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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001517-MR

JAMES L. VAN NICE — APPELLANT

v.

APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE VERNON MINIARD JR., JUDGE
ACTION NO. 08-CI-00082

WAL-MART STORES EAST,
LIMITED PARTNERSHIP — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: James Van Nice appeals from an order of the Wayne Circuit Court granting summary judgment to Wal-Mart Stores East, Limited Partnership pursuant to CR[1] 56 and dismissing with prejudice Van Nice's negligence claim. For the following reasons, we affirm.

[1] Kentucky Rules of Civil Procedure.

On the morning of June 28, 2007, Van Nice cut his leg on a display in Wal-Mart in Monticello, Kentucky. Van Nice was an employee of Wal-Mart, but was not working on June 28. Thereafter, Van Nice filed a premises liability tort claim against Wal-Mart for damages associated with his accident. The parties exchanged discovery interrogatories in which Van Nice stated that he was at Wal-Mart on June 28 to collect his paycheck. Later in his deposition, Van Nice stated that he was also at Wal-Mart to pick up a card and was on his way to pick up the card when he cut his leg.

Wal-Mart moved for summary judgment based on KRS[2] 342.690, which provides for exclusive liability for employers under the Workers' Compensation Act. The trial court granted Wal-Mart's motion for summary judgment. This appeal followed.

Van Nice claims the trial court erred by granting Wal-Mart's motion for summary judgment because his injury did not occur in the course of employment and therefore was not covered by KRS 342.690. We disagree.

Summary judgment shall be granted only if "the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03. The trial court must view the record "in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be

[2] Kentucky Revised Statutes.

resolved in his favor." *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.,* 807 S.W.2d 476, 480 (Ky. 1991) (citations omitted). Further, "a party opposing a properly supported summary judgment motion cannot defeat it without presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482 (citations omitted).

On appeal from a granting of summary judgment, our standard of review is "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Lewis B & R Corp.*, 56 S.W.3d 432, 436 (Ky.App. 2001) (citations omitted). Because no factual issues are involved and only legal issues are before the court on a motion for summary judgment, we do not defer to the trial court and our review is *de novo*. *Hallahan v. Courier-Journal*, 138 S.W.3d 699, 705 (Ky.App. 2004).

KRS 342.690(1) generally provides for exclusive liability under workers' compensation and immunity from civil tort actions to employers for work-related injuries to employees. For an employer to be exclusively liable under the statute, the work-related injury must arise out of and in the course of employment. *See* KRS 342.0011(1) (defining "injury" as any work-related traumatic event arising out of and in the course of employment); *Coomes v. Robertson Lumber Co.*, 427 S.W.2d 809 (Ky. 1968). Whether an injury arises out of and in the course of employment is essentially a mixed question of law and fact. *See generally Jackson v. Cowden Mfg. Co.*, 578 S.W.2d 259 (Ky.App. 1978).

However, where the facts are undisputed the issue of whether an injury is work-related is purely a question of law. *Id.*

In *Barnette v. Hosp. of Louisa, Inc.*, 64 S.W.3d 828 (Ky.App. 2002), this court held "an employee's actions of picking up a paycheck at her employer's place of business constitutes a work-related activity covered by the Workers' Compensation Act" and therefore the employee's "exclusive remedy under the Act is a claim for workers' compensation benefits and the trial court properly dismissed her tort claim." *Id.* at 831. *See also Farris v. Huston Barger Masonry, Inc.*, 780 S.W.2d 611 (Ky. 1989). In this case, the parties do not dispute that Van Nice was on Wal-Mart's premises to collect his paycheck, though he also claims to have been running other errands. Accordingly, the trial court did not err by granting summary judgment to Wal-Mart.[3]

The order of the Wayne Circuit Court is affirmed.

CAPERTON, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

[3] Van Nice claims that Wal-Mart waived coverage under the Workers' Compensation Act by failing to file a claim, however, KRS 342.185 provides that a claim may be given or made by any person claiming to be entitled to compensation or by someone in his behalf. It appears that Van Nice did not make such a claim. Further, an employer is to file a report with the Office of Workers' Claims, pursuant to KRS 342.038, after receiving notice by an employee of an injury sustained at work causing his absence from work for more than one day. According to Van Nice, he did not miss a day of work. Thus, Wal-Mart was under no obligation to file a report. *See Newberg v. Hudson*, 838 S.W.2d 384, 389 (Ky. 1992) (An employer's obligation to notify the Workers' Compensation Board of an injury to a worker is not triggered merely by the notice of an accident as provided in KRS 342.185 to KRS 342.200, but by said notice coupled with an absence from work for more than one day).

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