

STATE OF MICHIGAN
COURT OF APPEALS

SAFECO INSURANCE COMPANY,

Plaintiff-Appellee,

v

LEROY DAVIS and TOMMIE DAVIS,

Defendants-Appellants,

and

DALE G. KENNEDY & SONS WAREHOUSE,
INC.,

Defendant.

UNPUBLISHED

May 2, 2000

No. 213217

Wayne Circuit Court

LC No. 97-721179 CK

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendants appeal as of right the order granting plaintiff's motion for summary disposition in this declaratory judgment action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant Leroy Davis was injured while walking around a tractor trailer he drove for El Toro Motor Freight. He originally filed a petition seeking worker's compensation benefits from El Toro, but then filed a second petition claiming that he was an employee of Dale G. Kennedy & Sons Warehouse, Inc. Plaintiff brought this action seeking a declaration that Davis was not an employee of its insured, and that it was not responsible for worker's compensation coverage. The trial court granted summary disposition to plaintiff. Defendants argue that the court lacked jurisdiction to determine employment status. We disagree.

As a general rule, the Bureau of Worker's Disability Compensation has exclusive jurisdiction to decide whether injuries suffered by an employee were in the course of employment. *Sewell v Clearing Machine Corp*, 419 Mich 56, 62; 347 NW2d 447 (1984). However, courts retain jurisdiction to

determine more fundamental issues. *Id.*; *Westchester Fire Ins Co v Safeco Ins Co*, 203 Mich App 663, 669; 513 NW2d 212 (1994). Courts have jurisdiction to determine the fundamental issue whether an employee-employer relationship exists. *Integral Ins Co v Maersk Container Service Co, Inc*, 206 Mich App 325, 330; 520 NW2d 656 (1994); *Amerisure Ins Cos v Time Auto Transportation, Inc*, 196 Mich App 569, 572; 493 NW2d 482 (1992).

Where this Court and the Supreme Court have held that courts have jurisdiction to determine if an employer-employee relationship exists in the context of a claim related to worker's compensation benefits, there is no merit to defendants' argument that the circuit court lacked jurisdiction.

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey