[J-89-2013]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, MCCAFFERY, STEVENS, JJ.

EARL PATTON AND SHARON PATTON, H/W,	:	No. 32 MAP 2013
Appellees	:	Appeal from the Order of the Superior Court at No. 85 EDA 2011 dated 3/27/12, reconsideration denied 5/31/12, affirming the judgment entered by the Bucks County Court of Common Pleas, Civil Division, at No. 03-06581-2602 dated 12/30/10
v.	:	
WORTHINGTON ASSOCIATES, INC.,	:	
Appellant	:	ARGUED: November 19, 2013

OPINION

MR. JUSTICE SAYLOR **DECIDED: March 26, 2014**

The issue presented concerns whether Appellant is a statutory employer per the Workers' Compensation Act and, as such, enjoys immunity from civil liability for injuries sustained by Appellee Earl Patton.

Pursuant to Section 302(b) of the Workers' Compensation Act,[1] 77 P.S. §462, general contractors bear secondary liability for the payment of workers' compensation benefits to injured workers employed by their subcontractors. See McDonald v. Levinson Steel Co., 302 Pa. 287, 294-95, 153 A. 424, 426 (1930). In this sense, general contractors have been denominated "statutory employers" relative to workers' compensation liability, although they are not common-law employers of subcontractor

[1] Act of June 2, 1915, P.L. 736 (as amended, 77 P.S. §§1-1041.1, 2501-2626) (the "WCA" or the "Act").

employees. Id. at 292, 153 A. at 425. The Legislature's purpose in imposing this status upon general contractors was remedial, as it wished to ensure payment of workers' compensation benefits in the event of defaults by primarily liable subcontractors. See Qualp v. James Stewart Co., 266 Pa. 502, 509, 109 A. 780, 782 (1920).[2]

Concomitant with the treatment of traditional employers, statutory employers under Section 302(b) enjoy a measure of immunity from liability in tort pertaining to work-related injuries for which they bear secondary liability under the Act. See 77 P.S. §52 (embodying Section 203 of the Act); see also 77 P.S. §481(a) (providing that liability of employers under the WCA serves as an exclusive remedy). This Court has previously determined that this immunity pertains by virtue of statutory-employer status alone, such that it is accorded even where the statutory employer has not been required to make any actual benefit payments. See Fonner v. Shandon, Inc., 555 Pa. 370, 380, 724 A.2d 903, 907 (1999).[3]

The above would seem to be relatively straightforward. Accord McDonald, 302 Pa. at 292, 153 A. at 425 ("There is no difficulty in determining in most cases whether or not one is a statutory employer."). In the present case, nevertheless, the trial and intermediate courts determined that a general contractor was not a statutory employer relative to an employee of its subcontractor. Below, we consider the obvious tension between such rulings and this Court's longstanding jurisprudence maintaining that

[2] Section 302(b) is phrased in terms broader than the "classic" statutory employer scenario involving general contractors and employees of their subcontractors. Peck v. Del. County Bd. of Prison Inspectors, 572 Pa. 249, 255, 814 A.2d 185, 189 (2002) (plurality). It is beyond the scope of this opinion, however, to address this broader reach.

[3] Statutory-employer status is also imposed per Section 302(a) of the Act, as recently addressed in Six L's Packing Co. v. W.C.A.B. (Williamson), 615 Pa. 615, 44 A.3d 1148 (2012). It also is beyond the scope of this opinion to address the scope of liability or immunity associated with such status.

conventional subcontract scenarios serve as paradigm instances in which the statutory-employment concept applies. See, e.g., McDonald, 302 Pa. at 294-95, 153 A. at 426.

Appellant, Worthington Associates, Inc., was engaged as the general contractor for an addition to a Levittown church. Worthington, in turn, entered into a standard-form subcontract with Patton Construction, Inc., a Pennsylvania corporation of which Appellee Earl Patton is the sole shareholder and an employee, to perform carpentry.

On October 26, 2001, while working at the construction site, Mr. Patton fell and sustained injuries to his back. Subsequently, the Pattons commenced a civil action against Worthington contending that the company failed to maintain safe conditions at the jobsite. Worthington moved for summary judgment on the basis that it was Mr. Patton's statutory employer and, accordingly, was immune from suit. After the motion was denied, a trial commenced, during which Worthington reasserted its claim to immunity in unsuccessful motions for a nonsuit and a directed verdict.

The trial court's substantive concern was with the principle that a general contractor is not a statutory employer relative to employees of an independent contractor. See, e.g., See N.T., Dec. 1, 2009, at 185-95, 258 (discussing Lascio v. Belcher Roofing Corp., 704 A.2d 642, 645 (Pa. Super. 1997) ("A contractor cannot claim statutory employer immunity with respect to [employees of] an independent contractor.")). Reasoning that the issue in controversy before it was whether an injured employee of a subcontractor should be treated as an independent contractor or an employee of the general contractor, the court elected to submit the following interrogatory to the jury, over Worthington's objection: "Is Plaintiff, Earl Patton, an independent contractor or an employee with respect to Worthington Construction?" N.T., Dec. 2, 2009, at 80.

For clarity, we pause to observe that -- given that Worthington contracted with Patton Construction, Inc., and not Mr. Patton in his personal capacity – Mr. Patton himself had no contract whatsoever with Worthington and, accordingly, could not in the first instance be denominated an "independent contractor" or even a contractor for purposes of Sections 203 or 302(b) of the Act. Moreover, Mr. Patton was most certainly not a common-law employee of Worthington's; rather, he was an employee of Patton Construction, Inc. Nevertheless, having set up an errant dichotomy for the jurors, the court proceeded to instruct them concerning the differences between independent contractors and employees at common law. In doing so, the trial court compounded the underlying conceptual difficulties it had engendered, because this Court has long held that, for the salient purposes under Sections 203 and 302(b) of the WCA, the term "independent contractor" carries a narrower meaning than it does at common law. See, e.g., McDonald, 302 Pa. at 293, 153 A. at 426; Qualp, 266 Pa. at 507-09, 109 A. at 781-82.

The jury returned a verdict in favor of the Pattons in the amount of $1.5 million in the aggregate.[4] In answering the special interrogatory, the jury found that Mr. Patton was an independent contractor of Worthington.

Post-trial motions were denied, and Worthington lodged an appeal. A Superior Court panel affirmed in a divided opinion with the majority crediting and embellishing upon the trial court's approach. See Patton v. Worthington Assocs., Inc., 43 A.3d 479, 483-89 (Pa. Super. 2012).

Judge Bender dissented, relying on decisions of this Court confirming that traditional general contractor/subcontractor scenarios give rise to a statutory

[4] The jury also found that Mr. Patton was comparatively negligent and assigned twenty percent of the causal fault to him.

employment relationship per Section 302(b). See id. at 495-97 (Bender, J., dissenting). The dissenting opinion distinguished several of the cases relied upon by the majority and the trial court, since the general contractors in those matters had attempted to contractually evade their statutory responsibilities to injured employees of their subcontractors through a declaration that the subcontractor was independent. See, e.g., Lascio, 704 A.2d at 645 (reflecting circumstances in which a subcontract specified: "The parties agree that persons hired by the SUBCONTRACTOR . . . in the course of the performance of the Work shall not be deemed to be the employees of CONTRACTOR for any purposes whatsoever"). In such scenarios, the dissent highlighted, the courts had essentially suggested that an estoppel theory may apply to foreclose immunity defenses to tort claims. See Patton, 43 A.3d at 496 (Bender, J., dissenting).

We allowed appeal to address the noted difficulties with the trial court's approach, perpetuated in the published opinion of the Superior Court. Our review is plenary.

In its brief, Worthington emphasizes that it maintained an ordinary contractor/subcontractor relationship with Patton Construction, Inc. Thus, according to the company, the present circumstances represent a "classic statutory employer situation." Brief for Appellant at 14 (quoting Peck, 572 Pa. at 255, 814 A.2d at 189). It is Worthington's position that the trial and intermediate courts were able to evade the force of this conclusion only by inappositely overlaying common-law conventions onto the discrete statutory regime embodied in Sections 203 and 302(b) of the WCA. Accord Brief for Amici Shoemaker Constr. Co. and Ins. Fed. Of Pa., Inc., at vii ("[A] statutory employer is made one by the Workers Compensation Act, not by contract or by common law[.]").

Worthington reiterates that the employees of subcontractors typically are neither themselves independent contractors nor employees of general contractors. See, e.g., Brief for Appellant at 25 ("The fundamental flaw in the question approved by the Superior Court majority is that it forces the jury to determine whether the plaintiff is an employee or independent contractor of the general contractor when the only accurate answer is that he is an employee of the subcontractor" (emphasis in original)).[5] Accordingly, the company contends that the incongruous dichotomy interposed by the trial and intermediate courts effectively nullifies the statutory employer concept. Worthington also cautions that the Superior Court's precedential opinion may have an adverse impact on injured workers, since it just as well may be relied upon by employers to avoid workers' compensation liability as it may be used by plaintiffs to overcome immunity defenses raised in tort cases.

Shoemaker Construction Co. and the Insurance Federation of Pennsylvania, Inc., have filed an amici brief elaborating upon the essential points made by Worthington. These amici also note that the immunity created by the Act has encountered criticism and been treated with circumspection by the judiciary. See Brief for Amici Shoemaker Constr. Co. and Ins. Fed. Of Pa., Inc., at 8-11. While amici express no difficulty with the proposition that statutes curtailing individual rights should be applied with care, they find the approach of the trial and intermediate courts here to be so "precipitous and poorly-reasoned" as to raise concerns about the competency of the judicial system. Id. at 11, 32. A separate group of amici including twenty-one contractors and subcontractors wrote to warn of the impact of "a tremendous amount of new legal liability [introduced by

[5] Indeed, Worthington observes that if Mr. Patton had been an actual employee of Worthington's, the statutory employment concept would be irrelevant, since Worthington would bear workers' compensation liability and enjoy the immunity from tort liability available to a conventional employer. See Brief for Appellant at 25-26.

the Superior Court's Patton decision] into the construction industry in the absence of any indication from the Pennsylvania General Assembly that it intended to abrogate long-standing legal protections provided to general contractors for suits by employees of subcontractors." Brief for Amici at 3 (emphasis in original).

In response, the Pattons and their amicus, the Pennsylvania Association for Justice, rely largely upon the reasoning of the trial and intermediate courts. In addition, they contend that the present circumstances do not entail a "classic statutory employer situation," since "Mr. Patton was not only the injured employee of the subcontractor, but also the (independent) subcontractor as it related to Worthington." Brief for Appellees at 10; accord Brief for Amicus Pa. Ass'n for Justice at 10 (alluding to the uniqueness of the facts, since Mr. Patton was the principal of Patton Construction, Inc.). Furthermore, highlighting the opinion of a dissenting Justice in the Fonner decision, amicus criticizes the application of immunity in favor of statutory employers who are not required to pay workers' compensation benefits. According to amicus, "the only way to even the scales of justice, considering the inherent inequity of the statutory employer immunity," is to strictly construe the threshold requirements for attaining statutory employer status when considering immunity questions. Id. at 23-25.

Upon review, and for the reasons already indicated, we agree with Worthington and its amici that the approach of the trial court and the Superior Court majority is flawed. As explained above, a century ago, this Court established that, per the terms of Section 302(b), a conventional relationship between a general contractor maintaining control of a jobsite and a subcontractor implicates the statutory employer concept relative to employees of the subcontractor working there. See McDonald, 302 Pa. at 293-97, 153 A. at 426-27; Qualp, 266 Pa. at 507, 109 A. at 781. Although the Court recognized that statutory employment does not extend to employees of "independent

contractors," it has clarified that the use of this phrase for the relevant purposes in connection with Sections 203 and 302(b) is unique, as it pertains to contractors having a relationship with the owner which is not a derivative one and, accordingly, excludes conventional subcontractors. The following passage from the Qualp decision is illustrative:

> The . . . original contractor in control of the premises to perform the work it had engaged to do . . . is regarded by the Workmen's Compensation Law as the employer to those engaged on or about the work within the scope of the undertaking. . . . This relation of employer to those employed about the premises includes only those whose work is a part of that embraced within the terms of the [original contractor's] contract with the owner. The work of a contractor, on the same premises, in furtherance of the owner's general plan, on the same structure or enterprise, performing under another and different contract with the owner is, as to the person under consideration, the work of an independent contractor under the law, and his employ[ees] or those under him must look to him for compensation. Each is separate and distinct, operating within his own sphere, though engaged on the same general work.

Id. at 507, 109 A. at 781 (emphasis added); accord McDonald, 302 Pa. at 296, 153 A. at 427 (explaining that a contract is an independent one "[w]here an owner contracts with another for work on his premises in furtherance of his regular business" (emphasis added)).

Qualp then carefully distinguished this limited conception of an "independent contractor" -- i.e., one having a distinct and independent contract with the owner -- from conventional subcontractor scenarios. In this regard, the Court explained that one entrusted by a general contractor with a portion of the work through an agreement "is a subcontractor because his contract is subordinate to and under the principal contract, though in the business world he may be independent; but as regards this transaction his

contract is a dependent one, wherein he agrees to do all or a part of that which another has agreed to do." Id. at 508, 109 A. at 781 (emphasis added); accord McDonald, 302 Pa. at 293, 153 A. at 426 (explaining that "[t]hough contractors are often referred to as general, original, principal, and independent, the sense here used indicates their relation to the work as dependent or independent").[6]

Based on the above, Worthington is correct that the trial and intermediate courts inappropriately layered common-law concepts onto a distinctive statutory regime. Per Qualp and McDonald, conventional subcontractors are dependent contractors, not independent ones, for purposes of Sections 203 and 302(b). For these purposes, their employees are not contractors at all, nor, at least in the absence of special circumstances, are they employees of the general contractor.[7]

Here, as a matter of law, Patton Construction, Inc., was a subcontractor and not an "independent contractor" relative to Sections 203 and 302(b) of the Act, particularly

[6] Since the decision in Qualp, both Sections 203 and 302(b) have been amended, but the operative language has remained materially the same, thus reinforcing that the opinion reflects the meaning intended by the Legislature. See 1 Pa.C.S. §1922(4) (embodying the principle of statutory construction that "[w]hen a court of last resort has construed the language used in a statute, the General Assembly in subsequent statutes on the same subject matter intends the same construction to be placed upon such language").

[7] We note that the viability of Qualp's holding has been questioned as it concerns the applicability of Sections 203 and 302(b) to the employees of persons or entities which have no direct contractual relationship with putative statutory employers, see Travaglia v. C.H. Scwertner & Son, Inc., 391 Pa. Super. 61, 69-70, 570 A.2d 513, 517-18 (1989), and to persons who are common-law independent contractors of a subcontractor, see also Rolick v. Collins Pine Co., 925 F.2d 661, 664 (3d Cir. 1991). The passages from Qualp which are relevant here, however, concern the core class of statutory employers (i.e., those who are general contractors in control of worksites who have entered into subcontracts with direct employers of persons injured in the performance of their duties at the jobsite). As to this class, the salient passages from Qualp were reaffirmed in McDonald and provide essential guidance here, as discussed above.

since it is undisputed that the company's contract was with the general contractor (Worthington) and not the owner (Christ United Methodist Church).

In response to the argument of the Pattons and their amicus that Mr. Patton's status as the principal of Patton Construction, Inc., alters the above calculus, we disagree. Individuals elect to conduct their affairs using the corporate form for various reasons, including to insulate their personal assets from exposure to liability for the debts of the corporation. See, e.g., Lumax Indus., Inc. v. Aultman, 543 Pa. 38, 41-42, 669 A.2d 893, 895 (1995) (discussing the strong presumption in favor of maintaining the corporate form against efforts to penetrate it). Once these choices are made, such persons and entities are not free to blur the lines of the capacity in which they act as it may suit them, and the courts must take care to maintain the necessary distinctions. The WCA does not sanction an exception to the statutory employment concept for subcontractors' principal-employees, and nothing in the arguments persuades us that one should be fashioned judicially.

In any event, whether he acted in a personal or corporate capacity, Mr. Patton's relationship with the owner here was undeniably a derivative one, arising per a conventional subcontract with a general contractor (Worthington). Again, under longstanding precedent, neither Patton Construction, Inc., nor Mr. Patton was an "independent contractor" relative to Worthington for Section 203 or 302(b) purposes. See McDonald, 302 Pa. at 293, 153 A. at 426; Qualp, 266 Pa. at 508, 109 A. at 781.

We note that we are no more pleased to disturb a compensatory jury award than the intermediate court. In the present circumstances, however, the governing law should have been applied by the trial court at the summary judgment stage, before the case ever reached trial, and certainly our error-correcting court should have recognized

and vindicated this law on appeal. Since this did not happen, it has been left for us to do so at this late juncture, four years after trial.

Finally, in terms of the disagreement by the Pattons' amicus with the holding of Fonner, Fonner is a majority decision of this Court which has been controlling law on a matter of statutory construction for almost fifteen years. Thus, the argument that it reflects poor public policy is at this point best expressed to the Legislature. The courts cannot abide the sort of distortions which occurred here as a counterbalance to previous decisions with which some may disagree. Were we to do so, we would not quell the sorts of apprehensions about the competency of the justice system expressed by several of Worthington's amici. While we have no difficulty with the proposition that statutory-employer status should be assessed carefully when asserted as a defense to tort liability, see Travaglia, 391 Pa. Super. at 69-71, 570 A.2d at 517-18, we are unable to credit a finding that there were material facts in question when there were, in fact, none.

The order of the Superior Court is reversed, and the matter is remanded for any further actions as may be necessary to conclude it, consistent with this opinion.

Mr. Chief Justice Castille, Messrs. Justice Eakin and Baer, Madame Justice Todd, and Messrs. Justice McCaffery and Stevens join the opinion.

Mr. Justice Baer also files a concurring opinion.