

STATE OF MICHIGAN
COURT OF APPEALS

AYED ABOONA,

Plaintiff-Appellant,

v

GREAT WEST CASUALTY COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 27, 2011

No. 297584
Wayne Circuit Court
LC No. 09-008162-NF

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff was injured while working as a tractor-trailer operator for YES Express. At the time of the incident, defendant was YES Express's no-fault insurer, while plaintiff had personal no-fault insurance coverage through a different insurer. Plaintiff filed suit against defendant, seeking personal protection insurance benefits. Defendant sought summary disposition under MCR 2.116(C)(10) on the basis that plaintiff was an independent contractor, rather than an employee of YES Express, so plaintiff's no-fault insurer was higher in priority. The trial court agreed and granted its motion. Plaintiff contends that the trial court lacked subject-matter jurisdiction to make that determination, arguing that only the Bureau of Workers' Disability Compensation (the "Bureau") may determine whether a worker is an employee or an independent contractor. We disagree. "Whether a court has subject-matter jurisdiction is a question of law subject to review de novo." *Davis v Dep't of Corrections*, 251 Mich App 372, 374; 651 NW2d 486 (2002).

Michigan circuit courts have original subject-matter jurisdiction "in all matters not prohibited by law." Const 1963, art 6, § 13. Plaintiff argues that the Worker's Disability Compensation Act ("WDCA"), MCL 418.101 *et seq.*, creates an exception to this general grant of jurisdiction by vesting exclusive jurisdiction over determinations of employment status with the Bureau. Plaintiff relies on the following statutory language:

Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau or a worker's compensation magistrate, as applicable. [MCL 418.841(1).]

* * *

Except as otherwise provided for under this act, upon the filing with the bureau by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the case shall be set for mediation or hearing, as applicable. [MCL 418.847(1).]

However, MCL 418.847(1) does not relate to subject-matter jurisdiction; it simply sets forth a procedure for resolving issues under the WDCA generally. Under MCL 418.841(1), the circuit courts are divested of jurisdiction over cases “concerning compensation or other benefits . . . and all questions arising under [the WDCA].” This statutory language, however, is limited only to compensation or benefits under the WDCA.

While employment status can be decisive under both the no-fault act and the WDCA, the two do not rely on one another. As this Court has explained:

The [WDCA] and the no-fault insurance act are complete and self-contained legislative schemes addressing discrete problems. Neither act refers expressly to the other. The WDCA provides a substitute for common-law tort liability founded upon an employer’s negligence[.] On the other hand, the no-fault act provides a substitute for common-law tort liability based upon the ownership or operation of a motor vehicle. Thus, when an employee . . . is injured in a motor vehicle accident during the course of employment, entitlement to compensation for injuries is governed by both the WDCA and the no-fault act. [*Specht v Citizens Ins Co of America*, 234 Mich App 292, 294-295; 593 NW2d 670 (1999) (internal citations, brackets, and quotations omitted).]

Our Supreme Court has explained that the circuit courts do have jurisdiction to determine a person’s employment status. *Sewell v Clearing Machine Corp*, 419 Mich 56, 62; 347 NW2d 447 (1984). Circuit courts “retain the power to decide the . . . fundamental issue whether the plaintiff is an employee . . . of the defendant.” *Id.* at 62. The Court rejected the notion that “the bureau’s jurisdiction takes precedence over that of the circuit court whenever there is an issue concerning the applicability of the [WDCA].” *Id.* The Court clarified that, “properly stated, the *Szydlowski v General Motors Corp*, 397 Mich 356; 245 NW2d 26 (1976)] principle is that the bureau has exclusive jurisdiction to decide whether injuries suffered by an employee were in the course of employment.” *Sewell*, 419 Mich at 62. The *Sewell* Court’s interpretation of *Szydlowski* contradicts plaintiff’s argument that *Szydlowski* vests exclusive subject-matter jurisdiction with the Bureau over determining employment status.

Plaintiff contends that *Sewell* should be overturned. Plaintiff may make that argument before our Supreme Court, but this Court is bound by precedent established by our Supreme Court. See *Ratliff v General Motors Corp*, 127 Mich App 410, 416-417; 339 NW2d 196 (1983). Because plaintiff has not provided us with a sound basis for distinguishing this case from *Sewell*, we conclude that the circuit court acted within its jurisdiction when it determined that plaintiff was an independent contractor, rather than an employee, of YES Express.

Furthermore, the WDCA has no bearing whatsoever on the instant case. The WDCA replaced common-law negligence principles in employer-employee contexts, but it did not displace common-law rules of agency in any situation involving some kind of employment relationship. Employment status under the no-fault act is determined by the “economic reality” test, see *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 624-625; 335 NW2d 106 (1983), which differs from the statutory definition provided under the WDCA. See MCL 418.161; *Reed v Yackell*, 473 Mich 520, 535-536; 703 NW2d 1 (2005); *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 571-573; 592 NW2d 360 (1999). Thus, there are two distinct standards for determining whether someone is an employee for the purposes of claims under the WDCA and for the purposes of claims *not* brought under the WDCA. The fact that the no-fault act does not explicitly provide its own statutory definition does not necessarily mean the WDCA’s definition must be used. Consequently, it makes no sense to give the Bureau unlimited jurisdiction to determine employment status under *any* circumstance.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen