

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER L. HEINZ, Individually and as
Personal Representative of the Estate of RANDY
HEINZ, Deceased,

Plaintiff-Appellant,

v

PENINSULA CONSTRUCTION & SUPPLY,
INC.,

Defendant-Appellee.

UNPUBLISHED
April 29, 2003

No. 238213
Grand Traverse Circuit Court
LC No. 01-021366-NO

Before: Kelly, P.J., and White and Hoekstra, JJ.

PER CURIAM.

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

Decedent worked for Chaney Creek Construction Company as a carpenter. From time to time Chaney leased its employees to defendant on an as-needed basis. Defendant entered into a contract with ITW Workholding for the construction of an addition to ITW's building. Chaney was not a subcontractor on the project; however, defendant leased two Chaney employees, one of whom was decedent, to work on the project. Decedent was working on the site when a platform collapsed. He fell twenty-six feet onto a concrete floor, and died from his injuries.

Plaintiff filed suit alleging that defendant negligently failed to provide a safe working environment, failed to properly supervise workers, and failed to provide fall protection. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that plaintiff's claim was barred by MCL 418.131(1), the exclusive remedy provision of the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, because decedent was its employee. Defendant asserted that under the economic reality test, no genuine issue of fact existed as to whether decedent was its employee.

The trial court granted defendant's motion, finding the evidence showed that defendant directed decedent's day-to-day activities on its job site, that defendant could remove decedent from its job site, that decedent's activities on the job site were integral to defendant's business and went toward fulfilling defendant's contractual obligation, and that defendant paid Chaney a flat rate designed to reimburse Chaney for the cost of labor, taxes, and insurance. The court

concluded that at the time of his death decedent was working for defendant as a loaned employee, and that reasonable persons could not disagree that an employment relationship existed between defendant and decedent for purposes of application of the exclusive remedy provision of the WDCA.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

For purposes of the WDCA, the right to recover worker's compensation benefits is the employee's exclusive remedy against the employer for a personal injury or an occupational disease. MCL 418.131(1). The determination whether an employment relationship exists for purposes of the WDCA involves consideration of the following factors: (1) the control of the worker's duties; (2) the payment of wages; (3) the right to hire, fire, and discipline; and (4) the performance of the duties as an integral part of the employer's business toward the accomplishment of a common goal, and no one factor is controlling. *Clark v United Technologies Automotive, Inc*, 459 Mich 681, 688-689; 594 NW2d 447 (1999). Whether an employment relationship exists is a question of law for the court if the evidence is reasonably susceptible to only one inference. If the evidence is disputed or if conflicting inferences may reasonably be drawn from the known facts, the issue must be decided by the trier of fact. *James v Commercial Carriers, Inc*, 230 Mich App 533, 536; 583 NW2d 913 (1998). An employee can work for two employers at the same time. *Clark, supra*, 690.

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. The undisputed evidence showed that Chaney retained the right to assign decedent to job sites, but had no ability to control the hours that decedent worked or the duties he performed when he was on defendant's site. Defendant exercised direct control over decedent's actual work activities when decedent was on its site. Defendant could not terminate decedent's employment with Chaney; however, defendant could remove decedent from its job site for unsatisfactory performance of his duties. Defendant's ability to remove decedent from its job site was tantamount to the ability to hire, fire, and discipline decedent. *Chiles v Machine Shop, Inc*, 238 Mich App 462, 467-468; 606 NW2d 398 (1999). Defendant paid Chaney for the right to use decedent's services, but did not pay decedent directly. Decedent performed work that was integral to defendant's business and that was meant to fulfill defendant's contractual obligation. This factor examines the nature of the work performed, and not the identity of the person who performed it. The trial court correctly found that the undisputed evidence regarding the control of decedent's duties, the ability to hire, fire, and discipline, and the performance of duties integral to the defendant's business weighed in favor of finding an employment relationship between defendant and decedent under the totality of the circumstances. *Clark, supra*, 688; *Chiles, supra*, 467-468. The trial court correctly decided the issue as one of law, and properly granted defendant's motion for summary disposition. *James, supra*.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra