

STATE OF MICHIGAN
COURT OF APPEALS

ROYAL INSURANCE COMPANY,

Plaintiff-Appellant,

v

MICHIGAN CATASTROPHIC CLAIMS
ASSOCIATION,

Defendant-Appellee.

UNPUBLISHED

February 19, 1999

No. 194390

Wayne Circuit Court

LC No. 94-424199 CK

Before: Kelly, P.J., and Cavanagh and N.J.Lambros*, JJ.

MEMORANDUM.

This case is before this Court pursuant to an order for the trial court to make findings of fact and conclusions of law on the issue of whether or not Mr. Polakowski, while driving his car intoxicated, would have been precluded Worker's Compensation benefits by reason of his intentional and willful misconduct. MCL 418.305; MSA 17.237(305).

We review a trial court's factual findings for clear legal error. MCR 2.613(C). "A finding is clearly erroneous when, although there is evidence to support the finding, this Court is left with a definite and firm conviction that a mistake has been made". *Berry v State Farm*, 219 Mich App 340, 345; 556 NW2d 207 (1996). Moreover, we defer to the trial court's special opportunity to judge the credibility of the witnesses. MCR 2.613(C). Here, the trial court's findings that Mr. Polakowski was not injured by reason of his intentional and willful misconduct were not clearly erroneous.

Accordingly, we agree with the trial court's conclusion that at the time of his injury, Mr. Polakowski was in the course of his employment for the purposes of the Worker's Disability Compensation act, MCL 418.101 et seq; MSA 17.237(301) et seq.

Affirmed. We do not retain jurisdiction.

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

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros*