

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001845-MR

MARQUITA L. WALKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS WINE, JUDGE
ACTION NO. 95-CI-04292

TUBE PRODUCTS CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Mariquita L. Walker appeals from a summary judgment entered by the Jefferson Circuit Court on July 6, 1998. Ky. R. Civ. P. 56. We affirm.

In July 1994, Walker was hired by Manpower Temporary Services, Inc. (Manpower), a contract labor company. Manpower assigned Walker to work at Tube Products Corporation (Tube Products). On August 4, 1994, Walker seriously injured her hand while operating a press at Tube Products. She received workers' compensation benefits from Manpower's insurance carrier. On August 2, 1995, Walker filed a civil complaint against Tube

Products. Tube Products filed a motion for summary judgment on April 8, 1998. The circuit judge opined that Ky. Rev. Stat. (KRS) Chapter 342 provided Walker's exclusive remedy and granted summary judgment on July 6, 1998. This appeal followed.

Walker first claims the circuit court erred in granting summary judgment in Tube Products' favor. Specifically, she contends KRS Chapter 342 does not preclude her seeking recovery from Tube Products under a claim arising out of the Product Liability Act (KRS 411.300-470). We disagree. Summary judgment is appropriate where there exists no material issue of fact and the moving party is entitled to judgment as a matter of law. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991).

KRS 342.690(1) states "the liability of such employer . . . shall be exclusive and **in place of all other liability** of such employer to the employee" [Emphasis added.] It further states that "[f]or purposes of this section, the term 'employer' shall include a 'contractor' . . . whether or not the subcontractor has in fact, secured the payment of compensation." KRS 342.610(2) defines *contractor* as "a person who contracts with another . . . [t]o have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person" It is our opinion that for purposes of KRS Chapter 342, Tube Products is an employer subject to the provisions thereof. As Walker's injury occurred while she was performing work which was a regular or recurrent part of the trade, business, or occupation of Tube

Products, her claim is barred by the exclusive remedy of KRS 342.690(1). See United States Fidelity & Guaranty Company v. Technical Minerals, Inc., Ky., 934 S.W.2d 266 (1996). We find no support for Walker's contention that she is barred only from pursuing a common law cause of action against Tube Products. KRS 342.690 clearly states that an employer's liability under KRS Chapter 342 shall be in place of **all** other liability. As such, we believe Walker is barred from mounting an action against Tube Products. Upon the whole, we cannot say the circuit court erred in dismissing her claim.

Next, Walker asserts that applying KRS Chapter 342 to her claims against Tube Products violates her constitutional rights under §§ 14, 54, and 241 of the Kentucky Constitution. In response to a similar attack on the workers' compensation system, this Court in Edwards v. Louisville Ladder, Ky. App., 957 S.W.2d 290, 295 (1997), quoted, with approval, the following excerpt from Greene v. Caldwell, 170 Ky. 571, 580, 186 S.W. 648, 652 (1916):

[The legislature] . . . proposed a statute to a certain class of people for their individual acceptance or rejection. It did not assume to deprive those classes or individuals without their consent of any constitutional rights to which they were entitled. The General Assembly merely afforded by this legislation a means by and through which individuals composing classes might legally consent to limit the amount to which the individual would be entitled if injured or killed in the course of his employment.

Edward v. Louisville Ladder, 957 S.W.2d at 295.

In M.J. Daly Company v. Varney, Ky., 695 S.W.2d 400, 403 (1985), *overruled on other grounds by* United States Fidelity & Guaranty Company v. Technical Minerals, Inc., Ky., 934 S.W.2d 266, 269 (1996), the Kentucky Supreme Court opined as follows:

Our Kentucky Constitution, §§ 14, 54, and 241, preserve to all persons, including the employee, the common law remedy in tort against a party at fault, except where the employee had made a voluntary election to waive such constitutional rights, express or implied. The foundation for declaring workers' compensation constitutional in Kentucky is built on recognition of this principle. *Wells v. Jefferson Co.*, Ky., 255 S.W.2d 462 (1953). In *Wells*, we recognized a "presumed acceptance" as a waiver of the worker's constitutional rights, but we did not abolish the acceptance and waiver requirements.

It is not alleged that Walker filed a written notice rejecting the provisions of the Workers' Compensation Act; thus, she is deemed to have accepted same. See KRS 342.395. We are, therefore, persuaded that Walker waived her constitutional rights under §§ 14, 54 and 241 of the Kentucky Constitution.

Next, Walker argues that it is against public policy to extinguish her right to recover against Tube Products. We disagree. We believe the purpose behind KRS 342.690(1) is to prohibit double recovery by an employee or his dependents from liable employers for injury or death arising out of and in the course of employment. In Wynn v. Ibold, Inc., Ky., 969 S.W.2d 695, 697 (1998), the Kentucky Supreme Court stated:

Keeping in mind that the purpose of workers' compensation legislation is to maintain a stream of income to disabled workers and their dependents, we are persuaded that avoiding a duplication of income benefits is

a legitimate state objective and sound public policy. [Citation omitted.]

Hence, we believe Walker's contention is without merit.

Last, Walker makes an argument concerning punitive damages. As we have determined that the circuit judge correctly held that Walker's exclusive remedy lies within the workers' compensation act, any issue regarding punitive damages is moot. We deem Walker's remaining contentions to be moot as well.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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