STATE OF MICHIGAN

COURT OF APPEALS

MIGUEL MENDEZ,

Plaintiff-Appellant,

v

ESTATE OF THOMAS RONCELLI, DECEASED,

Defendant-Appellee.

UNPUBLISHED
September 26, 1997

No. 197850
Oakland Circuit Court
LC No. 95-506041-NO

Before: Holbrook, Jr., P.J., and White and R.J. Danhof*, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right from the trial court order granting defendant's motion for summary disposition. We affirm.

Plaintiff was employed by Crown Boring, a machine shop, which was owned by Thomas Roncelli, defendant's decedent. Plaintiff performed maintenance and janitorial work at Crown Boring, as well as work which involved rebuilding, cleaning, and moving heavy machinery. Plaintiff was also often asked to perform various jobs at Roncelli's personal residence. During these times, plaintiff remained on the time clock for Crown Boring and was paid for the work performed at the residence. Plaintiff's claim in this lawsuit arises from a back injury he suffered while moving a console television set at Roncelli's residence.

Plaintiff argues on appeal that the trial court erred in determining that his claim was barred by the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.131; MSA 17.237(131), because Roncelli acted in a dual capacity. We disagree. The exclusive remedy provision provides that "[t]he right to recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease." MCL 418.131(1); MSA 17.237(131)(1). The dual capacity doctrine provides an exception to the exclusive remedy rule by recognizing that in some circumstances an employee may bring suit against the employer where the employer is acting in a role other than his role of employer. *Howard v White*, 447 Mich 395, 398; 523 NW2d 220 (1994); *Wells v Firestone Tire and Rubber Co*, 421 Mich 641, 653; 364

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

NW2d 670 (1984). The dual capacity doctrine is applied only "where the employer has a second identity which is completely and distinctly removed from his status as employer." *Id.* at 653; *Handley v Wyandotte Chemicals Corp*, 118 Mich App 423, 429; 325 NW2d 447 (1982). The question is not a question of activity, but a question of identity. *Howard, supra* at 399, quoting 2A Larson, Workmen's Compensation, § 72.81(a), p 14-290.89.

Dual capacity issues often arise in the context of an injury to a government employee who is traveling in the course of employment and is injured by unsafe road conditions or an accident with another government vehicle. In *Howard,* for example, the plaintiff was involved in an accident caused by a malfunctioning traffic light while driving a City of Detroit truck on a job assignment. *Id.* at 397-398. The Court concluded that the plaintiff could not recover under the dual capacity doctrine on the basis of defective road conditions. *Id.* at 405. Likewise, in *Cassani v Detroit*, 156 Mich App 573, 574; 402 NW2d 1 (1985), the plaintiff, a police officer, was injured by a wire cable on a lot owned by the defendant city while he pursued a fleeing criminal. This Court stated that the city's status as a landowner did not endow the city with a "second legal persona" against which the plaintiff could bring a claim. *Id.* at 575-576. See also *Benson v Dep't of Management and Budget*, 168 Mich App 302, 304, 309; 424 NW2d 40 (1988) (dual capacity doctrine did not apply where the plaintiff-employee was injured after slipping and falling in a parking lot owned and maintained by her employer even though the plaintiff paid a monthly fee to park in the lot).

Plaintiff argues that when he worked at Roncelli's residence, he was not working for Roncelli, as president and chief operation officer of Crown Boring, but for Roncelli as landowner. Thus, plaintiff argues that Roncelli maintained two separate identities. Plaintiff further argues that the activities he performed at Roncelli's home were completely unrelated to Crown Boring business. However, as this Court has recognized, an employer's status as landowner is not sufficient to endow the employer with a distinct legal status. See *Benson, supra* at 309; *Cassani, supra* at 575-576. See also *Royster v Montanez,* 134 Cal App 3d 362; 184 Cal Rptr 560 (1982) (dual capacity doctrine did not apply where the defendant's "secretary/clerk/girl-Friday" injured herself while on an errand to the defendant's residence). Under the present facts, we conclude that Roncelli did not hold a second identity completely separate and distinct from his status as employer. As plaintiff acknowledged, he remained on the Crown Boring time clock and was paid by Crown Boring for work he performed at Roncelli's home. Plaintiff may have had two workplaces, but he had one employer. Accordingly, the dual capacity doctrine does not apply to bring plaintiff's tort claim outside the ambit of the exclusive remedy provision of the WDCA.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Helene N. White
/s/ Robert J. Danhof