RENDERED: MARCH 10, 2000; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002834-MR

PAMELA WOODWARD — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE HUGH ROARK, JUDGE
ACTION NO. 98-CI-00449

MANPOWER TEMPORARY SERVICES; AMBRAKE;
CNA RISK MANAGEMENT; GINGY QUALLS; AND
CNA INSURANCE COMPANY — APPELLEES

AND

NO. 1998-CA-002837-MR

MICHAEL DEGUTIS — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE HUGH ROARK, JUDGE
ACTION NO. 98-CI-01027

MANPOWER TEMPORARY SERVICES; SERVICE
FIRST WAREHOUSE & DISTRIBUTION; AND
CNA INSURANCE COMPANY — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, McANULTY, and MILLER, Judges.

McANULTY, JUDGE. Pamela Woodward appeals from the judgments of the Hardin Circuit Court entered on October 20, 1998, and November 16, 1998, which dismissed her personal injury claim. In appeal No. 1998-CA-002837, Michael Degutis appeals from the judgments of the Hardin Circuit Court entered on October 20, 1998, and November 16, 1998, which also dismissed his personal injury claim.

We begin with a brief summation of the facts in both cases. On April 21, 1998, Pamela Woodward (Woodward) suffered a head injury when she slipped on the concrete floor at Ambrake Corporation's plant. On March 19, 1998, Woodward filed a complaint in Hardin Circuit Court seeking compensatory damages for her injuries against Manpower Temporary Services (Manpower) and Ambrake. Woodward also sought compensatory and punitive damages from Manpower, Ambrake, CNA Risk Management, Gingy Qualls and CNA Insurance Company for intentionally conspiring to deny her reasonable medical treatment. All of the defendants answered the complaint and subsequently filed motions to dismiss for failure to state a claim upon which relief can be granted. Kentucky Rule of Civil Procedure (CR) 12.02(f). On October 20, 1998, the circuit court granted Manpower and Ambrake's motions to dismiss. On November 16, 1998, the circuit court granted CNA Risk Management, Gingy Qualls and CNA Insurance Company's motion to dismiss. This appeal followed.

At the time of his injury, Michael Degutis (Degutis) was also employed by Manpower and assigned to work for Service First Warehouse and Distribution as a laborer. On July 21, 1997, Degutis injured his back in a fall at Service First's warehouse. On June 29, 1998, Degutis filed a complaint in Hardin Circuit Court against Manpower, Service First, CNA Insurance Company, Governor Paul Patton in his individual capacity, and Commissioner Walter Turner in his individual capacity. The defendants answered the complaint and filed motions to dismiss pursuant to CR 12.02(f). The circuit court granted Service First's motion to dismiss on October 20, 1998, followed by CNA and Manpower's motions to dismiss on November 16, 1998. This appeal followed.

Because Woodward and Degutis's (hereafter the appellants) complaints were dismissed under CR 12.02(f), this Court must presume that all the factual allegations in the complaints are true and must draw any reasonable inference in favor of the appellants. Under CR 12.02(f) a claim should be dismissed if "it appears to a certainty that the claimant is entitled to no relief under any state of facts which could be proved in support of the claim." Kevin Tucker & Assoc. v. Scott & Ritter, Inc., Ky. App., 842 S.W.2d 873 (1992), citing Spencer v. Woods, Ky., 282 S.W.2d 851 (1955). Thus, the sole issue on appeal is whether the appellants are entitled to pursue a negligence claim in circuit court against their respective employers and insurance carriers or whether they are barred from asserting such claims by the exclusive liability provisions of Kentucky Revised Statute (KRS) 342.690.

On appeal, the appellants argue that the Workers' Compensation Act (the Act), embodied in KRS chapter 342, is unconstitutional. Appellants' first argument relates to the jural rights doctrine. As the appellants readily assert, the jural rights doctrine is implicated whenever the General Assembly enacts a statute that impairs our common law right to recover damages for death and injuries to person or property. Louisville & N. R. v. Kelly's Adm'x, 100 Ky. 421, 38 S.W. 852 (1897). "The right of every individual in society to access a system of justice to redress wrongs is basic and fundamental to our common law heritage, protected by Sections 14, 54 and 241 of our Kentucky Constitution." O'Bryan v. Hedgespeth, Ky., 892 S.W.2d 571, 578 (1995). The appellants' argument in this case is not a novel one. Taking away a worker's constitutionally protected right to seek redress in court for personal injuries without their consent is what led to the demise of the first Workers' Compensation Act in 1914. As the court explained in Kentucky State Journal Co. v. Workmen's Compensation Board, 161 Ky. 562, 170 S.W. 1166 (1914), the General Assembly may adopt an effective compensation law that would provide shelter to both employers and employees without offending the constitution; however, it could not use compulsory means to put the act into operation. Under the 1916 version of the Act, a worker was allowed to reject coverage, thereby maintaining his/her common law rights, or accept coverage and voluntarily relinquish those rights. In this form, the Act was held to be constitutional in Greene v. Caldwell, 170 Ky. 571, 186 S.W. 648 (1916). Accordingly, the

issue concerning the effect of a compensation system enacted by the General Assembly on workers' rights protected by Section 14, 54, and 241 of the Constitution has been previously decided and we decline the appellants' invitation to revisit the issue.

The appellants' also argue that KRS 342.395, the "opt-out" provision, is an unconstitutional waiver of an employee's jural rights. In both cases, appellants contend that they did not know that they had a right to "opt-out" of the Act under KRS 342.395. KRS 342.395(1) provides, in pertinent part:

> Where an employer is subject to this chapter, then every employee of that employer, as a part of his contract of hiring . . . shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease.

The constitutionality of this provision, which was added by amendment in 1952, was upheld in Wells v. Jefferson County, Ky., 255 S.W.2d 462 (1953). The court specifically stated that "KRS 342.395 adequately preserves the right of the employee to make a voluntary election as to whether he will come under the Compensation Act." Id. at 463. Contrary to appellants' assertion, this Court is not in a position to overrule the Wells decision. Rules of the Supreme Court 1.030(8)(a).

Next, the appellants argue that the 1996 version of the Act does not provide an adequate remedy to injured workers and is unconstitutional because the formula used to determine occupational disability is arbitrary, vague, and against public policy. Appellants' argument fails for the following reasons.

First, in an attempt to bypass the entire administrative system set up to handle injured workers' claims, the appellants have sought judicial relief without ever filing a workers' compensation claim. It is a well settled principle of law that "where an administrative remedy is provided by the statute, relief must be sought from the administrative body and this remedy exhausted before the courts will take hold. . . . Ordinarily the exhaustion of that remedy is a jurisdictional prerequisite to resort to the courts." Goodwin v. City of Louisville, Ky., 309 Ky. 11, 215 S.W.2d 557 (1948) (citation omitted). Second, the real matter at issue in both cases is the applicability of the exclusive liability provision, KRS 342.690(1), which was in effect prior to the 1996 amendments. Appellants' arguments concerning the 1996 version of the Act are not relevant to deciding whether the employer's liability is exclusively under the act.

Finally, appellants argue that their respective employers and insurance carriers have violated KRS 304.12-230, the unfair claims settlement practices statute. Appellants' argument is without merit and is based on the ill-conceived notion that they have demonstrated the unconstitutionality of the Workers' Compensation Act. Appellants have produced no evidence that their respective employers and insurance carriers have exercised bad faith or unfair settlement practices.

Having determined that KRS 342.690(1) is applicable, the Hardin Circuit Court's orders dismissing appellants' complaints under CR 12.02(f) are hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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BRIEF FOR APPELLEE AMBRAKE CORPORATION:

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BRIEF FOR APPELLEES MANPOWER TEMPORARY SERVICES, CNA RISK MANAGEMENT, GINGY QUALLS, AND CNA INSURANCE COMPANY:

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