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Workmen's Compensation

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WORKMEN'S COMPENSATION

I. INJURIES ARISING OUT OF EMPLOYMENT

To sustain an award under the South Carolina Workmen's Compensation Law,[1] it must appear that the injury or death resulted from an accident "arising out of and in the course of the employment."[2] *LaMott v. City of West Columbia*[3] dealt solely with the question of whether the deceased was acting in the course of employment at the time of his death. George LaMott, Jr., a member of the West Columbia Fire Department and Rescue Squad, drowned in Lake Murray while helping to recover a sunken racing boat and the body of its driver. At the time of the incident, LaMott was on a two-week vacation, but as an employee of the West Columbia Fire Department he was subject to call whether on or off duty, and even when on vacation if still in town. However, while off duty he was not required to respond to fire or rescue alarms unless requested to do so.

LaMott was not requested to come to the fire station but nevertheless voluntarily accompanied several other off-duty employees to Lake Murray to assist in the search. There were no facts indicating an urgent need for his assistance. The Industrial Commission denied the application of LaMott's beneficiaries for workmen's compensation benefits, but the court of common pleas reversed and granted the benefits.

In reinstating the decision of the Industrial Commission, the supreme court found this case within the general rule that an employee while on vacation is not protected by the Workmen's Compensation Law.[4] LaMott's death did not arise out of and in the course of his employment because he was performing no duty or obligation of his employment at the time of his death. The court distinguished the cases of *Compton v. Town of Iva*[5] and

1. S.C. CODE ANN. § 72-1 *et seq.* (1962).

2. *Id.* § 72-14 provides in part: " 'Injury' and 'personal injury' shall mean only injury by accident arising out of and in the course of the employment . . . ."

3. 193 S.E.2d 592 (S.C. 1972).

4. *See* Williams v. City of Columbia, 218 S.C. 287, 62 S.E.2d 469 (1950).

5. 256 S.C. 35, 180 S.E.2d 645 (1971). *Compton* concerned the death of an off-duty police officer who, pursuant to the custom of the town, volunteered to aid a highway patrolman in investigating a disturbance. The policeman was killed in a head-on auto collision following the investigation.

Walker v. City of Columbia[6] in which the court had reached a different result with off-duty police officers. These cases, the court pointed out, concerned situations from which it could reasonably be inferred that the officers were engaged in authorized law enforcement at the time of their accidents. Their activities arose from conditions of their employment, and the accidents were therefore held to have arisen out of their employment. The court decided that LaMott's death "did not result from any duty, obligation, or condition of the employment, but was a purely voluntary and gratuitous effort."[7]

As a general rule an injury sustained by an employee while on his way to or from work and away from the premises of the employer does not arise out of and in the course of employment. There are, however, certain recognized exceptions to this rule.[8] In *Bickley v. South Carolina Electric & Gas Co.*,[9] the supreme court introduced another exception, "the special errand rule."[10] Many courts have recognized this exception and have allowed compensation when injury was sustained by an employee while perform-

6. 247 S.C. 241, 146 S.E.2d 856 (1966). *Walker* involved an off-duty policeman who died of a heart attack while assisting a fellow officer in making an arrest. A strong consideration here was the fact that the police rules and regulations, obedience to which was a condition of employment, required Walker to respond at all times to aid a fellow officer.

7. 193 S.E.2d at 593 (S.C. 1972).

8. Sola v. Sunny Slope Farms, 244 S.C. 6, 14, 135 S.E.2d 321, 326 (1964), listed the exceptions as follows:

> (1) Where, in going to and returning from work, the means of transportation is provided by the employer, or the time that is consumed is paid for or included in the wages; (2) Where the employee, on his way to or from his work, is still charged with some duty or task in connection with his employment; (3) The way used is inherently dangerous and is either (a) the exclusive way of ingress and egress to and from his work; or (b) constructed and maintained by the employer; or (4) That such injury incurred by a workman in the course of his travel to his place of work and not on the premises of his employer but in close proximity thereto is not compensable unless the place of injury was brought within the scope of employment by an express or implied requirement in the contract of employment of its use by the servant in going to and coming from his work.

9. 192 S.E.2d 866 (S.C. 1972).

10. 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION § 16.10 (1952) defines the special errand rule as follows:

> When an employee, having identifiable time and space limits on his employment, makes an off premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

ing a special task, service, mission, or errand for his employer, even before or after customary working hours or on a day on which he did not ordinarily work.[11]

Collins Bickley was an apprentice lineman employed by the defendant and usually worked in the Columbia area. Although his normal work week consisted of forty hours, he was subject to being called for emergency work outside the regular period of his employment. Early on the morning of November 3, 1969, he and other members of his crew were called upon to repair storm damage to the defendant's electrical lines in Charleston. They worked until late that night and then returned to their Columbia worksite. On his way home from the worksite, Bickley collided with a truck and was killed.

The Commissioner determined that Bickley's death did not arise in the course of his employment but rather that the employer-employee relationship ceased when Bickley left the place of his employment to return home. The full Commission upheld this decision, but the court of common pleas reversed on the basis of a "special mission." The supreme court, in affirming the lower court, quoted from a North Carolina case, *Massey v. Board of Education*:[12]

> An exception to the aforesaid general rule is found in cases where it is shown that the employee, although not at his regular place of employment, even before or after customary working hours, is doing, is on his way home after performing, or on the way from his home to perform, some special service or errand or the discharge of some duty incidental to the nature of his employment in the interest of, or under direction of, his employer. In such cases, an injury arising en route from the home to the place where the work is performed, or from the place of performance of the work to the home, is considered as arising out of and in the course of the employment.[13]

II. EMPLOYER-EMPLOYEE RELATIONSHIP

Corollo v. S.S. Kresge Co.[14] concerned the question of whether the plaintiff, an employee of the defendant's licensee,

11. 99 C.J.S. *Workmen's Compensation* § 234d (1958).
12. 204 N.C. 193, 167 S.E. 695 (1933).
13. 192 S.E.2d at 869-70, *quoting from* 204 N.C. at 197, 167 S.E.2d at 697.
14. 456 F.2d 306 (4th Cir. 1972).

was an employee of the defendant for workmen's compensation purposes. The plaintiff was employed by Benjamin Kraft & Sons, Inc., a company licensed to manage the millinery section of the defendant's K-Mart department store in Columbia. In a work-related fall she sustained painful and perhaps permanently disabling injuries. Although she made a claim for and was paid workmen's compensation benefits on behalf of Kraft, she brought a common law tort action against Kresge in federal district court. Verdict was for the plaintiff,[15] and Kresge appealed to the Fourth Circuit Court of Appeals.

The circuit court had to decide whether the South Carolina Workmen's Compensation Law constituted a bar to this tort action. The defendant contended that it was an "owner" within the meaning of section 72-111 of the South Carolina Code.[16] Kresge also asserted that the plaintiff was its "statutory employee" and therefore limited to the exclusive remedy of the Workmen's Compensation Law as provided by section 72-121 of the Code.[17]

The court decided that the issue was controlled by *Adams v. Davison-Paxon Co.*,[18] a case with a nearly indistinguishable factual situation in which no tort recovery was allowed. The court rejected the plaintiff's argument that the degree of control necessary to create a master-servant relationship between Kresge and herself should also be necessary to create the statutory employer-

15. This case was tried twice resulting in verdicts for the plaintiff both times. In the first trial the jury awarded $10,000, but the judge set this aside as "grossly inadequate" and ordered a new trial. The second trial resulted in a $20,000 verdict and the defendant appealed to the circuit court.

16. S.C. CODE ANN. § 72-111 (1962) provides as follows:

> When any person, in this section . . . referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section . . . referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

17. *Id.* § 72-121 provides as follows:

> The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this Title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin as against his employer, at common law or otherwise, on account of such injury, loss of service or death.

18. 230 S.C. 532, 96 S.E.2d 566 (1957).

employee relationship for workmen's compensation benefits.[19] Instead, the court said that when work done by the subcontractor was a part of the owner's general business, the employees of the subcontractor were statutory employees of the owner even though their immediate employer was the independent contractor.[20] The court had little difficulty in finding that Kraft's millinery business was part of the business of Kresge—that of operating a "one-stop shopping center." The court stated: "That the agreement with Kraft for the operation of the millinery department did not remove that department from the scope of K-Mart's 'trade, business or occupation' as those terms are used in the statute is . . . clear."[21] Thus, the court concluded that the workmen's compensation statutes barred the plaintiff from maintaining the tort action and limited her to a workmen's compensation award.

III. RECIPIENTS OF BENEFITS

The supreme court in *Flemon v. Dickert-Keowee, Inc.*,[22] had to determine who was entitled to the workmen's compensation benefits of the deceased, John R. Flemon. Flemon was an unmarried man survived by numerous next of kin and also by three acknowledged illegitimate children. The state circuit court held in accordance with the hearing Commissioner that the three illegitimate children should receive the benefits as dependents of the deceased.

Evidence indicated that the deceased had contributed only irregularly and insubstantially to the support of these children. The next of kin maintained that the illegitimate children, although acknowledged, were not dependents entitled to workmen's compensation benefits absent proof of their having been supported by Flemon. Although for workmen's compensation purposes "child" is defined as including an "acknowledged illegitimate child dependent upon the deceased,"[23] section 72-161 of

19. *See* Marchbanks v. Duke Power Co., 190 S.C. 336, 2 S.E.2d 825 (1939).

20. MacMullen v. South Carolina Elec. & Gas Co., 312 F.2d 662 (4th Cir. 1963); Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 132 S.E.2d 18 (1963).

21. 456 F.2d at 310 (4th Cir. 1972).

22. 259 S.C. 99, 190 S.E.2d 751 (1972).

23. S.C. CODE ANN. § 72-6 (1962) provides in part:

> The term "*child*" shall include a posthumous child, a child legally adopted prior to the injury of the employee and a step-child or acknowledged illegitimate child

the Code undermines this definition by stating that "a child shall be conclusively presumed to be wholly dependent for support on a deceased employee."[24]

Because South Carolina modeled its Workmen's Compensation Law after that of North Carolina,[25] decisions interpreting the North Carolina statute are weighed heavily in this state.[26] The North Carolina case of *Lippard v. Southeastern Express Co.*,[27] decided just before South Carolina adopted its Workmen's Compensation Law, construed the statute to allow illegitimate children to receive benefits in an almost identical situation, stating:

> The dependency which the statute recognizes as the basis of the right of the child to compensation grows out of the relationship, which in itself imposes upon the father the duty to support the child, and confers upon the child the right to support by its father. The status of the child, social or legal, is immaterial.[28]

The South Carolina Supreme Court, which had adopted the *Lippard* rationale previously,[29] again found no reason to interpret the statute any differently. The court based its decision on the fact that the Workmen's Compensation Law is "remedial legislation which is entitled to a liberal construction in order to accomplish the ends and purposes for which it was enacted."[30] Public policy thus militated in favor of paying the benefits to the three illegitimate children in order to uphold one of the primary purposes of workmen's compensation—preventing injured employees or their dependents from becoming charges of society.

IV. JUDICIAL REVIEW

In *Davis v. McAfee Manufacturing Co.*,[31] the supreme court affirmed the long standing principle that in workmen's compensation cases the Industrial Commission is the fact finding body.

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dependent upon the deceased, but does not include married children unless wholly dependent upon him.

24. *Id.* § 72-161.

25. N.C. GEN. STAT. §§ 97-1 *et seq.* (1972).

26. *See, e.g.*, McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947); Fuller v. South Carolina Tax Comm'n, 128 S.C. 14, 121 S.E. 478 (1924).

27. 207 N.C. 507, 177 S.E. 801 (1935).

28. *Id.* at 509, 177 S.E. at 802.

29. Barr's Next of Kin v. Cherokee, Inc., 220 S.C. 447, 68 S.E.2d 440 (1951).

30. 259 S.C. at 104, 190 S.E.2d at 753 (1972).

31. 259 S.C. 433, 192 S.E.2d 328 (1972).

In an appeal from the Commission, the court is limited to the determination of whether there was competent evidence to justify the Commission's factual findings. Only where the evidence supports one possible inference is the matter a question of law for the court to decide.[32]

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32. Arnold v. Benjamin Booth Co., 257 S.C. 337, 185 S.E.2d 830 (1971).