

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY SGRO a/k/a TONY SGRO,

Plaintiff-Appellant,

v

ACRO SERVICE CORPORATION and
GENERAL MOTORS CORPORATION,

Defendants-Appellees.

UNPUBLISHED

May 7, 1996

No. 176169

LC No. 92-233599 CZ

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington,* JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(10).¹ We affirm.

On appeal, an order granting or denying summary disposition is reviewed de novo. A motion for summary disposition may be granted pursuant to MCR 2.116(C)(10) when, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Giving the benefit of reasonable doubt to the nonmovant, the trial court must determine whether a record might be developed that would leave open an issue upon which reasonable minds might differ. *Plieth v St Raymond Church*, 210 Mich App 568, 571; 534 NW2d 164 (1995).

Plaintiff first argues that the trial court erred in finding that he was not an employee of defendant General Motors. The appropriate test for determining whether an employer/employee relationship exists is the economic reality test. *Wells v Firestone Tire & Rubber Co*, 421 Mich 641, 647; 364 NW2d 670 (1984). Relevant factors under this test include: (1) control of the worker's duties, (2) payment of wages, (3) the right to hire, fire, and discipline, and (4) performance of the duties as an integral part of the employer's business toward the

* Circuit judge, sitting on the Court of Appeals by assignment.

accomplishment of a common goal. *Chilingirian v City of Fraser*, 194 Mich App 65, 69; 486 NW2d 347 (1992). In applying this test, the totality of the circumstances surrounding the work performed must be examined, with no single factor controlling. *Amerisure Ins Cos v Time Auto Transportation, Inc*, 196 Mich App 569, 575; 493 NW2d 482 (1992).

After carefully reviewing the record, we conclude that the trial court did not err in finding that plaintiff was not an employee of General Motors. Plaintiff was employed by defendant Acro. General Motors contracted with Acro to lease plaintiff's services. Plaintiff had an employment contract with Acro which set forth plaintiff's starting time and the paid holidays that he would receive. Plaintiff's wages were paid by Acro. General Motors did not have the ability to hire, fire, or discipline plaintiff; rather, when it concluded that plaintiff's performance was deficient, it simply decided not to renew the contract with Acro for his services. Finally, the functions of General Motors and Acro, a temporary help service, were not "so integrally related that their common objectives [were] only realized by a combined business effort." *White v Central Transport, Inc*, 150 Mich App 128, 131; 388 NW2d 274 (1986), quoting *Farrell v Dearborn Manufacturing Co*, 416 Mich 267, 277; 330 NW2d 397 (1982). Under the totality of the circumstances, plaintiff was employed by Acro, not General Motors. Accordingly, plaintiff has not established a prima facie case against General Motors of discrimination under the Michigan Handicappers' Civil Rights Act (HCRA), MCL 37.101 *et seq*; MSA 3.550(10) *et seq.*

As plaintiff conceded in the trial court, its sole allegation against defendant Acro was that it acted on General Motors' decision not to renew plaintiff's contract. Plaintiff argues that the alleged discrimination on the basis of handicap by General Motors can therefore be imputed to Acro. However, plaintiff cites no authority for this proposition, and accordingly he has waived the issue. *Gubin v Lodisev*, 197 Mich App 84, 92; 494 NW2d 782 (1992). Moreover, plaintiff has not shown that he has a handicap that "substantially limits 1 or more of his major life activities," MCL 37.1103(e)(I)(A); MSA 3.550(103)(e)(I)(A), and therefore plaintiff has not demonstrated that he is handicapped within the meaning of the HCRA.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Mark J. Cavanagh
/s/ Thomas L. Ludington

¹ Defendants moved for summary disposition pursuant to both MCR 2.116(C)(8) and MCR 2.116(C)(10). Although the trial court did not specify the basis for its ruling, because it considered matters outside the pleadings, it is clear that summary disposition was granted under MCR 2.116(C)(10).