NOT DESIGNATED FOR PUBLICATION

MICHAEL SAVOY	NO. 02-CA-0524
VERSUS	FIFTH CIRCUIT
LOUISIANA LANDSCAPE SPECIALTY	COURT OF APPEAL
	STATE OF LOUISIANA

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 00-07314, DISTRICT 7
HONORABLE JOHN C. GROUT, JR., JUDGE PRESIDING

October 29, 2002

SUSAN M. CHEHARDY
JUDGE

Panel composed of Judges Thomas F. Daley,
Marion F. Edwards, and Susan M. Chehardy.

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REVERSED AND REMANDED.

SMC
T.D.

In this workers' compensation lawsuit, Michael Savoy("Savoy") appeals a summary judgment dismissing his disputed claim for compensation against his former employer and defendant-herein, Louisiana Landscape Specialty("LLS"). For the reasons that follow, we reverse and remand.

LLS is a residential and commercial landscaping company. Savoy was employed by LLS installing lawn sprinkler and drainage systems for LLS's residential and commercial customers. Both parties agree that, in September of 1999, Savoy had been employed by LLS periodically for about four years doing various types of work including, but not limited to, grass-cutting, irrigation, and general yard work.

On Friday, September 10, 1999, Savoy completed his regular daily duties with the irrigation department of LLS without incident. At quitting time, he saw two other LLS employees, Cody Lane("Lane") and Larry Hunter("Hunter"), who coincidentally usually drove him home from work on Fridays, leaving to deliver a bushhog[1] to a jobsite in New Orleans East. Lane and Hunter offered to drop Savoy

[1] A bushhog was defined during this proceeding as a tractor with an attached mowing deck.

off at his house later that evening after the two of them delivered the bushhog. Savoy, who was not "on the clock," accepted the ride because it saved him from having to walk home.

That afternoon, Mike Faucheaux, a supervisor for LLS, saw the three men, who had stopped for refreshments at a convenience store near LLS's business location, and questioned the necessity of three employees to deliver one tractor. Lane, Hunter and Savoy informed Faucheaux that Savoy was not "on the clock" and was merely riding with Lane and Hunter as was their custom on Fridays. Hunter and Faucheaux both testified that delivering the tractor was a one-man job. Faucheaux stated that Lane was a good employee who had received fewer hours then usual that week so Faucheaux allowed Lane to remain on the clock and help Hunter deliver the tractor.

While the three men were driving towards New Orleans East on Interstate 10, Hunter noticed that the tractor's deck had slipped about one foot off of its trailer. After Hunter pulled over, the men used a chain and a binder that had been securing the tractor to reposition the tractor on the trailer without incident. Once the tractor was in proper position, Hunter attempted to replace the binding to secure the tractor. When Savoy saw that Hunter was having a difficult time securing the binding, Savoy bent down to help Hunter secure the binding. Unfortunately, the binding slipped, hit Savoy in the chin and caused damage to Savoy's chin, teeth, and jaw.

Savoy received medical and dental treatment for his injuries but LLS refused to pay for the treatment. Savoy missed one day of work as a result of his injuries. Subsequently, Savoy left LLS and obtained other employment.

On September 12, 2000, Savoy filed a disputed claim for compensation with the Office of Workers' Compensation seeking payment of benefits for his injuries. After trial, the judge concluded that "the claimant, Michael Savoy[sic] was not in

the course and scope of his employment at the time of his injury," and dismissed Savoy's claim.

On appeal, Savoy argues that the trial judge erred in concluding that Savoy was "outside the course and scope of his employment when the accident occurred." He contends that the accident "arose out of" his employment because the source of the risk, an accident resulting from the shifting of his employer's equipment in transport, was related to his employment and was a risk more attributable to him as an employee of LLS. He further insists that, while he was not "on the clock," his actions in aiding his co-employees in resecuring their employer's equipment was "in the course of" his employment since his actions furthered his employer's interests.

In Haywood v. Dugas,[2] this Court enunciated the relevant jurisprudence on risks resulting in injuries within the course and scope of employment:

> An employee who receives personal injury 'by accident arising out of and in the course of his employment' is entitled to workers' compensation benefits. La. R.S. 23:1031(A). The rights and remedies granted under the Workers' Compensation Act are exclusive of all other rights, remedies and claims for damages, except for liability resulting from an intentional act. La. R.S. 23:1032(A)-(B).
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> * * *
>
> The principal criteria for determining course of employment are time, place and employment activity. The determination of whether an accident arises out of employment focuses on the character or source of the risk which gives rise to the injury and on the relationship of the risk to the nature of the employment. An accident arises out of employment if the risk from which the injury resulted was greater for the employee than for a person not engaged in the employment.... Moreover, an accident has also been held to arise out of employment if the conditions or obligations of the employment caused the employee in the course of employment to be at the place of the accident.

[2] 00-334 (La.App. 5 Cir. 10/31/00), 772 So.2d 240.

> An accident occurs in the course of employment when the employee sustains an injury while actively engaged in the performance of his duties during working hours, either on the employer's premises or at other places where employment activities take the employee.
>
> In ascertaining the relationship of the injury to the employment, the 'course of employment' and 'arising out of employment' requirements are mutually interdependent concepts.
>
> In determining, therefore, whether an accident 'arose out of' the employment, it is necessary to consider only this: (1) Was the employee then engaged about his employer's business and not merely pursuing his own business or pleasure; and (2) did the necessities of that employer's business reasonably require that the employee be at the place of the accident at the time the accident occurred?
>
> It is irrelevant whether the employee might have been injured in the same way, place and time had he gone there only for his own pleasure or in pursuit of his own business: If he was called to the place and time of the accident due to his employer's business, then his injuries arose out of his pursuit of his employer's business and not out of his pursuit of his own business or pleasure.
>
> The terms 'arising out of' and 'in the course of' constitute a dual requirement. The former suggests an inquiry into the character or origin of the risk while the latter brings into focus the time and place relationship between the risk and the employment. The two requirements cannot, however, be considered in isolation from each other.
>
> A strong showing by the claimant with reference to the Arise-out-of requirement may compensate for a relatively weak showing on the During-course-of requirement, or vice versa. As a corollary it follows that whenever the showing with respect to both requirements is relatively weak a denial of compensation is indicated. (Citations omitted).

Haywood, 772 So.2d 242-244.

The uncontested facts elicited at the workers' compensation hearing are that Savoy had completed his workday in the irrigation department at LLS before his accident. Further, while he had previously done grass-cutting for LLS, his current job was installing sprinkler systems and drainage systems for LLS's residential and

commercial clients. While the risk of injury while attempting to secure a bushhog on a trailer may be greater for a *grass cutter* employed by a landscaping firm, the risk is smaller for a sprinkler and drainage system installer for a different division of the same company.

Further, it is undisputed that Savoy's injury did not occur during his employment hours since he was no longer "on the clock" when he accepted a ride with Hunter and Lane to deliver their employer's bushhog. While his presence in the vehicle with Hunter and Lane was not mandated by his employer, and it is undisputed that Savoy was not performing work duties at his immediate supervisor's direction, it is also clear that his assistance in securing his employer's bushhog significantly benefited his employer.

Applying the law to these facts, we conclude the trial court erred in determining that Savoy was not within the course and scope of his employment when he was injured. While Savoy may not have been "in the course" of his employment when he was injured, we find that Savoy's injuries "arose out of" his employment because his actions in securing his employer's equipment sufficiently benefited his employer to trigger employment status. Based on the foregoing, we reverse the trial court's decision and remand for further proceedings consistent with this ruling. Costs of this appeal are assessed to the appellee.

REVERSED AND REMANDED.

Court of Appeal

FIFTH CIRCUIT
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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY OCTOBER 29, 2002
TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Peter J. Fitzgerald, Jr.
PETER J. FITZGERALD, JR.
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