STATE OF MICHIGAN

COURT OF APPEALS

AMERISURE MUTUAL INSURANCE CO.,

Plaintiff-Appellant,

v

STATE FARM MUTUAL AUTO INSURANCE CO.,

Defendant-Appellee.

UNPUBLISHED
April 19, 2005

No. 251279
Wayne Circuit Court
LC No. 02-229042-CK

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for declaratory relief against defendant to determine who was first in priority for no-fault benefits for injuries sustained by the Clayton Keene family in an accident in August 2001. Plaintiff claimed that it had paid all of the no-fault benefits incurred by the Keene family and sought a determination that defendant, as the insurer of Keene's personal vehicles, was first in priority for payment of the Keene family's no-fault benefits and should reimburse plaintiff for the personal protection benefits paid.

Defendant filed a motion for summary disposition, arguing that plaintiff was the insurer of the highest priority in regard to any benefits owed to the Keene family for the accident pursuant to MCL 500.3114(3). Defendant further argued that Keene and his family were occupants in a van that was insured by plaintiff and owned by Keene's employer, the Northwest Church of God.

This Court reviews de novo a trial court's ruling to either grant or deny a motion for summary disposition. *Greene v A P Products,* 264 Mich App 391, 397; 691 NW2d 38 (2004). Questions of statutory interpretation are likewise reviewed de novo. *Id.* MCR 2.116(C)(10) provides for summary disposition where there is no genuine issue regarding any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Id.* at 398.

The trial court properly ruled that Amerisure was liable for any benefits payable to the Keene family pursuant to MCL 500.3114(3) and, as a result, properly granted State Farm's motion for summary disposition. The parties do not dispute that Keene and his family were injured while occupants of a motor vehicle owned or registered by the Northwest Church of God or that plaintiff was the insurer of the vehicle they were driving when the accident occurred. In addition, the parties do not dispute that the Keene family was driving the vehicle for purely personal reasons. However, MCL 500.3114(3) applies to "any situation in which an employee is injured while occupying a vehicle owned by his employer, regardless of whether the injury occurred in the course of his employment." *State Farm Mutual Automobile Ins Co v Hawkeye-Security Ins Co,* 115 Mich App 675, 681; 321 NW2d 769 (1982). Accordingly, Amerisure's argument that MCL 500.3114(3) requires that an employer furnish the vehicle to an employee in furtherance of the business of the employer is without merit. Thus, the trial court did not err in granting State Farm's motion for summary disposition because Amerisure was the insurer of highest priority pursuant to MCL 500.3114(3).

Plaintiff also argues that the trial court erred because Keene was not an employee of the Northwest Church of God for purposes of this determination of no-fault benefits. The economic reality test is generally used to determine the existence of an employment relationship for purposes of the no-fault act. *Parham v Preferred Risk Mutual Ins Co*, 124 Mich App 618, 624; 355 NW2d 106 (1983). Although the totality of the circumstances are considered, in applying the economic realities test, the courts generally consider the following four factors: (1) control of a worker's duties, (2) payment of wages, (3) the right to hire and fire and the right to discipline, and (4) performance of duties as an integral part of the employer's business towards the accomplishment of a common goal. *Parham, supra*, 124 Mich App 623. No single factor is controlling; all the factors are viewed as a whole. *Nichol v Billot*, 406 Mich App 284, 294; 279 NW2d 761 (1979).

Viewing the elements as a whole and in relationship to the realities of the work performed, the trial court did not err in concluding that Keene was an employee of the Northwest Church of God. The first factor of the economic reality test supports the finding of an employer-employee relationship. Although Keene and Chairman of the Deacon Board Elisha Gray agreed that Keene had complete discretion in determining how much time a week he spent executing his duties, Keene's duties and responsibilities as pastor of the Northwest Church of God were clearly defined. The second factor similarly supports this finding. Keene and Gray agreed that the $600 a month Keene received was determined by the role Keene played in church business. Regarding the third factor, Keene testified that he was hired by the consensus of the church membership and that, if he were not performing his duties as pastor, the church's board would meet with him and act accordingly. The final factor also strongly supports an employer-employee relationship. Keene's performance of his duties, ministering Sunday services, teaching Sunday school, performing weddings and funerals, and visiting the elderly and the sick, was an integral part of the Northwest Church of God's regular business and a contribution to the accomplishment of a common objective. *Nichol, supra* at 295; *Parham, supra* at 623. Upon review of the totality of the circumstances surrounding Keene's work, the trial court properly concluded that the Northwest Church of God was his employer for purposes of the no-fault act. Therefore, the trial court properly granted summary disposition in favor of State Farm.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder