

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

**Cari and Joshua Stigler,** )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
**Goldwire Jackson and Grubb** )  
**Lumber Company, Inc., a** )  
Delaware corporation, )  
 )  
 Defendants. )

C.A. No. N14C-10-068 CEB

Date Submitted: April 27, 2015  
Date Decided: June 4, 2015

**OPINION.**

*Upon Consideration of Defendants' Motion to Dismiss.*

**GRANTED.**

Gordon L. McLaughlin, Esquire, Wilmington, Delaware. Attorney for the Plaintiffs.

Paula C. Witherow, Esquire, COOCH and TAYLOR, P.A., Wilmington, Delaware. Attorney for the Defendants.

**BUTLER, J.**

## **FACTS**

Michael Stigler was an employee of Grubb Lumber when he was killed in a motor vehicle crash. The Complaint alleges that: (1) at the time of the accident, Mr. Stigler was a passenger in a vehicle driven by Defendant Goldwire Jackson and owned by Defendant Grubb Lumber Co., (2) both Defendant Jackson and Mr. Stigler were within the course and scope of their employment for Grubb Lumber at the time of the accident, (3) the accident was caused by the negligent and reckless conduct of the driver Jackson when he drove the truck at a high rate of speed onto the shoulder of the road and crashed into a legally parked camper. The Complaint does not allege any deliberate or willful actions on behalf of Jackson or Grubb Lumber with the intent to harm Mr. Stigler.

The Plaintiffs are Cari Stigler, Michael's widow, and Joshua Stigler, Michael's son. The Defendants are Goldwire Jackson, the driver, and Grubb Lumber Co., the employer. Plaintiffs filed this wrongful death action against Defendants seeking damages for Michael's passing. Defendants have filed a motion to dismiss under Rule 12(b)(6). Oral argument was held on Wednesday April 22, 2015.

## **STANDARD OF REVIEW**

“A motion to dismiss for failure to state a claim upon which relief can be granted made pursuant to Superior Court Rule 12(b)(6) will not be granted if the

plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.”<sup>1</sup> All well-plead allegations in the complaint must be accepted as true.<sup>2</sup>

## **DISCUSSION**

The exclusivity provision of the Delaware Worker’s Compensation Act provides:

Every employer and employee, adult and minor, except as expressly excluded in this chapter, shall be bound by this chapter respectively to pay and to accept compensation for personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and to the exclusion of all other rights and remedies.<sup>3</sup>

“Delaware’s Workers’ Compensation Act provides that the exclusive remedy for personal injuries sustained during the course of employment is worker compensation payments.”<sup>4</sup> The “exclusivity provision ‘precludes a suit for negligence under the common law, even if the injury was caused by the gross, wanton, willful, deliberate, reckless, culpable or malicious negligence, or other misconduct of the employer.’”<sup>5</sup> Further, “[a]n employee is also precluded

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<sup>1</sup> *Martin v. Widener Univ. Sch. of Law*, 1992 WL 153540, at \*2 (Del. Super. Ct. June 4, 1992).

<sup>2</sup> *Id.*

<sup>3</sup> 19 *Del. C.* § 2304.

<sup>4</sup> *Stayton v. Clariant Corp.*, 10 A.3d 597, 599 (Del. 2010).

<sup>5</sup> *Id.* (quoting *Rafferty v. Hartman Walsh Painting Co.*, 760 A.2d 157, 159 (Del.2000)).

from bringing a tort action against a fellow employee for a work-related injury.”<sup>6</sup> The Delaware Supreme Court has held that “[f]or this court to consider an exception to the exclusivity provision of 19 *Del. C.* § 2304, a party . . . must allege specific, intentional tortious conduct.”<sup>7</sup>

Plaintiffs do not allege any intentional tortious conduct. Instead, Plaintiffs argue that their claim arises under the Wrongful Death Act, which was passed after the Worker’s Compensation Act, and that if the legislature intended the exclusivity provision of the Worker’s Compensation Act to “trump” the cause of action created by the Wrongful Death Act, the legislature would have expressly stated that intention, or they would have amended 19 *Del. C.* § 2304. Unfortunately for Plaintiffs, § 2304 expressly states that worker’s compensation is the exclusive remedy for “personal injury or death by accident arising out of and in the course of employment, regardless of the question of negligence and *to the exclusion of all other rights and remedies.*”<sup>8</sup>

In *Lovett v. Cheney*, two employees of a car dealership were test driving a car owned by their employer, and they were operating the vehicle within the course

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<sup>6</sup> *Lovett v. Cheney*, 2007 WL 687228, at \*2 (Del. Super. Ct. Mar. 2, 2007); 19 *Del. C.* § 2363.

<sup>7</sup> *Rafferty v. Hartman Walsh Painting Co.*, 760 A.2d 157, 161 (Del. 2000).

<sup>8</sup> 19 *Del. C.* § 2304 (emphasis added).

and scope of their employment.<sup>9</sup> The car was involved in an accident and the employee seated in the passenger seat later died from his injuries.<sup>10</sup> The decedent's parents brought a wrongful death action against the employer and the driver-employee. The *Lovett* court noted that a claim can be brought under the Wrongful Death Act only against a party whose "wrongful act" causes the death of another.<sup>11</sup>

Under the Wrongful Death Act, a "wrongful act" is defined as an act "which would have entitled the party injured to maintain an action and recover damages if death had not ensued."<sup>12</sup> The *Lovett* court held that "[a] wrongful death claim is a derivative claim, which is wholly dependent on the decedent's ability to bring a civil action."<sup>13</sup> The court ruled that, because 19 *Del. C.* § 2304 would have precluded the decedent from bringing a tort action against his employer and his co-worker, the decedent's parents were barred from making a derivative wrongful death claim against the employer and the co-worker.

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<sup>9</sup> *Lovett*, 2007 WL 687228, at \*1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at \*3.

<sup>12</sup> 10 *Del. C.* § 3721(5).

<sup>13</sup> *Lovett*, 2007 WL 687228, at \*3; *See also Yardley v. U.S. Healthcare, Inc.*, 698 A.2d 979, 985 (Del. Super. Ct. 1996) ("[T]he Delaware Wrongful Death statute preconditions the right to recover on the decedent's ability to have maintained an action and recover damages.").

## CONCLUSION

In this case the facts are remarkably similar to *Lovett* except that the plaintiffs here are the decedent's widow and child. That fact is not significant to the Court's decision here because "an action under [the Wrongful Death Act] shall be for the benefit of the spouse, parent, child and siblings of the deceased person."<sup>14</sup> Accordingly, there is no basis on which to distinguish *Lovett* from the instant case and the Plaintiffs' complaint must be dismissed.

For the foregoing reasons, the Defendants' Motion to Dismiss is **GRANTED.**

**IT IS SO ORDERED.**

**/s/ Charles E. Butler**  
Judge Charles E. Butler

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<sup>14</sup> 10 *Del. C.* § 3724(a).