RENDERED: JANUARY 8, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000726-MR

BRENDA MCMICAN
AND WILLIAM MCMICAN — APPELLANTS

v.

APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE C. RENÉ WILLIAMS, JUDGE
ACTION NO. 13-CI-00210

MARTIN & BAYLEY, INC.
D/B/A HUCK'S CONVENIENCE STORE — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, KRAMER, AND NICKELL, JUDGES.

NICKELL, JUDGE: Brenda McMican and William McMican have appealed from the Webster Circuit Court's dismissal of their personal injury action against Martin & Bayley, Inc. d/b/a Huck's Convenience Store (hereinafter "Huck's"). They disagree with the trial court's finding in its order of dismissal that the claims raised

in the McMican's tort action were subject to the exclusive remedy provision[1] of the Kentucky Workers' Compensation Act ("Act").[2] Following a careful review, we affirm.

Brenda was employed at the Huck's in Providence, Kentucky. On September 22, 2012, after completing her work shift, Brenda clocked out and made a purchase before leaving the store. As she was exiting, Brenda tripped on the rolled-up edge of a rug and "was propelled forward out the door." She sustained unspecified injuries. On September 3, 2013, Brenda filed a complaint alleging Huck's was negligent in failing to maintain its premises in a reasonably safe condition, thereby causing her injuries. William joined the complaint seeking damages for loss of spousal consortium as a result of Huck's negligence in causing Brenda's injuries.

On October 22, 2013, Huck's filed a motion to dismiss the action alleging the claims asserted were barred by the Act's exclusive remedy provision. Specifically, Huck's contended Brenda's injuries arose out of and in the course of her employment, and were, therefore work-related. Stated otherwise, because she was hurt on her employer's "operating premises," an exception was triggered to the general prohibition on compensability under the Act when injuries occur during travel to and from work—a doctrine known as the "going and coming" rule.[3]

---

[1] Kentucky Revised Statutes (KRS) 342.690(1).

[2] KRS Chapter 342.

[3] *See Warrior Coal Co. v. Stroud*, 151 S.W.3d 29 (Ky. 2004).

Based on this exception, Huck's argued Brenda's complaint should be dismissed and her claims for relief, if any, pursued under the Act.

In response, Brenda argued her claim fell squarely within the going and coming rule and the operating premises exception was inapplicable. Brenda contended her injuries were unrelated to any work-related activity since she was engaged in a personal mission after clocking out, and was in the process of leaving work when she fell. She alleged her actions constituted a substantial deviation from her employment, thus rendering the exclusive remedy provision of the Act inapplicable.

Following a brief hearing and receipt of post-hearing memoranda from the parties, the trial court entered an order on April 10, 2014, wherein it agreed with Huck's assertions relative to the exclusive remedy provision of the Act. In dismissing the action, the trial court rejected Brenda's assertion that her "personal mission" constituted a substantial deviation from her employment, and concluded her injuries were, in fact, work-related. This appeal followed.

The primary issue before us is whether Brenda's injury was work-related. If so, the trial court correctly determined her tort action was barred under the exclusive remedy provision of the Act. Conversely, if the injury was not work-related, the tort action should have been permitted to continue unhampered by the Act. We believe the trial court was correct.

Under the Act, an injury must arise out of and in the course of employment to be compensable. *See* KRS 342.0011(1). Succinctly stated, it must

be work-related. Perils encountered during travel to and from work are no different from those encountered by the general public and are considered neither occupational nor industrial hazards. Therefore, under the principle commonly referred to as the "going and coming rule," an injury occurring during travel to and from work generally is not compensable. *Harlan Collieries v. Shell*, 239 S.W.2d 923 (Ky. 1951). An exception to the rule permits compensation if an injury occurs on the employer's "operating premises." *Ratliff v. Epling*, 401 S.W.2d 43 (Ky. 1966). The underlying premise of the exception is coverage should apply when an injury arises from a peril related to the employment, regardless of whether it occurs at the actual worksite.

Consistent with this premise, an injury occurring while the worker is on a personal mission that substantially deviates from the employment is not viewed as being work-related, even if it occurs on the employer's operating premises. *Id*. In other words, although a worker is viewed as being exposed to the risks of her employment when she crosses the threshold onto private property where the job site is located, the cause of his injury must be considered as well as the place. *Hayes v. Gibson Hart Co.*, 789 S.W.2d 775, 779 (Ky. 1990). The cause of the injury may outweigh the place if it represents a significant deviation from normal coming and going activity at that place. *Id*. But an injury is compensable if the worker is engaged in normal coming and going activity at the time it occurs and has access to the place where it occurs because of her employment. *Id*.

It is conceded Brenda was on Huck's private property when she was injured. Brenda's fall occurred shortly after her shift ended, while she was making her way out of the store. We are not persuaded by Brenda's assertion that making a purchase and speaking to a customer constituted a substantial deviation. Further, the rug upon which she stumbled was clearly an instrumentality under the exclusive control of her employer. Under the circumstances, the trial court did not err in concluding any resulting injury was work-related. *See Stroud*, 151 S.W.3d 29; *Pierson v. Lexington Public Library*, 987 S.W.2d 316 (Ky. 1999); *Smith v. Klarer Co.*, 405 S.W.2d 736 (Ky. App. 1966).

Because Brenda's injury was work-related, the exclusive remedy provision set forth in KRS 342.690(1) was triggered. Thus, the McMicans' claims should have been brought under the Act, rather than in a negligence action as the trial court correctly concluded. There being no error in the trial court's decision, the judgment of the Webster Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Wm. Clint Prow
Providence, Kentucky

BRIEF FOR APPELLEE:

Joseph H. Langerak IV
Lauren E. Dimmitt
Evansville, Indiana