NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

SHAYLA CLINE and SANDRA BROCAR,

Plaintiffs/Appellants,

vs.

LENNY RAY PECHA,

Defendant/Appellee.

Case No. 120,314

APPEAL FROM THE DISTRICT COURT OF
MAJOR COUNTY, OKLAHOMA

HONORABLE TIM HAWORTH, TRIAL JUDGE

AFFIRMED

Justin Lamunyon
LAMUNYON LAW FIRM, P.C.
Enid, Oklahoma

For Plaintiffs/Appellants

Aaron J. Goodman
LAWSON & SHELTON, P.L.L.C.
Tulsa, Oklahoma

For Defendant/Appellee

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Shayla Cline and Sandra Brocar appeal the summary judgment of the district court, which found that the defendant, Ray Pecha, did not breach any duty to her during the events leading up to Ms. Cline injuring her hand during a cattle round-up. On review, we affirm the decision of the district court.

BACKGROUND

The plaintiff, Shayla Cline, was injured while assisting in the round-up of cattle on the property of the defendant, Lenny Pecha. Ms. Cline was seventeen years old at the time of the incident but was evidently already skilled in working cattle. She owned four horses and had engaged in various ranching activities for payment since "third or fourth grade." She has competed in cattle cutting competitions and was a good rider. She worked on a "day" basis for several ranches at times when cattle help was required, generally receiving approximately $100 per day in compensation, plus travel expenses.

On the day of the injury here, a portable corral was in use. At some point, this involved lowering the walls of the corral inwards, which was done by means of a manual winch. As physics dictates, when a wall is lifted, its weight will attempt to spin the winch backwards unless the handle is firmly held or the winch is otherwise locked in position by a brake or ratchet. Ms. Cline was generally familiar with this type of corral but had not used a winch before, although she had seen others doing so and felt comfortable in operating it "to her ability."

On the day of her injury, Ms. Cline endeavored, of her own accord, to assist by operating the winch. For reasons unknown, the winch handle came out of her hand while a wall was lifted, and the spinning arm or handle struck her hand, breaking one or more bones and causing a laceration.[1]

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[1] Ms. Cline thought her hand was "just cut" and continued working that day with some pain. She did not suspect she had broken any bones until she had difficulty with lifting and closing a gate.

Ms. Cline, and her mother, Sandra Brocar, who had paid Ms. Cline's medical expenses, sued Mr. Pecha, alleging that he had breached various duties, including: a duty to "train his 17 year old employee how to safely operate the corral system," a duty to "ensure that the equipment was in a safe operating condition," and a duty to warn of the "hidden danger" posed by the winch and gate. Mr. Pecha answered that Ms. Cline was an independent contractor, not an employee, and he owed none of the duties alleged.

Mr. Pecha filed a motion for summary judgment arguing that he had breached no duty towards Ms. Cline. The court found that Ms. Cline was working as an independent contractor, and thus, Mr. Pecha had breached no duty towards her. Ms. Cline and Ms. Brocar appeal.

STANDARD OF REVIEW

Although a trial court in making a decision on whether summary judgment is appropriate considers factual matters, the ultimate decision turns on purely legal determinations, *i.e.*, "whether one party is entitled to judgment as a matter of law because there are no material disputed factual questions." *H2K Techs., Inc. v. WSP USA, Inc.*, 2021 OK 59, ¶ 6, 503 P.3d 1177, 1197 (citing *Carmichael v. Beller*, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053). The appellate standard of review of a trial court's grant of summary judgment is *de novo*. *Id.* Using the *de novo* standard, we subject the record to a new and independent examination without regard to the district court's reasoning or result. *Gladstone v. Bartlesville Indep. Sch. Dist. No. 30*, 2003 OK 30, ¶ 5, 66 P.3d 442, 446. The underlying facts contained in the record are to be considered in the light most favorable to the

party opposing summary judgment. *U.S. Bank, N.A. ex rel. Credit Suisse First Boston Heat 2005-4 v. Alexander*, 2012 OK 43, ¶ 13, 280 P.3d 936, 939.

ANALYSIS

The plaintiffs' initial argument is that a minor generally cannot contract, and hence, Ms. Cline could not have been an independent contractor here.[2] Although statutory law governs contracts made by minors, only a small subset of these contracts is statutorily prohibited and void. "A minor cannot give a delegation of power, nor make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control, except as otherwise specially provided." 15 O.S. § 17 (West 2022). However, "[a] minor may make any other contract than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this Chapter." *Id.* § 18.[3] This includes employment contracts.[4] We find no statutory prohibition on Ms. Cline contracting either to become an employee or to work as an independent contractor.

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[2] We are unable to fully discern from the briefing below whether the plaintiffs argue that a minor may contract to act as an employee, but *not* as an independent contractor, or that minors may do *neither*. If the plaintiffs argue that a minor cannot legally be an employee, we reject this argument.

[3] A minor may disaffirm a permissible contract "before the age of majority or within one (1) year's time afterwards." 15 O.S. § 19 (West 2022). We find no record of any disaffirmance here.

[4] *See, e.g., U.S. Fid. & Guar. Co. v. Cruce*, 1928 OK 45, 263 P. 462 (minor may make an employment contract and hence may pursue a worker's compensation claim).

Employee or Independent Contractor

The arguments below did little to illustrate why the employee/independent contractor dichotomy is *significant* here. Ms. Cline never clearly explained below how any duty of Mr. Pecha towards her changes if she is an employee, as opposed to an independent contractor. We can glean from the plaintiffs' petition that one of her theories is that, as an employee, she was working under the direction and control of Mr. Pecha, and if Mr. Pecha directed her to assist with the corral gate as part of her job duties, he had a duty to "properly train" her on the corral's operation; ensure that the equipment was in safe operating condition; and warn Ms. Cline of "hidden dangers and defects" in the equipment.

By comparison: "'One going upon another's property as an independent contractor ... is an invitee.'" *Hatley v. Mobil Pipe Line Co.*, 1973 OK 42, ¶ 13, 512 P.2d 182, 186 (*quoting* 41 Am.Jur.2d, "Independent Contractors", § 27). The invitor is generally only responsible to warn of "hidden dangers and defects." *Kamphaus v. Town of Granite*, 2022 OK 46, ¶ 9, 510 P.3d 181, 184. The invitor has no duty to protect a contractor from hazards "which are incidental to or part of the very work which the independent contractor has been hired to perform." *Hatley*, ¶ 16. As the distinction may be significant, we will first determine if the district court was correct in its judgment that Ms. Cline was an independent contractor here.[5]

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[5] Normally, this question would be critical because, as an employee of Mr. Pecha, Ms. Cline must seek worker's compensation rather than a tort remedy, but Ms. Cline is evidently not eligible for worker's compensation. *See* 85A O.S. § 2(18)(b) (West 2022) ("The term 'employee' shall not include ... any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines").

The Supreme Court has set out at least eleven factors that should be considered in deciding whether a person is an independent contractor or employee. *See Page v. Hardy*, 1958 OK 283, 334 P.2d 782; *Coleman v. J.C. Penney Co.*, 1993 OK 21, 848 P.2d 1158. *Coleman* identifies these factors as:

> (a) the nature of the contract between the parties, whether written or oral; (b) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent; (c) whether or not the one employed is engaged in a distinct occupation or business and whether he carries on such occupation or business for others; (d) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision; (e) the skill required in the particular occupation; (f) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work; (g) the length of time for which the person is employed; (h) the method of payment, whether by the time or by the job; (i) whether or not the work is a part of the regular business of the employer; (j) whether or not the parties believe they are creating the relationship of master and servant; and (k) the right of either to terminate the relationship without liability.

Id. ¶ 8 (*quoting Page* at ¶10, 784-85). No one factor is controlling, and the relationship must be based on the set of facts peculiar to the case. *Id.* ¶ 9.

Ms. Cline was candid in the extracts of her deposition attached to Mr. Pecha's motion for summary judgment. [See Record 4, red tabs]. She worked in a distinct and skilled occupation for a number of different employers. She provided her own tools and was paid by the job or day rather than by the hour. Each contract ran for a short period until the necessary work was complete. She clearly testified that she was hired for short, task-specific periods by several different employers rather than being in a continuing employment relationship with Mr. Pecha. We further find no record that Mr. Pecha engaged in active

supervision of Ms. Cline or directed her individual tasks. As such, she met a substantial number of the requirements identified in *Coleman* and we find no error in the decision that she was engaged as an independent contractor here.

Mr. Pecha's Duty to an Independent Contractor

An independent contractor doing work on another's premises is an invitee. *McKinney v. Harrington*, 1993 OK 88, ¶ 8, 855 P.2d 602, 604.

> An owner of premises who has engaged an independent contractor to do work on his premises owes to such invitee the duty to keep the premises reasonably safe for the performance of the work. Such duty applies to conditions which are in the nature of a hidden danger, traps, snares, pitfalls and the like which are not ordinarily known to an invitee who, if he does not observe them, can exercise no care to avoid injurious consequences; the owner is under no legal duty to alter the premises so as to eliminate known and obvious dangers, but an owner breaches his duty to an invitee by not warning him of hidden dangers.

Davis v. Whitsett, 1967 OK 190, ¶ 5, 435 P.2d 592, 595.

"[T]he basis of the invitor's liability rests on the owner's superior knowledge of the danger." *Southerland v. Wal–Mart Stores, Inc.*, 1993 OK CIV APP 12, ¶ 4, 848 P.2d 68. Where "the danger or potentiality of danger is known or should be known to the user, the duty (to warn) does not attach." *Grover v. Superior Welding, Inc.*, 1995 OK 14, ¶ 10, 893 P.2d 500, 504. "An invitor cannot be held responsible unless it be shown that he/she had notice or could be charged with gaining knowledge of the condition in time sufficient to effect its removal or to give warning of its presence." *Taylor v. Hynson*, 1993 OK 93, ¶ 16, 856 P.2d 278 (*quoting Rogers v. Hennessee*, 1979 OK 138, ¶ 9, 602 P.2d 1033).

Two questions thereby arise: (1) was the winch latently but not obviously dangerous, and (2) did Mr. Pecha have some superior knowledge of this danger?

In this case, even if the potentially dangerous nature of the winch was not generally obvious, the record shows that it bore a conspicuous warning sign with a graphic showing a hand being struck by a handle and a written warning to that effect. The sign stated a warning to "hold handle firmly" and other warnings that the "spinning handle could cause serious injury." As such, we agree with the trial court that the "potentiality of danger" should have been clear to Ms. Cline.

We further find no record that the injury here was caused by some latent defect or danger rather than by the inherent danger of operating the winch, which was clearly posted and warned against. We have no record that the winch was tested after the accident and found to be latently defective, and Ms. Cline did not testify that any defect had caused the winch handle to spin.[6] Finally, we find no record indicating that Mr. Pecha had any superior knowledge of the properties of the winch "in time to give warning of its presence." Hence Mr. Pecha had no duty to warn pursuant to *Taylor*. We find no error in the judgment of the district court.

CONCLUSION

We are not unsympathetic towards Ms. Cline suffering a work-related injury at the age of seventeen. We find it clear as a matter of law, however, that she was working as an independent contractor and that, pursuant to this record,

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[6] *See* R. Doc. 4, deposition pg. 66, where Ms. Cline testifies that she has "no explanation" why she lost her grip and did not know if the winch had "slipped' or failed to catch.

Mr. Pecha did not breach any duty towards Ms. Cline as a business invitee. As such, we affirm the decision of the district court.

AFFIRMED.

WISEMAN, P.J., and HIXON, J. (sitting by designation), concur.

November 14, 2022