

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN TOOLING ASSOCIATION
WORKERS' COMPENSATION FUND, as
Subrogee of DISTEL TOOL & MACHINE
COMPANY,

Plaintiff-Appellant,

v

FARMINGTON INSURANCE AGENCY, LLC,

Defendant/Third Party Plaintiff-
Appellee,

and

MACHINERY MAINTENANCE SPECIALISTS,
INC.,

Defendant,

and

EMPLOYERS INSURANCE OF WAUSAU and
WAUSAU INSURANCE COMPANIES,

Third Party Defendants.

UNPUBLISHED
November 29, 2007

No. 271272
Oakland Circuit Court
LC No. 2001-030684-CK

Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

MEMORANDUM

In this appeal after remand, Michigan Tooling Association Workers' Compensation Fund (MTAWC) appeals as of right from the trial court's decision to allow Farmington Insurance Agency (Farmington Insurance) to amend its pleadings near the end of trial. Farmington Insurance argues in reply, *inter alia*, that the law of the case prevents reconsideration of the trial court's ruling on the motion to amend. We agree and affirm the trial court's entry of judgment in favor of Farmington Insurance after remand.

We need not reiterate the facts of the case in this second appeal, other than to note that the appeal seeks to reopen a factual question decided by the trial court and addressed by our Supreme Court. That question is: Who sent a copy of the certificate of insurance to Distel Tool & Machine Company? In the initial pleadings, Farmington Insurance admitted certain matters regarding this question. At trial, however, both MTAWC and Farmington Insurance introduced evidence on the question. MTAWC's evidence indicated that Farmington Insurance had sent the copy of the certificate; Farmington Insurance's evidence indicated that Machinery Maintenance Specialists (MMS) had sent it. Neither party objected to the introduction of evidence on the question. When MTAWC raised the matter of Farmington Insurance's initial admissions, Farmington Insurance moved to amend the pleadings to conform to the evidence. The trial court granted the motion pursuant to MCR 2.118(C)(1). The court later found that MMS, not Farmington Insurance, had delivered the certificate to Distel. The court entered judgment in favor of MTAWC. This Court affirmed, but our Supreme Court reversed and remanded for entry of judgment in favor of Farmington Insurance.

In a motion for reconsideration, MTAWC argued that Farmington Insurance's initial admissions were critical to the case and that the Supreme Court should remand the case for consideration of the trial court's ruling that allowed Farmington Insurance to withdraw those admissions. Our Supreme Court denied MTAWC's motion for reconsideration. The denial indicates that our Supreme Court considered the MTAWC's challenge to the trial court's ruling, and that the Court determined the argument did not alter the outcome of the case. The Court's decision is thus the law of the case. Accordingly, this Court is barred from reconsidering the issue. See *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127-129; 737 NW2d 782 (2007).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood