

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT RAY MORRIS,

Plaintiff-Appellant,

v

MICHIGAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

May 25, 2010

No. 290465

Wayne Circuit Court

LC No. 08-106067-NF

Before: SAAD, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

In this action for first party no-fault benefits, plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10)¹ when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff was injured while a passenger in a motor vehicle owned and operated by defendant's insured, Scott Allan Bearup. Although there are other policies that are potentially applicable to provide coverage for plaintiff's injuries, this appeal concerns whether defendant may be liable for first party no-fault benefits as a higher priority insurer under MCL 500.3114(3), which applies where an "employee . . . suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer" The terms "employee" and "employer" are not defined by statute for purposes of MCL 500.3114(3). This Court has approved the use of the economic reality test to determine whether an employment relationship

¹ Defendant moved for summary disposition under both MCR 2.116(C)(8) and (C)(10). Although the trial court did not specify the subrule under which it granted defendant's motion, the trial court's decision was based on evidence outside the pleadings, thereby indicating that summary disposition was granted under MCR 2.116(C)(10). *Steward v Panek*, 251 Mich App 546, 554-555; 652 NW2d 232 (2002).

exists for purposes of MCL 500.3114(3). *Citizens Ins Co of America v Auto Club Ins Ass'n*, 179 Mich App 461, 464-465; 446 NW2d 482 (1989); *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 624; 335 NW2d 106 (1983). Factors to be considered in applying the economic reality test include: “(1) control of the worker’s duties; (2) payment of wages; (3) right to hire, fire and discipline; and (4) performance of the duties as an integral part of the employer’s business towards the accomplishment of a common goal.” *Citizens Ins Co*, 179 Mich App at 465. Although an independent contractor agreement may support a determination that a plaintiff was an independent contractor, it is not determinative. *Buckley v Prof Plaza Clinic Corp*, 281 Mich App 224, 234; 761 NW2d 284 (2008).

In this case, plaintiff testified at his deposition that, at the time of the accident, he was working for one of Bearup’s companies, Bear Construction & Development, Inc. Although plaintiff’s testimony establishes a question of fact whether he was an employee, as opposed to an independent contractor, of one of Bearup’s companies, see *Citizens Ins Co*, 179 Mich App at 465, the vehicle in which he was injured was not owned by the companies and defendant’s insured is Bearup, not one of the companies. Plaintiff did not establish a question of fact with respect to whether he was an employee of Bearup. In some instances, application of the economic reality test may involve piercing the corporate veil to determine the actual employer. See, e.g., *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 647-652; 364 NW2d 670 (1984) (parent corporation was the plaintiff’s employer for purposes of the Workers Disability Compensation Act). Here, however, plaintiff does not present any argument on this point. He ignores the distinction between Bearup and his companies, and provides no legal basis for this Court to disregard the corporate entity. In the absence of argument by plaintiff, supported by facts to provide a basis for determining that Bearup and not the corporation was plaintiff’s actual employer, there is no basis for concluding that MCL 500.3114(3) is applicable. Therefore, we affirm the trial court’s decision granting summary disposition to defendant.

Affirmed.

/s/ Henry William Saad

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto