

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

UNPUBLISHED
January 23, 2014

Plaintiff-Appellant,

v

ALLSTATE INSURANCE COMPANY,

No. 312318
St. Clair Circuit Court
LC No. 09-000474-CK

Defendant-Appellee.

Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

In this no-fault priority dispute, plaintiff appeals as of right a judgment holding that plaintiff was first in priority to pay personal protection insurance (“PIP”) benefits to its insured pursuant to MCL 500.3114. We affirm.

In 1995, Joseph Mundt was severely injured in a motor vehicle accident. Because of his injuries, Joseph requires the assistance of in-home caregivers throughout the day. These caregivers assist Joseph with his personal hygiene, meals, exercise, medications, and transportation. Joseph’s mother, Karen Mundt, coordinates Joseph’s care. Gary Mundt, Joseph’s father, participates in Joseph’s care in a more limited manner. Plaintiff’s insured, Alexandra Eagling, was one of Joseph’s caregivers.

This case arises from a motor vehicle accident that occurred in 2008. In April of that year, Eagling was driving Joseph to his home in Michigan after the conclusion of a religious retreat in Florida when they were involved in an accident and Eagling was injured. Eagling was driving a van, titled and registered to Gary, which was modified to accommodate Joseph’s needs. Gary purchased a no-fault insurance policy through defendant and it listed Gary as the only “named insured” on the policy. Eagling’s personal vehicle was insured through plaintiff. Plaintiff paid Eagling’s PIP benefits, but filed a complaint seeking reimbursement from defendant. Plaintiff alleged that defendant was first in priority to pay Eagling’s PIP benefits because, when the accident occurred, Eagling was operating Gary’s vehicle while working as his employee.

Subsequently, the parties filed cross-motions for summary disposition. Plaintiff argued that Eagling was employed by Gary and was operating his vehicle in the course of her employment when she was injured. Plaintiff argued that, under the economic reality test,

Eagling was Gary's employee. Defendant responded to plaintiff's motion and sought summary disposition in its favor. Defendant argued that Eagling was not an employee under the economic reality test.

Thereafter, the parties agreed to submit their dispute to the trial court for resolution. Stipulated findings of facts and conclusions of law were submitted to the trial court. Each party also submitted their proposed findings of fact, conclusions of law, and supporting exhibits, as well as supplemental briefs. Following oral argument, the trial court issued its opinion and order holding that Eagling was not an employee under the economic reality test; therefore, the employer exception to the general priority statute, MCL 500.3114, did not apply. Accordingly, the trial court held, plaintiff was solely responsible for plaintiff's benefits. A judgment was entered in favor of defendant and this appeal followed.

Plaintiff argues that the trial court's finding that Eagling was not an employee was clearly erroneous. We disagree.

Although the parties had filed cross-motions for summary disposition, they subsequently agreed to submit this matter to the trial court for final determination consistent with count II of plaintiff's complaint seeking declaratory relief under MCR 2.605. Subsequently, after resolving disputed issues of fact, the trial court entered a declaratory judgment in favor of defendant. This Court reviews a declaratory judgment de novo. *Taylor v Blue Cross & Blue Shield of Mich*, 205 Mich App 644, 649; 517 NW2d 864 (1994). However, the trial court's findings of fact will not be reversed unless clearly erroneous. *Id.* "Findings are clearly erroneous when, although there is evidence to support them, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made." *CD Barnes Assoc, Inc v Star Heaven, LLC*, 300 Mich App 389, 425; 834 NW2d 878 (2013).

Under MCL 500.3114(1), an injured party generally looks to her own no-fault insurance carrier for PIP coverage, even if the injured party's vehicle was not involved in the accident. *Corwin v DaimlerChrysler Ins Co*, 296 Mich App 242, 262; 819 NW2d 68 (2012), quoting *Lee v Detroit Auto Inter-Ins Exch*, 412 Mich 505, 515; 315 NW2d 413 (1982). However, MCL 500.3114(3) creates an exception to this general rule. Under MCL 500.3114(3), "[a]n employee . . . who suffers accidental bodily injury while an occupant of a motor vehicle owned or registered by the employer, shall receive personal protection insurance benefits to which the employee is entitled from the insurer of the furnished vehicle." Because the no-fault act does not define the term "employee," the "economic reality test" is applied to determine if an individual is an employee within the meaning of MCL 500.3114(3). *Citizens Ins Co of America v Auto Club Ins Ass'n*, 179 Mich App 461, 464-465; 446 NW2d 482 (1989), citing *Parham v Preferred Risk Mut Ins Co*, 124 Mich App 618, 624; 335 NW2d 106 (1983).

The factors to be considered under the economic reality test are: "(1) control of the worker's duties; (2) payment of wages; (3) right to hire, fire and discipline; and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal." *Citizens Ins Co of America*, 179 Mich App at 465. Under the economic reality test, no one factor is dispositive and this list of factors is nonexclusive. *Buckley v Professional Plaza Clinic Corp*, 281 Mich App 224, 235; 761 NW2d 284 (2008). "The test takes into account the totality of the circumstances around the work performed"

Id. at 234. Further, “[w]eight should be given to those factors that most favorably effectuate the objectives of the statute in question.” *Id.* at 235 (quotation marks and citation omitted). The purpose of the employer-employee exception, MCL 500.3114(3), to the general priority statute of MCL 500.3114(1), is to provide predictability in a commercial setting by imposing liability on the employer’s insurer. *Besic v Citizens Ins Co of the Midwest*, 290 Mich App 19, 31-32; 800 NW2d 93 (2010) (citation omitted).

In this case, the trial court considered the economic reality test factors and concluded as follows:

Applying the factors of the economic reality test, the Court finds that Alexandra Eagling was not an employee of Gary Mundt, Karen Mundt, or even of the Estate of Joseph Mundt. Although she was given a work schedule, Ms. Eagling had the flexibility to trade hours with other employees without first obtaining permission to do so. While “on the job,” Ms. Eagling had full responsibility for Joseph’s transportation, care, and even entertainment, without supervision of any kind. Although she was typically paid on an hourly basis, Ms. Eagling (as well as Joseph’s other caregivers) was paid a lump sum for long trips on which she transported, accompanied, and cared for Joseph. She was always paid in gross amounts, with no withholding for taxes.

Although Karen Mundt and, theoretically, Gary Mundt had the right to hire and fire caregivers such as Ms. Eagling, it is unclear whether they disciplined them. If a caregiver were to provide unacceptable or substandard care for Joseph, he or she would not be “counseled” or “reprimanded,” as an employee might be, but would likely be fired. As Mrs. Mundt testified, there was no disciplinary structure, such as that which her own employer has, in place. The Mundts’ right to “hire” or “fire” Joseph’s caregivers is not, in the Court’s judgment, determinative on this issue, as the Mundts could hire or fire any of Joseph’s caregivers at any time, just as they could hire or fire a building contractor.

The Court also finds that the fourth prong of the economic reality test (the performance of the duties as an integral part of the employer’s business towards the accomplishment of a common goal) has not been satisfied. Karen Mundt (with occasional assent from Joseph’s father) chose to coordinate her disabled son’s attendant care. By no stretch of the imagination did she or does she own or operate a business. Concluding otherwise and deeming her and/or her husband (in any capacity) an “employer” would be entirely inconsistent with the purpose behind the enactment of MCL 500.3114(3), which is intended to allocate the cost of injuries resulting from the use of business vehicles to the business involved.

Plaintiff argues that the trial court’s finding that Eagling was not an employee was clearly erroneous because “as a result of Joseph’s condition, in-home caregivers were and are specifically hired to render assistance to him, and the selection of said caregivers and the scope of services are undertaken at the direction and control of the Mundts.” Plaintiff further argues that the Mundts had the right to fire in-home caregivers, were involved in scheduling the hours of the caregivers, and negotiated the rate of pay for these caregivers. And, at the time Eagling

was involved in a traffic accident, she was transporting Joseph and being compensated for her time.

While we agree that there is some support for the argument that an employer-employee relationship existed between the Mundts and Eagling, we agree with the trial court that there was more support for the argument that she was not an employee. The Mundts hired Eagling to provide assistance to Joseph. Although Karen testified that she provided initial direction to the hired caregivers as to the types of assistance Joseph required, she did not provide regular instruction or supervision after that point. Karen did not monitor or supervise caregivers during the day and Gary was largely uninvolved with Joseph's caregivers. Karen relied on the caregivers to make appropriate decisions without her input. Further, in consideration of Joseph's privacy, Joseph and his caregivers were separated from Karen and Gary for the majority of any given day. And with regard to Joseph's transportation needs, caregivers were only told when and where Joseph needed to be, and the caregivers were left to transport Joseph without further supervision. This lack of control over the caregiver's duties, including Eagling's duties, is not consistent with an employer-employee relationship.

Further, although Eagling was generally paid on an hourly basis, no deductions were made for state or federal withholdings. And there were occasions when caregivers were not paid on an hourly basis but rather in a lump sum, like when Eagling took Joseph to Florida. Caregivers were not provided with medical benefits, workers' compensation insurance, paid vacation, or paid sick leave. And, while Karen and Gary retained the right to fire caregivers who were not providing adequate care to Joseph, Karen testified that there were no disciplinary procedures in place. Moreover, as the trial court held, the Mundts did not hire caregivers as a business venture; rather, they hired caregivers to provide care to their disabled son using funds they receive from an insurance company for that purpose. Thus, the purpose of the employer-employee exception, MCL 500.3114(3), i.e., to provide predictability in a commercial setting by imposing liability on the employer's insurer, would not be furthered under the circumstances of this case. See *Besic*, 290 Mich App at 31-32.

In summary, after review of the record in this matter, we cannot conclude that the trial court's findings were clearly erroneous. See *CD Barnes Assoc's, Inc*, 300 Mich App at 425. Accordingly, we affirm the trial court's judgment in favor of defendant, holding that plaintiff, Eagling's no-fault insurer, is liable for payment of her PIP benefits.

Affirmed.

/s/ Henry William Saad
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly