2020 WL 357172
District Court of Appeal of Florida, First District.

Leroy MCNAIR, Appellant,
v.
Michael DORSEY and James "Bill" Armstrong, d/b/a Armstrong Tree Service, Appellees.

No. 1D18-698
|
January 22, 2020
|
Rehearing Denied March 13, 2020

Synopsis

Background: Following two denials of workers' compensation benefits, employee brought negligence action against employer and coworker for injuries allegedly sustained carrying a tree branch to a wood chipper. Employer and coworker moved for partial summary judgment, and the Circuit Court, 2nd Judicial Circuit, Leon County, Charles W. Dodson, J., 2017 WL 6819310, granted the motion. Employee appealed.

The District Court of Appeal, Winokur, J., held that employer and coworker were not estopped from claiming workers' compensation exclusivity.

Affirmed.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

On appeal from the Circuit Court for Leon County. Charles W. Dodson, Judge.

Attorneys and Law Firms

Paul M. Anderson of Anderson & Hart, P.A., Tallahassee, for Appellant.

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Opinion

Winokur, J.

***1** Leroy McNair challenges summary judgment entered in favor of James Armstrong and Michael Dorsey, who claimed entitlement to workers' compensation immunity from McNair's suit. We affirm and find that Armstrong and Dorsey are not estopped from claiming workers' compensation immunity.

I.

McNair and Dorsey were coworkers employed by Armstrong's company, Armstrong Tree Service. McNair claimed he was injured while carrying a tree branch with Dorsey to a wood chipper. McNair then filed a petition for workers' compensation benefits, but later received a Notice of Denial from Armstrong's insurer stating that there was "no compensable accident."

McNair then filed a second petition for benefits. The parties filed a Uniform Statewide Pretrial Stipulation in that compensation claims case, in which Armstrong denied that McNair's accident was compensable under workers' compensation law, claimed that no compensable accident occurred, and took the position that McNair's accident did not occur within the course and scope of his employment. Armstrong also alleged in the stipulation that McNair fraudulently misrepresented his prior medical and employment history.

A month after the stipulation was filed, McNair voluntarily dismissed his workers' compensation petition. McNair then instituted an action in circuit court alleging negligence on the part of both Armstrong and Dorsey. McNair's amended complaint argued that Armstrong was estopped from claiming that workers' compensation provided McNair's exclusive remedy since he had claimed in the compensation case that McNair did not suffer a compensable accident within the course and scope of his employment.[1]

Armstrong filed a motion for partial summary judgment alleging the McNair's "accident occurred within the course and scope of his employment," and that they were therefore entitled to workers' compensation immunity.[2]

The trial court granted Final Summary Judgment in favor of Armstrong, concluding that McNair's exclusive remedy was through a workers' compensation claim.

II.

A trial court's decision to grant summary judgment is reviewed *de novo*. *Mills v. State Farm Mut. Auto. Ins. Co.*, 27 So. 3d 95, 96 (Fla. 1st DCA 2009). The moving party must demonstrate that there are no genuine issues of material fact in dispute and that it is entitled to summary judgment as a matter of law. *USCardio Vascular, Inc. v. Fla. Dep't of Revenue*, 993 So. 2d 81, 84 (Fla. 1st DCA 2008). Summary judgment has been found "particularly unsuitable in a case where the facts and circumstances indicate the possibility of an estoppel." *Elliott v. Dugger*, 542 So. 2d 392, 393 (Fla. 1st DCA 1989).

***2** Excluding exceptions not relevant here, Florida's statutory workers' compensation scheme provides the exclusive remedy for an injured employee. § 440.11(1), Fla. Stat. The immunity from suit conferred by this exclusivity of remedy, however, "may be lost to an employer whose conduct amounts to an estoppel, since it would be inequitable for the employer to invoke the said statute in bar of an employee's action or suit." *Quality Shell Homes & Supply Co. v. Roley*, 186 So. 2d 837, 840 (Fla. 1st DCA 1966).

An employer is estopped from asserting workers' compensation immunity when the following occurs: 1) a representation of a material fact that is contrary to a later-asserted position; 2) reliance on that representation; and 3) a change in position detrimental to the party claiming estoppel that is caused by the reliance on said representation. *See Specialty Emp. Leasing v. Davis*, 737 So. 2d 1170, 1172 (Fla. 1st DCA 1999) (quoting *Dep't of Revenue v. Anderson*, 403 So. 2d 397, 400 (Fla. 1981)). Florida courts have held that "an employer may be equitably estopped from raising a workers' compensation exclusivity defense if the employer denies the employee's claim by asserting that the injury did not occur in the course and scope of his or her employment." *Coastal Masonry, Inc. v. Gutierrez*, 30 So. 3d 545, 547 (Fla. 3d DCA 2010) (citing *Schroeder v. Peoplease Corp.*, 18 So. 3d 1165 (Fla. 1st DCA 2009)).

III.

A party should not always be foreclosed from claiming entitlement to workers' compensation immunity to a lawsuit simply because it denied compensability in an earlier compensation claims proceeding. This is especially true when the employer, like Armstrong claims here, asserts that no work accident causing injury occurred at all. This is why *Byerley v. Citrus Publ'g*, 725 So. 2d 1230 (Fla. 5th DCA 1999), does not apply. In *Byerley*, the employee sought compensation, claiming that she suffered a workplace injury. The employer denied compensability, claiming that the "injury did not arise out [of] the course and scope of [Byerley's] employment," because it occurred after she "clocked out and had exited the building." *Id*. at 1231. *Byerley* then filed a tort action, to which the employer claimed that Byerley's exclusive remedy was workers' compensation. *Id*. The Fifth District held that the employer was estopped from claiming workers' compensation exclusivity based on its initial representation that no accident occurred within the course and scope of employment. *Id*. at 1232-33.

The specific allegation of the employer in *Byerley* was that the accident did not, in fact, occur within the course and scope of employment, and was therefore outside the scope of the workers' compensation system. They reversed that position in the later tort suit, arguing that the employee's *only* remedy was in the workers' compensation system. The Fifth District ruled that this course would "allow employers to avoid all liability for employee job related injuries." *Id*. at 1232.

This does not appear to be the case here. McNair's claimed accident, if it happened as he alleged, certainly occurred in the course and scope of his employment. Armstrong's claim was that no accident causing injury occurred at all. Either the factfinder would determine that the accident occurred, in which case it was indisputably within the course and scope of employment, or that the accident did not occur, in which case there was no compensable injury.[3] Unlike the employer in *Byerley*, it was not inconsistent for Armstrong to claim in the compensation proceeding that no accident occurred, but to later claim in the tort suit that any injury alleged was in the course and scope of employment. While Armstrong arguably took "inconsistent positions" in the compensation proceeding and in the tort suit, it is simply not the kind of inconsistency that should estop them from asserting workers' compensation immunity.[4]

***3** An employer is not estopped from asserting workers' compensation exclusivity merely because it had denied compensability of an alleged workplace injury. The employer is entitled to litigate whether a compensable accident occurred in a compensation forum. The employer cannot, however, claim that the employee doesn't belong

in a compensation forum because the accident was not work-related, and then turn around and claim that the employee *must* be in a compensation forum because the accident *was* work-related.

Nor does *Gutierrez* require a different result. In that case, the employer (Coastal Masonry) argued in the later negligence action that Gutierrez had not been its employee. *Id.* at 548 ("In ... its Answer, Coastal *specifically* denied that Gutierrez was a Coastal employee ...."") (emphasis in original). In other words, the Court held that Coastal could not assert workers' compensation immunity, arguing that Gutierrez's claim belonged in a compensation forum, and at the same time argue that Gutierrez was not an employee, which would preclude him from a compensation forum. This holding is consistent with our decision here. The employer in *Gutierrez* would not have been estopped from asserting workers' compensation immunity if it had merely denied the employee's claim in the earlier compensation case. But the employer there did much more: it affirmatively denied that the employee belonged in a compensation forum at all. In this respect, denying that the claimant is an employee is similar to denying that an accident occurred during the course and scope of employment: both claims affirmatively deny that the claimant, even if the accident and injury occurred as alleged, is permitted to assert the claim in a compensation proceeding. It is in this circumstance that an employer cannot assert workers' compensation immunity.

Here, in contrast, Armstrong affirmatively admitted in its Answer that McNair was employed by Armstrong. Accordingly, *Gutierrez* does not apply.

IV.

Armstrong initially denied that any accident occurred within the course and scope of McNair's employment. After McNair filed suit, Armstrong filed a motion for summary judgment. Since the alleged injury would have been covered under the workers' compensation statute, the trial court did not err in granting summary judgment and finding that Armstrong is not estopped from claiming workers' compensation exclusivity.

AFFIRMED.

B.L. Thomas and Kelsey, JJ., concur.

All Citations

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Footnotes

[1] We analyze this case solely in terms of whether Armstrong's stipulation estopped his workers' compensation immunity defense. For clarity, we refer to both appellees as "Armstrong" in this opinion.

[2] Workers' compensation immunity means that "[e]mployers are generally immune from liability in negligence actions brought by employees for injuries occurring in the course and scope of employment," because "[t]he Florida workers' compensation system provides the exclusive remedy for an employee injured in the course and scope of employment." *Pensacola Christian Coll. v. Bruhn*, 80 So. 3d 1046, 1049 (Fla. 1st DCA 2011). This immunity applies to coworkers as well. *See Holmes Cty. Sch. Bd. v. Duffell*, 651 So. 2d 1176, 1177–78 (Fla. 1995) (holding that "the same immunity extends to each employee of the employer when such employee is acting in furtherance of the employer's business").

[3] To be clear, we do not claim that McNair would necessarily have been entitled to compensation if the factfinder determined that a workplace accident occurred. Armstrong asserted other defenses that may have foreclosed compensability. But such a finding would show that a workplace accident was presented, which places the case in the ambit of workers' compensation law.

[4] Put another way, if the employee in *Byerley* were to prevail in a tort suit, she would have proven an accident that was outside the scope of employment. In contrast, if McNair were to prevail in this suit, he would have proven an accident that was *inside* the scope of employment. This fact demonstrates why the employer's assertion of worker's compensation immunity was improper in *Byerley*, but not improper here.

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