STATE OF MICHIGAN

COURT OF APPEALS

KENNETH EUGENE HINES, JR.,

Plaintiff-Appellant,

v

FINALPHASE FINISHING, INC. and PERSONNEL STAFFING, INC.,

Defendants-Appellees.

UNPUBLISHED
July 15, 1997

No. 194010
Jackson Circuit Court
LC No. 95-073203-NO

Before: Sawyer, P.J., and Neff and A. L. Garbrecht*, JJ.

PER CURIAM.

Plaintiff Kenneth Eugene Hines, Jr., appeals by right the circuit court's grant of summary disposition in favor of defendants Finalphase Finishing, Inc. (Finalphase), and Personnel Staffing, Inc. (Personnel), in plaintiff's tort action for injuries received in the course of his employment. We affirm.

I

Plaintiff was hired through Personnel, an employment agency located in Indiana, to work for Finalphase, a company located in Michigan. Throughout his tenure with Finalphase and on the date of injury, plaintiff worked solely at Finalphase's place of business in Michigan, and received paychecks for his work with Finalphase from Personnel. Personnel had a workers' compensation insurance policy to cover injuries of its employees, but Finalphase did not.

Personnel's worker's compensation insurer paid plaintiff wage loss benefits and reimbursement for medical expenses; the payments were made under Indiana's worker's compensation law. Subsequently, plaintiff brought an action in tort against both defendants. Defendants moved for summary disposition, alleging that plaintiff's claim was barred by the exclusive remedy provision of the Worker's Disability Compensation Act [WDCA]. MCL 418.101; MSA 27.237(101). The circuit court granted defendants' motions.

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

II

Plaintiff argues that the circuit court erred in determining that Personnel was a labor broker, and thus an employer entitled to the protection of the exclusive remedy provision of the WDCA. MCL 418.131; MSA 27.237(131). We disagree.

It is well settled that in a labor broker employment situation, where one company hires a worker and assigns the worker out to another company, the worker is an employee of both the labor broker and the broker's customer for purposes of the WDCA. *Farrell v Dearborn Mfg Co*, 416 Mich 267, 274; 330 NW2d 397 (1982). Accordingly, § 131 of the WDCA bars the injured worker in a labor broker situation from bringing a separate tort action against the customer of the labor broker. *Id*. at 278.

Courts apply the "economic reality test" to determine whether a labor broker situation exists. *Id* .at 276. The relevant factors, none of which is controlling, include: (1) control of the worker's duties; (2) payment of wages; (3) right to hire, fire, and discipline; and (4) performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal. *Tolbert v US Truck Co*, 179 Mich App 471, 475-476; 446 NW2d 484 (1989). Application of the economic realities test is a question of law for the court. *Nezdropa v Wayne County Probate Court*, 152 Mich App 451, 466; 394 NW2d 440 (1986).

In the present case, the trial court properly determined that this case represents a typical labor broker situation. Personnel hired plaintiff to work for Finalphase, and Personnel paid all of plaintiff's wages and benefits. Although plaintiff worked under the direction of Finalphase, there is no question that the relationship between Personnel and Finalphase established a common business objective. The economic reality here is that both Personnel and Finalphase were employers within the meaning of the WDCA.

III

Plaintiff also argues that his tort action is not barred because Personnel did not secure the payment of worker's compensation benefits under Michigan law. We disagree.

A

In granting defendants' motions for summary disposition, the circuit court stated that the language in the amendatory endorsement to Personnel's policy expressly extended coverage under Michigan's worker's compensation law. Plaintiff challenges this determination, and argues that a genuine issue of fact existed regarding the interpretation of the endorsement. We find no error in the trial court's determination. Where, as here, the language of an insurance policy is clear and unambiguous, its construction is a question of law for the court. *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 649; 517 NW2d 864 (1994).[1]

B

In a related argument, plaintiff contends that Personnel's insurance policy only provided coverage under Indiana law, and thus did not secure payment of worker's compensation benefits under the WDCA. Therefore, posits plaintiff, the WDCA does not apply, and he should be permitted to proceed with his tort claim. This argument is without merit.

Every employer subject to the WDCA must secure the payment of worker's compensation benefits or be subject to tort claims by its injured employees. *Smeester v Pub-N-Grub (On Remand)*, 208 Mich App 308, 312; 527 NW2d 35 (1992). One of the methods by which an employer may secure the payment of compensation is by "insuring against liability with an insurer authorized to transact the business of worker's compensation insurance within this state." MCL 418.611; MSA 17.237(611). In the present case, it is undisputed that Personnel's insurer was authorized to provide worker's compensation insurance in Michigan.

Furthermore, plaintiff acknowledges that he has received workers' compensation benefits for his injury, albeit under Indiana law, and has not alleged any deficiency, vis-à-vis the WDCA, in the amount of benefits received. Consequently, these benefits are plaintiff's exclusive remedy against both Personnel and Finalphase. See *Sieman v Postorino*, 111 Mich App 710; 314 NW2d 736 (1981); MCL 418.131; MSA 17.237(131).

IV

There being no genuine issue of material fact presented, the circuit court did not err in granting defendants' motions for summary disposition.

Affirmed.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ Allen L. Garbrecht

[1] Even if we were to assume that the policy language was ambiguous, any ambiguity should be strictly construed against the insurer and in favor of coverage. *State Farm Mutual Automobile Ins Co v Enterprise Leasing Co*, 452 Mich 25, 38; 549 NW2d 345 (1996).