

STATE OF MICHIGAN
COURT OF APPEALS

DERRICK D. CURRIE,

Plaintiff-Appellant,

and

LIBERTY MUTUAL INSURANCE,

Intervening Plaintiff,

v

NATIONAL METAL PROCESSING, INC., and
MERIDIAN NATIONAL CORPORATION,

Defendants-Appellees.

UNPUBLISHED
December 9, 2003

No. 240450
Wayne Circuit Court
LC No. 95-523061-NP

Before: Whitbeck, C.J. and Talbot and Zahra, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right the trial court's order granting defendant Meridian's motion for summary disposition under MCR 2.116(C)(10). We affirm.

I. Facts and Procedural History

This is the second time this case has been before this Court. The relevant facts and procedural history are set forth in *Derrick D Currie v National Metal Processing Inc*, unpublished opinion of the Court of Appeals, issued February 11, 2000 (Docket No. 211106), as follows:

Plaintiff's cause of action stems from a workplace accident that occurred at National Metal's steel pickling plant. National Metal, a Michigan corporation, is

¹ Intervening plaintiff Liberty Mutual played a very limited role in the proceedings below and does not join this appeal. Therefore, "plaintiff" refers only to Currie.

a wholly owned subsidiary of Meridian, a Delaware corporation. Plaintiff sustained severe and permanent injuries to his legs when he was struck by a crane carrying a load of steel shafts. At the time of the accident, plaintiff was an employee of Amstaff, a labor broker who provided personnel to work at National Metal's plant. The Client Service Agreement between Amstaff and National Metal provided that the personnel supplied by Amstaff to work in the plant were employees of Amstaff. Prior to trial, National Metal and Meridian moved for summary disposition, arguing that because plaintiff was their employee, plaintiff's only remedy was under the [Worker's Disability Compensation Act]. The trial court disagreed, reasoning that "[u]nder the economic reality and the supervision and control tests," plaintiff was not, as a matter of law, an employee of defendants. Subsequently, the parties stipulated that defendants were negligent, that their negligence was the proximate cause of plaintiff's injuries, and that plaintiff was entitled to damages in the amount of \$625,000. A judgment for plaintiff in that amount was thereafter entered by the court. On appeal, defendants challenge the trial court's ruling regarding plaintiff's employment status. [*Currie, supra* at slip op pp 1-2.]

In addressing plaintiff's claim against National Metal, this Court applied the economic reality test to determine whether an employment relationship existed for the purposes of the WDCA. This Court stated that:

After reviewing the totality of the circumstances, we conclude that under the economic reality test plaintiff was an employee of National Metal. Accordingly, National Metal is entitled to invoke the exclusive remedy provision of the WDCA. [*Currie, supra* at 3.]

However, in regard to plaintiff's claims against Meridian, this Court found that,

[b]ecause the focus below was on whether National Metal was plaintiff's employer for purposes of the exclusive remedy provision of the WDCA, there is insufficient information in the record to determine whether under the economic reality test Meridian was also plaintiff's employer for purposes of the WDCA. Accordingly, we remand this matter to the trial court for a determination of whether Meridian was plaintiff's employer for purposes of the exclusive remedy provision of the WDCA. [*Currie, supra* at 5.]

On remand, the trial court applied the economic reality test and determined that Meridian was plaintiff's employer for purposes of the exclusive remedy provision of the WDCA. On appeal, plaintiff challenges the trial court's ruling in regard to plaintiff's employment status with Meridian.

A. "Employer" under MCL 418.131(1)

Plaintiff first argues that the Legislature intended to preclude a finding of more than one employer under the act when it used "the" to modify "employer" in the WDCA's exclusive-remedy provision, MCL 418.131(1).

Plaintiff's contention is inapposite. Here, the inquiry concerns whether Meridian and National Metal will be treated as essentially one entity for purposes of the exclusive remedy provision, *infra*. Unlike a claim that plaintiff has two employers, *Currie, supra*, the instant inquiry considers whether two entities will be treated as one. Consequently, plaintiff's reliance on the language in MCL 418.131(1) is misplaced because Meridian and National Metal are claimed to be one employer for purposes of the WDCA.

B. Plaintiff's Employment Relationship with Meridian

Plaintiff next argues that the trial court erred when it determined that Meridian employed plaintiff because Meridian and National Metal do not engage in a single integrated enterprise and because Meridian has no responsibility for plaintiff's compensation benefits. We disagree. We review de novo a trial court's decision to grant summary disposition under MCR 2.116(C)(10). *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). Summary disposition of all or part of a claim or defense may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). Further,

. . . whether a business entity is a particular worker's "employer," as that term is used in the WDCA, is a question of law for the courts to decide if the evidence on the matter is reasonably susceptible of but a single inference. Only where evidence of a putative employer's status is disputed, or where conflicting inferences may reasonably be drawn from the known facts, is the issue one for the trier of fact to decide. [*Clark v United Technologies Automotive, Inc*, 459 Mich 681, 693-694; 594 NW2d 447 (1999) (internal citations omitted).]

Broad distinctions have been created by case law that has applied the economic realities test for purposes of the WDCA exclusive remedy provision.

One line of authority involves what can be called the dual employer or coemployer cases. In these cases, the employee typically has a "legal" or "actual" employer against whom there is no question that a tort suit is barred by the exclusive remedy provision, and the dispositive question is whether, under the economic realities test, a second entity can also be classified as an employer for purposes of the provision. *Clark, supra* at 689.

Plaintiff's claims against National Metal involved this type of scenario. However,

[a]nother line of authority involves cases concerning parent and subsidiary corporations. *Wells [v Firestone Tire & Rubber Co*, 421 Mich 641; 364 NW2d 670 (1984)] is, of course, the leading case in this area. In *Wells*, the employee was injured during the course of his employment at a wholly owned subsidiary corporation; he then brought suit against the subsidiary's parent corporation. This

Court applied the economic realities test and found that the parent corporation was the employee's employer. This Court recognized that this result constituted "in effect, ... a 'reverse-piercing' "of the parent corporation's corporate veil and acknowledged that the general rule in Michigan is that separate entities, including that of corporation and shareholder, will be respected. However, this Court premised its willingness to depart from the general rule and disregard the separate corporate entities in that case on the Court's "recognition of the important public policies underlying the [WDCA] and our belief that a contrary determination would be inequitable under the facts of this case." [*Clark, supra* at 689-690 (internal citations omitted).]

Plaintiff's claim against Meridian involves the classic *Wells* scenario, concerning parent and subsidiary corporations. This Court previously determined that National Metal was plaintiff's employer under the economic reality test. *Currie, supra* at 3-5. We must now determine whether Meridian and National Metal will be treated as one entity for purposes of the exclusive remedy provision. "A salient factor in determining an employee-employer relationship in the parent-subsidiary context is the use of a combined worker's compensation insurance policy by both parent and subsidiary." *James v Commercial Carriers, Inc*, 230 Mich App 533, 539; 583 NW2d 913 (1998) citing *Verhaar v Consumers Power Co*, 179 Mich App 506, 509; 446 NW2d 299 (1989). "Combined bookkeeping and accounting, together with income tax treatment that regards the corporations as a single entity, has also been a persuasive factor in supporting the conclusion that two corporations should be treated as one for the purposes of the exclusive remedy provision." *Id.*, citing *Verhaar, supra*. "In some cases, the parent company has been directly responsible for hiring and firing, but in *Verhaar*[, *James*] and *Wells*, there was nothing more than unity of personnel policy." *Id.*, citing *Verhaar, supra*.

Here, Meridian did not obtain worker's compensation insurance for National Metal's Amstaff employees, such as plaintiff. Rather, plaintiff received worker's compensation benefits through Amstaff because, under a labor contract with Meridian and National Metal, Amstaff was obligated to obtain worker's compensation insurance for its employees. Though Amstaff issued plaintiff his employment check, the economic reality is that Meridian paid plaintiff's wages and benefits. See *Kidder v Miller-Davis Co*, 455 Mich 25, 41; 564 NW2d 872 (1997). Undisputed testimony was presented that, in practice, National Metal would request a disbursement from Meridian's central account to pay the Amstaff employees. After withdrawing the funds, National Metal would then transfer the money to Amstaff, who, acting as a "payment conduit," would pay its employees. In reality, Meridian paid plaintiff's wages, fringe benefits, health insurance premiums and worker's compensation insurance premiums through National Metal and Amstaff. This payment arrangement, along with Meridian obtaining worker's compensation insurance policy for some of National Metal's direct employees, supports the conclusion that Meridian and National Metal should be treated as one for purposes of the exclusive remedy provision.

In addition, Meridian lists National Metal as its subsidiary on its Securities Exchange Commission form, and Meridian consolidates income tax returns for itself and its subsidiaries. Further, while National Metal keeps its own day-to-day bookkeeping record, Meridian controls National Metal's cash and maintains a central account to wire funds to its subsidiaries, including National Metal, upon request. Money received by National Metal was deposited into Meridian's

central account. Thus, the financial structure of the entities suggests they should be treated as one for purposes of the exclusive remedy provision. Finally, Meridian managed personnel records for National Metal's direct employees, which indicates a unity of personnel policy.

Our Supreme Court has recognized that courts should normally uphold the separate identities of a parent and its wholly owned subsidiary corporation. *Wells, supra* at 641. However, in the context of the exclusive remedy provision of the WDCA, our Supreme Court has deemed that public policy justifies disregarding the business distinctions between the parent and subsidiary when upholding them would inequitably allow a plaintiff to enjoy the benefits of the worker's compensation structure without suffering the single-remedy drawback. *Id.*, at 651. Because plaintiff received the benefits of the worker's compensation from its employment relations with Amstaff, Meridian and National Metal, equity does not favor plaintiff's attempt to override the act's exclusive-remedy provision. *Id.* Therefore, the trial court correctly determined that Meridian and National Metal were one employer for purposes of the WDCA.

Affirmed.

/s/ William C. Whitbeck

/s/ Michael J. Talbot

/s/ Brian K. Zahra