

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

ROBERT THORNTON,
Plaintiff

vs

RUSSELL J. BEYNE,
Defendant

File No. 90-5212-CK
HON. PHILIP E. RODGERS

ROBERT BEEMAN,
Plaintiff

vs

RUSSELL J. BEYNE,
Defendant

File No. 90-5260-CK
HON. PHILIP E. RODGERS

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Attorney for Plaintiff

Michael D. Lewis (P16635)
Attorney for Defendant

DECISION AND ORDER

Plaintiffs Robert Thornton and Robert Beeman have both filed claims against the Defendant, Russell J. Beyne. Each Plaintiff alleges in this Complaint that the business relationship between he and the Defendant precluded the Defendant from legally withholding worker's compensation premium payments.

The Defendant has filed a Motion for Summary Disposition in each case alleging that the dispute is one within the exclusive jurisdiction of the Worker's Liability Compensation Act, MCLA 418.101, et seq; MSA 17.237(101) et seq.

The decision before this Court is jurisdictional, and the Motion for Summary Disposition is brought pursuant to MCR 2.116(C)(4). Simply stated, the issue is whether factual determinations regarding the nature of the employment relationship in a case involving withholding of monies for worker's compensation premium payments is one within the exclusive jurisdiction of the Worker's Compensation Bureau. This issue has been well briefed by both parties; and, after reviewing applicable law, it the conclusion of this Court that the issues

raised by each Plaintiff do not lie within the exclusive jurisdiction of the Worker's Compensation Bureau.

Both Plaintiffs argue that during the course of their business relationship with the Defendant, he deducted nine percent of the monies paid to each Plaintiff for purposes of purchasing worker's compensation insurance coverage. Each further alleges that an insurance policy was purchased which showed the Defendant as the sole insured. Neither Plaintiff alleges that he was injured during the course of this business relationship, and neither Plaintiff seeks benefits for injuries allegedly arising out of--or in the course of--employment.

Plaintiffs further argue that their dispute with the Defendant is contractual and involves a determination of two issues: (1) the relationship between the parties; and (2) the legality of withholding monies for worker's compensation coverage given that business relationship.

The Defendant argues that the jurisdiction for the determination of the business relationship between the parties is one within the exclusive jurisdiction of the Worker's Compensation Bureau. Defendant cites MCLA 418.841(1) which provides as follows:

"Any dispute or controversy concerning compensation or other benefits shall be submitted to the bureau and all questions arising under the act shall be determined by the bureau or a worker's compensation magistrate, as applicable.

Defendant further notes that the Worker's Disability Compensation Act (hereinafter referred to as the Act) provides a lengthy definition of an employee at MCLA 418.161. The Michigan Constitution also addresses the issue of factual determinations in worker's compensation cases as follows:

"Findings of fact in workmans' compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law." Const 1963, Art. 6, Sec 28.

The jurisdiction of the Circuit Court to decide whether an employer/employee relationship exists for purposes of invoking the exclusive remedy provision of the Worker's Disability Compensation Act was the subject of the Michigan Supreme Court's decision in *Sewell v Clearing Machine Corp*, 419 Mich 56 (1984).

In *Sewell*, the Court discussed its earlier opinion in *Szydlowski v General Motors Corp*, 397 Mich 356 (1976) and its subsequent application by the lower courts. *Szydlowski*, noted the *Sewell* Court, was generally cited by the Court of Appeals in support of orders directing Circuit Courts to hold claims in abeyance pending determinations by the Bureau of Worker's Disability Compensation regarding employment status or whether injuries arose out of--or in the course of--employment. *Id.*, p 60. In an effort to clarify the *Szydlowski* holding and to set forth general principles regarding jurisdiction to determine the employment relationship, the *Sewell* Court wrote as follows:

"Taken alone, those general statements suggest that the bureau's jurisdiction takes precedence over that of the Circuit Court whenever there is an issue concerning the applicability of the Worker's Disability Compensation Act. The rule is not so broad, however. Properly stated, the *Szydlowski* principle is that the bureau has exclusive jurisdiction to decide whether injuries suffered by an employee were in the course of employment. The Courts, however, retain the power to determine the more fundamental issue whether the plaintiff is an employee (or fellow employee) of the defendant. This distinction was noted in *Northern v Fedrigo*, 115 Mich App 239, 241; 320 NW2d 230 (1982), and is clearly illustrated by *Nichol v Billot*, 406 Mich 284; 279 NW2d 761 (1979), in which this Court discussed at some length how the Court (judge and jury) is to go about determining whether a plaintiff is a fellow employee of the defendant." *Sewell*, *supra*, p 62. (Emphasis supplied by the Court.)

The *Sewell* majority then went on to discuss, and cite with approval, Judge Brennan's dissenting opinion in *Nichol v Billot*, 88 Mich App 263 (1977), when it was considered in the Court of Appeals. There, Judge Brennan stated the jurisdictional issue as follows:

"The Circuit Court can decide whether its jurisdiction extends to this case. To do so, the Court must determine whether defendant was plaintiff's co-employee under the WDCA.

I would distinguish one recent decision of the Michigan Supreme Court. *Szydlowski v General Motors Corp*, 397 Mich 356; 245 NW2d 26 (1976). In *Szydlowski*, where plaintiff filed a claim for workman's compensation with the bureau which was dismissed twice for no progress and then filed a wrongful death action in Circuit Court trying to recover compensation under a mandatory statutory medical service provision of the WDCA, the Court denied the Circuit Court the jurisdiction to hear the case.

"I would distinguish that case as dealing with a claim involving the grant of workman's compensation benefits under circumstances which would have completely usurped the primary function of the Workman's Compensation Bureau had the Court allowed the Circuit Court concurrent jurisdiction...In the case before us now, plaintiff does not seek to substitute the trial court for the bureau. The action alone seeks determination of the trial court's rightful jurisdiction--that is, whether plaintiff's action violates the statutory jurisdiction of the WDCA. This question the Court must answer. The Court must have jurisdiction to decide the matter of its own jurisdiction. Its resolution of jurisdictional facts is appropriate to the singular purpose of resolving the jurisdictional problem." *Nichol*, *supra*, p 272 fn 1

In the *Sewell* opinion, Justice Levin went on to describe this issue in a separate concurring opinion. Justice Levin agreed with the majority opinion that the *Szydlowski* rule was not so broad as to provide "that the bureau's jurisdiction takes precedence over that of the Circuit Court whenever there is an issue concerning the applicability of the initial Worker's Disability Compensation Act" *Id.*, p 68. However, Justice Levin then set forth a test regarding Section 841, exclusive jurisdiction. It reads as follows:

"Where a claim for compensation is pending or could yet be filed, a Court may or should

refrain from deciding a question that may also 'arise under' the act and defer to the bureau as the body designated by statute to make the decision. But unless a compensation claim is pending or could yet be filed, there can be neither a 'controversy concerning compensation' nor a question arising under this act.

"The second clause of Section 841, providing that 'all questions arising under this act shall be determined by the bureau' (emphasis added) should be read in conjunction with the introductory clause, providing that '[a]ny controversy concerning compensation shall be submitted to the bureau' (emphasis added). Read together, the jurisdiction of the bureau is limited to 'questions arising under' the act in connection with a 'controversy concerning compensation'. The legislature did not provide for the issuance of advisory opinions by the bureau on 'questions' that have not arisen in connection with a 'controversy concerning compensation'." *Id.*, pp 71, 72. (Emphasis supplied by the Court.)

In the facts before this Court, neither Plaintiff has received worker's compensation benefits nor redeemed a worker's compensation claim. In fact, neither Plaintiff was injured in the course of his business relationship with the Defendant and, therefore, there can never be "any controversy concerning compensation" to submit to the bureau. Rather, the question before this Court involves a determination as to whether or not Plaintiffs enjoyed an employment relationship with the Defendant which could serve as the basis for a lawful deduction of funds for the purchase of workman's compensation insurance coverage.

Cases cited by the Defendant are consistent with the preceding rationale. For example, *Walker v Dept of Social Services*, 428 Mich 389 (1987) was decided after *Sewell* and reaffirmed the long-standing recognition by Michigan Courts that the Worker's Compensation Bureau and its appeal board are exclusively empowered to make factual determinations regarding whether injuries suffered by an employee arose in the course of an employment relationship. In *Walker*, the Plaintiff sought worker's compensation benefits and alleged that she was an

employee of the Department of Social Services. The fact finding regarding the nature of her employment relationship was first performed by the Worker's Compensation Bureau and then reviewed by the Worker's Compensation Appeal Board. This procedure is consistent with the Worker's Compensation Disability Act and the rationale of the majority in Sewell which recognizes the bureau's exclusive jurisdiction to decide whether injuries suffered by an employee were in the course of employment. Sewell, supra, p 62. Other cases cited to the Court are either consistent with the Sewell rationale or implicitly overruled.

For all the foregoing reasons, it is this Court's decision that jurisdiction properly lies with the Circuit Court and the Defendant's motion is denied in each case.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS
Circuit Court Judge
Dated: 3/7/91.