

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAULETTE KARSCHNICK, as Personal  
Representative of the Estate of GORDON  
KARSCHNICK, Deceased,

UNPUBLISHED  
May 21, 1999

Plaintiff-Appellee,

v

No. 203095  
Wayne Circuit Court  
LC No. 95-505843 NO

STATE WIDE EXCAVATING, INC.,

Defendant-Appellant.

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Before: Saad, P.J., and Murphy and O'Connell, JJ.

MURPHY, J. (concurring in part and dissenting in part).

I do not disagree with my colleagues' conclusion that, on this record, application of the economic-reality test results in a finding that plaintiff's claim against defendant State Wide Excavating, Inc., is barred by the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.131; MSA 17.237(131). However, in lieu of reversing, I would remand this case to the trial court with instructions that it allow plaintiff to engage in additional discovery relative to plaintiff's decedent's employment status with defendant. I am persuaded by plaintiff's representation that in light of the deposition testimony of Charles Gross, co-owner of both defendant and Mid-Way Equipment Company, in which Gross stated that plaintiff's decedent was employed by Mid-Way and that defendant owned the instrument that allegedly caused plaintiff's decedent's death, as well as the parties' stipulation to dismiss Mid-Way from the lawsuit following Gross' deposition testimony, plaintiff abandoned all discovery relative to plaintiff's decedent's employment status with defendant. Fundamental fairness demands that discovery should be re-opened so that plaintiff can adequately explore plaintiff's decedent's employment status with defendant for purposes of the exclusive remedy provision of the WDCA.

/s/ William B. Murphy