

STATE OF MICHIGAN
COURT OF APPEALS

TONY BYNUM, ADRIENNE BYNUM, Individually
and as Next Friend of TONY BYNUM, JR.,
LAKEISHA M. BYNUM, AND LADRINE M.
BYNUM, minors,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 169750
LC No. 92-231838

HEMPHILL, INC., HEMPHILL TOWING, INC.,
AND PAUL HEMPHILL,

Defendants-Appellees.

Before: Doctoroff, C.J., and McDonald and J.B. Sullivan*, JJ.

DOCTOROFF, C.J. (dissenting).

I respectfully dissent. The worker's compensation act exists to reimburse employees for injuries suffered in the workplace that were not caused by an employer's intentional act. In exchange for this protection, employees are barred from suing their employers for negligence. *Beauchamp v Dow Chemical Co.*, 427 Mich 1, 8; 398 NW2d 882 (1986). In this case, the statute served its purpose. Defendant's company, Bradshaw-Smith, paid for plaintiff's worker's compensation insurance. After his injury, plaintiff received worker's compensation benefits.

Workers compensation benefits are available only to employees under the statute. MCL 418.131; MSA 17.237(131). Independent contractors are not entitled to benefits. *Amerisure v Time Auto*, 196 Mich App 569, 572; 493 NW2d 482 (1992). Even though plaintiff received benefits as an employee of Bradshaw-Smith, he now claims that he was acting as an independent contractor for defendant. Applying the economic reality test, I would find that plaintiff was defendant's employee. In his deposition, plaintiff indicated that he reported to the dispatcher at Hemphill Towing at an assigned times each morning. Plaintiff testified that the dispatcher gave him his work assignments. Plaintiff stated that he received a paycheck from Bradshaw-Smith, and that his tow truck had "Hemphill Inc." written on its side.

* Retired Court of Appeals Judge, sitting on the Court of Appeals by assignment.

The majority would allow plaintiff to maintain two identities. Plaintiff can collect workers compensation payments as an employee. Then, plaintiff can elude the bar on negligence suits because, rather than being an employee, he is an independent contractor. I would affirm.

/s/ Martin M. Doctoroff