

STATE OF MICHIGAN
COURT OF APPEALS

EARNELL HAILES,

Plaintiff-Appellant,

v

LIBERTY MUTUAL INSURANCE COMPANY
and JEFF BARRACO,

Defendants-Appellees.

UNPUBLISHED

December 28, 1999

No. 215509

Washtenaw Circuit Court

LC No. 98-009772 PZ

Before: Murphy, P.J., and Hood and Neff, JJ.

PER CURIAM.

Plaintiff Earnell Hailes appeals as of right from a circuit court order granting summary disposition in favor of defendants Liberty Mutual Insurance Company and Jeff Barraco on plaintiff's claim for intentional infliction of emotional distress. We affirm.

Plaintiff initiated this action in the circuit court following defendants' decision to terminate his worker's compensation benefits. On defendants' motion for summary disposition, the circuit court determined that plaintiff's emotional distress claim arose from a breach of an insurance contract between plaintiff and defendant, and following *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401; 295 NW2d 50 (1980), the court concluded that plaintiff could not pursue this claim because it stemmed from a breach of contract. Thus, because only a breach of contract claim remained, the court finally concluded that the proper jurisdiction for this claim was in the worker's compensation system, not the circuit court.

Plaintiff argues that the circuit court erred when it relied on *Kewin*. Instead, plaintiff argues that this claim can be pursued in the circuit court under MCL 418.131; MSA 17.237(131). Pursuant to this statute, an employee may seek damages for intentional torts caused by his or her employer outside of the worker's compensation system, which is normally the exclusive remedy for employees seeking benefits. Relying on this provision, and on *Broadus v Ferndale Fastener Division*, 84 Mich App 593; 269 NW2d 689 (1978), plaintiff further argues that defendants, standing in the stead of the

employer, are liable for their intentional torts and that proper jurisdiction for these claims is within the circuit court.

Although we find that the circuit court erred in granting summary disposition based on the reasoning set forth above, contrary to plaintiff's argument we affirm because such an order was appropriate on the ground that plaintiff failed to state a claim. We will not reverse where the trial court reached the right result for the wrong reason. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 190; 600 NW2d 129 (1999).

The circuit court did not explicitly identify the technical basis for granting summary disposition on the emotional distress claim. Nevertheless, it is clear that in referencing *Kewin, supra*, the court was addressing that portion of defendants' motion which relied on MCR 2.116(C)(8). The grant or denial of a motion for summary disposition based on the failure to state a claim is reviewed de novo. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). Such a motion tests the legal sufficiency of a claim to determine whether the opposing party's pleadings allege a prima facie case. *McIntosh v Dep't of Transportation*, 234 Mich App 379, 381; 594 NW2d 103 (1999). We must determine if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Id.*

Pursuant to *Broaddus, supra* at 599-600, a plaintiff may proceed in circuit court against his employer and its compensation carrier if the plaintiff truly alleges a tort and damage identifiably separate from any claims regarding the compensability of the plaintiff's injuries. Compare *Maglaughlin v Liberty Mutual Ins Co*, 82 Mich App 708, 710-711; 267 NW2d 160 (1978) (where this Court identified the actual basis for the plaintiff's purportedly similar claim as the failure of the defendant to pay compensation benefits pending a compensation appeal, and concluded that pursuant to MCL 418.841; MSA 17.237(841), resolution of all disputes related to the plaintiff's worker's compensation claim were properly vested in the bureau). We need not determine the true nature of plaintiff's claim in this case, however, because even assuming that the alleged emotional distress is identifiably separate from plaintiff's ongoing compensation action, plaintiff has failed to allege the element of extreme and outrageous conduct necessary to establish a prima facie case. *Atkinson v Farley*, 171 Mich App 784, 788; 431 NW2d 95 (1988). Plaintiff does not allege facts evidencing a continuous pattern of harassment, abuse and unethical conduct. *Id.* at 791. Rather, plaintiff merely alleges that his compensation benefits were wrongfully terminated. Such an allegation is insufficient to sustain a claim for intentional infliction of emotional distress. See *Lisecki v Taco Bell Restaurants, Inc*, 150 Mich App 749; 389 NW2d 173 (1986). Consequently, summary disposition was appropriate.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Janet T. Neff