In The

Court of Appeals

Ninth District of Texas at Beaumont

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NO. 09-15-00248-CV

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THEROLD PALMER, Appellant

V.

NEWTRON BEAUMONT, L.L.C., Appellee

On Appeal from the 58th District Court
Jefferson County, Texas
Trial Cause No. A-195,552

MEMORANDUM OPINION

This is an appeal from a summary judgment in a personal injury case. In his sole appellate issue, Therold Palmer contends the trial court erred by granting summary judgment in favor of Newtron Beaumont, L.L.C. (Newtron). We affirm the trial court's judgment.

Palmer, an employee of Motiva, filed a personal injury action against Newtron for injuries Palmer sustained at Motiva on September 26, 2013, "when a Newtron employee stepped on him while descending from scaffolding." Palmer

contended that Newtron's negligence caused his injuries. Newtron filed a traditional motion for summary judgment, in which it asserted that Newtron and Motiva

> entered into a Procurement Agreement for Services under which Motiva provided workers' compensation insurance and employer's liability insurance through a Rolling Contractor Insurance Program ("RCIP") for Newtron and its employees working at the Motiva Plant in Port Arthur, Texas. Motiva's RCIP also provided insurance coverage for all of Motiva's employees—including [Palmer]. By operation of Texas law, and a result of the RCIP, Newtron was Motiva's "deemed employee," and thus Plaintiff's fellow employee, for purposes of the Texas Workers' Compensation Act, rendering it immune from the recovery of workers' compensation benefits[.]

According to Newtron's motion, under the terms of the Procurement Agreement for Services, Motiva retained the right to implement and maintain an RCIP to provide workers' compensation and employer's liability insurance, and Newtron attached excerpts from the agreement and amendments to the agreement as summary judgment evidence. Newtron also attached as evidence the workers' compensation and employer's liability insurance policy, which was in effect on the date of Palmer's accident and provided workers' compensation to Motiva, as well as to Newtron and Newtron's employees.

Newtron's motion asserted that Palmer was a Motiva employee and was acting within the course and scope of his employment when the injury occurred. According to Newtron, the exclusive remedy provision of the Texas Workers'

Compensation Act (TWCA) bars Palmer from "seeking common law remedies for a work-related injury against any employee of his employer, Motiva." Newtron contended that the TWCA also provides that a general contractor may be considered to be the employer of a subcontractor and its employees under certain circumstances, such as when a written agreement makes the general contractor the employer of both the subcontractor and the subcontractor's employees. *See* Tex. Labor Code Ann. § 406.123(a), (e) (West 2015). Newtron asserted that because Newtron and Motiva entered into a written agreement, pursuant to which Newtron provided an RCIP for all employees working at Motiva, Motiva became Newtron's "deemed employer" under the TWCA, so Palmer could not sue Newtron for negligence.

In his response to the motion for summary judgment, Palmer claimed that Newtron was not his employer and Newtron could not establish that it was entitled to the benefits of the TWCA's exclusive remedy provision. Palmer contended in his response that Newtron was not Palmer's "employer" under the TWCA and Newton's negligent employee was not Palmer's fellow employee. Palmer cited *TIC Energy and Chemical Inc. v. Martin*, No. 13-14-00278-CV, 2015 WL 127777 (Tex. App.—Corpus Christi Jan. 8, 2015, pet. granted), in which the Corpus Christi Court of Appeals concluded that when a subcontractor enters into an agreement

under both sections 406.122(a), (b) and 406.123(a), (e) of the Texas Labor Code, the two sections irreconcilably conflict.[1] *Id*. at *4. The *TIC* court therefore held that "because [TIC's] motion did not establish that section 406.122(b) does not apply, TIC did not meet its summary judgment burden to establish its entitlement to judgment as a matter of law." *Id*.; *see* Tex. Labor Code Ann. § 406.122(b) (West. 2015).

We review the trial court's summary judgment order *de novo*. *See Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215 (Tex. 2003). With respect to a traditional motion for summary judgment, the movant must establish that there is no genuine issue of material fact and it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Randall's Food Mkts., Inc. v. Johnson*, 891 S.W.2d 640, 644 (Tex. 1995). If the moving party produces evidence entitling it to summary judgment, the burden shifts to the nonmovant to present evidence that raises a material fact issue. *Walker v. Harris*, 924 S.W.2d 375, 377 (Tex. 1996). In determining whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken as true. *Nixon v. Mr.*

[1]The case at bar was orally argued before this Court on December 3, 2015, and at that time, the Texas Supreme Court had not yet granted TIC Energy and Chemical, Inc.'s petition for review in *TIC Energy and Chem., Inc. v. Martin*, No. 13-14-00278-CV, 2015 WL 127777 (Tex. App.—Corpus Christi Jan. 8, 2015, pet. granted). On December 18, 2015, the Texas Supreme Court granted the petition for review.

Prop. Mgmt. Co., 690 S.W.2d 546, 548-49 (Tex. 1985). We review the summary judgment record "in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005).

The exclusive remedy provision of the TWCA states as follows: "Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage or a legal beneficiary against the employer or an agent or employee of the employer for the death of or a work-related injury sustained by the employee." Tex. Labor Code Ann. § 408.001(a) (West 2015). Section 406.123 of the TWCA "allows general contractors and subcontractors to enter into written agreements 'under which the general contractor provides workers' compensation insurance coverage to the subcontractor and the employees of the subcontractor.'" *Becon Const. Co. v. Alonso*, 444 S.W.3d 824, 829 (Tex. App.—Beaumont 2014, pet. denied) (quoting Tex. Labor Code Ann. § 406.123(a)). When a general contractor and a subcontractor enter into such a written agreement, the general contractor becomes the employer of the subcontractor and the subcontractor's employees. Tex. Labor Code Ann. § 406.123(e). Section 406.122(b) of the Labor Code states as follows:

> [a] subcontractor and the subcontractor's employees are not employees of the general contractor for purposes of this subtitle if the

> subcontractor: (1) is operating as an independent contractor; and (2) has entered into a written agreement with the contractor that evidences a relationship in which the subcontractor assumes the responsibilities of an employer for the performance of work.

Id. § 406.122(b). Palmer argues that (1) section 406.123(e) conflicts with section 406.122(b), (2) the requirements of section 406.122(b) are satisfied in this case, and (3) the trial court therefore erred by granting summary judgment. We disagree.

In construing statutes, we are to consider all laws related to the subject of the act and the general system of legislation of which the act forms a part. *Reed v. State of Tex. Dep't of Licensing and Regulation*, 820 S.W.2d 1, 2 (Tex. App.—Austin 1991, no writ). "[Our] objective is to ascertain the consistent purpose of the legislature in the enactment of the laws and to carry out the legislative intent by giving effect to all laws bearing on the same subject . . . ." *Id*. We must presume that the Legislature intended a just and reasonable result, and meant for the entire statute to be effective. *Indus. Accident Bd. v. Martinez*, 836 S.W.2d 330, 333 (Tex. App.—Houston [14th Dist.] 1992, no writ). We should not give one provision a meaning that is out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone; that is, if a general provision conflicts with a more specific provision, we must construe the provisions to give effect to both if possible. Tex. Gov't Code Ann. § 311.026(a) (West 2013);

Helena Chem. Co. v. Wilkins, 47 S.W.3d 486, 493 (Tex. 2001); *Barr v. Bernhard*, 562 S.W.2d 844, 849 (Tex. 1978).

As discussed above, section 406.122(b) states that a subcontractor and its employees are not employees of the general contractor if the subcontractor is operating as an independent contractor and has entered into a written agreement with the general contractor that demonstrates that the subcontractor has assumed the responsibilities of an employer. Tex. Labor Code Ann. § 406.122(b). Section 406.122 is entitled "Status as Employee[.]" *Id.* On the other hand, section 406.123 permits general contractors and subcontractors to enter into written agreements, pursuant to which the general contractor agrees to provide workers' compensation insurance coverage to the subcontractor and the subcontractor's employees. *Id.* § 406.123(a); *see also Becon Constr. Co.*, 444 S.W.3d at 829. When the parties enter into such an agreement, the general contractor becomes the employer of the subcontractor and the subcontractor's employees. Tex. Labor Code Ann. § 406.123(e).

Applying the principles of statutory construction discussed above, we conclude that sections 406.122(b) and 406.123(a) do not conflict; rather, section 406.122(b) addresses the relationship between a general contractor and subcontractor under the act generally, while section 406.123 contemplates the

specific circumstance when the general contractor and subcontractor elect to provide coverage by entering into a written agreement under which the general contractor agrees to provide workers' compensation insurance coverage to the subcontractor's employees. *See* Tex. Gov't Code Ann. § 311.026(a); *Wilkins*, 47 S.W.3d at 493; *Martinez*, 836 S.W.2d at 333; *Reed*, 820 S.W.2d at 2; *Barr*, 562 S.W.2d at 849. We further conclude that Newtron's summary judgment evidence conclusively established that Motiva and Newtron had entered into a written agreement under which Motiva agreed to provide workers' compensation insurance coverage to Newtron's employees, and that Motiva did provide workers' compensation insurance coverage as required by the agreement. *See* Tex. Labor Code Ann. § 406.123. Therefore, Newtron was entitled to the benefit of the exclusive remedy provision of the TWCA. *See Becon*, 444 S.W.3d at 832-33; *see generally* Tex. Labor Code Ann. § 408.001(a). The trial court did not err by granting summary judgment in favor of Newtron. Accordingly, we overrule issue one and affirm the trial court's summary judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on December 3, 2015
Opinion Delivered February 18, 2016

Before McKeithen, C.J., Kreger and Johnson, JJ.