

STATE OF MICHIGAN
COURT OF APPEALS

MARY ETTA REINHARDT, Personal Representative
of the Estate of LYLE ERNEST REINHARDT,
deceased,

UNPUBLISHED
August 1, 1997

Plaintiff- Appellant,

v

No. 188499
Washtenaw Circuit Court
LC No. 90-05740-NI

ROLLING GREEN CORPORATION,

Defendant- Appellee.

Before: Wahls, P.J., and Young and Fisher,* JJ.

PER CURIAM.

Plaintiff appeals from the circuit court's order granting summary disposition in favor of defendant. Plaintiff sued defendant for the wrongful death of plaintiff's decedent Lyle Reinhardt. Both defendant and another company, Wyatt corporation, claimed to be Reinhardt's employer at the time of his death. While the circuit court action was pending, a workers' compensation magistrate found that Mr. Reinhardt was an employee of both Wyatt and defendant at the time of his death, and that both Wyatt and defendant were responsible for paying survivor's benefits to Mrs. Reinhardt. Following the magistrate's determination, the circuit judge found that plaintiff was estopped from asserting that Mr. Reinhardt had not been employed by defendant at the time of his death, so plaintiff's action was barred by the exclusive remedy provision of the Workers' Disability Compensation Act, MCL 418.131; MSA 17.237(131). We affirm.

Plaintiff argues that the circuit court erred by finding her wrongful death claim barred by collateral estoppel. We find no error.

The magistrate's determination was adjudicatory in nature and provided a right to appeal. MCL 418.851, 418.859a; MSA 17.237(851), 17.237(859a). The Legislature expressly made the magistrate's decision final absent an administrative appeal. MCL 418.851; MSA 17.237(851). Collateral estoppel can be used to preclude relitigation of issues based upon the magistrate's

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

decision. *Nummer v Treasury Dept*, 448 Mich 534, 542; 533 NW2d 250 (1995), cert den ___ US ___, 116 S Ct 418; 133 L Ed 2d 335 (1995). The magistrate's written decision states that he used the economic reality test to find that Mr. Reinhardt was defendant's employee at the time of his death. Whether decedent was employed by defendant at the time of his death was essential to the ultimate finding that defendant was liable for workers' compensation survivor's benefits. This issue was actually and necessarily litigated before the workers' compensation magistrate and determined by a valid and final judgment. The hearing before the workers' compensation magistrate involved the same parties, who had a full opportunity to litigate the issue in that forum. Regardless of the basis of the magistrate's decision, plaintiff was collaterally estopped from relitigating the issue of whether Mr. Reinhardt was employed by defendant at the time of his death. *Nummer, supra*; *City of Detroit v Qualls*; 434 Mich 340, 357; 454 NW2d 374 (1990); *Temple v Kelel Distributing*, 183 Mich App 326, 328; 454 NW2d 610 (1990). Plaintiff's circuit court action was barred by the exclusive remedy provision of the Workers' Disability Compensation Act. MCL 418.131; MSA 17.237(131). Since summary disposition was properly granted, it is not necessary to address plaintiff's argument that the circuit judge misapplied the doctrine of judicial estoppel.

Affirmed.

/s/ Myron H. Wahls

/s/ Robert P. Young, Jr.

/s/ James H. Fisher