

STATE OF MICHIGAN
COURT OF APPEALS

TERRY B. ANGEL,

Plaintiff-Appellant/Cross-Appellee,

v

A1 SOUTH, L.L.C./GRAND RAPIDS
GRIFFINS/WAUSAU UNDERWRITERS
INSURANCE COMPANY,

Defendants-Appellees/Cross-
Appellants,

and

A1 SOUTH, L.L.C./GRAND RAPIDS
GRIFFINS/CITIZENS INSURANCE
COMPANY,

Defendants.

UNPUBLISHED
September 6, 2012

No. 295015
WCAC
LC No. 09-000070

ON REMAND

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

FORT HOOD, J. (*concurring in part and dissenting in part*).

I join in the majority's holding on appeal that the WCAC properly held that plaintiff failed to meet the burden of proving his disability. *Stokes v Chrysler LLC*, 481 Mich 266, 297; 750 NW2d 129 (2008). With regard to the cross-appeal, I respectfully dissent from the majority's conclusion that an employment relationship did not exist. Although plaintiff was not paid a wage during the tryout period, he signed a contract that contained a consideration provision, paying the expenses of transportation, hotel room, and meals. Additionally, the contract governed the playing season as a whole, and plaintiff was enjoined from negotiating or signing contracts with other clubs in the league. Irrespective of the fact that a salary was not delineated in the contract, the contract provided that it was binding during the term of the tryout agreement, and plaintiff was precluded from playing for any other team. In light of the contractual language, plaintiff was not merely a "gratuitous worker," *Hoste v Shanty Creek Mgt*, 459 Mich 561, 578; 592 NW2d 360 (1999), and a tryout injury is compensable when there is a

benefit to the defendant, *Moore v Gundelfinger*, 56 Mich App 73, 82-83; 223 NW2d 643 (1974).¹ Under these facts and circumstances, I cannot conclude that the WCAC erred in its holding on this issue. I would affirm the WCAC decision in its entirety.

/s/ Karen M. Fort Hood

¹ Although only a plurality opinion, *Reed v Yackell*, 473 Mich 520, 530-535; 703 NW2d 1 (2005) (Opinion by Taylor, C.J.) is also persuasive on this issue.