

STATE OF MICHIGAN
COURT OF APPEALS

NICK T. GEORGES,

Plaintiff-Appellant,

v

OCCIDENTAL FIRE AND CASUALTY
INSURANCE COMPANY OF NORTH
CAROLINA,

Defendant-Appellee.

UNPUBLISHED

March 10, 2000

No. 209864

Oakland Circuit Court

LC No. 97-544690 NO

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant summary disposition of plaintiff's claim of intentional interference with economic rights pursuant to MCR 2.116(C)(4) and (6). We affirm.

Plaintiff first contends that the trial court erred in determining that it lacked subject matter jurisdiction over his complaint alleging intentional interference with economic rights. Whether the trial court correctly concluded that summary disposition was properly granted pursuant to MCR 2.116(C)(4) because the court lacked subject matter jurisdiction represents a question of law that we review de novo. *Bruwer v Oaks (On Remand)*, 218 Mich App 392, 395; 554 NW2d 345 (1996).

The trial court correctly concluded that exclusive jurisdiction over plaintiff's complaint was vested in the Workers' Disability Compensation Bureau (Bureau) pursuant to MCL 418.841; MSA 17.237(841), which provides as follows:

(1) Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable.

Plaintiff's argument that the Worker's Disability Compensation Act fails to define the persons subject to the act as including worker's compensation insurers is misplaced. A court's subject matter jurisdiction

is determined only by reference to the allegations listed in the complaint. If it is apparent from the allegations that the matter alleged is within the class of cases over which the court has the power to act, then subject matter jurisdiction exists. *Neal v Oakwood Hosp Corp*, 226 Mich App 701, 707-708; 575 NW2d 68 (1997). Here, despite plaintiff's characterization of his claim as involving intentional, tortious misconduct by defendant insurer, all of plaintiff's allegations involve the allegedly improper calculation of plaintiff's worker's compensation benefits, over which the Bureau clearly has subject matter jurisdiction. MCL 418.841(1); MSA 17.237(841)(1); *McMiddleton v Second Injury Fund*, 225 Mich App 326, 330-331; 570 NW2d 484 (1997). Therefore, the trial court lacked jurisdiction to consider plaintiff's allegations regarding the appropriate calculation of worker's compensation benefits, and properly granted defendant summary disposition pursuant to MCR 2.116(C)(4).

Plaintiff next insists that he properly brought a claim for intentional interference with economic rights against defendant. The following elements are required to establish a cause of action for tortious interference with economic advantage or business relations: (1) a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the interferer, (3) an intentional interference inducing or causing a breach or termination of a relationship or expectancy, and (4) damages. *Pryor v Sloan Valve Co*, 194 Mich App 556, 560; 487 NW2d 846 (1992). "One is liable for commission of this tort who interferes with business relations of another, both existing and prospective, by inducing a third person not to enter into or continue a business relation with another or by preventing a third person from continuing a business relation with another." *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 496; 421 NW2d 213 (1988).

In this case, plaintiff has alleged an expectancy, specifically that as a third party beneficiary of the insurance contract between defendant and his employer he was entitled to worker's compensation benefits. Plaintiff has failed to establish, however, that defendant can be characterized as an interferer with its own insurance contract. Defendant's alleged interference with its own contract does not represent the type of relationship intended to be protected by the tort of intentional interference with business or economic advantage. *Bonelli, supra*.¹ Accordingly, because plaintiff failed to properly plead a cause of action for intentional interference with business relations, we conclude that summary disposition of plaintiff's complaint was proper under MCR 2.116(C)(8).²

MCR 2.116(I)(5) provides that if summary disposition is based on MCR 2.116(C)(8), the trial court shall give the plaintiff the opportunity to amend his complaint unless amendment would be futile. In his brief on appeal, plaintiff noted that actions against an insurance company have been permitted where it is alleged that the company engaged in reckless, indifferent conduct or extreme and outrageous conduct. Had plaintiff been permitted to amend his complaint to allege either of the above, however, summary disposition would still remain appropriate.

In *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401; 295 NW2d 50 (1980), the Supreme Court rejected a separate tort cause of action for bad faith breach of an insurance contract and held that exemplary damages could not be recovered for the breach of a commercial contract. The Supreme Court held that to pursue a tort claim, a duty separate and distinct from the contractual obligation must be alleged. *Kewin, supra* at 414-423. The misfeasance alleged by plaintiff fails to satisfy the requirement that the tort duty element be distinct from any duty owed under the contract.

The parties did not submit the insurance contract executed between defendant and plaintiff's employer. Plaintiff alleged, however, that defendant failed to calculate plaintiff's entitlement to benefits by utilizing correct formulas and in accordance with MCL 418.827; MSA 17.237(827) and *Franges v General Motors Corp*, 404 Mich 590; 274 NW2d 392 (1979). The failure to compute benefits in accordance with the terms of an insurance policy, case law, formulas and statutory authority does not give rise to a separate duty for purposes of a tort action. *Kewin, supra*. Any other interpretation would subject a worker's compensation insurance carrier to tort liability for mere miscalculations or mathematical errors.

Amendment to permit a claim of intentional infliction of emotional distress would likewise be futile. "The tort of intentional infliction of emotional distress has four elements: (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Haverbush v Powelson*, 217 Mich App 228, 233-234; 551 NW2d 206 (1996). In *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 605; 374 NW2d 905 (1985), the Supreme Court observed that the mere failure to pay a contractual obligation, without more, will not amount to outrageous conduct for purposes of this tort. See also *Butt v DAIIE*, 129 Mich App 211, 219; 341 NW2d 474 (1983) ("An actor is not liable for intentional infliction of emotional distress where he has done no more than insist upon his legal rights in a permissible way, even though he is aware that such insistence is certain to cause emotional distress."). Here, defendant, pursuant to MCL 418.827; MSA 17.237(827), insisted on calculating plaintiff's benefits by taking into account a third party recovery obtained by plaintiff. No viable intentional infliction of emotional distress claim exists for this alleged act of misfeasance where defendant's actions are grounded in contract principles, case law and statutory authority. *Roberts, supra*; *Butt, supra*.

Therefore, summary disposition of plaintiff's complaint was proper pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage

¹ We further note that plaintiff failed to allege with specificity any affirmative acts that corroborate an improper motive for defendant's alleged interference and thus contravert defendant's assertion of a legitimate business reason for its actions. *BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996).

² This Court will not reverse the trial court's grant of summary disposition where it reaches the right result for the wrong reason. *Hawkins v Dep't of Corrections*, 219 Mich App 523, 528; 557 NW2d 138 (1996).