REL: July 30, 2021

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2021

2200239

Kevin Patrick

v.

Mako Lawn Care, Inc.

Appeal from Madison Circuit Court
(CV-19-901467)

MOORE, Judge.

Kevin Patrick appeals from a judgment entered by the Madison Circuit Court ("the trial court") denying his claim for workers' compensation benefits. We affirm the trial court's judgment.

Procedural History

On August 5, 2019, Patrick filed a complaint seeking workers' compensation benefits from Mako Lawn Care, Inc. ("the employer"), pursuant to the Alabama Workers' Compensation Act ("the Act"), Ala. Code 1975, § 25-5-1 et seq. The employer answered the complaint on September 5, 2019. On November 25, 2020, the trial court entered a judgment providing:

> "On October 26, 2020, the parties agreed that this matter be presented to this Court on submitted trial briefs, and the parties stipulated to the admission of [certain] exhibits ....
>
> "....
>
> "The parties submitted trial briefs to this Court on November 5, 2020.
>
> "The Court, having considered the evidence and admitted exhibits, determines the following Findings of Fact support the Conclusions of Law as set forth below.
>
> "FINDINGS OF FACT
>
> "The injury alleged by [Patrick] arose from an altercation with [Patrick's] co-worker, Landon McAnally[,] which occurred on May 8, 2019. The altercation arose out of a feud between [Patrick], Landon McAnally and his brother, Dylan McAnally. The feud began when 'Lofty[,]' a member of Landon and

Dylan's work crew, took [Patrick's] designated mower home over the weekend for his personal use. ...

"The next week, [Patrick] retaliated by taking the mower assigned to Landon and Dylan for his use during the day. ... He was aware that using their mower would upset the McAnally brothers. ...

"On the day of the altercation, May 8, 20[19], [Patrick] walked by Dylan McAnally and Dylan said to him, 'The next time you take our mower, something bad is going to happen to you.' ...

"The video of the incident shows, after that initial confrontation, Landon standing up and walking toward [Patrick]. ... [Patrick] then took several steps towards Landon before they met for the confrontation. The confrontation was initially verbal, until [Patrick] initiated physical contact by pushing Landon. Landon then struck [Patrick] in the temple, resulting in the alleged injuries.

"CONCLUSIONS OF LAW

"Alabama law holds that an active participant or aggressor in an altercation cannot recover benefits for injuries that arise from the altercation. See[,] e.g.[,] Martin v. Sloss-Sheffield Steel & Iron Co., 216 Ala. 500, 113 So. 578 (1927) (Finding that ... decedent's injuries, which occurred after the decedent renewed a quarrel by taunting his co-worker, were not compensable under the Alabama Workers' Compensation Act)[;] Stockham Pipe Fittings Co. v. Williams, 245 Ala. 570, 18 So. 2d 93, 94 (1943) (finding that decedent's injuries, which occurred after he was cutting off the flow of water from a co-worker and the co-worker, after growing frustrated, retaliated by throwing a bar of soap, were not

> compensable). This Court finds that [Patrick] was both an active participant and the aggressor in the confrontation that led to his injuries.
>
> "Although the initial dispute related to Landon and Dylan's work crew taking [Patrick's] assigned lawn mower, [Patrick] chose to retaliate by taking a mower assigned to Landon and Dylan. This Court finds that no benefit flowed to [the employer] in this escalation. [Patrick] escalated the situation again when he initiated the physical contact by pushing Landon, with no apparent physical provocation. [The employer] was again not benefited by [Patrick's] action in escalating a verbal conflict into a physical one. The injuries sustained by [Patrick] were the direct result of these decisions to escalate the conflict with Landon McAnally. As [Patrick's] duties with [the] employer did not include feuding and fighting with his co-workers, his injuries did not arise out of his employment with [the employer].
>
> "JUDGMENT ENTRY
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> "Therefore, it is CONSIDERED, ORDERED, ADJUDGED, AND DECREED [that] the [employer] is entitled to a judgment in its favor as [Patrick] was an active participant and the aggressor in the altercation that led to his injuries. Costs are taxed to [Patrick]."

(Capitalization in original.) Patrick filed his notice of appeal on December 29, 2020.

Standard of Review

Although some caselaw indicates that this court may review a workers' compensation judgment de novo when a trial court does not receive ore tenus evidence, see, e.g., Holy Family Catholic Sch. v. Boley, 847 So. 2d 371, 374 (Ala. Civ. App. 2002), our standard of review is, in fact, governed by Ala. Code 1975, § 25-5-81(e), an integral part of the substantive rights established in the Act, see United States Steel Min. Co. v. Riddle, 627 So. 2d 455, 458 (Ala. Civ. App. 1993), which provides:

> "(1) In reviewing the standard of proof set forth herein and other legal issues, review by the Court of Civil Appeals shall be without a presumption of correctness.
>
> "(2) In reviewing pure findings of fact, the finding of the circuit court shall not be reversed if that finding is supported by substantial evidence."

"Substantial evidence" is " 'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' " Ex parte Trinity Indus., Inc., 680 So. 2d 262, 268 (Ala. 1996) (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989)).

Applying the appropriate standard of review, we conclude that all the findings of fact made by the trial court are supported by substantial evidence. Thus, our disposition of this appeal centers on whether the law, as applied to those facts, supports the judgment of the trial court concluding that the altercation and Patrick's resulting injuries did not arise out of and in the course of Patrick's employment with the employer.

Discussion

Section 25-5-51, Ala. Code 1975, which is a part of the Act, basically provides that an employee who is injured as the result of an accident arising out of and in the course of his or her employment is entitled to compensation for the injuries caused by the accident. Section 25-5-77, Ala. Code 1975, which is also a part of the Act, basically provides that the employee may also obtain medical benefits for the injuries received as the result of an accident arising out of and in the course of his or her employment. An accidental injury arises out of the employment when the employment, and not some other agency, sets in motion the proximate cause of the injury, see Tiger Motor Co. v. Winslett, 278 Ala. 108, 176 So.2d 39 (1965), so that the injury may be considered a result of an

employment hazard. See City of Birmingham v. Jenkins, [Ms. 2190224, Dec. 11, 2020] ___ So. 3d ___ (Ala. Civ. App. 2020). An accidental injury arises in the course of the employment when an injury occurs within the period of the employment, at a place where the employee may reasonably be, and while the employee is reasonably fulfilling the duties of his or her employment or is engaged in doing something incidental to the employment. See United States Steel Corp. v. Martin, 267 Ala. 634, 104 So. 2d 475 (1958).

A willful assault upon an employee by a coemployee may be considered an accident arising out of and in the course of the employment. See Beverly v. Ruth's Chris Steak House, 682 So. 2d 1360 (Ala. Civ. App. 1996). However, "the fact of a willful assault alone does not conclusively establish that the assault arose out of the course of the employee's employment. That conclusion must be drawn from the circumstances of the case." Id. at 1362. As noted, we are bound by the findings of the trial court as to the circumstances leading to the assault in the present case. The question thus becomes whether the circumstances as determined by the trial court support the judgment denying compensation on the ground

that the assault did not arise out of and in the course of Patrick's employment.

In Martin v. Sloss-Sheffield Steel & Iron Co., 216 Ala. 500, 113 So. 578 (1927), one of the cases cited by the trial court in its judgment, the Jefferson Circuit Court determined that Will Martin had initiated a quarrel with and had cursed Henry Anderson, a fellow employee over whom Martin had no superintendence, over the manner in which Anderson was performing his work. After the quarrel had ended and both Martin and Anderson had completed their immediate duties, Martin proceeded to enter the area where Anderson worked during a rest break and started abusing and cursing Anderson, inviting Anderson several times to physically strike him until, finally, Anderson, who initially had indicated that he did not want any trouble, picked up an iron pin and hit Martin in the head, killing him instantly. The Jefferson Circuit Court determined that Martin's death had not arisen out of and in the course of the employment but, instead, had resulted from "the act of a fellow employee [i.e., Anderson] intended to injure [Martin] because of reasons personal to [Anderson] and not directed against [Martin] as an employee,

or because of [Martin's] employment." 216 Ala. at 501, 113 So. at 579 (statement of Somerville, J.). On certiorari review, our supreme court affirmed the Jefferson Circuit Court's judgment, stating, among other things:

> "Counsel for appellant takes a view of the evidence quite different from that of the trial court, and naturally reaches a different conclusion. His view is that the quarrel between [Martin] and his slayer, Henry Anderson, from its inception to its final termination, was one continuous transaction, begun and continued by [Martin] on account of and in the prosecution of his employment, and hence [the appellant's] conclusion that [Martin's] death was an accident arising out of and in the course of his employment.
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> "It may be conceded that some of the testimony supports that view of the quarrel and killing; but, on the other hand, there is testimony which clearly supports the several contrary findings of fact, as stated by the trial court, and we are bound to accept these findings as conclusively correct.
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> "The only question to be determined, therefore, is whether, as a matter of law, upon the facts found, the conclusion and judgment of the trial court are wrong.
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> "Without regard to judicial precedents, we think that conclusion and judgment are correct. [Martin] was not, when killed, in the discharge of any duty of his employment, nor in the pursuit of the master's business, notwithstanding that the original causa belli was connected with that business. The conclusion we think, is clear that [Martin] was renewing a quarrel because of his purely personal anger and resentment;

and he was assaulted and slain by Henry Anderson for reasons that were purely personal to him, and not because he was an employee, or because of his employment, or because he was engaged in the duties of his employment. Code, § 7596, subd. (j); Garrett v. Gadsden Cooperage Co., 209 Ala. 223, 96 So. 188 [(1923)]. See, also, for a strongly analogous application of the principle, Wells v. Henderson Land Co., 200 Ala. 262, 76 So. 28, L.R.A.1918A, 115 [(1917)].

"The case of Romerez v. Swift & Co., 106 Kan. 844, 189 P. 923 [(1920)], is substantially like this, and with respect to the conduct of the decedent, Romerez, who was killed in a row with fellow employees, the court said:

> " 'However much provocation or justification may have existed for the resentment felt by Romerez on account of the abusive language used by the [fellow employees], the fact remains that he stepped aside from his work and left his task to settle this matter of personal spleen. It cannot be held that in so doing he was in the line of his employment, or that the regrettable result arose out of such employment.'

"The case of Jacquemin v. Turner, etc., Mfg. Co., 92 Conn. 382, 103 A. 115, L.R.A.1918E, 496 [(1918)], presents the same features -- a quarrel between the injured workman and a fellow servant over the use of a ladle in doing their work. The court held that the injury did not arise out of the employment, and denied compensation, saying:

> " 'O'Shaugnessy asserted a right over Jacquemin's ladle which he did not have. He began the quarrel and fight. These were purely personal. They had no relation to the special conditions of

> the business, so far as the finding shows. And when Jacquemin had full opportunity to have desisted from the fight he chose to renew it and thereafter received his injury. The fight occurred in the course of the employment, but it did not originate in it or arise as a consequence or incident of it. These men turned temporarily from their work to engage in their own quarrel. Nothing their employer required of them would necessarily provoke them to a quarrel, nor could this have been reasonably anticipated. The fact that employees sometimes quarrel and fight while at work does not make the injury which may result one which arises out of their employment. There must be some reasonable connection between the injury suffered and the employment or the conditions under which it is pursued.' ([Emphasis] supplied.)

"To the same effect, on similar facts, is the case of Stillwagon v. Callan Bros., Inc., 183 App. Div. 141, 170 N.Y.S. 677 [(1918)], affirmed in 224 N.Y. 714, 121 N.E. 893 [(1918)].

"As observed by the Supreme Court of Minnesota in State ex rel., etc., v. District Court, 140 Minn. 470, 475, 168 N.W. 555, 556, 15 A.L.R. 579, 583 [(1918)] (quoted with approval in Ex parte Coleman, 211 Ala. 248, 250, 100 So. 114, 115 [(1924)]):

> " 'The employment may have given the occasion, and without the employment there might have been no opportunity, but there was no causal connection between the employment and the criminal act of the unknown assailant.'

> "The principle there declared is none the less applicable here because of the fact that the assailant was a fellow servant of the slain workman."

216 Ala. at 501-02, 113 So. at 579-80.

Martin did not directly hold that an employee who acts as an active participant or the aggressor in a physical confrontation is disqualified from receiving workers' compensation benefits. Martin instead emphasized that, although the "the original causa belli was connected" to the employment, 216 Ala. at 501-02, 113 So. at 579, after the quarrel had ended, Martin confronted Anderson out of resentment and anger, provoking the assault upon him for purely personal reasons. In determining that the judgment denying compensation should be affirmed, relying mainly on a predecessor statute to Ala. Code 1975, § 25-5-1(9), which provides, in pertinent part, that "[i]njury does not include an injury caused by the act of a third person or fellow employee intended to injure the employee because of reasons personal to him or her and not directed against him or her as an employee or because of his or her employment," our supreme court held in Martin that an assault by a fellow employee does not arise out of and in the course of the employment when the

assault results from personal anger or ill will between employees following a work-related dispute.

In this case, as the trial court found, "the initial dispute related to Landon and Dylan's work crew taking [Patrick's] assigned lawn mower." In an act of petty retribution, Patrick removed one of the McAnallys' mowers knowing it would cause them to become upset. When the McAnallys responded as predicted, Patrick escalated the quarrel by first engaging in a verbal confrontation with Landon McAnally and then by advancing on Landon and shoving him, provoking the assault. Like in Martin, counsel for Patrick argues at length that the trial court should have considered the dispute as one continuous work-related dispute, arguing that Patrick was assaulted while acting to protect the employer's property. See Beverly v. Ruth's Chris Steak House, supra (reversing a summary judgment denying an employee compensation for injuries resulting from an assault committed by a coemployee after the employee confronted that coemployee over theft of company food). However, the trial court essentially found, as the court in Martin did, that, although the "original causa belli" may have been connected with the work, each action

Patrick took thereafter was not for the benefit of the employer but, instead, was to gratify Patrick's personal resentment and that Landon McAnally assaulted Patrick only after Patrick had escalated their personal verbal dispute into a physical confrontation.

Martin dictates that, under those circumstances, the injuries resulting from the assault upon Patrick are not compensable because the assault was not directed against Patrick because he was an employee or because of his employment but, rather, because of purely personal motives. Patrick argues that Martin should not control because, among other reasons, Martin was decided in 1927 before more liberal interpretations have been given to our workers' compensation laws. However, this court is bound by a decision of our supreme court unless and until that court overrules that decision. See Ala. Code 1975, § 12-3-16. Patrick may petition the supreme court to overrule Martin through a petition for a writ of certiorari, but this court is powerless to overrule Martin.

In reviewing a final judgment of a trial court, the ultimate test is whether the trial court reached the correct legal conclusions when

applying the law to the facts. Consequently, if the judgment is correct, but for reasons other than those stated by the trial court, generally this court will affirm the judgment. See Norandal U.S.A., Inc. v. Graben, 18 So. 3d 405 (Ala. Civ. App. 2009). In this case, the trial court correctly determined that Patrick's injuries were not compensable under Martin. Accordingly, we affirm the trial court's judgment, although we do not necessarily agree with all the language and reasoning in the trial court's judgment.

AFFIRMED.

Edwards, Hanson, and Fridy, JJ., concur.

Thompson, P.J., concurs in the result, without writing.