COURT OF APPEALS
DECISION
DATED AND FILED

September 9, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP3030 **Cir. Ct. No. 2008CV511**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

AARON ULRICH AND SENTRY INSURANCE COMPANY,

PLAINTIFFS-APPELLANTS,

V.

SCHARINE'S AGRI-SYSTEMS AND THE SCHARINE GROUP, INC.,

DEFENDANTS,

RURAL MUTUAL INSURANCE COMPANY,

DEFENDANT-THIRD-PARTY
PLAINTIFF-RESPONDENT,

V.

PROGRESSIVE CLASSIC INSURANCE COMPANY AND
WESTERN HERITAGE INSURANCE COMPANY,

THIRD-PARTY DEFENDANTS.

APPEAL from a judgment and order of the circuit court for Rock County: JAMES WELKER, Judge. *Affirmed*.

Before Vergeront, P.J., Lundsten, and Blanchard, JJ.

¶1 BLANCHARD, J. Under the plain terms of the Worker's Compensation Act (WCA), WIS. STATS., Chapter 102 (2007-08),[1] a temporary employee injured on the job may not maintain a tort action against a temporary employer for personal injury. Third-party liability provisions of the WCA provide statutory immunity for a temporary employer who compensates a temporary help agency for the services of an injured employee. The injured employee here claims that the temporary employer, whose allegedly negligent operation of a vehicle resulted in injury to the temporary employee, is subject to one of the statutory exceptions to the exclusive remedy rule.

¶2 We conclude that the general rule, and not the claimed exception, applies. The temporary employer and his insurer are immune from the employee's actions in tort, because the temporary employer fits the statutory definition of a compensating employer under WIS. STAT. § 102.29(6)(b)1.

¶3 Therefore, we hold that the circuit court did not err when it granted summary judgment to the insurer of the temporary employer, concluding that the tort claim was not saved under the exception to the WCA's exclusive remedy rule allowing a third-party action against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer. WIS. STAT. §§ 102.29(6)(b)3.

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

and 102.03(2). We agree with the circuit court that, because a temporary help agency, acting as general employer, placed the employee with the temporary employer, the temporary employer and his insurer are immunized from tort liability under the exclusive remedy rule. Sections 102.29(6)(a),(b) and 102.03(2).

BACKGROUND

¶4 The relevant facts are not in dispute. Aaron Ulrich was severely injured by electric shock on September 12, 2007, while working with Sam Peterson. At the time of the accident, the two men were transporting a large metal grain bin from one farm to another. The Scharine Group and Scharine Agri-Systems (Scharine), had hired Peterson to use Peterson's crane to load the grain bin onto Scharine's trailer and transport it behind Peterson's truck.

¶5 Neither Peterson nor Ulrich were Scharine's employees. Peterson owned and operated Peterson & Son Welding & Crane Service, a sole proprietorship. Ulrich began working with Peterson full-time through Affordable Personnel Resources (APR), a temporary help agency, in May 2006. On a regular basis, Ulrich helped Peterson with such tasks as welding, constructing agricultural equipment, and driving vehicles. Peterson paid APR for Ulrich's services and APR paid Ulrich.

¶6 Ulrich filed a worker's compensation claim and received compensation from APR's worker's compensation carrier, Sentry Insurance, for his injuries sustained in the accident. In addition, Ulrich commenced this action against Scharine's Agri-Systems (later adding its parent company as an additional defendant), and its insurer, Rural Mutual. Rural Mutual provided two insurance policies to Scharine at the time of the accident, a business auto policy and a commercial package policy with commercial liability umbrella coverage. Ulrich

asserted that Rural Mutual was liable for the negligence of both Scharine, as its primary insured, and of Peterson, as an additional insured, that resulted in his injuries. Rural Mutual later filed a third-party claim against Peterson's general liability insurer, Western Heritage Insurance Company, and Peterson's automobile liability insurer, Progressive Classic Insurance Company, which the circuit court dismissed.

¶7 In moving for partial summary judgment, Rural Mutual acknowledged that Peterson was an "additional insured" under its policies, but asserted that Ulrich's claim against Rural Mutual was barred, first, by the exclusive remedy rule of the WCA and, second, by the employee exclusion of its insurance policies.

¶8 The circuit court concluded that Peterson was Ulrich's borrowing employer under WIS. STAT. § 102.29(6) and, therefore, the exclusive remedy provisions of the WCA precluded Ulrich from maintaining an action in tort against Rural Mutual. The circuit court granted Rural Mutual's motion for summary judgment and dismissed Ulrich's complaint against Rural Mutual, in its capacity as insurer for Peterson. Ulrich and Sentry appeal.

DISCUSSION

¶9 We review a grant of summary judgment de novo, employing the same methodology as the circuit court. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314-16, 401 N.W.2d 816 (1987). A party is entitled to summary judgment when no genuine issues of material fact are in dispute and the party is entitled to judgment as a matter of law. ***Id.***; WIS. STAT. § 802.08(2).

¶10 This case requires us to interpret and apply provisions of the WCA to undisputed facts. "The interpretation and application of a statute to an undisputed set of facts are questions of law that we review independently." ***Estate of Genrich v. OHIC Ins. Co.***, 2009 WI 67, ¶10, 318 Wis. 2d 553, 769 N.W.2d 481 (citation omitted). Interpretation of a statute "begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry." ***Seider v. O'Connell***, 2000 WI 76, ¶43, 236 Wis. 2d 211, 612 N.W.2d 659. Plain meaning may be determined by both the language and context of the statute. ***Watton v. Hegerty***, 2008 WI 74, ¶14, 311 Wis. 2d 52, 751 N.W.2d 369. Therefore, "[w]e interpret statutory language in the context in which those words are used; 'not in isolation but as part of a whole; in relation to the language of the surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.'" ***Id.*** (citation omitted).

¶11 Ulrich argues that summary judgment was not properly granted for two reasons. First, Ulrich alleges that the exclusive remedy provisions of the WCA do not bar his claim. Second, Ulrich argues that the employee exclusion in Rural Mutual's policies does not apply to Peterson. We do not reach the second claim in light of our conclusion that the WCA's exclusive remedy provisions bar Ulrich's tort action against Peterson.

¶12 A summary of statutory provisions cited by the parties is necessary to address Ulrich's claim that he has a right to pursue a negligence action against Rural Mutual, as Peterson's insurer, under an exception to the WCA's exclusive remedy rule.

¶13 The general rule is that the WCA is "the exclusive remedy" for any injury sustained in the course of and arising out of one's employment. WIS. STAT.

§ 102.03(1), (2). As our supreme court has observed, the exclusive remedy rule strikes a balance between the interests of employers and employees. ***Bauernfeind v. Zell***, 190 Wis. 2d 701, 713, 528 N.W.2d 1 (1995). "Under the act, employers are held strictly liable for all work-related injuries that befall their employees in return for immunity from tort action. In turn, employees recover less than potentially available in a tort action in return for coverage of all work-related injuries regardless of fault." ***Id.*** (citation omitted).

¶14 Highly relevant to our analysis is the decision of the legislature to add the temporary help agency provisions, WIS. STAT. §§ 102.01(2)(f), 102.29(6), and 102.04(2m), to the WCA in order to resolve inconsistencies under the prior "loaned employee test," and to clarify whether a temporary employee injured in the workplace could maintain a tort action against a temporary employer. *See* ***Gansch v. Nekoosa Papers, Inc.***, 158 Wis. 2d 743, 750-52, 463 N.W.2d 682 (1990).

¶15 A temporary help agency is the "employer" of the temporary employee and thus liable for all compensation and other payments payable to the temporary employee under the WCA. WIS. STAT. § 102.04(2m).[2] A temporary help agency is defined as:

> an employer who places its employee with or leases its employees to another employer who controls the

[2] WISCONSIN STAT. § 102.04(2m) states:

> A temporary help agency is the employer of an employee whom the temporary help agency has placed with or leased to another employer that compensates the temporary help agency for the employee's services. A temporary help agency is liable under s. 102.03 for all compensation and other payments payable under this chapter to or with respect to that employee ….

> employee's work activities and compensates the first employer for the employee's services, regardless of the duration of the services.

WISCONSIN STAT. § 102.01(2)(f); *see also* WIS. STAT. § 102.29(6)(a) ("In this subsection, 'temporary help agency' means a temporary help agency that is primarily engaged in the business of placing its employees with or leasing its employees to another employer as provided in s. 102.01(2)(f).").

¶16 The temporary help agency provisions also limit a temporary help agency employee's ability to collect worker's compensation and pursue tort actions to recover damages for the employee's work-related injuries. WISCONSIN STAT. § 102.29(6)(b) states:

> No employee of a temporary help agency who makes a claim for compensation may make a claim or maintain an action in tort against any of the following:
>
> 1. Any employer that compensates the temporary help agency for the employee's services.
>
> 2. Any other temporary help agency that is compensated by that employer for another employee's services.
>
> 3. Any employee of that compensating employer or of that other temporary help agency, unless the employee who makes a claim for compensation would have a right under s. 102.03(2) to bring an action against the employee of the compensating employer or the employee of the other temporary help agency if the employees were coemployees.

¶17 Accordingly, a temporary employer, such as Peterson, who compensates the temporary help agency for the temporary employee's services is immune from tort liability for the employee's injuries if the employee of the temporary help agency makes a claim for compensation under the WCA. WIS. STAT. § 102.29(6)(b)1.

¶18 It is undisputed that Ulrich was an employee of a temporary help agency who made a claim for compensation. Ulrich concedes that APR fits the definition of a temporary help agency under WIS. STAT. §§ 102.29(6)(a) and 102.01(2)(f). APR was an employer who placed its employee, Ulrich, with another employer, Peterson, who controlled Ulrich's work activities and compensated APR for Ulrich's services. In addition, it is undisputed that Ulrich made a claim for and received worker's compensation benefits from APR's worker's compensation carrier, Sentry Insurance.

¶19 Because Ulrich is an employee of a temporary help agency who made a claim for worker's compensation from the temporary help agency, Ulrich's claim for and recovery of compensation under the WCA is his exclusive remedy. *See* ***Kopfhamer v. Madison Gas and Elec. Co.***, 2002 WI App 266, ¶23, 258 Wis. 2d 359, 654 N.W.2d 256. Ulrich is barred from pursuing a tort action against Peterson because Peterson is an employer who compensated the temporary help agency for Ulrich's services, pursuant to WIS. STAT. § 102.29(6)(b)1.

¶20 Ulrich claims that his case qualifies for one of the three statutory exceptions to the exclusive remedy rule, namely the exception allowing a tort claim by an employee against a coemployee for "negligent operation of a motor vehicle not owned or leased by the employer." WIS. STAT. § 102.03(2).[3] This

[3] WISCONSIN STAT. § 102.03(2) states in relevant part:

> This section does not limit the right of an employee to bring action against any coemployee for an assault intended to cause bodily harm, or against a coemployee for negligent operation of a motor vehicle not owned or leased by the employer, or against a coemployee of the same employer to the extent that there would be liability of a governmental unit to pay judgments against employees under a collective bargaining agreement or a local ordinance.

negligent operation exception is incorporated into the temporary help agency provisions under WIS. STAT. § 102.29(6)(b)3. Section 102.29(6)(b)3. permits an employee to bring an action against an "employee of [the] compensating employer … if the employees were coemployees" and the employee would otherwise have a right under § 102.03(2) to bring an action.

¶21 But it is irrelevant whether Peterson could be deemed a coemployee of Ulrich's because WIS. STAT. § 102.29(6)(b) excludes the tort option against one who fits "any" of the three statuses set forth in the statute, and Peterson is covered under the plain language of § 102.29(6)(b)1. We need not decide whether Peterson might also be considered a coemployee under the third category, subd. (6)(b)3.[4] Consequently, Peterson and Rural Mutual, as Peterson's insurer, are immune from Ulrich's actions in tort, pursuant to § 102.29(6)(b)1.

CONCLUSION

¶22 We conclude that the circuit court properly granted summary judgment dismissing Ulrich's complaint against Rural Mutual. At the time of the accident, Ulrich was an employee of a temporary help agency and Peterson was compensating the temporary help agency for Ulrich's services. Ulrich made a claim for worker's compensation with the agency. Therefore, Ulrich is barred from pursuing a tort action against Rural Mutual as Peterson's insurer.

[4] For the same reason, we also need not reach the question of whether Peterson's activity at the time of the accident would qualify as "negligent operation of a motor vehicle" under WIS. STAT. § 102.03(2), a point disputed by the parties.

By the Court.—Judgment and order affirmed.

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