

STATE OF MICHIGAN
COURT OF APPEALS

ISAAC DIXON,

Plaintiff-Appellant,

v

COUNTY OF WAYNE,

Defendant-Appellee.

UNPUBLISHED

April 15, 2004

No. 243521

Wayne Circuit Court

LC No. 02-219146-CZ

Before: Cavanagh, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a former employee of defendant, filed an application for worker's disability compensation benefits. While his claim was pending before a magistrate, the parties entered into a voluntary pay agreement settling the claim and the magistrate entered an order of dismissal. Plaintiff then filed this action seeking a judgment to enforce the agreement pursuant to MCL 418.863. Defendant asserted that the agreement was not enforceable. The trial court apparently agreed and dismissed the complaint. We review the trial court's ruling on a motion for summary disposition de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

MCL 418.863 provides:

Any party may present a certified copy of an order of a worker's compensation magistrate . . . in any compensation proceeding to the circuit court for the circuit in which the injury occurred The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance with the order unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

Under § 863, entry of a judgment is mandatory absent proof of payment. *Cook v Hearthside, Inc*, 162 Mich App 236, 238; 412 NW2d 276 (1987). However, the order sought to be enforced must be a final order. If an appeal is pending before the Worker's Compensation

Appeal Board, a judgment cannot be entered. *Id.* at 242. In addition, the decision must be positive and unqualified and must fix the amount of compensation to be paid to permit entry of a judgment. *Thayer v Britz*, 234 Mich 645, 647; 209 NW 50 (1926); *Harris v Castile Mining Co*, 222 Mich 709, 711-712; 193 NW 855 (1923).

In this case, the voluntary pay agreement appears to fix a base benefits amount of \$423.31 for a fifteen-month period, but that amount appears to be subject to recalculation upon submission of proofs. Additional benefits beyond the fifteen-month period were not set at all but were payable only upon presentation of proof of earnings. Given that the agreement does not positively establish a fixed amount of compensation to be paid, the trial court did not err in granting defendant's motion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Michael R. Smolenski