2014 IL App (1st) 120682-U

THIRD DIVISION
APRIL 9, 2014

No. 1-12-0682

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SAMUEL ESCARENO,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 09 L 2386
	)	
	)	
TERRA COTTA COMMONS CONDOMINIUMS	)	
ASSOCIATION and KASS MANAGEMENT	)	
SERVICES,	)	Honorable
	)	John P. Kirby,
Defendants-Appellees.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Hyman and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Employers with the power only to inspect work but without the power to control the manner of a contractor's work, do not retain sufficient control over a contractor's work to give rise to a duty to employees of the contractor. The trial court did not err when it entered summary judgment in favor of defendants where plaintiff failed to proffer admissible evidence to create a material issue of fact.

¶ 2 Plaintiff, Samuel Escareno, filed a complaint against the defendants, Terra Cotta Commons Condominium Association (Terra Cotta) and Kass Management Services (Kass) after he fell from an unsecured ladder while replacing window screens at a condominium building owned by Terra Cotta and managed by Kass. Escareno alleged in his complaint that the defendants were negligent for failing to provide a safe means of access to the areas of the building being painted and for refusing to allow the painters to tie their ladders to the building.[1] The defendants moved for summary judgment arguing that they owed no duty to plaintiff and that they did not forbid plaintiff from securing his ladder. The trial court initially denied the motion for summary judgment, but on defendants' motion for reconsideration, the court granted the motion.

¶ 3 On appeal, Escareno argues that the trial court erred when it granted the defendants' motion for summary judgment because a genuine issue of material fact exists as to whether it was the defendants or Escareno's employer who did not want him to tie his ladder to the window bars. We find the evidence establishes (1) that defendants did not retain sufficient control over the work performed by Escareno's employer, Sherwin, to owe Escareno a duty and be held liable for his injuries, and (2) that Escareno failed to proffer admissible evidence that

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[1]Escareno alleged in his complaint that defendants refused to allow the painters to tie their ladders to the building. In his deposition, Escareno testified that Soriano told him that he could not tie the ladder to the "poles at the edges of the windows." However, during his deposition, Escareno explained in more detail that at each window there were three horizontal metal bars, "like jail bars,"and those were the bars that defendants did not want the ladders tied to. Therefore, we will use the terms "building," and "window bars" where appropriate.

created a material issue of fact. Therefore, we hold that the trial court did not err when it granted defendants' motion for summary judgment.

¶ 4 Background

¶ 5 Terra Cotta owned a condominium building located at 1760 West Wrightwood in Chicago, Illinois. Kass was responsible for the management of the condominium building and it hired Sherwin Painters, Inc.[2] to furnish the materials and perform the labor necessary to paint certain portions of the condominium building. Escareno was one of Sherwin's painters who worked on the condominium project. Escareno was injured when he fell from a ladder while attempting to replace a window screen at the condominium building.

¶ 6 On January 22, 2010, Escareno filed his first amended complaint to recover damages as a result of the accident at the condominium building. Escareno alleged in his complaint that Sherwin had requested permission from the defendants to allow the painters to tie their ladders to the building because of the wind, that the defendants refused to allow Escareno and his co-workers to secure their ladders to the building, and that Escareno was injured when the ladder he was working on shifted in the wind causing him to fall.

¶ 7 Escareno also alleged in his complaint that the defendants were negligent because they failed to provide him with a safe means of access to the areas of building being painted and because

[2]Kass filed a third party complaint against Sherwin for contribution. Sherwin filed a motion to dismiss the third party complaint with prejudice because it had waived its lein on Escareno's recovery from the defendants. The trial court granted Sherwin's motion on August 8, 2011, and dismissed all claims against Sherwin. Therefore, Sherwin is not a party to this appeal.

they refused to allow him to tie his ladder to the building.

¶ 8 Terra Cotta and Kass filed answers and affirmative defenses to Escareno's amended complaint. In their affirmative defenses, Terra Cotta and Kass alleged that Escareno's injuries resulted from his own negligence because Escareno failed to secure his ladder when it was windy.

¶ 9 On March 24, 2011, the defendants filed a motion for summary judgment and argued that their conduct was not the proximate cause of Escareno's injuries because they did not forbid Escareno from securing his ladder to the building nor did they deny him a safe means of access to the building. Defendants also argued that they did not possess or retain control over Escareno's work in order to give rise to a duty.

¶ 10 In support of their motion for summary judgment, the defendants attached the depositions of Escareno, Brian Soriano, Sherwin's foreman who was responsible for overseeing the work at the condominium building, Peter Matousek, Sherwin's general manager, and Andy Monk, an employee of Kass and a former property manager for the Terra Cotta condominiums.

¶ 11 Escareno testified at his deposition that he received all his instructions about how to perform his job from Soriano. Soriano was in charge of when and how the work was to be performed and he decided whether the work had to be stopped for safety infractions or other reasons. Escareno did not receive any instructions, directions or equipment from anyone associated with the condominium building. He testified that he never had a conversation or overheard a conversation with anyone from the condominium association or the management company, and that no one from the condominium association or building told him he could not tie his

ladder to the window bars. He remembered, however, seeing two men at the job site on two separate occasions, and he assumed that they were from the condominium association or the management company.

¶ 12 On the day of the accident, it was cloudy and very windy. Escareno told Soriano that he did not want to get on the ladder unless he was able to secure his ladder. Escareno testified that Soriano told him that he and his co-workers "couldn't tie down the ladders to the poles at the edges of the windows because "they -- Sherwin -- I mean Sharon [an employee of Sherwin] had told him that they didn't want none of those bars to chip paint because they didn't want to have to paint them [out of their pocket] because that wasn't in the contract." However, on re-direct, when explaining the aforementioned statement, Escareno testified that Soriano told him that "the people from the building" not only told Sharon that they did not want the ladders tied to the window bars but "that's what they had told him [Soriano]." Escareno did not know who made this statement to Soriano or when the statement was made, but he assumed it was one of the men that he saw at the job site on two occasions. Escareno did not know if anyone from the condominium association or management company knew that he and his co-workers wanted to tie their ladders to the window bars on the day of the accident.

¶ 13 Despite the wind, Escareno testified that he decided to stay and finish the job. Escareno was replacing the window screens on the third floor windows using a 40-foot aluminum ladder. As Escareno climbed the ladder with a window screen in his hand, a strong gust of wind blew and shook the ladder, but he stood still until the ladder was stable again. When he extended his arm to the right to replace the window screen, the ladder slid to the right side,

swung in towards the building, flung back and threw him to the ground. Escareno testified that he suffered a broken right elbow and a cracked hip from the fall.

¶ 14 Soriano testified that he was employed by Sherwin as a team leader for outdoor and inside painting. The initial paint job at the condominium building was performed by other painters from Sherwin and Soriano and his crew were only there to perform "touch-up work", such as, painting the window screens. He received no directions, instructions or equipment from the defendants on how to perform the job. The defendants did not have any full time presence at the job site and he did not need any assistance or supervision from the defendants to perform the work safely.

¶ 15 Soriano further testified that on the day of the accident, it was not dangerously windy and he did not have any problems controlling his ladder. He was working on a ladder next to Escareno and, as Escareno turned around to say something to him, Escareno lost his balance and fell. After Escareno fell, he told Soriano that "I grabbed something and something came with me." Escareno never told him that he fell because it was windy and Escareno never complained to him about the wind that day. Finally, Soriano testified that there was no place on the third floor where they could have tied the ladders to replace the window screens and no one told him that he could not tie the ladders to the roof.

¶ 16 Peter Matousek testified that all the day-to-day activities on the project were under the direct control of Sherwin. Sherwin was responsible for providing all the equipment, materials and directions as to how the work was to be performed. Matousek testified that it is standard protocol in their line of business for the contractor, in this case Sherwin, to decide the "means

and method" to perform the work. The customer would tell Sherwin what they want to have done but "they never in any way, shape or form tell us how to do it. It's not their right or their business." He had no knowledge of Terra Cotta or Kass telling anyone from Sherwin that they did not want the ladders tied to the window bars.

¶ 17 Andy Monk, a senior property manager for Kass, testified that he was responsible for the management of the Terra Cotta condominium property until 2008. He visited the building to inspect the work before it was completed on two or three occasions. He does not know Soriano and has never spoken to him. There was no discussion with Sherwin during the job about tying the ladders to the window bars.

¶ 18 On July 6, 2011, the trial court denied defendants' motion for summary judgment. On August 2, 2011, the defendants filed an amended motion for reconsideration. At a hearing on January 3, 2012, a different trial court judge entered an order (1) granting the motion for summary judgment in favor of defendants, and (2) stating "[f]urther status on motion 2/3/12 at 11:30."

¶ 19 On February 3, 2012, the trial court entered a written order and found that the issue was whether certain parts of Escareno's deposition testimony were admissible. The court also found that Escareno's testimony– that Soriano told him that someone from Terra Cotta or Kass had told him that the painters were not allowed to tie their ladders to the window bars -- was inadmissible hearsay within hearsay. The court further found that Escareno's testimony was inadmissible because it lacked foundation: Escareno had no first hand knowledge of who made the statement or when or where it was made. Finally, the court found that there was

no admissible evidence that the defendants directed Escareno not to tie off his ladder. Accordingly, the court granted the defendants' motion for reconsideration and entered summary judgment in favor of the defendants.

¶ 20 Analysis

¶ 21 I. Jurisdiction

¶ 22 The defendants argue that this court does not have jurisdiction to review this appeal because Escareno did not file a timely notice of appeal as prescribed by Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008). Specifically, defendants argue that the final judgment was entered on January 3, 2012, and that Escareno's notice of appeal was untimely because it was not filed until February 29, 2012.

¶ 23 Escareno responds by arguing that his February 29, 2012, notice of appeal was timely because the final judgment was entered on February 3, 2012. Escareno maintains that the successor judge's February 3, 2012 order, reversing the prior judge's July 6, 2011 order denying defendants' motion for summary judgment, fails to evince careful consideration of the prior judge's order and fails to show restraint. We find that the February 3, 2012 order entered by the successor judge followed the Supreme Court's holding in *Balciunas v. Duff*, 94 Ill. 2d 176, 185-86 (1983), because the successor judge reconsidered the July 6, 2011 interlocutory order and the memorandum opinion and order outlined the successor judge's reasons for granting defendants' motion for summary judgment and showed careful consideration of the law and the facts of the case. Therefore, we find the successor judge did not err when he granted the defendants' motion to reconsider the July 6, 2011, interlocutory

order, granted the motion for summary judgment, and entered the February 3, 2012, order.

¶ 24 Rule 303 provides that the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or within 30 days after entry of the order disposing of the last pending postjudgment motion directed against that judgment or order. Ill. S. Ct. R. 303(a)(1) (eff. May 30, 2008). Case law holds that "as long as any party's posttrial motion remains undisposed, the underlying judgment is not final, notice of appeal is premature, and complete jurisdiction remains with the circuit court." *In re Marriage of Uphoff*, 99 Ill. 2d 90, 95 (1983).

¶ 25 Here, the last postjudgment motion pending before the court was defendants' amended motion for reconsideration of the interlocutory order entered on July 6, 2011. On January 3, 2012, when the trial court granted the defendants' motion for summary judgment, it did not rule on the motion for reconsideration but continued the hearing on the pending motion for reconsideration until February 3, 2012. On February 3, 2012, the trial court granted the motion for reconsideration, thereby disposing of the last postjudgment motion pending before the court and therefore, made the February 3, 2012, order the final judgment. Accordingly, because Escareno's notice of appeal was filed on February 29, 2012, within 30 days of the February 3, 2012 final judgment, we find that the notice of appeal was timely and we have jurisdiction over this appeal.

¶ 26 II. Standard of Review

¶ 27 A trial court is permitted to grant summary judgment only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as

to any material fact and that the moving party is entitled to summary judgment as a matter of law. *Thompson v. Gordon*, 241 Ill. 2d 428, 438 (2011). " 'Genuine' is construed to mean that there is evidence to support the position of the non-moving party." *Ralston v. Casanova*, 129 Ill. App. 3d 1050, 1058 (1984). Although plaintiff need not prove his case at summary judgment, he must present evidence that would support a finding in his favor. *Nordness v. Mitek Corp. Surgical Products, Inc.*, 286 Ill. App. 3d 761, 762 (1997). We may affirm an order granting summary judgment on any basis appearing in the record, regardless of whether the lower court relied upon that ground. *Home Insurance Co. v. Cincinnati Insurance, Co.*, 213 Ill. 2d 307, 315 (2004). We review the trial court's order that granted defendants' motion for summary judgment under a *de novo* standard of review. *Home Insurance Co.*, 213 Ill. 2d at 314.

¶ 28 III. Negligence

¶ 29 Escareno's theory of liability against defendants is based on negligence. In any action for negligence, the plaintiff must present sufficient evidence to establish that the defendant owed a duty to plaintiff, that the defendant breached that duty, and that any injury was proximately caused by the breach. *Wojdyla v. City of Park Ridge*, 148 Ill. 2d 417, 421 (1992). Whether a duty exists is a question of law to be decided by the court, and if no duty exists, there can be no recovery. *Mount Zion State Bank & Trust v. Consolidated Communications, Inc.*, 169 Ill. 2d 110, 116 (1995).

¶ 30 A. Premises Liability

¶ 31 Escareno alleged in his complaint that the defendants were negligent because they failed to

provide him "with a safe means of access to the areas of the building being painted." In their motion for reconsideration and on appeal, defendants maintain that Escareno has admitted that he fell because of the wind and Escareno has not presented any evidence that his injuries arose from a condition on the land.

¶ 32 According to section 343 of the Restatement (Second) of Torts (1965), in certain circumstances, "[a] possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land." Restatement (Second) of Torts § 343 (1965). The duty of care imposed on an individual as possessor of the premises differs from the duty of care imposed under section 414 of the Restatement (Second) of Torts (1965), where an individual "retains control" over the work entrusted to an independent contractor. *Clifford v. Wharton Business Group, L.L.C.*, 353 Ill. App. 3d 34, 38-39 (2004). In order for a possessor of the premises to be liable under section 343, a plaintiff must establish that his injury arose from a condition on the land. See *Day v. Menard, Inc.*, 386 Ill. App. 3d 681, 682-83 (2008). Therefore, because Escareno alleged in his complaint that the wind caused him to fall and he has not alleged nor presented any evidence that any condition on the land caused him to fall, we find that no action would lie for premises liability. See Restatement (Second) of Torts § 343 (1965).

¶ 33 B. Section 414 of the Restatement (Second) of Torts

¶ 34 The defendants also maintain that because they did not retain any control over Escareno's work, they owed him no duty and they are not liable for his injuries. Here, the defendants employed Escareno's employer, an independent contractor, to perform a paint job. As a

general rule, one who employs an independent contractor is not liable for the acts or omissions of the independent contractor. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 9 (2004); *Rangel v. Brookhaven Constructors, Inc.*, 307 Ill. App. 3d 835, 838 (1999). A recognized exception to this rule, referred to as the "retained control" exception, is set forth in Section 414 of the Restatement (Second) of Torts, as a recognized "expression of Illinois law." *Rangel*, 307 Ill. App. 3d at 838; see *Larson v. Commonwealth Edison Co.*, 33 Ill. 2d 316, 325 (1965).

¶ 35 Section 414 of the Restatement (Second) of Torts provides:

> One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care. Restatement (Second) of Torts § 414 (1965).

¶ 36 Comment (c) to section 414 explains the retained control exception as follows:

> "In order for the rule stated in this Section to apply, the employer must have retained at least some degree of control over the manner in which the work is done. It is not enough that he has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestions or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. Such a general right is usually reserved to employers, but it does not mean that the contractor is controlled as to his methods of work,

> or as to operative detail. There must be such a retention of a right of supervision that the contractor is not entirely free to do the work in his own way." Restatement (Second) of Torts § 414 cmt. c (1965).

¶ 37 Thus, negligence and the existence of a duty under section 414 turns on whether the defendants controlled the work in such a manner that they should be held liable. *Gregory v. Beazer East*, 384 Ill. App. 3d 178, 186 (2008). Here, Escareno testified that he received all his instructions on how to perform his work from Soriano and not the defendants. Soriano and Matousek, employees of Sherwin, testified that Sherwin was responsible for the means and methods of how the work was to be performed; Sherwin provided all the equipment and materials and gave all the directions and instructions on how the work was to be done. Matousek also testified that once the defendants told them what they wanted done, it was Sherwin's duty to determine how to perform the work and complete the job. Monk's testimony corroborated the testimony of Soriano and Matousek that Kass had no control over how the work was to be performed. Soriano, Matousek and Monk all testified that the defendants never told Sherwin or anyone connected with the company that the painters were not allowed to secure their ladders to the window bars.

¶ 38 The admissible evidence shows that Sherwin was free to determine how the work was to be performed and only Sherwin exercised control over Escareno's work. The defendants never directed the operative details of the work performed by Sherwin. Sherwin, not the defendants, provided the ladder on which Escareno worked. No evidence was presented that the defendants knew or had notice that on the day of the accident, Escareno would be

working from an unsecured ladder while it was windy. See *Rangel*, 307 Ill. App. 3d at 839. Case law makes it clear that the fact that defendants reserved the right to inspect the work's progress did not mean that they controlled the manner in which Sherwins' work was done. *Rangel*, 307 Ill. App. 3d at 839.

¶ 39 We find the evidence establishes that the defendants had no right to supervise Escareno, and that Escareno was required to perform his work and paint according to Sherwin's instructions. Therefore, because the defendants exercised only their general right to inspect the work's progress, while Sherwin controlled the methods by which the work was to performed, we find that the defendants owed Escareno no duty and cannot be held liable for Escareno's injuries.

¶ 40 In so finding, we necessarily reject Escareno's argument that he created a genuine issue of material fact with his deposition testimony that Soriano told him that someone from Terra Cotta or Kass told Soriano that the painters were not allowed to tie their ladders to the window bars because they did not want the paint to chip. Although Escareno maintains Soriano's statement and the alleged statement made to Soriano by someone from Terra Cotta or Kass was admissible evidence that created a genuine issue of material fact as to whether it was the defendants or Sherwin that did not want the ladders tied to the window bars, we find that both statements constitute inadmissible hearsay

¶ 41 Because a plaintiff must present admissible evidence to create a genuine issue of material fact that defeats a defendant's motion for summary judgment (*Davis v. Times Mirror Magazine, Inc.*, 297 Ill. App. 3d 488, 494-95 (1998)), a party may not rely on inadmissible

hearsay evidence to create a genuine issue of material fact. The Illinois Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted" (Ill. R. Evid. 801(c) (eff. Jan. 1, 2011)), and the rules provide that such statements are generally inadmissible unless they fall within an exception to the hearsay rule. Ill. R. Evid. 802 (eff. Jan. 1, 2011); *People v. Caffey*, 205 Ill. 2d 52, 88 (2001). The rules also provide that "[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception" provided by the hearsay rules. Ill. R. Evid. 805 (eff. Jan. 1, 2011).

¶ 42 The two statements that Escareno wanted admitted into evidence include: (1) Soriano's statement to Escareno that he "couldn't tie down the ladders to the poles at the edges of the windows;" and (2) Soriano's statement to Escareno that he could not tie his ladder to the window bars because "that's what ['the people from the building'] had told him." Because Soriano's alleged statement to Escareno was made out of court and the alleged statement contained a recitation of what someone told Soriano, each statement must be considered separately to determine if either statement comes within an exception to the hearsay rule or qualifies as non hearsay under Rule 801.

¶ 43 Escareno argues that the first statement–Soriano's statement to Escareno that he could not tie the ladder to the window bars–was admissible under Rule 803(3) because (1) it explains Soriano's state of mind when he told Escareno not to tie his ladder to the window bars, and (2) it explains the reason why Escareno did not secure his ladder on the day of the accident.

Thus, Escareno maintains that Soriano's statement was not hearsay because it was not being offered for the truth of the matter asserted.

¶ 44 We find that Soriano's statement to Escareno satisfies the first test for hearsay because Soriano's statement was made out of court. We further find that Soriano's statement satisfies the second test for hearsay because was the statement proffered to prove the truth of the matter asserted. See Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). Considering Escareno's theory of negligence–that he fell and injured himself because the defendants said that he could not secure his ladder to the window bars–the only plausible purpose Escareno would have for proffering Soriano's statement was not to prove Soriano's state of mind but to prove the truth of the matter asserted–that the defendants did not want the ladders tied to the window bars. See *Agins v. Schonberg*, 397 Ill. App. 3d 127, 136 (2009). We find that Escareno sought to use the content of Soriano's statement to prove its truth, which is precisely what the hearsay rule seeks to prevent. *Guski v. Raja*, 409 Ill. App. 3d 686, 700 (2011). Accordingly, Soriano's statement is inadmissible because it does not fall within any of the exceptions to the hearsay rule. Even if we agree with Escarino on this point, it would not change the outcome as Soriano's statement does not mention or refer to any conduct by defendants.

¶ 45 The second statement Escareno wanted admitted into evidence was the statement allegedly made to Soriano by someone from Terra Cotta or Kass that the painters were not allowed to tie their ladders to the window bars. Escareno argues that the unknown declarant's statement was not hearsay but an admission by a party opponent that was admissible under rule 801(d)(2). Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011). Rule 801(d)(2) provides that

admissions by party opponents are not hearsay if the statement is offered against a party and is the party's own statement, in either an individual or a representative capacity. Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011). In order for an agent's statement to be admissible as a "vicarious admission by a party opponent," the party offering the statement must first set forth a proper foundation for its introduction. *Waechter v. Carson Pirie Scott & Company*, 170 Ill. App. 3d 370, 374 (1988). Specifically, the party offering the statement, in this case Escareno, must first establish that (1) the person who made the statement was an agent or employee of the person against whom the evidence will be used, (2) the statement was made about a matter over which the agent or employee had actual or apparent authority, and (3) he spoke by virtue of his authority as such agent or employee. *Waechter*, 170 Ill. App. 3d at 374; *Cornell v. Langland*, 109 Ill. App. 3d 472, 476 (1982).

¶ 46 Because Escareno does not know who made the statement to Soriano, he is unable to establish that the declarant was an agent of Terra Cotta or Kass, that the statement was made about a matter over which the declarant had actual or apparent authority, or that the declarant spoke by virtue of his authority as an agent. See *Redmon v. Austin*, 188 Ill. App. 3d 220, 224-25 (1989). Therefore, since the identity of the alleged Terra Cotta or Kass agent making the statement is unknown, there is simply no basis for treating the statement as an admission by a party opponent. *Redmon,* 188 Ill. App. 3d 225. Further, even if Escareno could identify the maker of the alleged statement as an agent of defendants, the statement is not an "admission" of anything.

¶ 47 We find that Escareno's testimony–that Soriano told him that the defendants told him that

they did not want the ladders tied to the window bars–was double hearsay and, therefore, the rules of evidence did not permit the trial court to consider Escareno's testimony as evidence that created a material issue of fact. See Ill. R. Evid. 801(d)(2), 803(3) (eff. Jan. 1, 2011); *Davis*, 297 Ill. App. 3d at 494-95. Accordingly, the trial court did not err when it granted defendants' motion for summary judgment.

¶ 48 Conclusion

¶ 49 We find the evidence establishes that defendants did not retain sufficient control over Sherwin, the independent contractor's work, to owe Escareno a duty and be held liable for Escareno's injuries. We also find that Escareno failed to proffer admissible evidence that created a material issue of fact. Accordingly, we hold that the trial court did not err when it granted defendants' motion for reconsideration and their motion for summary judgment.

¶ 50 Affirmed.