

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002281-MR

SHERRIE SEXTON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
ACTION NO. 96-CI-003744

SHONEY'S, INC. D/B/A SHONEY'S RESTAURANTS

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS, EMBERTON, AND GUIDUGLI, JUDGES.

COMBS, JUDGE: The appellant, Sherrie Sexton (Sexton), appeals from the order and opinion of the Fayette Circuit Court which held that her injury arose out of the scope of employment and, therefore, that workers' compensation coverage precluded her ability to maintain a civil action. Finding no error, we affirm the circuit court's order.

At the time of her injury, Sexton was employed as an assistance manager of the evening shift at the Shoney's Restaurant (Shoney's) located on Richmond Road in Lexington, Kentucky. Her duties included closing the restaurant at the end of her shift. Initially, the procedures for closing the

restaurant were performed by two people: the cook and the manager. While the manager completed his or her paperwork, the cook would clean the kitchen. After they had completed their respective tasks, the manager, accompanied by the cook, would take the charge receipts<sup>1</sup> from the restaurant to the adjacent Shoney's Inn (the Inn). They would then return to the restaurant to retrieve the night deposit and take it to the night depository at the bank.

About a month prior to Sexton's injury, Shoney's changed its closing procedures in an effort to cut costs. Under the new closing procedures, the manager was to assist the cook in cleaning the kitchen. After the kitchen had been cleaned, the cook was to leave and the manager would then complete the remaining duties alone - including taking the charge receipts to the Inn and the night deposit to the bank.

On November 2, 1995, Sexton was assaulted as she was taking the charge receipts to the Inn. The other employees had already left the restaurant and, in accordance with the new closing procedures, Sexton was completing the remaining tasks by herself. As she was getting into her car to take the charge receipts to the Inn, Sexton was attacked and raped. It appeared that the assailant had broken into her car and had lain in wait for her. After the assailant released her and fled the scene, Sexton managed to go to the Inn; the police were then called. She has not returned to work since the attack.

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<sup>1</sup>Guests from Shoney's Inn who dined at Shoney's Restaurant could charge their meals to their rooms by signing a charge receipt.

On November 1, 1996, Sexton filed a complaint against Shoney's, alleging that it had deliberately placed her in a known and hazardous position with the intention that she suffer severe physical and psychological injuries. Shoney's responded by filing a motion to dismiss for failure to state a claim on two grounds: (1) that since Sexton's injuries arose out of and in the course of her employment, the Workers' Compensation Act was her exclusive remedy; and (2) that since she accepted workers' compensation benefits, her claim was barred as a matter of law.

On February 11, 1997, the court entered an opinion and order overruling Shoney's motion to dismiss. The court found that Sexton's injuries arose out of her employment and stated that she "was at that place at that time because of the requirements of her work." However, relying upon Zurich American Insurance Company v. Brierly, 936 S.W.2d 561 (1997), the court recognized that under KRS 342.610(4), an employee can elect to pursue a civil claim against her employer if her injury is the result of the deliberate intention of the employer. The court held that Sexton was entitled to pursue a civil claim against Shoney's based upon her allegation that it had intended to harm her. With regard to Shoney's contention that Sexton was precluded from maintaining a civil action because she had accepted workers' compensation benefits, the court directed the parties to supplement the record, stating that there were many questions which it could not answer based upon the undeveloped nature of the record at that point in the litigation.

Subsequently, on July 9, 1997, Sexton filed a motion to amend the court's order. She stipulated that she would be unable to show "deliberate intent" on the part of Shoney's and therefore, that she could not maintain a civil action under KRS 342.610(4). Thus, her ability to proceed with a civil claim against Shoney's rested wholly upon whether her injuries arose out of her employment – the portion of her argument in which she contested the finding of the circuit court. She requested that the court amend its order to make it final and appealable. On August 13, 1997, the court amended its order of February 11, 1997, making it a final and appealable order. Sexton then filed this appeal, challenging as erroneous the circuit court's finding that her injuries arose out of her employment.

In determining whether an injury is work-related, "no single factor should be given conclusive weight." Jackson v. Cowden Manufacturing Company, Ky. App., 578 S.W.2d 259 (1978). We must consider the "quantum of aggregate facts rather than the existence or nonexistence of any particular factor." Id. at 262. Based upon the "quantum of aggregate facts," we find that the positional-risk doctrine is pertinent to this case. The positional-risk doctrine extends coverage under the Workers' Compensation Act to employees whose work assignments place them where they are exposed to injury even though the mechanism which causes the injury may not be directly or necessarily "work-related." Hayes v. Gibson Hart Company, 789 S.W.2d 775 (1990). The Supreme Court of Kentucky first applied this doctrine in Corken v. Corken Steel Products, Inc., Ky., 385 S.W.2d 949

(1964). In Corken, a salesman, who had stopped for lunch in the course of calling on customers, was shot and killed for no apparent reason as he was getting back into his car. The Supreme Court held that the salesman's "death arose out of the employment," Corken, supra, at 950, adopting the view that a causal connection to the harmful occurrence arose out of and in the course of employment and that there was a sufficient nexus between the harmful exposure and the fact of the employment to sustain the conclusion that the injury was work-related.

Here, Sexton's work assignment required her to take the charge receipts to the Inn late at night and unaccompanied. Her employment was the sole reason for her presence in the restaurant's parking lot, which tragically turned out to be a place of danger. That the assault upon her appears to have been motivated by reasons unrelated to her job failed to remove it from the scope of her employment. The position of risk in which she was placed by virtue of her employment provided a sufficient causal connection between her work and her injuries to activate application of the Workers' Compensation Act. Since Sexton's injuries were work-related, the Workers' Compensation Act provided the exclusive remedy for her injuries. The circuit court reasoned and determined correctly that her injuries arose out of her employment and that she was thus precluded from pursuing a civil action against Shoney's - absent a claim that her injuries had resulted from its deliberate intentions, a claim that she abandoned.

We affirm the order and opinion of the Fayette Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Bruce D. Gehle  
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