

ESTATE OF JOSEPH S. NICHOLS

v.

HUBER ENGINEERED WOODS, LLC

Submitted on Briefs April 29, 2010

Decided May 18, 2010

Panel: SAUFLEY, C.J., and LEVY, SILVER, MEAD, GORMAN and JABAR, JJ.

MEMORANDUM OF DECISION

The Estate of Joseph S. Nichols appeals from a summary judgment entered in the Superior Court (Aroostook County, *Hunter, J.*) in favor of Huber Engineered Woods, LLC on the Estate's complaint alleging negligent omissions resulting in the death of Joseph S. Nichols. The court grounded its granting of Huber's motion in part on the fact that the fall that caused Nichols's death resulted from an activity on Huber's land rather than from a dangerous land condition. We will affirm a summary judgment granted on an erroneous basis if it was proper on other grounds. *See Town of Lisbon v. Thayer Corp.*, 675 A.2d 514, 517 (Me. 1996); *see also Melanson v. Matheson*, 1998 ME 117, ¶ 1, 711 A.2d 147, 147 ("Where the trial court's ultimate conclusion is correct in law, it must be sustained on appeal, although its conclusion may have been reached by an incorrect process of legal reasoning." (quoting *Baybutt Constr. Corp. v. Commercial Union Ins. Co.*, 455 A.2d 914, 917 (Me. 1983), *overruled on other grounds by Peerless Ins. Co. v. Brennon*, 564 A.2d 383, 385-87 (Me. 1989)).

"A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or

obviousness.” Restatement (Second) of Torts § 343A(1) (1965); *see also Isaacson v. Husson Coll.*, 297 A.2d 98, 105 (Me. 1972) (adopting section 343A(1)). However, liability for activities on the land only attaches when the physical harm results from the *land possessor’s* activities. Restatement (Second) of Torts § 343A(1) & cmts. c, e; *see Baker v. Mid Me. Med. Ctr.*, 499 A.2d 464, 467-68 (Me. 1985). In this case, the activities that led to Nichols’s death were under the express control of Nichols’s employer, W.M. Jr. Trucking Co., an independent contractor providing transport services to Huber. As these activities were not the activities of the land possessor, summary judgment was appropriate. The Estate’s remaining arguments on appeal are unpersuasive and are not discussed further.

The entry is:

Judgment affirmed.

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