

[Cite as *Lalumiere v. Bur. of Workers' Comp.*, 2004-Ohio-5916.]

IN THE COURT OF CLAIMS OF OHIO

PATRICIA LALUMIERE	:	
Plaintiff	:	CASE NO. 2003-09629
		Judge J. Warren Bettis
v.	:	
		<u>DECISION</u>
BUREAU OF WORKERS'	:	
COMPENSATION	:	
Defendant	:	
.....	:	

{¶ 1} Plaintiff brought this case against defendant alleging defendant wrongfully filed liens against her property. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶ 2} Plaintiff was hired in 1990 as a truck driver for a trucking company in Sandusky, Ohio, by the name of Potters Wheel, Inc. Plaintiff applied for and received workers' compensation coverage through defendant, Bureau of Workers' Compensation (BWC). Plaintiff left Potters Wheel in early 1991.

{¶ 3} Neither plaintiff nor Potters Wheel canceled the workers' compensation coverage. BWC continued to charge plaintiff premiums for some time until it canceled her coverage for failure to pay the premiums. At that time, BWC attempted to contact plaintiff, sending several notices to the only address that they had for plaintiff, which was Potters Wheel in Sandusky. However, Potters Wheel was no longer in operation and plaintiff was living in Michigan. When its attempts were unsuccessful, BWC sought different means.

{¶ 4} In 1991, BWC filed the first of three liens against plaintiff. In 1997, after having sent notices to Sandusky without response, BWC filed a second lien against plaintiff. In 1998, BWC referred the case to the Attorney General's special counsel for further investigation and collection of the debt. Counsel eventually contacted plaintiff. According to the investigator, plaintiff stated that

she was not going to pay. In 1999, the third and final lien was filed against plaintiff, at which point she reiterated her unwillingness to pay the balance due on her account.

{¶ 5} In 2000, plaintiff went to a bank to apply for a loan. The bank performed a credit check on plaintiff, discovered the liens and informed plaintiff of that fact. Plaintiff claims that she had a nervous breakdown as a result of hearing that information. Several weeks later plaintiff obtained a loan and used the money to pay off her debts to BWC and the liens were lifted. She then filed this claim on September 10, 2003.

{¶ 6} Plaintiff argues that she was an employee of Potters Wheel and that therefore it was the duty of defendant, BWC, to cancel her workers' compensation when she left the company. BWC contends that plaintiff was an independent contractor. Plaintiff also argues that some of the signatures on her application for workers' compensation are forgeries.

{¶ 7} The court finds that the signatures that appear on the BWC forms are those of plaintiff. Forensic specialist David Hall testified as defendant's handwriting expert. Mr. Hall performed an analysis of plaintiff's handwriting and compared a handwriting sample prepared by plaintiff with the signatures on the BWC forms. Mr. Hall concluded that at least one of the signatures on plaintiff's BWC application forms was hers. (Defendant's Exhibit C.)

{¶ 8} Plaintiff is listed as a "sole proprietor" on both application forms that plaintiff filed with BWC, making her relationship with Potters Wheel as one of an independent contractor. (Defendant's Exhibits A and B.) Plaintiff testified that Potters Wheel filled out the forms for her and that she merely signed them. However, plaintiff also testified that not all of the signatures on the forms were hers, and that it was Potters Wheel that identified her as a sole proprietor. Plaintiff testified that it was her belief that she was an employee.

{¶ 9} Taking into account Mr. Hall's testimony that at least one of the signatures on the forms belonged to plaintiff, the court finds plaintiff's testimony to be less than credible. The court further finds that it was reasonable for defendant to rely on the forms which bore plaintiff's name and signatures listing her as a sole proprietor for the purpose of workers' compensation coverage. In fact, Rex Blateri, a BWC supervisor, testified that if plaintiff had filed a claim for benefits, it would have been covered.

{¶ 10} Plaintiff maintains that since she never received notice regarding the overdue premiums, she should not have to pay them. She also argues that once its letters were returned as undeliverable, BWC should have been more diligent in its efforts to locate her.

{¶ 11} According to the testimony of Ron Suttles, a collections supervisor at BWC, when premiums remain unpaid for a certain period of time, BWC refers the matter to the Ohio Attorney General's office for collection. In this case, it took considerable time for special counsel for the Attorney General to locate and make contact with plaintiff. When contact was finally established, plaintiff refused to pay the back premiums; however, after receiving a loan, plaintiff paid approximately \$1,200 to release the liens. Plaintiff then disputed the amount in controversy. At that point, after some communication with plaintiff, defendant learned of the miscommunication regarding notices sent to Potters Wheel in Sandusky, Ohio. Therefore, defendant recalculated the debt and agreed to charge plaintiff the minimum statutory amount for only the period of time that she was working with Potters Wheel, plus some fees, penalties, and handling costs. As a result, plaintiff received a refund of almost \$600.

{¶ 12} The court finds that plaintiff filled out and signed forms for workers' compensation. The forms stated that plaintiff was a sole proprietor, and defendant relied on such information. Plaintiff failed to cancel her coverage or to provide defendant with a valid address.

{¶ 13} For the foregoing reasons, the court finds that plaintiff has failed to prove any of her claims by a preponderance of the evidence and, accordingly, judgment shall be rendered in favor of defendant.

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JUDGMENT ENTRY

BUREAU OF WORKERS'
COMPENSATION

:

:

Defendant

.....

This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS

Judge

Entry cc:

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Filed October 6, 2004

To S.C. reporter November 5, 2004