

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>BRADD M. MILLER,</b>	:	
<b>Plaintiff</b>	:	<b>NO. CV-20-1214</b>
	:	
<b>vs.</b>	:	
	:	<b>CIVIL ACTION - LAW</b>
<b>DEBRA KINLEY and</b>	:	
<b>GERALD KINLEY,</b>	:	
<b>Defendants</b>	:	

**ORDER**

**AND NOW**, this 5<sup>th</sup> day of **May, 2022**, before the Court is a Motion for Summary Judgment filed by Defendants on January 10, 2022.

**Background**

This litigation arises from a Complaint filed by Bradd M. Miller (“Plaintiff”), on December 28, 2020. The suit alleges that Debra Kinley and Gerald Kinley (“Defendants”) hired Plaintiff to cut down a large tree on real estate owned by the Defendants. On May 16, 2020, Plaintiff arrived at the property with sufficient equipment to perform the requested tree cutting. It is alleged that the Defendants were present at the time of the incident and that they directed Plaintiff on the manner in which to cut the tree, specifically indicating the area into which the tree was to be dropped. It is further alleged that the Defendants retained control of all, or at least a portion, of the work Defendants requested Plaintiff to perform.

As the Plaintiff began cutting the tree, it snapped. Plaintiff attempted to avoid the falling tree, but was unable to do so, and the tree fell onto Plaintiff. As a result, Plaintiff suffered numerous injuries which have necessitated 3 separate surgeries and resulted in lost wages, an inability to fully utilize his upper and lower extremities, an inability to enjoy the ordinary pleasures of life, and pain, suffering,

and embarrassment. Plaintiff alleges his injuries were the sole, direct, and proximate result of the negligent actions of the Defendants.

An Answer with New Matter was filed on January 15, 2021, on behalf of the Defendants, and an Answer to New Matter was filed on February 12, 2021, on behalf of the Plaintiff. Defendants filed a Motion for Summary Judgment on January 10, 2022, and Plaintiff filed a Response thereto on February 16, 2022. Argument was held on April 13, 2022, with Charles R. Rosamilia, Jr., Esquire, appearing on behalf of the Plaintiff and Joseph R. Musto, Esquire, appearing on behalf of the Defendants.

### **Standard of Review**

“A court may enter summary judgment after the close of the relevant pleadings if the court determines that there is no dispute as to material fact or if the record contains insufficient evidence of facts to make out a *prima facie* cause of action or defense.” *Petrina v. Allied Glove Corp.*, 46 A.3d 795, 798 (Pa. Super. 2012). “In considering the merits of a motion for summary judgment, a court views the record in the light most favorable to the non-moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party.” *Jones v. SEPTA*, 772 A.2d 435, 438 (Pa. 2001). However, the nonmoving party may not rest upon the mere allegations or denials of the pleadings, but must file a response to the motion for summary judgment within thirty days identifying: “(1) one or more issues of fact arising from evidence in the record controverting the evidence cited in support of the motion or; (2) evidence in the record establishing the facts essential to the cause of action or defense which the motion cites as not having been produced.” Pa.R.C.P. 1035.3(a)(1)-(2). The Court will only grant summary judgment “where the right to such judgment is clear

and free from all doubt.” *Summers v. Certaineed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) (quoting *Toy v. Metro. Life Ins. Co.*, 928 A.2d 186, 195 (Pa. 2007)).

### **Analysis**

In their Motion for Summary Judgment, the Defendants allege that Plaintiff has failed to place evidence on the record sufficient to support his claim that Defendants were negligent and that their negligence was a substantial factor in causing the Plaintiff to sustain the injuries of which he complains. Plaintiff, in his Response to the Motion for Summary Judgment and accompanying brief, submits there has been sufficient evidence introduced during the discovery phase of this matter to support a finding of negligence under the Retained Control theory contained in the Restatement (Second) of Torts § 414 which states:

One who entrusts the 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.

Plaintiff argues that the Defendant Gerald Kinley retained “active oversight over the project” and reserved responsibility for the removal of certain items from the intended tree fall line. Deposition testimony of several witnesses indicated that Defendant Gerald Kinley played an active role in the decision to refuse to allow Plaintiff to climb the tree and remove branches while using a rope to direct the landing spot for the tree; rather Defendant indicated that a cable would be used to direct the cut tree.

Reviewing the record in the light most favorable to the non-moving party, this Court finds that the evidence present is sufficient to overcome the Motion for Summary Judgment on behalf of Defendant Gerald Kinley. Based on the quoted

deposition testimony, there is an issue of fact which establishes a basis upon which the finder of fact may impute liability upon Defendant Gerald Kinley.

**Conclusion**

After careful consideration of the Motion for Summary Judgment, the response thereto, and the argument of counsel, Defendants' Motion for Summary Judgment is **GRANTED** in part and **DENIED** in part. The Motion is granted with respect to Defendant Debra Kinley, as Plaintiff has failed to allege or produce any evidence that she had any involvement at all in the matter, much less that she was negligent and her negligence was a legal cause of the Plaintiff's injuries. With respect to Defendant, Gerald Kinley, Defendants' Motion for Summary Judgment is **DENIED**.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/jel

CC: Charles R. Rosamilia, Jr., Esquire  
Joseph R. Musto, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire