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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2003-CA-002153-MR

STEVEN L. BRATCHER — APPELLANT

v.

APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE THOMAS O. CASTLEN, JUDGE
ACTION NO. 98-CI-00541

CONOPCO, INC., A NEW YORK
CORPORATION DOING BUSINESS UNDER
THE ASSUMED CO. OF RAGU FOODS
CO./LIPTON CO. AND ITS
EMPLOYEES/AGENTS (WHOSE NAMES
ARE NOT KNOWN) — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

NICKELL, JUDGE: Steven L. Bratcher ("Bratcher") appealed from the Daviess Circuit Court's entry of summary judgment in favor of Conopco, Inc. ("Conopco") and dismissal of his negligence claim arising from injuries he sustained at Conopco's plant while he was employed by Mechanical Consultants, Inc. ("MCI"). The summary judgment was based on the exclusive liability provisions of KRS[1] 342.690(1). In an unpublished

[1] Kentucky Revised Statutes.

decision, a panel of this Court reversed and remanded the matter to the circuit court for further proceedings. The Supreme Court of Kentucky granted discretionary review and remanded the matter to this Court for reconsideration.[2] We now affirm the original ruling by the circuit court.

The facts are relatively simple and undisputed. Bratcher was injured during the course of his employment with MCI, an industrial plumbing company. MCI contracted with Conopco to perform weekly maintenance at Conopco's Owensboro tomato sauce manufacturing and distribution plant. Bratcher was working atop a scissor lift,[3] repairing a blown gasket on a steam pipe, when a fire broke out below him. To avoid the fire he leapt from the lift, falling sixteen feet, and sustaining certain bodily injuries. It was later determined a hose on the lift had been damaged and allowed an unknown combustible fluid to leak onto the floor where it was ignited by sparks from the cutting torch Bratcher was using atop the lift. Bratcher applied for and received workers' compensation benefits and medical benefits from MCI's insurance carrier. He then filed the instant personal injury suit against Conopco alleging it failed to maintain a safe workplace. MCI's insurance carrier intervened in the suit seeking subrogation of the amounts it had paid Bratcher.

Conopco moved for summary judgment arguing the work Bratcher was performing was a regular and recurrent part of its business, thus entitling Conopco to the protection of the exclusive remedy provisions of the Workers' Compensation Act ("Act") as set forth in KRS 342.690(1). In granting the motion, the circuit court found there were no genuine issues of material fact present, the work Bratcher performed was as a matter of law a regular and recurrent part of Conopco's business, Conopco was a

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[2] 2005-SC-000897-D.

[3] The scissor lift was owned and maintained by Conopco.

"statutory employer" under the Act, and Bratcher's claim was thus barred under the exclusive remedy provisions of the Act.

Bratcher appealed and a panel of this Court found the work Bratcher was performing at the time he sustained his injuries was not a regular and recurrent part of Conopco's business and therefore the exclusive remedy provisions of the Act were inapplicable. The matter was reversed and remanded to the circuit court for further proceedings. Conopco's subsequent petition for rehearing before this Court was denied. Conopco then requested and was granted discretionary review by our Supreme Court. The matter was ultimately remanded to this Court for reconsideration. We now vacate our earlier opinion and affirm the trial court in all respects.

The Supreme Court has previously held "[w]orkers' compensation is a creature of statute, and the remedies and procedures described therein are exclusive." *Williams v. Eastern Coal Corp.*, 952 S.W.2d 696, 698 (Ky. 1997). "Courts are not at liberty to add to or subtract from a legislative enactment, nor to discover meaning not reasonably ascertainable from the language used." *Lindall v. Kentucky Retirement Systems*, 112 S.W.3d 391, 394 (Ky.App. 2003) (citing *Beckham v. Board of Education of Jefferson County*, 873 S.W.2d 575, 577 (Ky. 1994)). The Act clearly provides an employer's exclusive liability,[4] thus prohibiting injured workers from pursuing tort claims

[4] In pertinent part, KRS 342.690(1) states:

> If an employer secures payment of compensation as required by this chapter, the liability of such employer shall be exclusive and in place of all other liability of such employer to the employee. . . . For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has, in fact, secured the payment of compensation.

Furthermore, KRS 342.610(2) states in pertinent part:

> A contractor who subcontracts all or any parts of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily

when the injury complained of is covered by the Act.[5] Thus, pursuant to statutory mandate, if Conopco is Bratcher's "statutory employer", it is entitled to the exclusive remedy protection of the Act.

As the facts herein are undisputed, the sole issue for us to decide is whether the work performed by Bratcher was a regular and recurrent part of Conopco's business, and that issue is a question of law to be decided by the court. We review that question of law *de novo*. *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky.App. 1998); *Daniels v. Louisville Gas & Elec. Co.*, 933 S.W.2d 821, 824 (Ky.App. 1996). Furthermore, as there were no genuine issues of material fact presented, the grant of summary judgment was proper if Conopco was entitled to judgment as a matter of law. CR[6] 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). We hold it was so entitled.

The general purpose of the Act is the protection of injured workers. In furtherance of this purpose, KRS 342.610 provides "up the ladder" liability to prevent employers from subcontracting with irresponsible parties and protect the employees of subcontractors. *Fireman's Fund Insurance v. Sherman & Fletcher*, 705 S.W.2d 459, 461 (Ky. 1986). By the same token, if an employer satisfies the statutory requirements to qualify as a "contractor" it has no tort liability to a subcontractor's injured worker. *Id*.

> liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. . . . A person who contracts with another:
>
> > (b) To have work performed of a kind which is a regular or recurrent part of the work, trade, business, occupation, or profession of such person
>
> shall for the purposes of this section be deemed a contractor, and such other person a subcontractor.

[5] *See also, Edwards v. Louisville Ladder*, 957 S.W.2d 290, 294 (Ky.App. 1997).

[6] Kentucky Rules of Civil Procedure.

It is clear from the record before us that Conopco qualifies as a contractor and was Bratcher's statutory employer for purposes of the Act.

As stated in our earlier opinion in this matter, the term "recurrent" as it is used in the Act means "occurring again or repeatedly" and "regular" means "customary or normal, or happening at fixed intervals." *Daniels, supra*, 933 S.W.2d at 824. In the recent case of *General Electric Co. v. Cain*, 236 S.W.3d 579 (Ky. 2007), our Supreme Court held employees of contractors hired to perform routine repairs or maintenance are generally viewed as being statutory employees under the Act. Such maintenance work on an employer's physical plant is classified as a matter of law to be a regular and recurrent part of the employer's business.

In the case at bar, Bratcher contends the work he performed for MCI was not a regular and recurrent part of Conopco's business or trade. He thus argues he was not Conopco's statutory employee for purposes of the Act. We disagree. Conopco hired MCI to perform weekly mechanical maintenance on the plumbing and piping at Conopco's manufacturing plant. Bratcher's own deposition testimony revealed he had worked at Conopco's facility approximately one day per week during the course of his employment with MCI. On the date of his injury, Bratcher was performing repair and maintenance work on the main steam header for the plant. As part of its business of manufacturing tomato based products, Conopco utilized these pipes to transfer its products from one part of the plant to another. By Bratcher's own admission, the piping was a necessary part of the plant's operation.

In light of the Supreme Court's decision in *Cain, supra*, we are convinced the trial court correctly found as a matter of law the work Bratcher performed was a regular and recurrent part of Conopco's business. Routine maintenance of the physical plant is both regular and recurrent, and here, was a necessary part of the operation of

the employer's business. Thus, Conopco is Bratcher's statutory employer under KRS 342.610(2) and is entitled to the protection of the exclusive remedy provisions of KRS 342.690. Therefore, the trial court's grant of summary judgment to Conopco was proper as the exclusive remedy provision of the Act barred Bratcher's claim, thus making it impossible for him to prevail at trial. *Steelvest, supra; Paintsville Hospital v. Rose*, 683 S.W.2d 255 (Ky. 1985).

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

ALL CONCUR.

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