STATE OF MICHIGAN

COURT OF APPEALS

CHRISTY KAPPEL as Personal Representative of the ESTATE OF MARY ELLEN MILLER, Plaintiff-Appellant,	UNPUBLISHED July 26, 2012
v	No. 304861 Lapeer Circuit Court
JACOB MAURER, Defendant-Appellee.	LC No. 09-042292-NO

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

Christy Kappel appeals as of right the trial court's grant of summary disposition[1] in favor of Jacob Maurer, finding that the Worker's Disability Compensation Act (WDCA)[2] was Kappel's exclusive remedy in this automobile negligence action. We affirm.

The decedent, Mary Ellen Miller, worked as a press operator for Trelleborg Automotive. In January 2007, a customer of Trelleborg's made a request that required that two Trelleborg employees travel to the customer. Maurer was chosen to go because he was the engineer best qualified to resolve the particular issue, and Miller volunteered to accompany Maurer. Maurer was a salaried employee and Miller was an hourly wage earner. Typically, customer visits are made in company vehicles, but because all of the company cars were in use, Maurer drove his own vehicle. All travel expenses including gas, meals, and lodging were reimbursed by Trelleborg. In addition, Miller was paid her hourly wage during the time traveling to the customer.

Maurer and Miller were expected at the customer's location at 6:00 a.m. the following day, so they began their drive at approximately 7:00 p.m., intending to stay overnight at a hotel near the customer. During the wintery drive, Maurer lost control of his truck and crashed; Miller was killed.

[1] MCL 2.116(C)(10).

[2] MCL 418.101 *et seq.*

Kappel argues that the trial court erred in granting summary disposition in Maurer's favor because Miller was not acting within the scope and course of her employment at the time of the accident. Thus, the suit against Maurer was not barred by the WDCA. We disagree.

A trial court's grant or denial of a motion for summary disposition is reviewed de novo.[3] "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law."[4] In reviewing the trial court's decision, the Court will "consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion."[5]

If the accident that resulted in Miller's death arose "out of and in the course of [Miller's] employment,"[6] then Kappel's suit against Maurer is barred by the WDCA's exclusive remedy provision.[7] "[T]he exclusive remedy provision, [which] applies when an employee is injured by the negligent acts of his employer or by the negligent acts of a coemployee[,]"[8] states:

> The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort

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[3] *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003).

[4] *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002).

[5] *Id.*

[6] MCL 418.301(1) provides "An employee, who receives a personal injury arising out of and in the course of employment by an employer who is subject to this act at the time of the injury, shall be paid compensation as provided in this act. A personal injury under this act is compensable if work causes, contributes to, or aggravates pathology in a manner so as to create a pathology that is medically distinguishable from any pathology that existed prior to the injury. In the case of death resulting from the personal injury to the employee, compensation shall be paid to the employee's dependents as provided in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a single event is the last day of work in the employment in which the employee was last subjected to the conditions that resulted in the employee's disability or death."

[7] MCL 418.131(1).

[8] *Harris v Vernier*, 242 Mich App 306, 310; 617 NW2d 764 (2000).

shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.[9]

Kappel directs this Court's attention to *Stark v L E Myers Co*,[10] which indicates:

> It is the general well-settled rule in Michigan that injuries sustained while going to and from work are not compensable. This general rule however has been repeatedly riddled with exceptions to the extent that it seems to have become an exception to the exceptions. From this consequent erosion of the general rule, it would appear that there is arising through evolution a new rule which compensates where "there is a sufficient nexus between the employment and the injury" so that it may be said that the injury "was a circumstance of the employment".[11]

Exceptions to the general rule exist where:

> (1) the employee is on a special mission for the employer, (2) the employer derives a special benefit from the employee's activity at the time of the injury, (3) the employer paid for or furnished employee transportation as part of the employment contract, (4) the travel comprised a dual purpose combining employment-related business needs with the personal activity of the employee, (5) the employment subjected the employee to excessive exposure to traffic risks, or (6) the travel took place as a result of a split-shift working schedule or employment requiring a similar irregular nonfixed working schedule.[12]

Kappel argues that because Miller's employer did not receive a special benefit while she was traveling, the accident should not be covered under the WDCA. Kappel relies on *Camburn v Northwest Sch Dist*[13] for this proposition. In *Camburn*, the plaintiff, a teacher, was injured in a car accident on her way to a seminar that she was voluntarily attending.[14] The plaintiff in that case argued that her employer directly benefited from her attendance at the seminar and thus it arose out of her employment.[15] The Court held that because plaintiff's attendance was "neither

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[9] MCL 418.131(1).

[10] *Stark v L E Myers Co*, 58 Mich App 439; 228 NW2d 411 (1975).

[11] *Id.* at 442-443 (citations omitted).

[12] *Bowman v R L Coolsaet Constr Co (On Remand)*, 275 Mich App 188, 191; 738 NW2d 260 (2007) (quotation and citation omitted).

[13] *Camburn v Northwest Sch Dist*, 459 Mich 471; 592 NW2d 46 (1999).

[14] *Id.* at 474.

[15] *Id.* at 478.

compulsory nor definitely urged or expected," but was "merely encouraged" by her employer, plaintiff's injury "did not arise out of and in the course of her employment."[16]

In the case at hand, we find that Trelleborg received a special benefit at the time of the accident. Unlike the voluntary seminar in *Camburn*, Miller's employer was to be directly benefited by Miller traveling to meet with the customer. In order to satisfy the needs of the customer, it was necessary for two employees to travel to meet the customer. Miller was one of those employees. As such, Kappel's argument must fail.

Additionally, contrary to Kappel's assertion, Trelleborg "paid for or furnished" Miller's transportation.[17] The facts demonstrate that Trelleborg paid Miller's hourly wage during the trip. It is also undisputed that Miller and Maurer would have taken a company car, however, one was unavailable. Furthermore, any and all travel expenses incurred were reimbursable by Trelleborg. While Miller did not have a specific contract with Trelleborg for traveling off-site, as the trial court aptly noted:

> Where the employer provides a vehicle, guarantees transportation, reimburses identifiable travel expenses, or provides an identifiable sum for travel time, it is probable that the employer has contracted for the employee's travel and that . . . the travel itself is employment.[18]

Kappel contends that summary disposition was improper because Maurer was not an employee at the time of the accident. Based on the above, Maurer was also acting in the scope of his employment at the time of the accident as Trelleborg was receiving a special benefit at the time of the accident and "paid for or furnished" Maurer's transportation.[19] Thus, this argument lacks merit.

Finally, Kappel argues that Maurer's alleged reckless driving was an intentional tort, which is an exception to the exclusive remedy provision.[20] While deposition testimony supports that Maurer may have been driving too fast for the road conditions, there is no evidence that suggests that Maurer specifically intended to harm Miller. The Supreme Court has rejected

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[16] *Id.*

[17] *Bowman*, 275 Mich App at 191.

[18] *Pappas v Sports Servs, Inc*, 68 Mich App 423, 429; 243 NW2d 10 (1976).

[19] *Bowman*, 275 Mich App at 191.

[20] MCL 418.131(1).

reckless and grossly negligent driving as the standard for the intentional tort exception.[21] Thus, Kappel's argument must fail.

Affirmed.

/s/ Michael J. Talbot
/s/ Deborah A. Servitto
/s/ Michael J. Kelly

[21] See *Gray v Morley*, 460 Mich 738, 744; 596 NW2d 922 (1999).