# STATE OF MICHIGAN

# COURT OF APPEALS

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WILLIAM H. SCHMITT and DELORES SCHMITT,

Plaintiffs-Appellants,

v

JAGUAR/LAND ROVER OF MACOMB, L.L.C., d/b/a JAGUAR/LAND ROVER OF LAKESIDE,

Defendant-Appellee.

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UNPUBLISHED
June 9, 2011

No. 297562
Macomb Circuit Court
LC No. 2009-002073-NI

Before: OWENS, P.J., and O'CONNELL and METER, JJ.

PER CURIAM.

In this personal injury action, plaintiffs appeal as of right from the trial court's March 29, 2010, order granting defendant summary disposition. We affirm.

Plaintiff William Schmitt (hereinafter "Schmitt") acted as a porter driver for defendant dealership; he picked up and delivered automobiles. After one such delivery, another individual was driving Schmitt back to the dealership in an automobile owned by defendant when an accident occurred. Schmitt sustained severe injuries, and he and his wife sued defendant under various theories. Defendant argued that plaintiffs' exclusive remedy was provided by the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq.*, because Schmitt was defendant's employee. The trial court agreed.

On appeal, plaintiffs solely argue that the trial court lacked subject-matter jurisdiction to determine whether Schmitt was defendant's employee because a magistrate had exclusive jurisdiction over the issue under the WDCA.

We review de novo whether subject-matter jurisdiction exists. *Attica Hydraulic Exch v Seslar*, 264 Mich App 577, 587; 691 NW2d 802 (2004). In *Sewell v Clearing Machine Co*, 419 Mich 56, 57-58, 64; 347 NW2d 447 (1984), the Michigan Supreme Court held that a circuit court had subject-matter jurisdiction to determine whether the plaintiff was an employee of the defendant in a personal-injury action. Based on *Sewell*, we are bound to conclude that the trial court had subject-matter jurisdiction to determine whether Schmitt was defendant's employee. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 447; 761 NW2d 846 (2008). Although some members of the Supreme Court criticized the "atmospherics surrounding the *Sewell* decision" in *Reed v Yackell*, 473 Mich 520, 539; 703 NW2d 1 (2005) (opinion by

TAYLOR, C.J., joined by YOUNG and MARKMAN, JJ.), and Justice Corrigan concluded that *Sewell* was wrongly decided, *id*. at 553-560 (opinion by CORRIGAN, J.), the Court explicitly did not overrule *Sewell*, and until a Supreme Court decision is overruled by the Supreme Court itself, we must follow the decision. *Paige v City of Sterling Hts*, 476 Mich 495, 524; 720 NW2d 219 (2006). Plaintiffs acknowledge this in their brief. Plaintiffs must direct their arguments that *Sewell* was wrongly decided to the Michigan Supreme Court.

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Patrick M. Meter