[Cite as *Price v. Goodwill Industries of Akron, Ohio, Inc.*, 2011-Ohio-783.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

VALONNE PRICE

Plaintiff-Appellant

-vs-

GOODWILL INDUSTRIES
OF AKRON, OHIO, INC., ET AL.

Defendants-Appellees

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Julie A. Edwards, J.
Hon. Patricia A. Delaney, J.

Case No. 10CA92

O P I N I O N

CHARACTER OF PROCEEDING:	Richland County Court of Common Pleas, Case No. 09CV1113
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	February 18, 2011

APPEARANCES:

For Plaintiff-Appellant

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Hoffman, P.J.

{¶1} Plaintiff-appellant Valonne Price appeals the June 22, 2010 Order on Motion for Summary Judgment entered by the Richland County Court of Common Pleas, granting the joint motion for summary judgment filed by defendants-appellees Goodwill Industries of Akron, Ohio, Inc., ("Goodwill") and Administrator, Bureau of Workers Compensation ("the Administrator").

STATEMENT OF THE CASE AND FACTS

{¶2} Despite Appellant's argument to the contrary, we find the facts are not disputed in this case. Appellant has been employed by Goodwill since 1996. At all relevant times, Appellant was the assistant manager of the Goodwill store in Mansfield, Ohio. As part of her duties, Appellant traveled two to four times a year from Mansfield to the Goodwill Office in Akron for training. Appellant was scheduled to attend one of the trainings on September 12, 2007. Appellant left her residence and proceeded to Akron on State Route 30. At approximately 7:10am, Appellant's vehicle was struck by a tractor trailer. Appellant sustained numerous injuries and was transported to Mid Central Hospital in Mansfield.

{¶3} In June, 2008, Appellant filed for Workers' Compensation benefits. The District Hearing Officer as well as the Staff Hearing Officer allowed her claim. Goodwill appealed the decision to the Industrial Commission. Following a hearing conducted on April 28, 2009, the Industrial Commission reversed the decision of the District and Staff Hearing Officers, and found Appellant was not entitled to Workers' Compensation benefits because she was a fixed-situs employee; therefore, subject to the coming-and-going rule.

{¶4} Appellant appealed the Industrial Commission's denial of her claim to the Richland County Court of Common Pleas. Goodwill and the Administrator filed a joint motion for summary judgment, asserting the coming-and-going rule applied. The trial court found Appellant was, at all times, a fixed-situs employee and granted summary judgment in favor of Goodwill and the Administrator. The trial court memorialized its ruling via Order on Motion for Summary Judgment filed on July 22, 2010.

{¶5} It is from this entry Appellant appeals, raising the following assignments of error:

{¶6} "I. THE COURT ERRED WHEN IT AWARDED SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS WHERE THERE EXISTED QUESTIONS OF FACT AS TO WHETHER THE COMING-AND-GOING RULE EVEN APPLIES TO THIS CASE.

{¶7} "II. NOTWITHSTANDING APPLICATION OF THE COMING-AND-GOING RULE, ISSUES OF MATERIAL FACT EXISTED AS TO WHETHER THE PLAINTIFF WAS INJURED 'IN THE COURSE AND SCOPE OF' AND 'ARISING OUT OF' EMPLOYMENT AND THESE ISSUES SHOULD BE SUBMITTED TO THE TRIER OF FACT."

SUMMARY JUDGMENT STANDARD

{¶8} Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36, 506 N.E.2d 212. As such, we must refer to Civ.R. 56 which provides, in pertinent part:

{¶9} " * * * Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. * * * A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor. * * * "

{¶10} Pursuant to the above rule, a trial court may not enter a summary judgment if it appears a material fact is genuinely disputed. The party moving for summary judgment bears the initial burden of informing the trial court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. The moving party may not make a conclusory assertion that the non-moving party has no evidence to prove its case. The moving party must specifically point to some evidence which demonstrates the non-moving party cannot support its claim. If the moving party satisfies this requirement, the burden shifts to the non-moving party to set forth specific facts demonstrating there is a genuine issue of material fact for trial. *Vahila v. Hall,* 77 Ohio St.3d 421, 429, 674 N.E .2d 1164, 1997-Ohio-259, citing *Dresher v. Burt,* 75 Ohio St.3d 280, 1996-Ohio-207.

{¶11} It is based upon this standard we review Appellant's assignments of error.

I, II

{¶12} Because we believe Appellant's assignments of error are interrelated, we shall address said assignments of error together. In her first assignment of error, Appellant contends the trial court erred in granting summary judgment in favor of Appellees based upon its finding the coming-and-going rule was applicable. In her second assignment of error, Appellant submits the trial court erred in granting summary judgment in favor of Appellee as she was injured in the course and scope of and/or arising out of her employment.

{¶13} R.C. Chapter 4123 permits an employee to participate in the Workers' Compensation Fund if the employee's injury, "whether caused by external accidental means or accidental in character and result, [was] received in the course of, and arising out of, the injured employee's employment." R.C. 4123.01(C). Accordingly, for an employee to be eligible for benefits she must demonstrate both the "in the course of" prong and the "arising out of" prong of R.C. 4123.01(C). *Burkey v. Elyria Maintenance Co.,* 9th Dist. No. 04CA008553, 2005-Ohio-992, at ¶ 10, citing *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277, 551 N.E.2d 1271.

{¶14} The coming-and-going rule is used to determine whether an injury suffered by an employee in a traffic accident occurs "in the course of" and "arise[s] out of" the employment relationship so as to constitute a compensable injury under R.C. 4123.01(C). "As a general rule, an employee with a fixed place of employment, who is injured while traveling to or from his place of employment, is not entitled to participate in the Workers' Compensation Fund because the requisite causal connection between injury and the employment does not exist." *MTD Products, Inc. v. Robatin* (1991), 61

Ohio St.3d 66, 68 (Citation omitted). The rationale supporting the coming-and-going rule is "[t]he constitution and the statute, providing for compensation from a fund created by assessments upon the industry itself, contemplate only those hazards to be encountered by the employe[e] in the discharge of the duties of his employment, and do not embrace risks and hazards, such as those of travel to and from his place of actual employment over streets and highways, which are similarly encountered by the public generally." *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St. 3d 117, 119, citing *Indus. Comm. v. Baker* (1933), 127 Ohio St. 345, 188 N.E. 560, paragraph four of the syllabus.

{¶15} In determining whether an employee is a fixed-situs employee and, therefore, within the coming-and-going rule, the focus is on whether the employee commences her substantial employment duties only after arriving at a specific and identifiable work place designated by her employer. Id. (Citation omitted). The focus remains the same even though the employee may be reassigned to a different work place monthly, weekly, or even daily. Despite periodic relocation of job sites, each particular job site may constitute a fixed place of employment. Id. (Citation omitted).

{¶16} A fixed-situs employee injured either before commencing or after ending her "substantial employment duties * * * at a specific and identifiable work place" is not eligible for workers' compensation unless she establishes an exception to the coming and going rule. Id. at 119.

{¶17} The evidence demonstrates Appellant's workday began and ended at the Medina store or, on a few occasions each year, at the Akron Goodwill office. Based upon the evidence, we find the trial court properly determined Appellant was a fixed-

situs employee. In fact in her cross-motion for summary judgment, Appellant conceded she was a fixed-situs employee. Accordingly, she is judicially estopped from asserting error as to the trial court's finding on the issue.

{¶18} Classification of Appellant as a fixed-situs employee, however, does not end our inquiry. We must next determine whether Appellant falls within one of the exceptions to the coming-and-going rule. Appellant asserts an exception to the general rule applies to her claim because her injury occurred while performing a special task, service, mission, or errand for her employer, to wit: attending training in Akron at a minimum of twice a year, and a maximum of four times per year. "For the exception to arise, the mission must be the major factor in the journey or movement, and not merely incidental thereto, and the mission must be a substantial one." See *Pierce v. Keller* (1966), 6 Ohio App.2d 25.

{¶19} We also find Appellant failed to demonstrate she qualified under the "special mission" exception pursuant to *Pierce*, supra. In *Pierce,* the "special mission" involved the employee's carrying instructions from his employer to his regular work site. The court explained the employee's carrying instructions for the employer while traveling to work from home did not qualify the employee under the "special mission" exception, because the mission was merely incidental to the journey and not the reason for the journey. Appellant herein was not performing any special task, mission, or errand for her employer when she sustained her injuries. She was merely driving to work, albeit for training which occurred infrequently and not at her usual work place, as part of her job duties. Appellant was not carrying out a "special mission" while she travelled to

Akron; commuting to work at a different site does not constitute a special mission contemplated by the exception as explained in *Pierce.*

{¶20} Appellant also argues driving to the manager's training in Akron was a "special hazard". To qualify under the "special hazard" exception, an employee must show the risk created by his/her traveling was "distinctive in nature or quantitatively greater than the risk common to the general public." *Ruckman*, supra at 123.

{¶21} We also find the injuries Appellant sustained were the result of normal hazards regularly encountered by the general public, and not a result of "exposure by the nature, conditions or surroundings of his employment." *Pierce* at 29-30, 215 N.E.2d 601. Appellant failed to show driving to Akron involved a quantitatively greater risk than the risk encountered by the general public in traveling on the highways.

{¶22} Based upon the foregoing, we find the trial court did not err in granting summary judgment in favor of Appellees.

{¶23} Appellant's first and second assignments of error are overruled.

By: Hoffman, P.J.

Edwards, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

VALONNE PRICE	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
GOODWILL INDUSTRIES OF AKRON, OHIO, INC., ET AL.	:	
	:	
Defendants-Appellees	:	Case No. 10CA92

For the reasons stated in our accompanying Opinion, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY