

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID ALAN SPANO, Personal Representative of  
the ESTATE OF DAVID MICHAEL SPANO,

UNPUBLISHED  
March 21, 2024

Plaintiff-Appellant,

v

No. 364736  
Macomb Circuit Court  
LC No. 2022-000005-NC

ROMEO-RIM, INC.,

Defendant-Appellee.

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Before: GADOLA, C.J., and K. F. KELLY and MURRAY, JJ.

PER CURIAM.

In this worker’s compensation case, plaintiff, as personal representative of the estate of David Michael Spano, appeals by right the trial court’s order granting defendant’s motion for summary disposition. Finding no errors warranting reversal, we affirm.

**I. BASIC FACTS AND PROCEDURAL HISTORY**

The decedent, David Michal Spano, died on November 10, 2020, when a large, heavy mold fell on top of him while working in defendant Romeo-Rim, Inc.’s industrial plant. The decedent was working at defendant’s plant as a laborer for a 90-day period after being referred there by START, Inc., an employment agency.

Plaintiff filed a complaint alleging one count of premises liability, one count of negligence/gross negligence, and one count of *res ipsa loquitur* against defendant. Defendant subsequently moved for summary disposition under MCR 2.116(C)(4), (7), (8), and (10), arguing that, because defendant was the decedent’s employer at the time of his death, plaintiff’s claims were barred by the exclusive remedy provision of the Worker’s Disability Compensation Act of 1969 (“WDCA”), MCL 418.101 *et seq.* Plaintiff responded by arguing that whether defendant was the decedent’s employer under the economic-reality test is a question of fact for a jury to decide. The trial court agreed with defendant and granted summary disposition in defendant’s favor.

This appeal followed.

## II. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Henry Ford Health Sys v Everest Nat'l Ins Co*, 326 Mich App 398, 402; 927 NW2d 717 (2018). Under MCR 2.116(C)(10),<sup>1</sup> summary disposition is appropriate "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id.* A court may consider the entire record, including "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties" when deciding a motion under MCR 2.116(C)(10). *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004).

Whether a business entity is a worker's employer "is a question of law for the courts to decide if the evidence on the matter is reasonably susceptible of but a single inference." *Clark v United Technologies Auto, Inc*, 459 Mich 681, 694; 594 NW2d 447 (1999) (citations omitted). "Only where evidence of a putative employer's status is disputed, or where conflicting inferences may reasonably be drawn from the known facts, is the issue one for the trier of fact to decide." *Id.* (citations omitted).

## III. ANALYSIS

Plaintiff argues that the trial court erred when it granted defendant's motion for summary disposition because it was a question of fact for the jury to determine whether defendant was the decedent's employer under the economic-reality test. We disagree.

MCL 418.131(1) states, as relevant here:

The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

The WDCA does not define the term "employer"; thus, courts look to the economic-reality test "to determine whether an employment relationship exists for purposes of the exclusive remedy provision . . . ." *Wittenberg v Bulldog Onsite Solutions, LLC*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_

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<sup>1</sup> Although the trial court did not specify under which subrule it granted defendant's motion, we consider the motion as being decided under MCR 2.116(C)(10) because in reaching its decision, the court relied on documents and other evidence outside of the pleadings. See *Janet Travis, Inc v Preka Holdings, LLC*, 306 Mich App 266, 273; 856 NW2d 206 (2014).

(2023) (Docket No. 359424); slip op at 2 (quotation marks and citation omitted). “The economic-reality test considers four basic factors: (1) control of a worker’s duties, (2) payment of wages, (3) right to hire, fire, and discipline, and (4) performance of the duties as an integral part of the employer’s business toward the accomplishment of a common goal.” *Rakowski v Sarb*, 269 Mich App 619, 625; 713 NW2d 787 (2006) (citations omitted). No single factor of the test is controlling, and “the list of factors is nonexclusive and other factors may be considered as each individual case requires.” *Id.*

Plaintiff contends that defendant was not the decedent’s employer because both START and defendant recognized that START was his employer. Plaintiff contends that this was evidenced by the contract agreement between the parties, acceptance of funds reimbursing the decedent’s funeral expenses, acknowledgment that START was responsible for filing state taxes and carrying worker’s compensation coverage for the decedent, and defendant’s characterization of the decedent as a temporary contract employee. For its part, defendant argues that it was the decedent’s employer under the economic-reality test because defendant gave the decedent his work assignments, provided the necessary tools and equipment for the work, supervised and trained the decedent, determined his pay rate, time off, and vacation time, and had the ability to hire, discipline, or dismiss the decedent. In addition, defendant contends that the decedent was engaged in work with a mold setting team doing a job that was integral to defendant’s business and went toward accomplishing the common goal of producing parts for its customers.

The trial court did not err when it concluded that defendant was the decedent’s employer. The undisputed evidence showed that defendant controlled the decedent’s duties by giving him his daily work assignments that he was required to complete. START, in contrast, played no role in this distribution of duties. START, however, did pay the decedent’s wages, though the funds to do so came from defendant, as did the funds used to pay for the worker’s compensation coverage START provided. Defendant also had the right to dismiss or discipline the decedent, who worked on a molding team, which was an integral part of defendant’s business as a molding supplier. All of the work the decedent performed took place on defendant’s property, using defendant’s tools and equipment, and under defendant’s supervision. Therefore, even when viewing these facts in the light most favorable to plaintiff, defendant demonstrated it was an employer of the decedent under the economic-reality test. And because plaintiff did not allege an intentional tort against defendant, his claims are barred by the exclusive remedy provision of the WDCA, MCL 418.131(1).

Affirmed. Defendant, as the prevailing party, may tax costs. MCR 7.219(A).

/s/ Michael F. Gadola  
/s/ Kirsten Frank Kelly  
/s/ Christopher M. Murray