SUPREME COURT OF LOUISIANA

NO. 98-CC-1602

MICHELLE O'REGAN and RYAN O'REGAN

V.

PREFERRED ENTERPRISES, INC.
D/B/A NUMBER ONE CLEANERS, et al

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON

MARCUS, Justice*

Michelle O'Regan was employed by Preferred Enterprises (hereinafter "Preferred"), a commercial laundry and dry-cleaning establishment, for a total of three months, from July 1990 until she resigned in October 1990. In 1993, she sought medical attention for sinus problems and was eventually diagnosed as having myelodysplasia, a form of aplastic anemia. She claims that she contracted this disease as a result of being exposed to hazardous chemicals in the course and scope of her employment with Preferred.

Mrs. O'Regan originally filed a workers' compensation claim asserting a right to benefits for having contracted an occupational disease. The workers' compensation judge denied benefits. He determined that plaintiff was unable to prove "by an overwhelming preponderance of the evidence" that her disease was contracted as a consequence of her short term 1990 employment with Preferred as required by La. R.S. 23:1031.1D. That determination was affirmed on appeal and is now final.[1]

Having failed to prove that her disease was employment related so as to justify receipt of compensation benefits, Mrs. O'Regan next filed suit in district court against her employer and

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* Johnson, J., not on panel. Rule IV, Part 2, § 3.

[1] O'Regan v. Number One Cleaners, 96-769 (La. App. 5th Cir. 2/12/97), 690 So. 2d 103.

various other defendants who allegedly designed, manufactured and/or distributed the hazardous chemicals used in her job with Preferred. She asserted claims sounding in negligence, intentional tort, and strict liability.[2] She also sought punitive damages pursuant to La. Civ. Code art. 2315.3. Preferred answered denying plaintiff's allegations of negligence and further asserting that plaintiff's exclusive remedy against it was provided by the Louisiana Workers' Compensation Act. Thereafter, Preferred filed a motion for summary judgment in an effort to have the negligence claims stricken from the case, arguing that as a matter of law the Workers' Compensation Act provides plaintiff's exclusive remedy. The trial judge denied the motion for summary judgment; the court of appeal denied supervisory writs. Upon the application of Preferred, we granted writs and remanded the matter to the Fifth Circuit Court of Appeal for briefing, argument and an opinion.[3] The court of appeal, after reconsidering the application, maintained its position that the trial judge was correct in denying the motion for summary judgment. It concluded that since plaintiff was unable to carry her burden of proof that she had an employment related disease, she should be allowed to pursue a tort remedy against her former employer. We granted Preferred's application for supervisory relief to consider the correctness of that ruling.[4]

The sole question presented for our review is whether the Louisiana Workers' Compensation Act is the exclusive remedy of a plaintiff who alleges that she contracted an occupational disease as a consequence of negligent acts of her employer in exposing her

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[2] Mrs. O'Regan's husband, Ryan O'Regan, joined in the tort action asserting a claim for loss of consortium and mental anguish on account of the medical condition of his wife. We refer to both claimants herein in the singular as "plaintiff."

[3] 98-0060 (La. 3/13/98), 712 So. 2d 861.

[4] 98-1602 (La. 10/30/98), 723 So. 2d 965.

to hazardous conditions in the course and scope of employment.

Plaintiff's petition makes the following allegations, which are undisputed for purposes of considering defendant's right to a partial summary judgment dismissing her negligence claims. Plaintiff worked in Preferred's dry cleaning establishment for three months in 1990. In the course and scope of her employment she was exposed to various chemicals and solvents and now suffers from a disease known as myelodysplasia, which is associated with exposure to hazardous chemicals. Plaintiff makes no claim that she was exposed to hazardous chemicals by Preferred outside of the employment relationship.

The Louisiana Workers' Compensation Act (hereinafter the "act"), like similar compensation schemes adopted in other states, represents an attempt by the legislature to achieve a compromise regarding the rights and responsibilities of workers and their employers. Originally enacted in 1914,[5] the act provided that employees injured in the course and scope of their employment could pursue legislatively defined compensation benefits without having to prove fault on the part of the employer. The employer, in exchange for accepting no-fault responsibility to pay legislatively fixed benefits, was guaranteed immunity from suits for tort damages arising out of the employment relationship, except for intentional torts. Over the years this initial core compromise has undergone numerous evolutionary changes; the contours of the "quid pro quo" have varied from time to time in accordance with legislative will. We have long held that the legislature has the prerogative to define the conditions and limitations under which workers can recover compensation benefits. The amount of compensation, to whom due and payable, and the limitations and restrictions within which it may be demanded, peculiarly address themselves to the law-making

[5] La. Acts 1914, No. 20.

power. Haynes v. Loffland Bros. Co., 215 La. 280, 40 So. 2d 243 (1949).

The Louisiana Workers' Compensation Act, with very few exceptions, covers all employees. La. R.S. 23:1035. Our statute is in step with the general trend throughout the nation toward compulsory coverage. H. Alston Johnson, 13 Louisiana Civil Law Treatise: Workers' Compensation Law and Practice § 37 (3rd ed. 1994). The requirement that the person in question be employed in the trade, business or occupation of the employer is now the only basic coverage criterion in the act. Johnson, supra, § 37.

As originally enacted, Louisiana's compensation scheme only covered job related "accidents" as that term was defined in La. R.S. 23:1021.[6] In 1952, the act was broadened to provide for coverage of listed occupational diseases and exposures.[7] As it became clear that many medical conditions caused by employment were not listed, the act was amended again in 1975 to provide that all occupational diseases are compensable under the act.[8] A disease is considered occupational if it is contracted as a result of work related conditions. La. R.S. 23:1031.1A; Johnson, supra, § 220. In 1989, the legislature amended the act again to exclude certain progressive diseases, such as degenerative disc disease, from coverage under the act. La. R.S. 23:1031.1B.[9] The disease plaintiff suffers from and for which compensation benefits were sought in this case is not an excluded disease.

From the outset, it was clear that the legislature

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[6] For a history of the evolution of coverage of accidents and diseases under the act, see generally, H. Alston Johnson, 13 Louisiana Civil Law Treatise: Workers' Compensation Law and Practice §§ 212-220 (3rd ed. 1994).

[7] La. R.S. 23:1031.1A (1952).

[8] La. Acts 1975, No. 583.

[9] La. Acts 1989, No. 454.

intended to embrace the new category of “occupational diseases” within the established compensation framework without doing violence to the concept that in exchange for exposure to no-fault compensation liability, the employer receives immunity from tort exposure for all but intentional torts. La. R.S. 23:1031.1H expressly provides:

> The **rights and remedies herein granted to an employee or his dependent on account of an occupational disease for which he is entitled to compensation under this Chapter shall be exclusive** of all other rights and remedies of such employee, his personal representatives, dependents or relatives (emphasis added).

La. R.S. 23:1032A(1)(a) further provides:

> Except for intentional acts provided for in Subsection B, **the rights and remedies herein granted** to an employee or his dependent on **account of** an injury, or **compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive** of all other rights, remedies, and claims for damages, including but not limited to punitive or exemplary damages (emphasis added) . . . .

In this case, plaintiff’s petition alleges that she contracted the disease for which she seeks recovery in the course and scope of her employment with Preferred. It is clear that the Louisiana Workers’ Compensation Act provided this plaintiff with a compensation remedy for her disease if she could prove that it was caused by her employment. As in all compensation cases, the employee must establish that the claimed injury or medical condition was caused by employment. In the case of injury by accident, it is relatively simple to determine whether the injury occurred on the job. But in the case of diseases which may or may not be job related, the legislature imposes safeguards against all diseases being held to be work related simply because the disease

manifests itself or is diagnosed while a person happens to have a job.

A primary concern of the legislature in enacting legislation covering occupational diseases was to assure that employment rooted diseases are compensated but that diseases not rooted in employment are not compensated. Johnson, supra, § 220. This concern was addressed in part by imposing a special burden of proof on a plaintiff claiming a work related occupational disease who has not been on the job for at least one year, and whose disease is therefore considered less likely to be employment related. La. R.S. 23:1031.1D provides:

> Any occupational disease as herein listed contracted by an employee while performing work for a particular employer in which he has been engaged for less than twelve months shall be presumed to be non-occupational and not to have been contracted in the course and scope of and arising out of such employment, provided, however, that any such occupational disease so contracted within the first twelve months' limitation as set out herein shall become compensable when the occupational disease shall have been proved to have been contracted during the course of the prior twelve months' employment by an overwhelming preponderance of evidence.[10]

Plaintiff asserts that the presumption provided in the statute for employees who have been on the job for only a short time, less than twelve months, means that such employees and their diseases are presumptively **not covered** by the act. From this premise plaintiff argues that short term employees can opt either to pursue a remedy in tort or to first pursue a compensation claim (as she did) and then seek recovery in tort if they fail to prove

[10] When the legislature amended the definition of "occupational disease" in 1975 to do away with the list of specific covered diseases, it failed to amend La. R.S. 23:1031.1D to omit the reference to listed diseases. However, it is clear from a reading of the act as a whole that La. R.S. 23:1031.1D has continued application to "occupational diseases" as that term is now more broadly defined.

causation by an overwhelming preponderance of the evidence as the compensation act requires. We do not agree.

La. R.S. 23:1031.1D does not by its language exclude plaintiff or plaintiff's disease from coverage under the act. It merely heightens the burden of proof required for a short term employee to demonstrate that the claimed occupational disease is causally linked to employment. All plaintiffs bear the burden of proof that the accident or occupational disease in question resulted from or arose out of employment. Moreover, in all cases, since the plaintiff bears the burden of proof on that issue, there is an implicit presumption against the plaintiff and in favor of the employer. In the case of an employee working for an employer for more than twelve months, the employee bears the burden of proving the link between the employee's illness and work-related duties by a reasonable probability. Seal v. Gaylord Container Corp., 704 So. 2d 1161 (La. 1997). La. R.S. 23:1031.1D does no more than specify that a short term employee must bear the burden of proving that same causal link by an "overwhelming preponderance of the evidence."

Plaintiff argues that since she failed to carry the legislatively stipulated burden of proof, she is not "entitled" to benefits and that only employees "entitled to benefits" are covered under the act. Since she claims she is not covered under the act, she reasons that the act cannot be her exclusive remedy. There is no merit to this circular reasoning based on a fundamentally flawed initial premise.

Entitlement to a remedy under the act is not synonymous with ultimate success on the merits in an individual case. Every employee who has a remedy under the compensation act does not recover. If failure to succeed on the merits in a compensation case resulted in the right to pursue a tort claim, the immunity granted employers under the act would be largely illusory. A

plaintiff who cannot prove a case for compensation benefits does not by that failure get a second bite at the apple---an arguably more lucrative tort remedy.[11] The distinction between a claim for disease or injury not covered by the act, in which case a tort recovery is allowed, and a claim that fails for want of proof, in which case no tort remedy may be pursued, is well illustrated in 6 Larson's Workers'Compensation Law § 65.40 (1999) wherein Professor Larsen explains:

> A distinction must be drawn . . . between an injury which does not come within the fundamental coverage provisions of the act, and an injury which is in itself covered but for which, under the facts of the particular case, no compensation is payable.

The exclusive remedy feature of our workers' compensation scheme is an essential element of its operation. Where the act covers an accidental injury or occupational disease, it is the employee's exclusive remedy; the employer's immunity from tort suits extends to all but intentional torts. It is axiomatic that coverage is liberally construed. That is true whether the employee is attempting to obtain compensation benefits or to pursue tort damages.

All occupational diseases are covered under the act, subject to the burdens of proof of causation stipulated by the legislature. In this case, plaintiff failed to satisfy the

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[11] The same conclusion was reached in Chatelain v. American Can Co., 387 So. 2d 670 (La. App. 4th Cir. 1980), writ denied, 394 So. 2d 275 (La. 1980). Therein the court concluded that a worker who had failed to prove that his hearing loss was caused by employment conditions was precluded by the exclusivity provisions of the workers' compensation act from thereafter pursuing a tort remedy. See also, Building and Const. Trades Dept., AFLCIO v. Rockwell Intern. Corp., 756 F. Supp. 492 (D. Colo. 1991) and Goyne v. Quincy-Columbia Basin Irr. Dist., 910 P. 2d 1321 (Wash. App. 1996). If we were to accept plaintiff's arguments, the result would give short term employees options that long term employees do not have, i.e., the choice of suing first in tort or of pursuing a compensation remedy and then suing in tort if unable to prove a compensation case.

requisite burden of proof. She did not prove to the workers' compensation judge that she contracted her disease during her period of employment with Preferred. That factual determination was affirmed on appeal and is now final. The failure of a compensation claimant to prove the causal link between an asserted disease or disability and job conditions does not eviscerate the exclusivity provisions of the compensation scheme. A long term employee unable to prove the causation element in an occupational disease case by a preponderance of the evidence cannot thereafter proceed with a case in tort. Similarly, the failure of an employee in an accidental injury case to prove that the claimed disability was caused by an on the job accident does not affect the employer's tort immunity. By the same token, the failure of an employee working at a job for less than twelve months to meet the heightened burden of proof set forth in La. R.S. 23:1031.1D does not affect the fact that workers' compensation is the exclusive remedy for an occupational disease which plaintiff claims arose only in connection with employment. Accordingly, we conclude that under the facts and circumstances of this case, defendant was entitled to a partial summary judgment dismissing the negligence claims brought against it in plaintiff's tort action. The exclusive remedy of a plaintiff asserting contraction of an occupational disease as a consequence of work related conditions is for workers' compensation benefits where that disease is of a type not specifically excluded by the act---whether or not the plaintiff is successful on the merits of the claim.

DECREE

For the foregoing reasons, the judgment of the court of appeal is reversed. Partial summary judgment is hereby rendered in favor of Preferred Enterprises, Inc. dismissing the negligence claims of Michelle and Ryan O'Regan. The matter is remanded to the

district court for further proceedings consistent with this opinion. All costs are assessed against the plaintiffs.