

[J-104-2005]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

BROOKHAVEN BAPTIST CHURCH,	:	No. 35 MAP 2005
	:	
Appellant	:	Appeal from the Order of the
	:	Commonwealth Court entered October 20,
	:	2004 at No. 2785 CD 2003, affirming the
v.	:	decision of WCAB entered December 16,
	:	2003 at No. A01-1698.
	:	
WORKERS' COMPENSATION APPEAL	:	
BOARD (HALVORSON),	:	
	:	SUBMITTED: July 26, 2005
Appellees	:	

CONCURRING OPINION

JUSTICE EAKIN

DECIDED: December 27, 2006

I agree with the majority that the Commonwealth Court's order should be reversed. I write separately because I conclude the decedent was not a Church employee, but an independent contractor.

While no hard and fast rule exists to determine whether a relationship is that of employer-employee or owner-independent contractor, the analysis is not different merely because the services are law-related. Our case law is replete with guidelines and factors that must be taken into consideration when making this determination:

Control of manner work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of a regular business of the employer, and ... the right to terminate the employment at any time.

Universal Am-Can, Ltd. and AIAC v. Workers' Compensation Appeal Board (Minteer), 762 A.2d 328, 333 (Pa. 2000) (internal citations omitted) (quoting Hammermill Paper Company v. Rust Engineering Company, 243 A.2d 389, 392 (Pa. 1968)).

“Whether some or all of these factors exist in any given situation is not controlling.” Id. (quoting J. Miller Co. v. Mixter, 277 A.2d 867, 869 (Pa. Cmwlth. 1971)). While each factor is relevant, control over the work to be completed and the manner in which it is to be performed have become dominant considerations and are the primary factors in determining employee status. Id. (collecting cases). In an employer-employee relationship, the employer controls the result of the work and has the right to direct the way in which it shall be done, whereas in an owner-independent contractor relationship, the independent contractor has exclusive control over the manner of performing it, being responsible only for the result. Moon Area School District v. Garzony, 560 A.2d 1361, 1367 (Pa. 1989) (quoting Feller v. New Amsterdam Casualty Co., 70 A.2d 299, 300 (Pa. 1950)). Broadly stated, if an individual is under the control of an employer, the individual is an employee; if the individual is not under such control, he is an independent contractor. Id. (quoting Feller, at 300).

“[I]nspection of the progress of work does not require ... an inference of exclusive control over the manner of performance of the work, but rather only of interest in the result.” Cox v. Caeti, 279 A.2d 756, 758 (Pa. 1971) (citing Murrin v. Rifugiato, 96 A.2d 865 (Pa. 1953)). “Where control is not reserved over the means, the relationship is that of independent contractor, and conversely, where such control is reserved, the relationship is that of ... employee.” Commonwealth v. Continental Rubber Works, 32 A.2d 878, 880 (Pa. 1943) (quoting Kelley v. Delaware, L. & W. R. Co., 113 A. 419, 420 (Pa. 1921)).

In re Perrone, 899 A.2d 1108, 1118-19 (Pa. 2006) (Eakin, J., dissenting) (footnote omitted).

Here, the facts indicate the decedent was an independent contractor. As the majority states, he determined whether the grass needed to be cut and when he would cut it. Majority Slip Op., at 2. At deposition, a Church member was asked:

Did the [C]hurch have any control over when [decedent] cut the grass? A: No. He was more or less on his own, wanted, [sic] when he thought it needed to be done. ... Q: Was [decedent] the one who determined when he was going to cut the grass? A: Yes. ... Q: And how he was going to cut it.? A: Yes.

O.R., Deposition of Edward H. Geiger, 4/18/96, at 26-27. The decedent's wife was asked, "Who was it that determined whether or not the grass needed to be cut, if you know? A: Well, [decedent] took that on his own. If he thought it had to be cut, he would cut it." O.R., Deposition of Thelma Halvorson, 4/18/96, at 15-16. There is no evidence in the record the Church had the right to control his work.

As the majority also states, testimony varies concerning how the decedent was paid. Majority Slip Op., at 2 n.2. It is clear, however, the Church did not give him a W-2 Form, O.R., Halvorson Deposition at 16, and he was not paid a set amount at a set time as most employees are paid. And while the Church Constitution provides that employees beneath Pastor, Assistant Pastor, and Associate Pastor will receive and sign written agreements, O.R., Constitution of the Brookhaven Baptist Church, at 14, the decedent's work arrangement was based solely upon an oral agreement. O.R., Halvorson Deposition at 8-9. The only fact supporting a determination that the decedent was an "employee" is the Church provided the tractor and gasoline, matters not inconsistent with his independent contractor status.

Messrs. Justice Castille and Saylor join this concurring opinion.