

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: FEBRUARY 19, 2009

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000461-MR

FINAL

DATE 6/25/09 Kelly Klaben P.C.
APPELLANT

KRM TRUCKING, INC.

V.

ON REVIEW FROM COURT OF APPEALS
CASE NO. 2008-CA-000447-OA
HOPKINS CIRCUIT COURT NO. 06-CI-00990

HON. JAMES C. BRANTLEY,
JUDGE, HOPKINS CIRCUIT
COURT, ET AL

APPELLEES

OPINION AFFIRMING

KRM Trucking, Inc., (hereinafter KRM) appeals the Kentucky Court of Appeals' decision to deny its request for a writ prohibiting Judge James C. Brantley of the Hopkins Circuit Court from proceeding to trial in the wrongful death action brought against KRM by Jackie Congrove, Administrator of the Estate of Jackie G. Groves. KRM contends that once it filed a workers' compensation claim with the Kentucky Department of Workers' Claims, the trial court lost its jurisdiction over the case and should not have been allowed to proceed. The Court of Appeals disagreed, however, and found that KRM's action of filing an application pursuant to KRS 342.270 did not divest the trial court's jurisdiction to determine the employment status of the deceased worker, Jackie G. Groves. Because there was a genuine issue as to whether Groves was an employee or an independent contractor of KRM, the Court of

Appeals held that the trial court had the authority to determine that jurisdictional fact despite KRM's application under KRS 342.270. Agreeing that the trial court had jurisdiction over this case and acted within its authority in declining to stay the case, we affirm the Court of Appeals' decision denying KRM's request for a writ of prohibition.

RELEVANT FACTS

On December 10, 2005, Jackie G. Groves¹ was fatally injured while performing maintenance services on a tractor-trailer owned by KRM at Whitco Enterprises, Inc., (hereinafter Whitco) a trucking operation located in White Plains, Kentucky. Unaware that Groves was working underneath the truck, Christopher Stanley started the ignition and backed over Groves, causing his death. Following Groves' death, his son and Administrator of his Estate, Jackie Congrove, filed a complaint in Hopkins Circuit Court against both Whitco and KRM. In the complaint, which was filed on December 8, 2006, Congrove alleged that Groves was an employee of KRM and/or Whitco at the time of his death; Stanley was an employee of KRM and/or Whitco at the time of the accident; Stanley had negligently operated the truck that caused Groves' death; KRM and/or Whitco was liable for Stanley's negligence; Groves suffered severe physical, mental, and emotional pain prior to his death; Groves incurred medical and funeral expenses due to this negligence; and that Groves' Estate was entitled to compensation from KRM and/or Whitco.

¹ Although KRM referred to Mr. Groves as "Jackie C. Groves" on the cover of its brief, the record indicates that his middle initial is "G."

Both KRM and Whitco raised the affirmative defense of the Workers' Compensation Act in their answer to Congrove's complaint, maintaining that because Groves was an employee of KRM, the complaint should be barred. After both parties participated in discovery and in taking depositions, KRM and Whitco filed Motions for Summary Judgment on July 27, 2007, again claiming that Congrove's complaint should be dismissed due to the exclusive remedy provisions of the Kentucky's Workers' Compensation Act. Congrove responded that Groves was not an employee of KRM, but rather, was an independent contractor with KRM and/or Whitco. Furthermore, Congrove argued that Summary Judgment was not warranted because there was a genuine issue of material fact as to whether Groves was an employee of KRM and/or Whitco. After conducting a hearing on this motion, the trial court agreed with Congrove and on October 23, 2007, denied the Motions for Summary Judgment. Approximately one month later, on November 26, 2007, KRM filed an application for resolution of an injury claim with the Kentucky Department of Workers' Claims pursuant to KRS 342.270.² Subsequently, the Department of Workers' Claims assigned KRM's case to Administrative Law Judge Grant S. Roark and set a Benefit Review Conference for April 9, 2008.

² KRS 342.270(1) states that "[i]f the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of the claim. . . ." In addition to KRM's application, Congrove also filed an application with the Kentucky Department of Workers' Claims pursuant to KRS 342.270 on December 6, 2007. Congrove filed an attachment to this application detailing the status of his pending wrongful death action in the Hopkins Circuit Court and explaining that he filed the claim only to protect the statute of limitations and allow a worker's compensation recovery if the circuit court determined that Groves was an employee of KRM and/or Whitco.

On January 2, 2008, KRM filed a motion in the Hopkins Circuit Court to stay the wrongful death action initiated by Congrove pending the resolution of the worker's compensation claim. Congrove responded to this motion by arguing that the circuit court had subject matter jurisdiction over the issue of whether Groves was an employee or an independent contractor of KRM and/or Whitco. The trial court agreed, and on January 29, 2008, entered an order denying KRM's motion for a stay and announcing that the case was ready to proceed to trial. Subsequently, Congrove filed a motion with the Office of Workers' Claims to hold the workers' compensation claim in abeyance pending a final resolution of the civil action in Hopkins Circuit Court, which ALJ Roark granted on February 16, 2008.

On March 3, 2008, KRM filed a Petition for Writ of Prohibition with the Court of Appeals, claiming that the trial court lacked jurisdiction over the case due to KRM's application with the Workers' Compensation Board. The Court of Appeals disagreed, and entered an order denying KRM's petition, concluding that the trial court had jurisdiction to determine the issue of Groves' employment status. KRM then appealed to this Court as a matter of right. KY Const. § 110(2) (a); CR 76.36(7) (a).

ANALYSIS

KRM contends that KRS 342.325 operates not only to provide administrative law judges with exclusive jurisdiction over workers' compensation claims, but also, to divest circuit courts of jurisdiction over cases that otherwise are properly before them. KRS 342.325 states that "[a]ll

questions arising under this chapter . . . shall be determined by the administrative law judge except as otherwise provided.” KRM argues that once it filed a workers’ compensation application pursuant to KRS 342.270, KRS 342.325 effectively removed the circuit court’s authority to proceed with Congrove’s previously filed wrongful death action and required the administrative law judge to resolve the issue. We disagree.

In Gordon v. NKC Hospitals, Inc., 887 S.W.2d 360 (Ky. 1994), NKC Hospitals also argued that its potential defense under the Workers’ Compensation Act effectively removed the circuit court’s authority to hear the civil suit brought against it. This Court disagreed and pointed out that NKC’s argument “confuses a defensive plea with want of jurisdiction.” Id. at 362. In holding that the circuit court had jurisdiction to determine whether a defense under the Workers’ Compensation Act existed, this Court explained that NKC’s alleged defense under the Act must be affirmatively pleaded and proven before the circuit court surrenders its jurisdiction over to the Workers’ Compensation Board. Id. at 363.

Similarly, in General Electric Co. v. Cain, 236 S.W.3d 579, 589 (Ky. 2007), this Court explained that “where the jurisdiction of the court depends upon a fact which the court is required to ascertain, the court has jurisdiction to determine that jurisdictional fact” *quoting* Collins v. Duff, 283 S.W.2d 179, 182 (Ky. 1955). In that case, this Court held that the jurisdictional fact of whether the injured worker was or was not an employee of General Electric,

and ultimately, whether the circuit court would be able to proceed with the civil suit, was a question to be decided by the circuit court itself. Id.

Despite this precedent from previous cases, KRM contends that its case is distinguishable because KRM did not merely assert an affirmative defense, but actually filed a Form 101 application with the Kentucky Department of Workers' Claims, which, KRM contends, removed jurisdiction from the circuit court. However, there is no case law supporting KRM's contention that filing an application for resolution of a workers' compensation claim is different from asserting the affirmative defense, and no case law holding that such a filing actually divests a circuit court of its jurisdiction to hear a case otherwise properly before it. The fact remains that Congrove's suit against KRM is not one for workers' compensation benefits, over which the Workers' Compensation Board does have exclusive jurisdiction, but for the wrongful death of Groves, over which the circuit court clearly has jurisdiction. See General Electric Co., 236 S.W.3d at 589 (holding that the employees' personal injury tort claims "are a kind of case that comes within a circuit court's subject matter jurisdiction"). Naturally, part of the circuit court's jurisdiction involves assessing the merits of an affirmative defense raised by one of the parties. Ultimately, KRM's action of filing a Form 101 does not change the fact that the suit brought against KRM was properly before the circuit court and that circuit courts have the authority to determine whether an affirmative defense warrants a dismissal. See Gordon, 887 S.W.2d at 362; General Electric Co., 236 S.W.3d at 589. Therefore, the Hopkins Circuit Court was not acting outside its jurisdiction when it proceeded

with the case, and the Court of Appeals was correct in denying KRM's request for a writ of prohibition.

CONCLUSION

Despite KRM's contention that filing an application for resolution of a workers' compensation claim is different from raising an affirmative defense under the Workers' Compensation Act, the fact remains that when a suit is otherwise properly before the circuit court, it has the jurisdiction to determine the merits of such a defense. In this case, Congrove as Administrator of Jackie Groves' Estate properly filed a complaint against KRM and Whitco in Hopkins Circuit Court seeking damages from Groves' work-related death. After having argued and lost its Motion for Summary Judgment, KRM attempted to invoke the protections of the Workers' Compensation Act before the circuit court ever made a determination as to whether the Act applied, *i.e.*, whether Groves was even an employee of KRM. Because the circuit court has the jurisdiction to assess whether such a defense requires a dismissal, KRM is not entitled to a writ prohibiting Judge James C. Brantley of the Hopkins Circuit Court from proceeding with the circuit court action, and the Court of Appeals decision is affirmed.

All sitting. All concur.

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