

STATE OF MICHIGAN  
COURT OF APPEALS

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LESLIE DOWNEY and MICHAEL DOWNEY,

Plaintiffs-Appellants,

v

MICHAEL C. FISK, and DETROIT NEWSPAPER  
AGENCY, d/b/a DETROIT FREE PRESS,

Defendants-Appellees.

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UNPUBLISHED

April 19, 2002

No. 229308

Macomb Circuit Court

LC No. 99-004335-NI

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

MEMORANDUM.

The circuit court dismissed plaintiffs' claims against defendants based on the exclusive remedy provisions of the Worker's Disability Compensation Act, MCL 418.181(1) and 418.827(1). Plaintiffs appeal as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs raise two arguments in their appeal: (1) that plaintiffs' action against defendant Fisk is not barred by the co-employee rule because plaintiff Leslie Downey's and Fisk's employment was only incidentally related to the collision which caused plaintiff's injuries; and (2) that Mrs. Downey may sue her employer defendant DNA in its dual capacity as the owner of the truck driven by Fisk. We disagree.

As a general rule the right to recover benefits under the Worker's Disability Compensation Act is an injured employee's exclusive remedy against a negligent employer or co-employee. MCL 418.131(1); MCL 418.827(1); *Whaley v McClain*, 158 Mich App 533, 535; 405 NW2d 187 (1987). Under the dual persona doctrine, an employer may become a third party vulnerable to employee suit if the employer possesses a second persona so completely independent from and unrelated to its status as an employer that the law recognizes it as a separate legal person. *Howard v White*, 447 Mich 395, 398-400; 523 NW2d 220 (1994); *Herbolsheimer v SMS Holding Co*, 239 Mich App 236, 243; 608 NW2d 487 (2000). The dual capacity/persona doctrine can also apply to claims against co-employees. *Miller v Massullo*, 172 Mich App 752, 758-759; 432 NW2d 429 (1988), lv den 433 Mich 879 (1989). The dual persona exception applies only in exceptional situations "where there is a genuine case of a legal separate personality and the relationship between the cause of action and the plaintiff's employment is no more than incidental." *Herbolsheimer*, at 246.

This case does not present one of those exceptional situations where the dual persona exception would apply. Both Mrs. Downey and defendant Fisk were delivery truck drivers for defendant DNA and were engaged in that employment at the time she was injured. As delivery drivers, Mrs. Downey and Fisk would both be expected to drive on public roads where they would be subject to the risk of motor vehicle accidents such as the one that injured plaintiff. Defendant DNA's role as owner of the truck driven by Fisk was not completely independent from and unrelated to its status as an employer, nor can Fisk's role as a delivery driver for defendant DNA be separated from his status as DNA's employee.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Martin M. Doctoroff  
/s/ Mark J. Cavanagh