STATE OF MICHIGAN

COURT OF APPEALS

ELMO MCGOWAN, JR.,

Plaintiff-Appellant,

v

TRW, INC., and SYDNEY ROYSTON,

Defendants-Appellees.

UNPUBLISHED
April 17, 2001

No. 215081
Macomb Circuit Court
LC No. 96-003139-NI

Before: Cavanagh, P.J., and Talbot, and Meter, JJ

PER CURIAM.

Plaintiff appeals by right from an order granting defendants' motion for summary disposition in this negligence action. We affirm.

Plaintiff filed a three-count complaint against TRW, Inc., and Sydney Royston, an employee of TRW, alleging premises liability, negligence, and respondeat superior after he was struck by a forklift truck operated by Royston at TRW's Sterling Heights manufacturing facility. At the time, plaintiff was working as a security guard on the premises, having been assigned the job by Nation Wide Security, Inc. (Nation Wide), a supplier of temporary security personnel, in fulfillment of its contract with TRW.

Defendants filed a motion for summary disposition, arguing that TRW and Nation Wide were coemployers of plaintiff and that plaintiff's tort claims were therefore barred by the exclusive remedy provision, MCL 418.131(1); MSA 17.237(131)(1), of the Worker's Disability Compensation Act (WDCA), MCL 418.1 *et seq*.; MSA 17.237(1) *et seq*. The trial court agreed and granted defendants' motion under MCR 2.116(C)(10).[1]

[1] In granting defendants' motion for summary disposition, the trial court indicated that plaintiff failed to state a claim upon which relief could be granted, which suggests that the court granted summary disposition under MCR 2.116(C)(8). However, in granting summary disposition, the court looked beyond the pleadings. Accordingly, this Court will treat the motion as granted under MCR 2.116(C)(10). See *Sharp v City of Lansing*, 238 Mich App 515, 518; 606 NW2d 424 (1999).

This Court reviews a trial court's decision regarding a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), this Court must review the documentary evidence and determine whether the moving party was entitled to judgment as a matter of law or whether a genuine issue of material fact existed. *Id.* This Court draws all reasonable inferences in the nonmoving party's favor. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

The single issue on appeal is whether TRW was plaintiff's coemployer, along with Nation Wide, for purposes of invoking the exclusive remedy provision of the WDCA. Our Supreme Court has held that summary disposition on this issue is appropriate if the evidence is reasonably susceptible to only a single inference. *Clark v United Technologies Automotive, Inc*, 459 Mich 681, 693-694; 594 NW2d 447 (1999). Only when evidence of a putative employer's status is in dispute, or when conflicting inferences may reasonably be drawn from the facts, is the issue one for the trier of fact. *Id.* at 694.

The exclusive remedy provision of the WDCA, MCL 418.131(1); MSA 17.237(131)(1), provides that "[t]he right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer. . . ." However, the provision does not define the term "employer." *Clark, supra* at 687. Therefore, Michigan courts apply an "economic reality test" to determine whether an employment relationship existed for purposes of the exclusive remedy provision. *Id.* This test is essentially a "totality of the circumstances" test adopted to address the increasingly complicated relationships in today's business and economic marketplaces. *Id.* at 688.

Courts generally consider the following factors in applying the economic reality test: (1) the control over a 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. *Id.* Additionally, whether a labor broker-customer relationship existed between the two alleged employers is an important consideration; the existence of such a relationship weighs heavily toward a finding that a dual-employer situation existed. See generally *Kidder v Miller Davis Co*, 455 Mich 25, 40; 564 NW2d 872 (1997), and *Farrell v Dearborn Mfg Co*, 416 Mich 267, 278; 330 NW2d 397 (1982). No single factor is controlling. See *Clark*, *supra* at 689.

Here, a labor broker-customer relationship existed. Indeed, Nation Wide "supplied" plaintiff, as personnel, to TRW, and plaintiff was subject to the authority of TRW once he arrived on the job site. TRW maintained the ability to remove plaintiff from the job site, and TRW reimbursed Nation Wide for the expense of paying plaintiff's salary and insurance premiums. These characteristics evidenced a classic labor broker-customer relationship. See *Farrell, supra* at 275-276.

Moreover, the first three factors from the economic reality test were clearly satisfied.[2]

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[2] As demonstrated in *Kidder, supra* at 40-42, the criteria for determining whether a labor broker-
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Although Nation Wide provided plaintiff's uniform and initial training, plaintiff's duties at TRW were determined by TRW, and plaintiff was subject to the direction and supervision of TRW employees while on the job site. Indeed, plaintiff testified that, while at TRW, he was at all times under the supervision of TRW's permanent security guards and he did as they instructed. Second, although plaintiff received his paycheck from Nation Wide, TRW reimbursed Nation Wide for plaintiff's wages and benefits, including worker's compensation insurance. Third, even though plaintiff was chosen by Nation Wide to fulfill its contract with TRW, TRW had the right to reject plaintiff and could terminate his services at TRW at any time. This evidence demonstrated the fulfillment of the first three factors of the economic reality test. See *Kidder, supra* at 42-45.

The final factor under the economic reality test is whether the work plaintiff performed was an integral part of defendant's business. Plaintiff argues that his work as a security guard was "merely incidental" to defendant's business of manufacturing automotive parts. Under *Farrell, supra* at 277, however, it appears that plaintiff's work as part of TRW's security team was indeed integral to achieving a common goal. See also *Kidder, supra* at 45 ("A labor broker-customer relationship may very well presume a common objective"). Indeed, although TRW's chief objective at its Sterling Heights plant is the manufacture of automotive parts, it employed a permanent security staff, which worked around the clock. Nation Wide did not provide a substantial part of TRW's security force; at the time of plaintiff's alleged injury, plaintiff was the only security guard working at TRW who worked through a labor broker. Accordingly, it seems logical to conclude that TRW and Nation Wide were working *together* toward the "common goal" of keeping the plant safe in order to produce automobile parts. It appears that TRW considered the services of its security guards to be an essential component of its overall plan to meet its business objectives, even if these services were only indirectly related to the production of automotive parts.

In any event, no one factor under the economic reality test is controlling. *Clark, supra* at 689. Therefore, even if plaintiff's responsibilities at TRW were not integral to TRW's ultimate business objective, the other factors weigh so heavily toward a finding of a dual-employer situation that only a single inference can be drawn from *the totality of the circumstances*: TRW was a coemployer of plaintiff and, thereby, immune from general tort liability under the exclusive remedy provision of the WDCA.[3] *Clark, supra* at 693-694. Accordingly, plaintiff could not maintain a tort action against defendants based on the injuries he allegedly received while working on TRW's premises. The trial court did not err by granting defendants' motion for summary disposition.

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customer relationship existed and the criteria for determining whether a dual-employer situation existed under the economic reality test are similar and often overlap.

[3] In response to plaintiff's suggestion to the contrary, we note that even though the contract between Nation Wide and TRW labeled plaintiff an "employee of Nation Wide," this does not change the result of this case. See *Kidder, supra* at 28, 45-46.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter