

STATE OF MICHIGAN  
COURT OF APPEALS

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JOYCE GRACE GONEK, SANN BRADLEY,  
Personal Representative of the Estate of MARTEE  
BRADLEY, and DORIS KOZIEL,

UNPUBLISHED  
January 18, 2002

Plaintiffs-Appellees,

V

No. 219610  
Wayne Circuit Court  
LC No. 95-52381-AW

WORKERS DISABILITY COMPENSATION  
BUREAU, SECOND INJURY FUND TRUSTEE,  
SECOND INJURY FUND ADMINISTRATOR,  
SECOND INJURY FUND, and DEPARTMENT  
OF LABOR,

Defendants-Appellants.

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Before: Bandstra, C.J., and Doctoroff and White, JJ.

PER CURIAM.

Defendants appeal as of right the circuit court's order for a writ of mandamus, requiring the Second Injury Fund of the Bureau of Workers Disability Compensation to pay all members of a certified class benefits owed them from past years. Defendants also appeal certification of the class. We affirm.

Although the substantive legal issues underlying this dispute were resolved in *Lincoln v General Motors Corp*, 231 Mich App 262; 586 NW2d 241 (1998) (*Lincoln I*), which has since initiation of this appeal been affirmed by our Supreme Court, see *Lincoln v General Motors Corp*, 461 Mich 483; 607 NW2d 73 (2000) (*Lincoln II*), several procedural issues remain. With respect to the first of these issues, defendants argue that the trial court erred in granting mandamus because plaintiffs had an adequate alternative remedy. We disagree.

We review a circuit court's decision to grant a writ of mandamus for an abuse of discretion. *In re MCI Telecommunications*, 460 Mich 396, 443-444; 596 NW2d 164 (1999). A writ of mandamus compels a public officer or a public body to perform a duty. *In re MCI, supra* at 443. To obtain such a writ, the plaintiff must establish a clear legal right to performance and must prove that the defendant has a clear legal duty to perform. *Id.* at 442-443. The plaintiff must also have no other legal or equitable remedy that, in practical terms, might produce the same result as the writ of mandamus. *Baraga Co v State Tax Comm*, 243 Mich App 452, 459; 622 NW2d 109 (2000).

This Court previously concluded that defendants had a clear legal duty to pay retroactive benefits to workers meeting the specifications of those who are plaintiffs in this action. *Lincoln I, supra* at 267.<sup>1</sup> Therefore, the first requirement for a writ of mandamus was present. To meet the second prerequisite, plaintiffs were required to show that they had no plain, direct, and adequate alternative remedy. *Johnston v Mid-Michigan Telephone Corp*, 95 Mich App 364, 368; 290 NW2d 146 (1980). The trial court found no such remedy to exist, and we find no error in that decision.

A trial court can be found to have abused its discretion only if an unprejudiced person would find no justification or excuse for the court's decision. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). Although we recognize that the members of the class could have conceivably brought individual petitions against the Worker's Disability Compensation Bureau, we disagree with defendants' contention that the Bureau had exclusive jurisdiction over these claims. The circuit court properly had jurisdiction over these claims because plaintiffs sought a writ of mandamus involving no factual issues and only clearly defined legal issues. See *Alexander v Workmen's Compensation Director*, 53 Mich App 262, 266; 218 NW2d 794 (1974); see also, *Shaughnesy v Michigan Tax Tribunal*, 420 Mich 246, 252-255; 362 NW2d 219 (1984) (holding that the availability of administrative review "is not an absolute bar to superintending control where [such review] would not be an adequate remedy.").

Moreover, the class of people affected by the decisions in *Lincoln I* and *II* is aging and, in fact, at least one plaintiff has died since the lawsuit began. The trial court found that a class action for a writ of mandamus was the most efficient mechanism to enforce the final resolution of this issue, a conclusion with which we agree. Our Supreme Court said many years ago in *Leahy v Wayne Probate Judge*, 227 Mich 40, 44; 198 NW 432 (1924), that mandamus is appropriate despite the existence of another remedy if the slowness of that remedy would produce "such immediate injury or mischief as ought to be prevented." Because we find both justification and excuse for the trial court's decision, we do not find an abuse of discretion. *Ullah, supra* at 673.

Defendants also argue that the trial court erred by certifying this case as a class action, claiming a class action was not superior to other means of adjudication. Again, we disagree.

This Court reviews a circuit court's certification of a class action for clear error. *Salesin v State Farm Fire & Casualty Co*, 229 Mich App 346, 370; 581 NW2d 781 (1998). Class certification is proper when the five requirements set forth in MCR 3.501(A)(1) are met. *Zine v Chrysler Corp*, 236 Mich App 261, 286-287; 600 NW2d 384 (1999). Defendants challenge only the final requirement – that the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice. MCR 3.501(A)(1); *Zine, supra* at 286-287. When determining whether a class action would be superior to other adjudication methods in promoting the convenient administration of justice, the circuit court must consider a list of factors. See MCR 3.501(A)(2); *Salesin, supra* at 371. The most relevant in this regard is whether the issues are so disparate as to make a class action suit unmanageable. *Lee v Grand Rapids Bd of Ed*, 184 Mich App, 502, 504-505; 459 NW2d 1

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<sup>1</sup> See also, *Lincoln II, supra* at 490-492, wherein our Supreme Court affirmed this proposition.

(1989). In this case, except as to dollar amount, the class members' claims are identical, the legal issues having been resolved for all claimants alike. Therefore, disparate claims are not an issue.

Defendants nonetheless argue that class certification is not necessary because the legal issues have been resolved in plaintiffs' favor in another case, i.e., *Lincoln I* and *II*. We find this argument unpersuasive to support a finding of clear error by the trial court. Given the age considerations noted above, we conclude that to require each individual in the affected class to now file a separate petition with the Bureau of Worker's Disability Compensation would impose an unreasonable burden upon the aggrieved claimants. See *Shaughnesy, supra* at 254-255. Accordingly, we find subsequent resolution of the substantive legal questions underlying the original action to be of little import to the question of class certification.

We similarly reject defendants' claim that class certification was improper because exclusive jurisdiction lies with the Bureau of Worker's Disability Compensation. As noted above, the Bureau does not have exclusive jurisdiction over plaintiffs' claims.

We affirm.

/s/ Richard A. Bandstra  
/s/ Martin M. Doctoroff  
/s/ Helene N. White