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May 6, 2020

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You are hereby notified that the Court has entered the following opinion and order:

2019AP874

Renee Moxon v. Lunda Construction Company and Zurich
American Insurance Company (L.C. #2018CV33)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Renee Moxon appeals the circuit court's grant of summary judgment to Lunda Construction Company and Zurich American Insurance Company (hereinafter collectively

Lunda) based upon the application of the “completed and accepted” rule.¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).² We affirm.

We independently review a circuit court’s grant of summary judgment. *Behrendt v. Gulf Underwriters Ins. Co.*, 2009 WI 71, ¶11, 318 Wis. 2d 622, 768 N.W.2d 568. Summary judgment is appropriate if, viewing the facts in the light most favorable to the non-moving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Moxon filed suit against Lunda claiming she was injured in April 2017 when wiring securing a steel safety gate “on the City of Oshkosh-owned river walk” broke, causing the gate and Moxon to fall. According to Moxon, Lunda, the company hired by the city to build the riverwalk, had installed the gate prior to “turn[ing] over” the project to the city in August 2015.

In *Nelson v. L. & J. Press Corp.*, 65 Wis. 2d 770, 223 N.W.2d 607 (1974), our supreme court recognized the

well-established general rule that, where the work of an independent contractor is completed and is turned over to, and accepted by, the owner, the contractor is not liable to third persons for damages or injuries subsequently suffered by reason of the condition of the work, the responsibility, if any, for maintaining or using the property in its defective condition shifting to the owner.

¹ Through her Notice of Appeal, Moxon also challenges the circuit court’s denial of her motion for reconsideration. Because she develops no arguments specific to the denial of her motion for reconsideration, we address it no further.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Id. at 777 n.4 (citing *Cadden v. Milwaukee County*, 44 Wis. 2d 341, 345, 171 N.W.2d 360 (1969)). The *Nelson* court also noted, however, that this rule does not apply “[w]here the defect in the work is not readily observable upon reasonable inspection.” *Nelson*, 65 Wis. 2d at 777-78.

Moxon does not dispute that Lunda’s work had been completed and accepted by the city in August 2015, more than a year and one-half prior to her fall. She instead contends the exception to the rule applies, asserting that the method Lunda used to secure the gate, the wiring, was a defect in Lunda’s work that was not “readily observable upon reasonable inspection.” Moxon’s argument goes nowhere.

Moxon admits that her appeal is not based upon any defect in the wiring itself, but “on the method that Lunda chose to secure the gate.” As to that method, Moxon submitted photos in opposition to Lunda’s motion for summary judgment that clearly depict the gate and the wiring that was used to secure it. As the circuit court observed in its summary judgment ruling, “the picture shows for all to see how this gate was secure[d], which it was secured by a wire. So certainly, the City upon conducting an inspection can see that these gates are secured by a wire versus a chain.” The court added: “[T]hose pictures show ... quite clearly that it is readily observable as to how this gate was secured. Upon reasonable inspection, by just looking at it, you can see that the gate is secured by a wire.” We agree the photos show that the wiring is “readily observable” as the method Lunda chose for securing the gate. As a result, we conclude the exception to the completed and accepted rule does not apply, the rule itself does, and the circuit court did not err in granting summary judgment.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals