STATE OF MICHIGAN

COURT OF APPEALS

DERRICK D. CURRIE,

Plaintiff-Appellee,

v

NATIONAL METAL PROCESSING, INC., and MERIDIAN NATIONAL CORPORATION,

Defendants-Appellants,

and

LIBERTY MUTUAL INSURANCE COMPANY,

Intervening Plaintiff.

UNPUBLISHED
February 11, 2000

No. 211106
Wayne Circuit Court
LC No. 95-523061-NP

Before: Bandstra, C.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Defendants National Metal Processing, Inc. (National Metal) and Meridian National Corporation (Meridian) appeal as of right from a judgment entered in favor of plaintiff in this negligence action. At issue in this case is whether plaintiff was defendants' "employee" for purposes of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.;* MSA 17.237(101) *et seq.* We reverse and remand.

I

Plaintiff's cause of action stems from a workplace accident that occurred at National Metal's steel pickling plant. National Metal, a Michigan corporation, is a wholly owned subsidiary of Meridian, a Delaware corporation. Plaintiff sustained severe and permanent injuries to his legs when he was struck by a crane carrying a load of steel shafts. At the time of the accident, plaintiff was an employee of Amstaff, a labor broker who provided personnel to work at National Metal's plant. The Client Service Agreement between Amstaff and National Metal provided that the personnel supplied by Amstaff to work in the plant were employees of Amstaff. Prior to trial, National Metal and Meridian

moved for summary disposition, arguing that because plaintiff was their employee, plaintiff's only remedy was under the WDCA. The trial court disagreed, reasoning that "[u]nder the economic reality and the supervision and control tests," plaintiff was not, as a matter of law, an employee of defendants. Subsequently, the parties stipulated that defendants were negligent, that their negligence was the proximate cause of plaintiff's injuries, and that plaintiff was entitled to damages in the amount of $625,000. A judgment for plaintiff in that amount was thereafter entered by the court. On appeal, defendants challenge the trial court's ruling regarding plaintiff's employment status.

II

This Court reviews decisions on motions for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

> A motion pursuant to MCR 2.116(C)(10) tests the factual basis underlying a plaintiff's claim. MCR 2.116(C)(10) permits summary disposition when, except for the amount of damages, there is no genuine issue concerning any material fact and the moving party is entitled to damages as a matter of law. A court reviewing such a motion must consider the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the opposing party and grant the benefit of any reasonable doubt to the opposing party. [*Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994).]

"[W]hether a business entity is a particular worker's 'employer,' as that term is used in the WDCA, is a question of law for the courts to decide if the evidence on the matter is reasonably susceptible of but a single inference." *Clark v United Technologies*, 459 Mich 681, 693-694; 594 NW2d 447 (1999).

III

A

> In enacting Michigan's Worker's Disability Compensation Act, the Legislature created a system that substitutes statutory compensation for common-law negligence liability and its related defenses. Under this system, employers provide compensation to employees for injuries suffered in the course of employment, regardless of who is at fault. In return for this almost automatic liability, employees are limited in the amount of compensation they may collect from their employer, and, except in limited circumstances, may not bring a tort action against the employer. [*Clark*, *supra* at 686-687 (citations omitted).]

The principle that an employer is entitled to protection from tort liability in exchange for a no-fault obligation to pay benefits is expressed in the exclusive remedy provision of the WDCA, which provides, in pertinent part:

> 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. . . . [MCL 418.131(1); MSA 17.237(131)(1).]

The WDCA does not define the term "employer," except to note that the term includes certain entities not relevant in this case.[1]

Michigan appellate courts have regularly applied the economic reality test to determine whether an employment relationship exists for purposes of the exclusive remedy provision of the WDCA. *Clark, supra* at 687; *Kidder v Miller-Davis Co*, 455 Mich 25, 35, 42-46; 564 NW2d 872 (1997). In recognizing the utility of the economic reality test, our appellate courts have noted that given the modern business environment, the economic reality test is a better method for evaluating the "employer-employee relationship . . . than the rigid control test." *Kidder, supra* at 35. Accord *Clark, supra* at 688; *Renfroe v Higgins Rack Coating & Mfg Co*, 17 Mich App 259, 265; 169 NW2d 326 (1969).

> Although the totality of the circumstances are considered in applying the economic realities test, the courts generally consider the following four factors "(1) [the] control of the worker's duties, (2) the payment of wages, (3) the right to hire and fire and the right to discipline, and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal." [*Clark, supra* at 688, quoting *Askew v Macomber*, 398 Mich 212, 217-218; 247 NW2d 288 (1976).]

No single factor controls the analysis. *Kidder, supra* at 42; *James, supra* at 537.

B

After reviewing the totality of the circumstances, we conclude that under the economic reality test plaintiff was an employee of National Metal. Accordingly, National Metal is entitled to invoke the exclusive remedy provision of the WDCA.

First, the record indicates that both Amstaff and National Metal shared control of the workers at the plant. Although the plant manager and supervisors were Amstaff employees, National Metal did not relinquish ultimate supervision or control over the steel pickling plant. Jim Alexsa, president of National Metal, averred that although Joe Pulis, the plant manager, was responsible for the "day-to-day" plant operations, Alexsa gave instructions to Pulis on a daily basis and controlled Pulis' daily activities. Moreover, Alexsa testified that National Metal exercised "control as to shifts, hours worked, jobs to be performed, how those jobs were to be performed." Pulis' deposition testimony supported Alexsa's testimony. Pulis averred that he and his supervisors, all Amstaff employees, instructed the workers with regard to their day to day activities. However, Pulis admitted that Alexsa controlled his day to day activities at the plant. According to Pulis, Alexsa set the production schedule, told Pulis "what material was to be processed," and what the "time table" was for completion of a project. Finally, we note that former National Metal officer Real Remillard testified that National Metal requested specific types of workers from Amstaff, National Metal set the hours of production, and National Metal provided the tools to be used in the steel pickling process. Clearly, even though Amstaff

employees were very involved in the supervision of the workers, National Metal maintained ultimate control over the pickling plant.

Second, the payment of wages indicates that both National Metal and Amstaff were plaintiff's employers. The fact that National Metal did not directly pay the workers "is a distinction without a difference." *Kidder, supra* at 41. The record establishes that National Metal reimbursed Amstaff for the actual amount of wages, fringe benefits, health insurance premiums and worker's compensation insurance premiums that were incurred by Amstaff. In essence, Amstaff was a "payment conduit" for National Metal. *Id.* As our Supreme Court indicated in *Kidder*, "who writes the check is not dispositive of the employer-employee relationship." *Id.* at 44.

Third, we conclude that Amstaff and National Metal shared responsibility for hiring, firing, and disciplining the employees. Although National Metal could not directly hire, fire or discipline the workers, it is undisputed that Amstaff agreed to remove any worker that National Metal deemed unsatisfactory. Alexsa averred that "[i]t was my understanding that if I found an employee to be intolerable for sufficient cause, of course, that I could tell Amstaff that they were no longer welcome at our facility." Pulis averred that although National Metal had no authority to fire or reprimand the workers, it did have "the authority to notify Amstaff and say[, 'I [no] longer want this individual at this location.['] " Remillard testified that National Metal could tell Amstaff "that with respect to any of the Amstaff workers on their property that [they] no longer wanted them on [their] property and Amstaff would take them away." Thus, it is clear that National Metal could accomplish indirectly what it could not do directly. National Metal had the right to order Amstaff to remove unsatisfactory workers. Therefore, it indirectly had the right to fire or discipline workers. *Kidder, supra* at 44-45.

Fourth, regarding the work performed, we believe the singular inference that can be drawn from the record is that a common objective was undertaken by both Amstaff and National Metal. National Metal could not have operated its steel pickling plant without Amstaff employees and Amstaff workers were working toward completing the production goals set by National Metal. Clearly, the two were "'so integrally related that their common objectives [were] only realized by a combined business effort.'" *Kidder, supra* at 45, quoting *Farrell, supra* at 277.

Even though the contract between the parties indicated that the workers assigned to National Metal were employees of Amstaff, that alone is not dispositive of the status of the parties. *Kidder, supra* at 45-46. The contract is merely one factor to consider. *Id.* Because the economic reality of this case is that the rights and responsibilities over plaintiff and his coworkers were shared by both National Metal and Amstaff, the contract is neither dispositive or controlling. *Kidder, supra* at 46.

Plaintiff argues that because the cases examining the labor broker-customer relationship have involved temporary workers, their reasoning should not apply here, where the workforce was essentially permanent. We disagree. The temporary-permanent distinction in no way affects the rationale behind using the economic reality test to determine whether an employment relationship exists. Furthermore, the fact that plaintiff was assigned to work at defendants' plant on a relatively permanent basis only serves to support the conclusion that plaintiff was defendants' employee.

In sum, a labor broker relationship existed between Amstaff and National Metal to an extent that each was plaintiff's coemployer for purposes of the WDCA. Accordingly, each is "protected by, and entitled to, the benefit of the exclusive remedy provision of the WDCA." *Kidder, supra* at 47. The trial court's decision, therefore, to deny defendants' motion for summary disposition and to rule as a matter of law that National Metal was not plaintiff's employer was erroneous and must be reversed.

C

The trial court did not address the question of whether Meridian is also entitled to the exclusive remedy defense if that defense is available to National Metal, its wholly owned subsidiary. The leading case in this area is *Wells v Firestone Tire & Rubber Co*, 421 Mich 641; 364 NW2d 670 (1984). In *Wells*, an employee who was injured during the course of his employment at a wholly owned subsidiary corporation brought suit against the subsidiary's parent corporation. *Id.* at 645-646. The *Wells* Court applied the economic realities test and found that the parent corporation was the employee's employer. *Id.* at 650. Since the decision in *Wells*, this Court has regularly found that the exclusive remedy provision of the WDCA required the "reverse piercing" of the corporate veil. See, e.g., V*erhaar v Consumers Power Co*, 179 Mich App 506, 508; 446 NW2d 299 (1989).[2]

Because the focus below was on whether National Metal was plaintiff's employer for purposes of the exclusive remedy provision of the WDCA, there is insufficient information in the record to determine whether under the economic reality test Meridian was also plaintiff's employer for purposes of the WDCA. Accordingly, we remand this matter to the trial court for a determination of whether Meridian was plaintiff's employer for purposes of the exclusive remedy provision of the WDCA.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald

[1] MCL 418.131(2); MSA 17.237(131)(2).

[2] The *Wells* Court noted that the legal principle that separate business entities will be respected by Michigan courts is a fiction that serves the goal of justice. *Wells, supra* at 650. However, "[w]hen this fiction is invoked to subvert justice, it is ignored by the courts." *Id.* When the WDCA is implicated, the important public policy objectives underlying the WDCA should be considered when determining whether it is appropriate to disregard the fiction of distinct corporate entities. *Id.* at 650-651.