

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF ALLYN L. TAYLOR, by LOUIS B.
TAYLOR, Personal Representative,

UNPUBLISHED
January 13, 2022

Plaintiff-Appellee,

v

OUTDOOR ADVENTURES OF DAVISON, LLC,

Nos. 355035; 355036
Genesee Circuit Court
LC No. 18-110936-NO

Defendant-Appellant.

Before: BOONSTRA, P.J., and CAVANAGH and RIORDAN, JJ.

PER CURIAM.

In this negligence action arising from the drowning death of plaintiff’s decedent, Allyn Taylor, defendant Outdoor Adventures of Davison, LLC, appeals by leave granted the trial court’s orders denying its motions for summary disposition.¹ We hold that the trial court erred by ruling that the exclusive remedy provision of the Worker’s Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, did not apply to bar plaintiff’s negligence claim. At the time of his drowning death, Taylor, an employee of defendant, was on defendant’s grounds performing a task for defendant within a reasonable time after his working hours. Thus, he is presumed to have been in the course of his employment and he was not engaged in an activity the major purpose of which was social or recreational. MCL 418.301(3). Therefore, under MCL 418.131(1), the WDCA

¹ In Docket No. 355035, defendant appeals by leave granted the trial court’s September 16, 2020 order denying its motion for summary disposition under MCR 2.116(C)(4). *Estate of Allyn Taylor v Outdoor Adventures of Davison LLC*, unpublished order of the Court of Appeals, entered December 17, 2020 (Docket No. 355035). In Docket No. 355036, defendant appeals by leave granted the trial court’s June 29, 2020 order denying its motion for summary disposition under MCR 2.116(C)(10). *Estate of Allyn Taylor v Outdoor Adventures of Davison LLC*, unpublished order of the Court of Appeals, entered December 17, 2020 (Docket No. 355036). We consolidated the cases “to advance the efficient administration of the appellate process.” *Estate of Allyn Taylor v Outdoor Adventures of Davison LLC*, unpublished order of the Court of Appeals, entered January 20, 2021 (Docket Nos. 355035 & 335036).

provides plaintiff's exclusive remedy against defendant for Taylor's drowning death. Accordingly, we reverse and remand to the trial court for entry of summary disposition in favor of defendant.

I. BACKGROUND

This case arises from the tragic June 12, 2016 drowning death of plaintiff's decedent, 20-year-old Allyn Taylor, on Lake Linda in Davison, Michigan. Taylor was an employee of defendant, which owns a campground on Lake Linda. Defendant provided paddleboats to its customers for their use on Lake Linda. Taylor's job responsibilities included checking out the boats and making sure all the boats were accounted for at the end of the day. When the boats were not in use, they were moored to a dock, but many of the ties were bad so boats would sometimes float away. One of Taylor's job responsibilities was to retrieve any wayward paddleboats. Taylor would sometimes use another boat to pull a wayward boat back in, but if the wayward boat was not too far away from the dock, Taylor would sometimes swim out to it and pull it back in. Evidence was presented that the lake contained seaweed or lake weeds in the water near the dock, which could make swimming difficult.

On June 12, 2016, Taylor finished work at approximately 8:00 p.m. He thereafter spoke to his mother on the telephone and told her that he was going to go fishing while he waited for his parents to pick him up, and he also planned on bringing in a paddleboat that had drifted away from the dock. Taylor drowned that evening while swimming to reach a wayward paddleboat.

According to Deputy Jason Thomas of the Genesee County Dive Team, the water right near the dock was clear, but lake weeds were visible at the top of the water within 10 yards of the dock. Taylor's body was recovered in 9 to 10 feet of water near the wall of lake weeds, approximately 90 feet from the dock. Autopsy photographs showed that Taylor had weeds wrapped around his left arm, in his mouth, and also in his nose. Plaintiff's expert in aquatic safety, Ralph L. Johnson, Ph.D, opined that Taylor experienced an "active drowning," whereby he became entangled in the lake weeds, which caused him to panic below the water surface, struggle a great deal, and "suck[] water like crazy." Although Taylor had also been diagnosed with syncope, a physical condition that causes fainting spells, neither Johnson nor the medical examiner, Dr. Patrick Cho, M.D., believed that this condition contributed to Taylor's drowning.

Plaintiff filed this action against defendant for negligence. Plaintiff alleged that Taylor drowned as a result of becoming entangled in the lake weeds in Lake Linda, and that defendant was aware of the hazardous lake weeds and did nothing to alleviate the dangerous condition or to warn swimmers of the potential danger. As relevant to these appeals, defendant filed two motions for summary disposition under MCR 2.116(C)(4) and (C)(10), respectively, asserting that plaintiff's action was barred by the exclusive remedy provision of the WDCA, MCL 418.131(1), and that plaintiff's action was barred by the recreational land use act (RUA), MCL 324.73301(1), because Taylor was engaged in the recreational activity of swimming at the time of his drowning death. Defendant also argued that plaintiff could not establish a triable issue of fact regarding causation because plaintiff's theory that Taylor drowned after becoming entangled in the lake weeds was based solely on speculation, which is insufficient to establish a question of fact. The trial court disagreed with defendant on all of these issues, and thus denied defendant's motions for

summary disposition. As noted, this Court granted defendant’s two applications for leave to appeal and consolidated the cases.

II. EXCLUSIVE REMEDY

We first consider defendant’s argument that the trial court erred by holding that the exclusive remedy provision of the WDCA did not apply to bar plaintiff’s action. We agree that defendant was entitled to summary disposition on this ground.

“We review de novo a trial court’s decision on a motion for summary disposition.” *O’Leary v O’Leary*, 321 Mich App 647, 651; 909 NW2d 518 (2017). Summary disposition is appropriate under MCR 2.116(C)(4) if the trial court does not have jurisdiction over the subject matter. *Petersen Fin LLC v Kentwood*, 326 Mich App 433, 441; 928 NW2d 245 (2018). If the facts are not in dispute, the issue of whether a plaintiff’s injury arose out of and in the course of employment under MCL 418.301(1) is a question of law reviewed de novo. See *Smith v Chrysler Group, LLC*, 331 Mich App 492, 496; 954 NW2d 214 (2020).

It is undisputed that, at the time of Taylor’s drowning, he was attempting to secure a wayward paddleboat for defendant, his employer. MCL 418.301 provides, in pertinent part:

(1) 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. . . .

* * *

(3) An employee going to or from his or her work, while on the premises where the employee’s work is to be performed, and within a reasonable time before and after his or her working hours, is presumed to be in the course of his or her employment. Notwithstanding this presumption, an injury incurred in the pursuit of an activity the major purpose of which is social or recreational is not covered under this act.

MCL 418.131(1) further provides that “[t]he right to the recovery of benefits as provided in [the WDCA] 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.” Under MCL 418.131(3), however, an injury is not covered by the WDCA if it was incurred “in the pursuit of an activity the major purpose of which is social or recreational.”

In *Eversman v Concrete Cutting & Breaking*, 463 Mich 86, 95; 614 NW2d 862 (2000), our Supreme Court explained that in applying “the social or recreational test” of MCL 418.301(3), a court “must consider the major purpose of the activity in which the plaintiff was engaged at the time of the injury.” See also *Buitendorp v Swiss Valley, Inc*, 485 Mich 879; 772 NW2d 50 (2009) (holding that “the major purpose of the plaintiff’s activity at the time of injury determines whether the social or recreational bar [of MCL 418.301(3)] applies”). In considering this question, the court is required to examine “the totality of the circumstances.” *Eversman*, 463 Mich at 96.

In the present case, the evidence demonstrated that Taylor had finished his work and went fishing while waiting for his parents to pick him up from work, but then decided to swim out to a wayward paddleboat to return it to the dock, which was one of his employment responsibilities. Taylor's time card reflected that he began work on June 12, 2016, at 12:58 p.m. and clocked out at 8:04 p.m. Two witnesses confirmed that Taylor was fishing with them off the dock, and they last saw Taylor at approximately 8:49 p.m., when they left the dock to go fish by a nearby bridge. The Richfield Township Police Department was dispatched to the scene at 9:45 p.m. Taylor spoke to his mother on the telephone and told her that he planned to retrieve a paddleboat that had floated away from the dock.

Because Taylor was on defendant's grounds within a reasonable time after his working hours, he is presumed to have been in the course of his employment under MCL 418.301(3). Additionally, under "the social and recreational test" set forth in *Eversman*, at the time of his drowning, Taylor was attempting to bring into shore a paddleboat that had drifted away. Because the evidence is clear that the "major purpose" of this activity was to perform a task for his employer, it is not subject to the social or recreational bar of MCL 418.301(3). *Eversman*, 463 Mich at 95. Therefore, under MCL 418.131(1), the WDCA provides plaintiff's exclusive remedy against defendant for Taylor's drowning death. Accordingly, the trial court erred by holding that the exclusive remedy provision does not bar plaintiff's negligence claim against defendant.

The present case is distinguishable from *Nock v M & G Convoy, Inc (On Remand)*, 204 Mich App 116; 514 NW2d 200 (1994), which is cited in *Eversman*. In *Nock*, the plaintiff truck driver, after making deliveries for his employer to several cities in Ohio, arrived in Detroit and, while at a Detroit bar, was attacked by another patron with a pool cue and lost an eye. *Id.* at 118. This Court agreed that under the version of MCL 418.301(3) in effect at that time, "the major purpose" of the plaintiff's patronage at the bar was both social and recreational, and therefore, his injuries were not compensable under the WDCA. *Id.* at 121. In contrast, Taylor was on defendant's grounds a short time after his work hours with defendant had ended and, although he was engaged in the social activity of fishing in Lake Linda while waiting for his parents to pick him up, he stopped that activity and was engaged in an effort to secure a wayward paddleboat for defendant at the time he drowned. Under these circumstances, the major purpose of Taylor's activity at the time of drowning was not social or recreational, and his injuries are presumed to have arisen out of and during the course of his employment. Therefore, the exclusive remedy provision of the WDCA is applicable.²

III. CONCLUSION

We reverse the trial court's ruling that the exclusive remedy provision of the WDCA is not applicable. At the time of his drowning death, Taylor was on defendant's grounds performing a task for defendant, his employer, within a reasonable time after his working hours. Thus, he is presumed to have been in the course of his employment and he was not engaged in an activity the major purpose of which was social or recreational. MCL 418.301(1), (3). Therefore, under MCL 418.131(1), the WDCA provides plaintiff's exclusive remedy against defendant for Taylor's

² Having so concluded, we need not reach defendant's alternate arguments for reversal.

drowning death, and the trial court lacked jurisdiction over this case. We accordingly remand to the trial court for entry of summary disposition in favor of defendant. We do not retain jurisdiction

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Michael J. Riordan