STATE OF MICHIGAN

COURT OF APPEALS

DEBORAH POWELL,

Plaintiff-Appellant,

v

SARATOGA COMMUNITY HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
July 17, 1998

No. 202526
Wayne Circuit Court
LC No. 96-612783 NO

Before: Murphy, P.J., and Young, Jr. and Michael R. Smith*, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the summary dismissal of her premises liability action against her employer. MCR 2.116(C)(7). The trial court determined that plaintiff's action was barred by the exclusive remedy provision, MCL 418.131(1); MSA 17.237(131)(1), of the Worker's Disability Compensation Act (the act), MCL 418.101 *et seq*.; MSA 17.237(101) *et seq*. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The act provides that it is an employee's "exclusive remedy" against an employer for a "personal injury." MCL 418.131(1); MSA 17.237(131)(1); *Atkinson v City of Detroit*, 222 Mich App 7, 12-13; 564 NW2d 473 (1997). Under the "dual capacity doctrine," however, an employee may, in some circumstances, bring a civil action against the employer for an injury caused by the employer in a role other than employer. *Howard v White*, 447 Mich 395, 398; 523 NW2d 220 (1994); *Atkinson, supra*, 13. The doctrine is applicable only when the employer has a second identity "completely distinct and removed from his status as employer." *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 653; 364 NW2d 670 (1984); *Atkinson, supra*. An employer's status as a landowner does not endow the employer with a second legal persona for purposes of the doctrine where the injury to the employee occurs in the course of employment, even where the property on which the injury occurred was not used by the employer as a workplace in the course of its business. *Benson v Department of Management and Budget*, 168 Mich App 302, 308-309; 464 NW2d 40 (1988); *Cassani v City of Detroit*, 156 Mich App 573, 575-576; 402 NW2d 1 (1985). See 6 Larson, Workers' Compensation Law, § 72.82, p 14-290.111 (it is held with virtual unanimity that an employer

* Circuit judge, sitting on the Court of Appeals by assignment.

cannot be sued as the owner or occupier of lands, whether the cause of action is based on common law obligations of landowners or on statutes such as safe place statutes or structural work acts).

Injuries occurring on the employer's premises during a regular lunch hour arise in the course of employment even where the employee is engaged in a personal activity and not performing a service for the employer at the time of injury. *Haller v City of Lansing*, 195 Mich 753; 162 NW 355 (1917)[1]; 2 Larson, Workers' Compensation Law, § 21.21(a), p 5-6. Cf. *McClure General Motor Corp (On Rehearing)*, 408 Mich 191; 289 NW2d 631 (1980).

In the instant case, plaintiff accepted payment of worker's disability compensation benefits for her injury, an act on the part of plaintiff tantamount to an admission that her injuries occurred in the course of her employment. Moreover, the fact that her fall occurred while she was engaged in a personal activity does not support a finding that her injuries were not sustained during the course of her employment, especially where plaintiff's fall occurred on defendant's premises, during her paid lunch hour. *Haller, supra*. Finally, because plaintiff remained on defendant's premises during her lunch hour and was carrying a pager so that she could respond to any emergency that might arise during that hour, her presence on the premises actually provided a benefit to her employer, i.e., prompt response to an emergency page Under such circumstances, plaintiff's fall occurred in the course of her employment. Because the fall occurred in the course of her employment, defendant's status as a landowner does not give rise to a separate and distinct persona that would justify an application of the dual capacity doctrine. Accordingly, summary disposition properly entered.

Affirmed.

/s/ William B. Murphy
/s/ Robert P. Young, Jr.
/s/ Michael R. Smith

[1] *Haller* was overruled by *Mack v REO Motors, Inc.*, 345 Mich 268; 76 NW2d 35 (1956). *Mack* was then overruled in *Dyer v Sears, Roebuck & Co*, 350 Mich 92; 85 NW2d 152 (1957), and *Haller* reinstated at that time.