STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL KELLY and JOYCE KELLY,

Plaintiff-Appellants,

v

METOKOTE CORPORATION,

Defendant-Appellee.

UNPUBLISHED
September 13, 1996

No. 180814
LC No. 92-015624

Before: Cavanagh, P.J., and Hood and J. J. McDonald,* JJ.

PER CURIAM.

Plaintiff Michael Kelly[1] appeals as of right the trial court order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). 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 granting defendant's motion for summary disposition because there was a genuine issue of fact as to whether defendant was plaintiff's employer. We disagree. It is undisputed that plaintiff was an employee of The Catalyst Group, a labor broker, and that plaintiff was on assignment at defendant's premises when he was injured. The exclusive remedy available to the employee in a labor broker situation is provided by the Worker's Disability Compensation Act (WDCA), MCL 418.131; MSA 17.237(131), and a separate tort action against the customer of the labor broker may not be maintained. See *Farrell v Dearborn Mfg Co*, 416 Mich 267, 278; 330 NW2d 397 (1982). Plaintiff has failed to present any facts which would support an inference that he was not an employee within the meaning of the WDCA.

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

Plaintiff also contends that public policy demands that defendant should be subject to a common-law cause of action in tort. However, plaintiff's argument is more properly directed to the Legislature. The duty of this Court is to interpret the statute as we find it. The wisdom of the provision in question is not a matter for our review. *Jennings v Southwood*, 446 Mich 125, 142; 521 NW2d 230 (1994).

In his last issue, plaintiff asserts that there is a genuine issue of material fact as to whether plaintiff stated a valid intentional tort claim. We disagree. Plaintiff has not alleged any fact demonstrating that defendant had actual knowledge of the specific danger which precipitated plaintiff's injury. *Travis v Dreis & Krump Mfg Co*, ___ Mich ___, ___; ___ NW2d ___ (Docket Nos. 101028, 102147, issued 7/31/96), slip op p 30-31. Plaintiff has alleged and presented facts supporting a conclusion that defendant ignored various safety concerns. However, negligently permitting an unsafe work environment to exist does not give rise to liability for an intentional tort under the WDCA. *Id*. at p 32.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Harold Hood
/s/ John J. McDonald

[1] Joyce Kelly, plaintiff's wife, joins him as plaintiff. Because her loss of consortium claim is derivative and dependent on Michael Kelly's claim, and to avoid confusion, we will refer only to plaintiff Michael Kelly.