[J-21-2015]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

LAURA O'ROURKE, v. WORKERS' COMPENSATION APPEAL BOARD (GARTLAND) APPEAL OF: JOSHUA GARTLAND	No. 27 WAP 2014 Appeal from the Order of the Commonwealth Court entered January 8, 2014 at No. 1794 CD 2012, reversing the Order of the Workers' Compensation Appeal Board entered August 29, 2012 at No. A11-0169. ARGUED: April 8, 2015

DISSENTING OPINION

MADAME JUSTICE TODD **DECIDED: OCTOBER 27, 2015**

The highly unusual facts of this appeal do not, in my view, provide a suitable vehicle for overarching pronouncements from this Court. For that reason, in my opinion, it was improvident to grant review. Nevertheless, having the appeal before us, but for reasons largely idiosyncratic to this case, I would affirm the decision below. Accordingly, I dissent.

At the time of the attack in her bedroom, it was uncontested that Laura O'Rourke ("Claimant") was not "actually engaged" in furthering the employment relationship established with her son and employer, Joshua Gartland ("Employer"). See Kmart Corp. v. W.C.A.B. (Fitzsimmons), 748 A.2d 660, 663-64 (Pa. 2000) (construing the definition of "injury arising in the course of his employment" in 77 P.S. § 411(1)). As a result, to show her injuries were compensable under the Workers' Compensation Act, Claimant was required to show that she: (1) was on the premises occupied or under the control of the employer, or upon which the employer's business or affairs are being

carried on; (2) was required by the nature of her employment to be present on the premises; and (3) sustained injuries caused by the condition of the premises or by operation of the employer's business or affairs thereon. Id. In my view, the Commonwealth Court correctly concluded, in its 6-1 *en banc* decision, that Claimant met each of these requirements.

Regarding the second prong — whether Claimant was required by the nature of her employment to be present on the premises — which the majority found to be dispositive, the workers' compensation judge ("WCJ") made the following findings, as summarized by the Commonwealth Court:

> Claimant was hired to provide a variety of attendant care services to Employer for a period of up to 64 hours a week; Employer could request Claimant to provide care anytime Claimant was awake; and Claimant worked evening hours on the weekend and evening hours on a sporadic basis during the weekdays. (WCJ's Findings of Fact Nos. 8–10, 15.) Significantly, Employer did not have another residence in which to receive attendant care, and, under the circumstances of this case, the only feasible way for Claimant to provide Employer with attendant care was to do so in her home. (WCJ's Findings of Fact No. 19, R.R. at 53a.) Finally, [Maria] Phillips from the Three Rivers Center for Independent Living approached Claimant and specifically asked Claimant to provide care for Employer in her home, and the employment arrangement was approved by the agencies knowing that Employer was going to live with Claimant. (WCJ's Findings of Fact Nos. 6, 19.)

O'Rourke v. Workers' Compensation Appeal Board (Gartland), 83 A.3d 1125, 1135 (Pa. Cmwlth. 2014). I agree with the Commonwealth Court that these unusual facts support the WCJ's conclusion that Claimant was, in practice, required by the nature of her employment to live with Employer. Id. Indeed, the "work premises" was *her home*, and the WCJ found that providing care "in her home was crucial to the employment relationship." WCJ's Finding of Facts, 8/4/10, at ¶ 19; see also N.T. Hearing, 5/10/10, at 13 (Claimant testifying that Employer stated that living together was a condition of employment). In regard to this employment relationship, I find the majority's focus on

the service plan established by Employer and Three Rivers Center for Independent Living, to which Claimant was not a party, as precluding evening or late-night shifts to be misplaced. See Majority Opinion at 12. Here, the WCJ specifically found that "as Mr. Gartland was the employer, he could request care during evening or night time hours provided the worker was awake." WCJ's Finding of Facts, 8/4/10, at ¶ 9. Under these facts, given that Claimant was employed in her home, the majority's conclusion that Claimant "was not, in any sense, required to remain on her work premises in her off-time," MO at 13, is, in my view, unsupported. For these reasons, I find this prong to be satisfied.

Like the Commonwealth Court, I would also find Claimant met the first and third prongs above.[1] Regarding the first prong — whether Claimant was on the premises occupied or under the control of the employer, or upon which the employer's business or affairs are being carried on — in this peculiar case, there is only one possible work premises: Claimant's home. While Employer obviously did not "control" the premises, he most certainly occupied it, and it was where his "business" — his mother seeing to his health and personal care needs — was carried on; indeed, again, it was the only possible place this employer could have "carried on" his business affairs. Furthermore, to Employer's suggestion that Claimant's bedroom, where the attack occurred, was not part of Employer's premises, I agree with the lower court's common sense conclusion that "[i]f the employee and the employer are required to live together as a result of the employment arrangement, then the employee's sleeping quarters should be included as part of the employer's premises because sleeping is a necessity of life." O'Rourke, 83 A.3d at 1137.

[1] The majority did not discuss these prongs as it determined the second prong was not met.

Finally, regarding the third prong — whether Claimant sustained injuries caused by the condition of the premises or by operation of the employer's business or affairs thereon — there is a rebuttable presumption that, when an employee is injured by another employee at work, the injury is work-related. See Kohler v. McCrory Stores, 615 A.2d 27, 30 (Pa. 1992). I agree with the Commonwealth Court that this presumption should apply here, even though the assault was perpetrated by Claimant's *employer*. See O'Rourke, 83 A.3d at 1138. Given this presumption, and given that the WCJ found Employer failed to rebut it by showing any personal reason for the attack, see WCJ's Findings of Fact, 8/4/10, at ¶ 18, I conclude this final prong is met as well.

I recognize that this is not a typical workers' compensation case. Indeed, the son-employer, mother-employee relationship found here is incongruously atypical. Yet, that relationship, created by a state-funded program, was a bona fide employer-employee relationship to which the Workers' Compensation Act applies. Further, that Act is remedial in nature, and must be liberally construed to effectuate its humanitarian objectives. School District of Philadelphia v. W.C.A.B. (Hilton), 117 A.3d 232, 241-42 (Pa. 2015). With that principle in mind, I find the unique facts of this case fit the definition of compensable injury under the Act. See Kmart. Accordingly, I dissent.