NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2015 CA 0276

SHANNON ROBINSON KAZEROONI

VERSUS

MONSTER RENTALS, L.L.C. and XYZ INSURANCE COMPANY

Judgment Rendered: NOV 06 2015

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Tangipahoa, Louisiana
Docket Number 2013-0001824

Honorable M. Douglas Hughes, Judge Presiding
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WHIPPLE, C.J., WELCH, AND DRAKE, JJ.

Welch Jr. dissents with reasons.

WHIPPLE, C.J.

This matter is before us on appeal by plaintiff, Shannon Robinson Kazerooni, in a lawsuit arising out of a slip-and-fall incident. Plaintiff, Shannon Robinson Kazerooni, appeals the trial court's judgment, which granted defendant's motion for summary judgment and dismissed plaintiff's claims against defendant, with prejudice, on the basis that plaintiff was a statutory employee of defendant whose exclusive remedy is in workers' compensation. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Devon Energy Production Company, L.P. (Devon), defendant herein, was involved in the drilling of a well in Kentwood, Louisiana in Tangipahoa Parish. In connection with the drilling of the well, Devon entered into a Master General Services Agreement (the Master Service Agreement) with Asset Security for Asset Security to provide security services for Devon at the drilling site. The Master Service Agreement provided, in pertinent part, that Devon was to be considered "the statutory employer of [Asset's] employees for purposes of LaR.S. 23:1061(A)(3), and [Devon] is entitled to the protections that are afforded a statutory employer under Louisiana Law."

On July 16, 2012, plaintiff was working a security detail assignment at Devon's drilling site. When exiting the mobile trailer at the drilling site, she slipped and fell from the stairs of the trailer. At the time of the incident, Kazerooni was a reserve deputy with the Tangipahoa Parish Sheriff's Office, which had a staffing agreement with Asset Security to provide the services of "appropriately licensed and qualified Off-Regular-Duty or Extra-Duty police officers" to Asset Security for certain security assignments.

Following her slip-and-fall incident, Kazerooni filed the instant tort suit against Monster Rentals, LLC, alleging that Monster Rentals provided the defective trailer to Devon for use at the drilling site. Thereafter, Kazerooni filed an amended petition, naming Devon as an additional defendant, contending that the accident and her resulting injuries were also caused by Devon's negligence, as Devon was the lessee and/or custodian of the mobile trailer involved in the accident and had control over the mobile trailer, its steps, and the surrounding worksite.[1] Devon answered the suit and asserted various affirmative defenses, including the defenses that (1) Devon was the statutory employer of Kazerooni and therefore, Kazerooni's exclusive remedy was workers' compensation benefits; and (2) Kazerooni's claims were barred by the doctrine of judicial and/or equitable estoppel.

Subsequently, Devon filed a motion for summary judgment, contending that pursuant to the Master Service Agreement between Devon and Asset Security, Kazerooni was a statutory employee of Devon. Accordingly, Devon argued that pursuant to LSA-R.S. 23:1061, it was immune from suit by Kazerooni for tort damages as her exclusive remedy against Devon for her alleged injuries was workers' compensation benefits. In a reply memorandum, Devon also noted that Kazerooni had previously filed a workers' compensation claim against Asset Security for her injuries sustained in this incident. As such, Devon contended that Kazerooni was barred by judicial estoppel from asserting in these proceedings that she was not an employee of Asset Security and by extension, not a statutory employee of Devon.

Following a hearing, the trial court signed a judgment on October 14, 2014, granting Devon's motion for summary judgment and dismissing Kazerooni's

[1]Monster Rentals also filed a third-party demand against Devon. However, Monster Rentals later dismissed its claims and third-party demand against Devon.

claims against Devon with prejudice. Kazerooni now appeals.[2]

On appeal, Kazerooni argues that as a reserve deputy, she was merely a "volunteer" and, accordingly, summary judgment was not appropriate herein, as there are unresolved genuine issues of material fact as to whether she was an employee of anyone, much less an employee of Asset Security, who would be covered by Devon's Master Service Agreement with Asset Security. Additionally, Kazerooni argues that the trial court erred insofar as its grant of summary judgment was based on the doctrine of judicial estoppel and the fact that she previously had filed a workers' compensation claim against Asset Security. Last, Kazerooni argues that the trial court erred in granting, in part, Devon's motion to strike

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[2]Subsequent to the signing of the October 14, 2014 judgment and Kazerooni's motion for appeal, Kazerooni filed a "motion for entry of amended judgment" with the trial court, seeking to have the judgment dismissing her claims against Devon certified as final for purposes of an appeal, pursuant to LSA-C.C.P. art. 1915(B). The trial court granted the motion and signed an amended judgment on March 19, 2015, certifying the judgment as final.

We decline to address the propriety of this certification, as the certification was not required for this court to have jurisdiction over the instant appeal. Louisiana Code of Civil Procedure Article 1915 authorizes the immediate appeal of partial final judgments, including some specified partial summary judgments, stating in pertinent part:

> A. A final judgment may be rendered and signed by the court, even though it may not grant the successful party or parties all of the relief prayed for, or may not adjudicate all of the issues in the case, when the court:
> (1) Dismisses the suit as to less than all of the parties, defendants, third party plaintiffs, third party defendants, or intervenors.
> ...
>
> B. (1) When a court renders a partial judgment or partial summary judgment or sustains an exception in part, as to one or more but less than all of the claims, demands, issues, or theories against a party, whether in an original demand, reconventional demand, cross-claim, third-party claim, or intervention, the judgment shall not constitute a final judgment unless it is designated as a final judgment by the court after an express determination that there is no just reason for delay.

A judgment is immediately appealable by virtue of its status as a final judgment under article 1915(A), without any need for an express determination of the propriety of immediate appeal and a designation ("certification") under article 1915(B). Motorola, Inc. v. Associated Indem. Corp., 2002-0716 (La. App. 1st Cir. 4/30/03), 867 So. 2d 715, 719. The judgment at issue herein dismissed the suit as to defendant Devon, even though it did not dismiss plaintiff's claims against the remaining defendant, Monster Rentals. Accordingly, pursuant to LSA-C.C.P. art. 1915(A)(1), the judgment dismissing plaintiff's claims against Devon, in their entirety, constitutes a final judgment for purposes of an immediate appeal and did not require a designation of the judgment as final.

certain exhibits that she submitted in opposition to the motion for summary judgment.

SUMMARY JUDGMENT

Summary judgment is properly granted if the pleadings, depositions, answers to interrogatories, admissions, affidavits, if any, admitted for purposes of the motion for summary judgment, show that there is no genuine issues of material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B)(2).

On a motion for summary judgment, the initial burden of proof is on the mover. If the moving party will not bear the burden of proof at trial, the movant's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the nonmoving party must produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden at trial. If the nonmoving party fails to make this requisite showing, there is no genuine issue of material fact, and summary judgment should be granted. LSA-C.C.P. art. 966(C)(2).

A summary judgment is reviewed *de novo* on appeal under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. East Tangipahoa Development Company, LLC v. Bedico Junction, LLC, 2008-1262 (La. App. 1st Cir. 12/23/08), 5 So. 3d 238, 243, writ denied, 2009-0166 (La. 3/27/09), 5 So. 3d 146. In ruling on a motion for summary judgment, a trial court's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a

genuine issue of triable fact. Hines v. Garrett, 2004-0806 (La. 6/25/04), 876 So. 2d 764, 765.

STATUTORY EMPLOYER DEFENSE

In the instant case, the issue on appeal is whether there is any genuine issue of material fact concerning Devon's status as a statutory employer of Kazerooni. If Devon is Kazerooni's statutory employer, then Kazerooni's exclusive remedy is workers' compensation. See LSA-R.S. 23:1032(A)(1)(a). The Louisiana Workers' Compensation Act applies both to direct employer/employee relationships as well as to statutory employer/employee relationships. See LSA-R.S. 23:1061(A)(1).[3] As set forth in LSA-R.S. 23:1061(A)(3), when a **written contract "recognizes a statutory employer relationship, there shall be a rebuttable presumption of a statutory employer relationship between the principal and the contractor's employees**, whether direct or statutory employees." (Emphasis added.) Further, "this presumption may be overcome only by showing that the work is not an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services."

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[3]Louisiana Revised Statute 23:1061(A)(1) provides:

> Subject to the provisions of Paragraphs (2) and (3) of this Subsection, when any "principal" as defined in R.S. 23:1032(A)(2), undertakes to execute any work, which is a part of his trade, business, or occupation and contracts with any person, in this Section referred to as the "contractor", for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, **the principal, as a statutory employer, shall be granted the exclusive remedy protections of R.S. 23:1032 and shall be liable to pay to any employee employed in the execution of the work or to his dependent, any compensation under this Chapter which he would have been liable to pay if the employee had been immediately employed by him**; and where compensation is claimed from, or proceedings are taken against, the principal, then, in the application of this Chapter reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the employee under the employer by whom he is immediately employed. For purposes of this Section, work shall be considered part of the principal's trade, business, or occupation if it is an integral part of or essential to the ability of the principal to generate that individual principal's goods, products, or services. (Emphasis added.)

(Emphasis added.) LSA-R.S. 23:1061(A)(3). The determination of statutory employer status is a question of law for the court to decide. Ramos v. Tulane University of Louisiana, 2006-0487 (La. App. 4th Cir. 1/31/07), 951 So. 2d 1267, 1269.

The Master Service Agreement between Devon and Asset Security, as noted above, explicitly recognizes Devon as the statutory employer of Asset Security's employees. Therefore, under LSA-R.S. 23:1061(A)(3), Devon is presumed to be the statutory employer of Kazerooni, if Kazerooni was an employee of Asset Security at the time she sustained her injuries.

In support of the motion for summary judgment, Devon submitted: (1) the affidavit of Meredith Spurlock, Devon's health and safety specialist[4]; (2) the Master Service Agreement between Devon and Asset Security, which was attached to Ms. Spurlock's affidavit; and (3) a copy of the "Order of Approval" from Kazerooni's workers' compensation claim, wherein Kazerooni sought and obtained workers' compensation benefits from "alleged [e]mployer, Asset Security, LLC and [i]ts insurer." Devon also submitted excerpts from the deposition transcript of Kazerooni, wherein Kazerooni testified that she was being paid by Asset Security for her work at the Devon drilling site at the time

[4]In pertinent part, Ms. Spurlock attests to the following in her affidavit:

1) She is familiar with the worked to be performed under the Master Service Agreement, and the work was essential to the drilling of Devon's well including, but not limited to, the movement of necessary equipment and the direction of traffic safely across nearby railroad tracts;
2) Shannon Kazerooni was employed by Asset Security to provide these services for Devon at the well site in Tangipahoa Parish;
3) At the time of Kazerooni's alleged injuries, she was in the course and scope of her employment with Asset Security;
4) The security services provided by Asset Security were an integral part of, and essential to, the ability of Devon to generate its product, and were essential to the safe and orderly drilling of Devon's well; and
5) Without the services provided by Asset Security, Devon could not have drilled its well or provided other services necessary for its related business.

she sustained her injuries.[5]

In opposition to the motion for summary judgment, Kazerooni submitted excerpts from the deposition transcript of Deputy James Travis, the accreditation manager for the Tangipahoa Parish Sheriff's Department. Deputy Travis was questioned about the differences between reserve officers and full-duty officers. Deputy Travis testified that full-duty officers are full-time employees, placed on payroll, and provided with benefits. However, reserve officers are only provided with a supplemental insurance policy for injury or death occurring in the line of duty. Deputy Travis further testified that reserve officers may go on paid details, which are separate from the department as far as money earned. In response to questions as to why someone may become a reserve officer, Deputy Travis explained that this status gives individuals a chance to gain experience and move up in the department more rapidly, giving the example that although an individual may have a normal job during the day, on their free time, they may "go out and work a few details here and there [as a reserve officer] to supplement their income." Deputy Travis then explained that reserve officers are not being paid for these shifts; rather, "they volunteer."

In reviewing Deputy Travis's deposition testimony, we find no support for Kazerooni's argument that his testimony established that she was a "volunteer" at the time she sustained her injuries. Deputy Travis described reserve officers'

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[5]During her May 22, 2014 deposition, Kazerooni testified as follows:

> Q: ... You had a W2 from Asset Security?
> A: Yes, sir.
> Q: All right. And you also got paychecks directly from Asset Security - -
> A: - - yes, sir - -
> Q: - - correct? Fair enough. Did the Sheriff Department pay you any money for the work you did out there that particular day?
> A: No, sir.
> Q: So the only money you received for the time you worked at the Devon Drilling site was from Asset Security - -
> A: - - yes, sir - -

"volunteer shifts" separate and apart from reserve officers' "paid details." Here, the evidence of record establishes that at the time Kazerooni sustained her injuries, she undisputedly was on a "paid detail" with Asset Security to provide security at Devon's drilling site. As such, we reject as meritless Kazerooni's argument that summary judgment was not appropriate herein because she was a "volunteer" and that, as such, unresolved issues of fact remain as to "whether she was an employee of anyone, much less an employee of Asset Security, subject to the terms of the Master Service Agreement with Devon."

Kazerooni further argues that she was not an employee of Asset Security and, by extension, not an employee of Devon because the contract between Asset Security and the Sheriff's Department precludes such an employment relationship. The agreement between Asset Security and the Sheriff's Department provides that "the [p]olice [d]epartment, its employees, and [o]fficers assigned to [f]acilities shall not be deemed employees or joint employees of Asset Security for any purpose." The agreement further states that "[o]fficers" assigned by the Sheriff's Office to Asset Security were to be "appropriately licensed and qualified Off-Regular-Duty or Extra-Duty police officers." As noted by Deputy Davis in his deposition testimony, the work details were for full-time employees only. Moreover, Asset Security's agreement with the Sheriff's Office was for **full-time Sheriff's Office employees only**. By Ms. Kazerooni's own admission, she was not a full-time employee; rather, she was a reserve deputy. Accordingly, the agreement between the Sheriff's Office and Asset Security does not govern or affect Ms. Kazerooni's employment relationship-status with Asset Security and, by extension, it does not affect her statutory employee relationship-status with Devon.

We find that the evidence presented on summary judgment shows that Kazerooni was an employee of Asset Security at the time she sustained her

injuries. By Kazerooni's own admission, she was being paid by Asset Security at the time of her slip-and-fall incident. Further, under LSA-R.S. 23:1061(A)(3) and the plain language of the Master Service Agreement, Devon is presumed to be the statutory employer of Kazerooni. It was Kazerooni's burden to rebut the showing made by Devon, and to rebut this presumption by demonstrating that the work that she was performing at the time she sustained her injuries was not an integral part or essential to Devon's ability to generate its goods, products, or services. Ramos, 951 So. 2d at 1270. Kazerooni has not produced any evidence to make the requisite showing. For these reasons, we find no error in the trial court's determination that Devon was entitled to judgment in its favor as a matter of law dismissing Kazerooni's claims against it.

Devon further argued that the doctrine of judicial estoppel likewise mandates a dismissal on summary judgment of Kazerooni's claims against Devon. The doctrine of judicial estoppel prohibits parties from deliberately changing positions according to the exigencies of the moment. As Devon correctly points out, the doctrine is intended to prevent the perversion of the judicial process and prevents "playing fast and loose with the courts." Lowman v. Merrick, 2006-0921 (La. App. 1st Cir. 3/23/07), 960 So. 2d 84, 92. As Devon notes, the Order of Approval from the workers' compensation proceeding demonstrates that Kazerooni previously took the position that she was an employee of Asset Security and that accordingly, she was entitled to workers' compensation benefits from Asset Security. Because we find, in accordance with Devon's earlier argument that summary judgment was properly granted herein, we pretermit further discussion of its claims of judicial estoppel.

As to Kazerooni's argument that the trial court erred in granting Devon's motion to strike plaintiff's exhibits, we note that the only exhibit at issue is a

statement from Lisa Shelling, an agent of Erdey Insurance Company. Erdey Insurance Company is the insurer of Asset Security. Pretermitting whether Ms. Shelling's statement was properly rejected as hearsay, we note that it provides in pertinent part, as follows:

> Our insured, Asset Security has a contract with Devon Drilling to provide security services at their sites. Asset Security contracted with Tangipahoa Sheriff Office to provide them with Full time deputies to provide security work as these premises. These deputies are not employees of Asset Security but are paid as Independent Contractors.

This statement provides only that "[f]ull time deputies" of the Tangipahoa Parish Sheriff's office are not employees of Asset Security. Here, plaintiff undisputedly was not a "full time deputy" of the Sheriff's Office; rather, she was a reserve deputy. Accordingly, regardless of whether the statement was properly excluded from evidence as hearsay, the statement offers no material support for plaintiff's arguments raised in opposition to the motion for summary judgment.

CONCLUSION

For the above and foregoing reasons, the trial court's October 14, 2014 judgment, granting Devon Energy's motion for summary judgment and dismissing Kazerooni's claims against it, with prejudice, is hereby affirmed. Costs of this appeal are assessed against appellant, Shannon Robinson Kazerooni.

AFFIRMED.

SHANNON ROBINSON KAZEROONI **NO. 2015 CA 0276**

COURT OF APPEAL

VERSUS

FIRST CIRCUIT

MONSTER RENTALS, L.L.C. AND XYZ INSURANCE COMPANY **STATE OF LOUISIANA**

WELCH, J., dissenting.

I respectfully disagree with the majority opinion. The evidence herein on the motion for summary judgment establishes there are genuine issues of fact with respect to whether Shannon Kazerooni is an "officer" under the police officer staffing agreement ("contract") between Asset Security and the Tangipahoa Parish Sheriff's Office ("Sheriff's Office"). Since that contract provides that officers assigned to Asset Security are not to be deemed employees of Asset Security for any purpose, this unresolved issue of fact precludes summary judgment on the issue of whether Ms. Kazerooni is the statutory employee of Devon Energy Production Company, L.P. ("Devon") by virtue of the Master General Services Agreement ("master service agreement") between Devon and Asset Security.

Herein, the affidavit of Merideth Spurlock sets forth that Ms. Kazerooni was employed by Asset Security to provide security services for Devon. The master service agreement between Asset and Devon explicitly provides that Devon was to be considered the statutory employer of Asset Security's employees. However, the deposition testimony of James Lee Travis of the Sheriff's Office establishes that Ms. Kazerooni was a POST-certified reserve officer (as opposed to a full-duty officer) with the Sheriff's Office. Deputy Travis explained that full-duty officers are full-time employees, placed on payroll, and provided with benefits, whereas reserve officers are only provided with a supplemental insurance policy for injury or death occurring in the line of duty. Deputy Travis further explained that reserve officers are provided with a uniform from the Sheriff's Office and that they may

work shifts as a police officer, which is on a volunteer basis; however, they may also go on paid details, which are separate from the Sheriff's Office. Although Deputy Travis testified that Ms. Kazerooni was not approved for the Devon detail because she was not a full-time employee, no explanation was provided as to how she was placed on that detail. Notably, the contract between Asset and the Sheriff's Office provided that "the police department [Sheriff's Office], its employees, and officers assigned to facilities shall not be deemed employees or joint employees of Asset Security for any purpose." For purposes of the contract, "officers" are "appropriately licensed and qualified Off-Regular Duty or Extra-Duty police officers."

Based on the evidence on the motion for summary judgment, there are issues of fact as to whether Ms. Kazerooni was an "Extra-Duty police officer" and as such, an "officer" under the contract between Asset Security and the Sheriff's Office. Because the contract between Asset Security and the Sheriff's Office precludes an employment relationship between officers and Asset, summary judgment on whether Ms. Kazerooni was the statutory employee of Devon by virtue of the master service agreement between Devon and Asset Security was inappropriate.

Additionally, with respect to the judicial estoppel issue, I believe that there are likewise issues of fact as to whether Ms. Kazerooni "took the position" that she was an employee of Asset Security. The only evidence offered by Devon in support of this argument was a settlement in the workers' compensation proceeding wherein Asset Security was identified as the "alleged employer" of Ms. Kazerooni. Thus, while Ms. Kazerooni may have alleged in that proceeding that Asset Security was her employer, Asset Security obviously took issue with that allegation and the record does not establish that there was any judicial determination of that disputed issue of fact. Absent such a determination,

summary judgment was inappropriate. Therefore, the judgment of the trial court should be reversed.

Thus, I respectfully dissent.