructing or supervising the contractor. 2) Non-delegable duties of the employer, arising out of some relation toward the public or the particular plaintiff. 3) Work which is specially, peculiarly, or 'inherently' dangerous." *Rowley v. Mayor & City Council of Baltimore*, 305 Md. 456, 462 (1986) (citing Restatement (Second) of Torts, § 409 comment *b*). , The Court of Appeals held:

> We agree that the City had a non-delegable duty to maintain the premises in a reasonably safe condition, and that the existence of that duty may be traced to several separate sources. We conclude, however, that under the circumstances of this case the duty did not extend to the independent contractor and its employees with respect to defects arising from the failure of the contractor to accomplish the very repairs it had undertaken to perform.

Rowley, 305 Md. at 463.

In the instant case, we must first determine whether Appellee was in possession and control of Building 9. "The liability of a landowner for injuries received on the land is dependent upon whether the device which caused the injury is in his possession and control." *Id.* An owner and occupier of land is defined as:

> (a) a person who is in occupation of the land with intent to control it or
> (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or
> (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

Restatement (Second) of Torts § 328.

Here, the record does not show that Appellee relinquished its possession over Building 9 to KBR or Collett nor is there any evidence that KBR or Collett had sole and exclusive control and possession of Building 9.

We must next consider which standard of due care Appellee owed Appellant when he was injured in Building 9. As a general rule, "the standard of care owed by a possessor of land depends upon the status of the person on the land; i.e. whether he is an invitee, licensee, or trespasser." *Sherman v. Suburban Trust Co.*, 282 Md. 242 (1978). The Court of Appeals has stated that "it is generally held that employees of an independent contractor

are invitees on the property of the landowner." *Rowley*, 305 Md. at 466 (citing *Prosser and Keeton on The Law of Torts* § 61, at 419 (W. Keeton 5th ed. 1984)).

A landowner must use reasonable and ordinary care to keep his land safe for an invitee and protect an invitee from "injury caused by an unreasonable risk." *Sherman*, 265 Md. at 261. In Maryland, employers of independent contractors must adhere to the "safe workplace" doctrine. Under the doctrine, the employer must notify the employee of any concealed or latent dangers subject to the employer knowing of the condition or with the exercise of "ordinary due care should have known of it." *Rowley*, 305 Md. at 466 (citing *Leonard v. Sav-A-Stop Services*, 289 Md. 204, 218 (1981); *see Le Vonas v. Acme Paper Bd. Co.*, 184 Md. 16, 20 (1944); *see also Appiah v. Hall* 416 Md. 533, 561 (2010). However, in *Lane v. Bethlehem Steel Corp*., 107 Md. App. 269 (1995), this Court held that "an employer/premises owner can discharge his duty to warn an independent contractor's employees of a latent danger by warning the independent contractor or his supervisory employees." *Lane*, Md. App. at 284.

Here, the record shows that:

> [Appellant] began working for Collett in 2008 and that employment continued until [Appellant's] alleged injury in 2013.
> ….
> [Appellee] needed to renovate the floor and trench system of a reactor room in Building 9 at its Chestertown Facility.
>
> For this floor renovation project, [Appellee] had no role other than owner of Building 9. [KBR] was the general contractor overseeing the project. [Collett] was the subcontractor actually doing the floor renovation.
>
> [KBR] through a Continuing Service Agreement, [Appellee] contracted with [KBR] for the engineering, procurement, construction, construction management, and related services at [Appellee's] Chestertown

> Manufacturing Site, including Building 9.
>
> [Collett] through a Continuing Services Agreement, [Appellee] contracted with Collett for construction services.
>
> This Continuing Services Agreement generally governed the relationship between [Appellee] and Collett, and allowed for the parties to enter separate contracts for specific projects.
>
> In all events, Collett would provide its services to [Appellee] as an independent contractor.
>
> Pursuant to its job as an independent contractor [KBR] hired Collett as a subcontractor to renovate Building 9's reactor room floor.
> …..
>
> Collett was also responsible for maintaining the safety of the Building 9 work zone, which included providing barricades and signage, and holding daily [Job Safety Analyses (JSA)] meetings.
>
> Collett's JSA's for the floor renovation project included safety discussions about trenches.
>
> To be allowed to work on-site, [Appellee] required Collett to be permitted. To this end, [Appellee] issued a safe work permit to Collett on a daily basis. That permit provided information about tasks to be completed, hazards associated with those tasks, and ways to avoid those hazards. This included instructing Collett that open trenches were to be covered.

The undisputed facts show that Collett was an independent contractor who was hired by Appellee to work on renovating the floor at Building 9. Appellant was an employee of Collett. In order for Appellee to discharge a duty of care owed to Appellant, i.e. to provide a safe workplace, Appellee had to warn Collett of the dangers of open trenches. Here, the record shows that Collett was responsible for "maintaining the safety of the Building 9 work zone, which included providing barricades and signage, and holding daily [Job Safety Analyses (JSA)] meetings." Moreover, Appellee issued to Collett a safe work permit on a

daily basis. The permit had information about the hazards associated with the task Collett was hired to perform and included information about how to avoid those hazards. Moreover, the permit instructed Collett that open trenches had to be covered for safety reasons. Thus, the undisputed facts shows that Appellee discharged its duty to provide a safe workplace to Appellant when Appellee instructed Collett that open trenches must be covered at all times. As noted above, this Court has held that "an employer/premises owner can discharge his duty to warn an independent contractor's employees of a latent danger by warning the independent contractor or his supervisory employees." *Lane*, Md. App. at 284.

Accordingly, the circuit court did not err when it found that there were no genuine material facts in dispute with respect to Appellee discharging its duty of providing Appellant a safe workplace when Appellee warned Collett about the dangers associated with open trenches.

ii. Did Appellee have control over the trenches from which Appellant was injured from?

Appellant argues that "the crux of the error by the trial court stems from its determination that 'evidence must demonstrate [Appellee] controlled the very thing from which the injury arose.'" Specifically, Appellant asserts that the circuit court conflated two separate arguments that Appellant was making in his Opposition to Appellee's Motion for Summary Judgment. Appellant maintains that his primary contention was that the injury arose not from '"control' over the construction activities of the floor but rather from [Appellee's] failure to exercise its proper and admitted 'control' over the safety procedures

attendant to the activities in Building 9."

Appellant's argument that Appellee is liable for Appellant's injuries because Appellee had control over the safety procedures attendant to the activities in Building 9 has no merit. The Court of Appeals has held that the employer of an independent contractor can be held liable for damages of an employee of an independent contractor if the employer retained sufficient control over the details of the work the employee was hired to perform. *See Parker v. Neighborhood Theatres, Inc.*, 76 Md. App. 590, 601 (1988); *see also Cutlip v. Lucky Stores, Inc.*, 22 Md. App. 673, 678 (1974). Here, Appellant has failed to show that Appellee retained control over the details of the work completed by Collett employees. In fact, the undisputed facts show that Appellant's injury occurred while he was performing the very work Collett was hired to perform. Moreover, Collett was responsible for maintaining the safety of the Building 9's work zone, which included providing barricades and signage and holding daily JSA meetings. Lastly, Appellant fell into a trench over which Collett maintained specific control. Thus, liability for the injuries Appellant sustained does not rest with Appellee.

Accordingly, the circuit court did not err when it found that there were no genuine material facts in dispute to establish that Appellee did not have control of the details of the work Appellant was hired to perform. Thus, Appellee is not liable for the injuries sustained by Appellant.

iii. Does a Landowner Owe a Duty of Care to Employees of Independent Contractors?

Appellee argues that "a landowner, [Appellee], who hires an independent

contractor, [Collett], does not owe a legal duty of reasonable care to the independent contractor's employees." Appellee request that this Court hold that a landowner who hires an independent contractor does not owe a duty of care to the independent contractor's employees because the '"exclusive remedy for any employee who is injured during the course and within the scope of his employment' is the Maryland Workers' Compensation Act." *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246. 253 (1986).

In *Rowley v. Mayor & City Council of Baltimore*, 305 Md. 456 (1986), the Court of Appeals left open the possibility that an employer of an independent contractor can be held liable for the injuries of the independent contractor's employees where the employer retains sufficient control over the safety of the workplace. *Rowley*, 305 Md. at 475. However, the record shows that Appellee did not properly raise this issue before the circuit court. As such, this issue was not properly preserved for appellate review.

2. Contributory Negligence and Assumption of the Risk

As an aside, Appellee argues that Appellant assumed the risk and was contributorily negligent. Specifically, Appellee contends that Appellant assumed the risk of stepping into an uncovered trench because Appellant knew about the risk of trenches within Building 9, Appellant appreciated the dangers associated with a hole in the ground, and Appellant voluntarily confronted the danger because nobody compelled Appellant to move the plywood. Appellee also maintains that Appellant's own negligence contributed to his alleged injuries.

In the circuit court's order to grant Appellee's Motion for Summary Judgment, the

Honorable Yvette Bryant stated:

> Recognizing that this court's ruling extinguishes the claim, the court notes it would not have granted summary judgment on the grounds of contributory negligence or assumption of risk. The record is not sufficiently clear to the court that [Appellant] assumed the risk of his injury or that he failed to exercise sufficient care for his own safety to allow this court to find, as a matter of law that [Appellee] would be entitled to judgment on either those grounds.

We decline to address this issue because this Court's determination of the first issue is dispositive of this matter and makes addressing assumption of the risk or contributory negligence unnecessary. Accordingly, the judgment of the Circuit Court for Baltimore City is affirmed.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.