IN THE COURT OF APPEALS OF IOWA

No. 9-707 / 09-0076
Filed November 25, 2009

ZACHARY D. WHITE,
Plaintiff-Appellee,

vs.

RAY H. KILBY, CONSOLIDATED FABRICATION AND CONSTRUCTORS, INC., and THE FARMERS AUTOMOBILE INSURANCE ASSOCIATION,
Defendants-Appellants.

Appeal from the Iowa District Court for Scott County, Charles H. Pelton, Judge.

Ray Kilby appeals from the district court's denial of his motion for summary judgment. **REVERSED AND REMANDED.**

Craig Levien of Betty, Neuman & McMahon, P.L.C., Davenport, for appellant.

Steven Berger of Wehr, Berger, Lane & Stevens, Davenport, for appellee.

Heard by Potterfield, P.J., Mansfield, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

POTTERFIELD, P.J.

I. Background Facts and Proceedings

The facts of this case are undisputed. On June 8, 2006, Ray Kilby and Zachary White, two co-employees, drove together to a job site in Iowa City, Iowa. Kilby drove his vehicle, and White rode in the passenger seat. On the interstate on the way home, Kilby's vehicle collided with another vehicle. White asserts he was injured during the collision and filed a petition seeking compensation for his injuries. White alleged Kilby was driving negligently and was liable for damages as the owner of the vehicle pursuant to Iowa Code section 321.493 (2005).

Kilby filed a motion for summary judgment contending his status as co-employee limited White to workers' compensation remedies under the exclusivity provisions of Iowa Code section 85.20. The district court denied Kilby's motion for summary judgment, finding *Smith v. CRST International, Inc.*, 553 N.W.2d 890 (Iowa 1996), supported White's claim that a non-employer vehicle owner is not protected from suit by the workers' compensation statute. Kilby appeals, arguing the district court erroneously interpreted Iowa Code section 85.20 and therefore improperly denied his motion for summary judgment.

II. Standard of Review

We review summary judgment rulings for correction of errors at law. *In re Estate of Renwanz*, 561 N.W.2d 43, 44 (Iowa 1997). Summary judgment is appropriate when the record demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We review the evidence in the light most favorable to the nonmoving party. *Id*.

III. Summary Judgment

White argues that his claim against his co-employee Kilby is not premised on Iowa's workers' compensation law, codified at Iowa Code chapter 85. Rather, White asserts his right to recovery arises from Iowa Code section 321.493, which allows recovery from the owner of a negligently driven vehicle. Thus, he claims chapter 85 does not grant Kilby immunity from liability for ordinary negligence under section 321.493.

Kilby argues the clear language of Iowa Code section 85.20 protects him as a co-employee from liability for less than gross negligence under any other chapter of the Iowa Code. Section 85.20 states:

> The rights and remedies provided in this chapter . . . for an employee . . . on account of injury . . . shall be the exclusive and only rights and remedies of the employee . . . on account of such injury . . . against . . . the employee's employer [or] any other employee of such employer, provided that such injury . . . arises out of and in the course of such employment and is not caused by the other employee's gross negligence . . . .[1]

We are to construe statutes to give effect to their plain language. *TLC Home Health Care, L.L.C. v. Iowa Dep't of Human Servs.*, 638 N.W.2d 708, 713 (Iowa 2002). "[A] statute should not be construed so as to render part of it superfluous." *Casteel v. Iowa Dep't of Transp.*, 395 N.W.2d 896, 898-99 (Iowa 1986).

We agree with Kilby that section 85.20 establishes the Workers' Compensation Act as the sole remedy against a co-employee for injuries that arise in the course of employment. The district court's interpretation of this

[1] White and Kilby agree White's injuries arose out of and in the course of employment. White does not allege Kilby acted with gross negligence.

statute renders its exclusivity provisions inapplicable among co-employees when a vehicle's owner is a co-employee and negligently causes injuries. There is no suggestion the legislature intended this result, and the clear language of section 85.20 suggests the legislature intended the Workers' Compensation Act to be the sole remedy in such a situation.

Relevant case law supports our reading of the statute at issue. In *Steffens v. Proehl*, 171 N.W.2d 297 (Iowa 1969), the Iowa Supreme Court considered a legal argument similar to the argument presented by White. In *Steffens*, an employee was injured by a co-employee's negligent operation of a truck owned by their employer. 171 N.W.2d at 298. The supreme court held that the injured employee was precluded from recovering against the owner under Iowa Code section 321.493 and that the employee's exclusive remedy against the employer was covered by Iowa Code chapter 85. *Id.* at 300. In reaching its conclusion, the supreme court stated, "We hold the legislature in adopting what is now section 321.493 of the Code did not intend to diminish or abrogate the exclusive nature of the remedy as between employer and employee, provided in workmen's compensation law." *Id.* This language compels our finding that the exclusivity provisions in section 85.20 preclude liability under section 321.493 of a vehicle owner, who is also a co-employee, for injuries negligently caused by a co-employee driver of the owner's vehicle.

Further, we find the district court's reliance on *Smith*, 553 N.W.2d 890, was misplaced, as *Smith* is factually distinguishable from the present case. In *Smith*, the supreme court found that a third-party vehicle owner, who was neither an employer or co-employee of the plaintiff, could be liable for damages under

Iowa Code section 321.493 for the negligent acts of the driver, even though the co-employee driver was protected from liability pursuant to section 85.20. 553 N.W.2d at 895. However, in the present case, the vehicle owner, Kilby, was also a co-employee of White, and as such was protected by the exclusivity provisions of section 85.20. Kilby's dual status as owner and co-employee exempt him from the third-party-owner rule of *Smith*. *See id.* at 894; *see also, Dean v. Air Exec, Inc*., 534 N.W.2d 103, 104-05 (Iowa 1995) (finding non-employer owner of aircraft liable to passenger for pilot co-employee's negligence).

We acknowledge White's argument that a public policy concern present at the time of *Steffens* has since been eliminated by the legislature's mandate that all car owners obtain automobile liability insurance. However, we believe the court's holding in *Steffens* is still controlling in this case. Because Kilby was White's co-employee, White's exclusive remedy against Kilby in this case is under the Workers' Compensation Act. Accordingly, we reverse the district court's summary judgment ruling and remand for entry of an order granting Kilby's motion for summary judgment.

REVERSED AND REMANDED.