STATE OF MICHIGAN

COURT OF APPEALS

LARRY OLSEN, Plaintiff-Appellee,	UNPUBLISHED September 13, 2007
v TOYOTA TECHNICAL CENTER USA, INC. and TOKIO MARINE & FIRE INSURANCE COMPANY, Defendants-Appellees, and SECOND INJURY FUND (VOCATIONALLY HANDICAPPED PROVISION), Defendant-Appellant.	No. 269208 WCAC LC No. 05-000256

Before: Bandstra, P.J., and Zahra and Fort Hood, JJ.

PER CURIAM.

The Second Injury Fund (SIF) of the Workers' Disability Compensation Act (WDCA) appeals by leave granted a February 22, 2006 Workers' Compensation Appellate Commission (WCAC) order denying the SIF's indemnification claim against Toyota. On appeal, the SIF argues that the WCAC erred in refusing to apply the doctrine of common-law indemnification. The central issue on appeal is whether the WCAC has jurisdiction to grant equitable relief. We affirm.

The basic facts in this case are not in dispute. In 1983, plaintiff Larry Olsen sustained a serious back injury while working for Braun Engineering. Prior to his employment with Toyota, plaintiff obtained a vocationally handicapped worker's certificate through a program administered by the Michigan Department of Education. See MCL 418.901 et seq. The certificate program improves a handicapped worker's chances of finding employment by limiting the subsequent employer's workers' compensation liability. Potential future benefits are coordinated with the Second Injury Fund.

In 1990, Olsen began work at Toyota as a senior maintenance technician. While lifting a heavy sump pump in 1993, plaintiff re-injured his back. Plaintiff continued to work until 1995, when surgery to alleviate his back pain failed. The failed surgery left plaintiff unable to work and almost completely disabled. Pursuant to MCL 418.921 in the Workers' Disability Compensation Act, plaintiff received workers' compensation benefits for one year from Toyota and afterward from the Second Injury Fund.

In October 1996, plaintiff filed a complaint against Toyota under the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101. Plaintiff alleged that Toyota had failed to accommodate his disability, which led to his on-the-job injuries. The jury found in favor of plaintiff and awarded $360,000.00 for lost wages, $800,00o for lost future wages and $5,000,000.00 for emotional distress. The trial court reduced the award for lost and future wages to set off for workers' compensation benefits.

The SIF then filed a petition under the WDCA against Toyota to indemnify the SIF for workers' compensation payments made to Olsen. On August 15, 2005, a magistrate of the Workers' Compensation Board of Magistrates denied the SIF's request. The magistrate found that it lacked authority to grant indemnity and could not effect a remedy not contained in the statute. The Workers' Compensation Appellate Commission affirmed. The SIF applied for leave to appeal with this Court, which was granted.

The SIF claims that the magistrate and WCAC erred in failing to conclude that under the common-law doctrine of indemnification, Toyota should indemnify the SIF for the benefits the SIF has and will pay to plaintiff. We disagree.

This Court may review questions of law involved with any final order of the WCAC. MCL 418.861. The WCAC's decision may be reversed if it operated within the wrong legal framework or based its decision on erroneous legal reasoning. *O'Connor v Binney Auto Parts*, 203 Mich App 522, 527; 513 NW2d 818 (1994). The role of the judiciary in an appeal from the WCAC "is to ensure the integrity of the administrative process." *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 701; 614 NW2d 607 (2000).

Workers' compensation is a statutory construct and the remedies provided as well as the authority of the Board of Magistrates are strictly limited by the terms of the statute. The WCAC has "the power and authority to review…the orders and opinions of the worker's compensation magistrates as provided for under this act." MCL 418.274(7). A workers' compensation magistrate has "the powers and duties as provided for under this act." MCL 418.213(7). Under the WDCA, all liability of the employer with regard to compensation of certified vocationally handicapped workers ends at the one-year anniversary of the employee's injury:

> A person certified as vocationally disabled who receives a personal injury arising out of an in the course of his employment and resulting in death or disability, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injury, the compensation shall be paid to his dependents. *The liability of the employer for payment of compensation, for furnishing medical care or for payment of expenses of the employee's last illness and burial as provided in this act shall be limited to those benefits accruing during the period of 52 weeks after the date of injury.*

> *Thereafter, all compensation and the cost of all medical care and expenses of the employee's last sickness and burial shall be the liability of the fund.* [MCL 418.921 (Emphasis added).]

The SIF would have this Court disregard the specific remedies provided by the WDCA and contravene the express language of the act to allow equitable remedies. As the SIF recognizes in their brief on appeal, common-law indemnity "is based on the equitable principle that where the wrongful act of one results in another being held liable, the latter party is entitled to restitution from the wrongdoer." *Skinner v D-M-E Corp.*, 124 Mich App 580, 584; 335 NW2d 90 (1983) quoting *Hill v Sullivan Equipment Company.*, 86 Mich App 693, 696; 273 NW2d 527 (1978). The SIF contends the WCAC should use the equitable principle of indemnity to provide equitable relief in the form of reimbursement.[1] While the WCAC does have the power to use equitable principles such as waiver and estoppel, it does not have the power to grant equitable relief. *Fuchs v General Motors Corp.,* 118 Mich App 547, 553; 325 NW2d 489 (1982); *Lulgjuraj, supra* at 544-545.

In addition, the SIF cannot cite to any case where the WCAC granted equitable relief outside the terms of the Act to parties all subject to the WDCA. In the SIF's brief and at oral argument, the SIF principally relied upon *Dale v Whiteman*, 388 Mich 698; 202 NW2d 797 (1972). In *Dale*, Whiteman drove his car to Goldfarb's car wash. Whiteman gave the car to Fox, an employee. Fox hit Dale, another employee. Under the automobile owner's liability statute, MCL 257.401, Whiteman was liable to Dale. Under the WDCA, Goldfarb was also liable to Dale. Because Dale was not entitled to double recovery of benefits, the court had to decide which defendant would have the burden to pay Dale's benefits. Whiteman filed an indemnification suit against the car wash owner, Goldfarb, and Goldfarb filed a cross-complaint against Whiteman seeking reimbursement for workers' compensation benefits paid to Dale. The Michigan Supreme Court concluded that Whiteman was entitled to indemnification from Goldfarb because Goldfarb breached his duty to operate Whiteman's car without negligence.

Dale is unlike the instant case. First, *Dale* was brought in a circuit court that has equitable jurisdiction. *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 546-547; 303 NW2d 35 (1981). Second, this case involves three parties—the employee, the employer, and the SIF—all of whom are subject to the provisions of the WDCA. In *Dale*, Whiteman was neither the employee, employer nor an arm of the WDCA and was not subject to the specific provisions of the WDCA. Therefore, Whiteman's remedies against Goldfarb were not limited by the WDCA

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[1] While the SIF argued for the use of indemnity, the relief ultimately requested was one of reimbursement, a form of equitable relief. *Wayne County Sheriff v Wayne County Bd. Of Com'rs*, 196 Mich App 498, 510; 494 NW2d 14 (1992). The SIF contends that *Lulgjuraj v Chrysler Corp.,* 185 Mich App 539; 463 NW2d 152 (1990) explains that a monetary claim is not a claim for equitable relief; this is untrue. *Lulgjuraj* explains that *repayment* is not a form of equitable relief. *Lulgjuraj*, *supra* at 546. In the instant case, the SIF is not arguing for repayment from Toyota; rather, the SIF is asking for Toyota reimburse funds the SIF has and will pay to Olsen. Therefore, the SIF is asking for equitable relief that the WCAC does not have the authority to grant.

and he was able to ask for common law remedies. *Dale* does not provide the authority to reallocate the rights and responsibilities within the WDCA; *Dale* allows equitable principles to be used to allocate liabilities between different legislative acts.

All of the cases cited by the SIF showing common law indemnification in relation to workers' compensation follow the reasoning in *Dale* and involve a third party not subject to the limitations of the WDCA. See *McLouth Steel Corp. v A. E. Anderson Construction Corp.*, 48 Mich App 424; 210 NW2d 448 (1973) (owner of blast furnace involved in injury sought indemnity from employer in employee injury case); *Nanasi v General Motors Corp*, 56 Mich App 652; 224 NW2d 914 (1974) (owner of construction site where injury occurred sought indemnity from employer in employee injury case); *Venters v Michigan Gas Utilities Co,* 493 F Supp 345 (WD Mich, 1980) (owner of gas lines where injury occurred sought indemnity from employer in employee injury case); *Fresco v 157 East 72nd Street Condominium*, 2 AD3d 326; 769 NYS2d 536 (2003) (general contractor sought indemnity from employer in employee injury case). Unlike our case, these cases involved a third party that could ask for equitable relief because it was not subject to the terms of the WDCA. There is no outside party in our case; all the parties are subject to the conditions of the WDCA. Therefore, the WCAC correctly decided that it lacks jurisdiction to grant relief not included within the express terms of the WDCA.

Affirmed.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Karen M. Fort Hood