Kentucky Supreme Court
Cases of Note
March-April, 2013

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TORTS

Garnett Gibson (as Executor and Personal Representative of the Estate of Topsie Gibson) v. Fuel Transport, Inc. And Fuel Transport, Inc. v. Garnett Gibson (as Executor and Personal Representative of the Estate of Topsie Gibson)
2010-SC-000072-DG March 21, 2013
2010-SC-000682-DG March 21, 2013
Opinion of the Court by Justice Cunningham. Minton, C.J.; Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Evidence was insufficient to sustain award of punitive damages where plaintiffs failed to establish causation between truck's mechanical failure and subsequent collision with oncoming motorist. Though compensatory damages award was sustainable under theory of ordinary negligence, there was no evidence of requisite gross negligence to support jury's punitive damages award.

WORKERS COMP

Unemployed Employers' Fund v. Matthew Stanford; U.S. Army Cadet Corps, Inc.; Bluegrass Area Development District; Honorable Chris Davis, Administrative Law Judge; and Workers' Compensation Board And U.S. Army Cadet Corps, Inc. v. Matthew Stanford; Bluegrass Area Development; Uninsured Employers' Fund; Honorable Chris Davis, Administrative Law Judge; and Workers' Compensation Board
2011-SC-000651-WC March 23, 2013
2011-SC-000652-WC March 23, 2013
Opinion of the Court. Minton, C.J., Abramson, Cunningham, Noble, Scott and Venters, JJ., sitting. All concur. Stanford was a participant in a summer job program operated by the Bluegrass Area Development District called By Learning You Earn ("BLUE"). As a part of this program, he was paid an hourly minimum wage and received health and workers' compensation insurance from Bluegrass, but was assigned to work with US Army Cadet Corp, Inc. ("USACC"). USACC did not carry workers' compensation insurance. Stanford suffered an injury while working for USACC which rendered him permanently and totally disabled.

The Administrative Law Judge granted Stanford benefits and found that USACC was a subcontractor for Bluegrass, and that Bluegrass had up-the-ladder liability for the workers' compensation benefits. The Workers' Compensation Board reversed the ALJ's determination that Bluegrass had up-the-ladder liability because it was not a contested issue at the Benefit Review Conference and because Bluegrass was a statutorily created entity. KRS 342.610(2); Uninsured Employers' Fund v. City of Salyersville, 260 S.W.3d 773 (Ky. 2008). It found USACC to be solely liable to pay Stanford's benefits. The Board further ordered USACC to compensate Bluegrass for any of the medical bills it previously paid on Stanford's behalf. USACC's appeal to the Board was dismissed as untimely

because it was filed in response to a petition for reconsideration filed by Stanford which was found to be improper. The Court of Appeals affirmed the Board's decision.

The Unemployed Employers' Fund then filed the present appeal contesting the determination that it (because USACC is uninsured) must repay Bluegrass for the expenses it paid on Stafford's behalf. USACC filed a cross-appeal contesting the finding that its appeal was untimely filed and that it was the sole employer of Stanford.

The Supreme Court held that USACC's appeal was timely filed and should have been considered by the Board. This holding is based on the fact that USACC could not have known that the second petition for reconsideration filed by Stanford was a nullity until the ALJ ruled as such. Since the USACC's appeal was timely if the petition for reconsideration not been a nullity, the Board should have heard the appeal.

In reviewing the merits of USACC's appeal, the Court held that the loaned employee doctrine as described in Labor Ready, Inc. v. Johnston, 289 S.W.3d 200, 206 (Ky. 2009) leads to the conclusion that USACC and Bluegrass share responsibility for being Stanford's employer. Bluegrass effectively hired Stanford to be a part of their summer job program, and then assigned him to work for USACC, who filled the role of being a special employer. Therefore, on remand, the ALJ should enter an order allocating the costs for Stanford's workers' compensation benefits between the two employers.

Kentucky Uninsured Employers' Fund v. Julian Hoskins, et al.
2012-SC-000008-WC April 25, 2013
Opinion of the Court. All sitting; all concur. The Uninsured Employers' Fund appealed from a decision which held that injured worker, Julian Hoskins, was not covered under an insurance policy issued by KEMI. The fact pattern in this matter is somewhat complicated. Hoskins was hired as a truck driver by Four Star Transportation. Four Star then allegedly entered into an employee leasing scheme where Hoskins would be considered an employee of a corporation named Better Integrated. Better Integrated, then allegedly leased Hoskins to another corporation named Beacon Enterprises. Beacon was the holder of the KEMI policy in question. Beacon then purportedly leased Hoskins to Four Star.
Hoskins testified that he had no idea that Better Integrated or Beacon existed, and considered his only employer to be Four Star. Hoskins was injured while working for Four Star.

The ALJ found that Hoskins was covered under the KEMI policy because there was evidence that KEMI knew Beacon was an employee leasing company and the policy listed the location of Four Star's office as one of Beacon's worksites. However, the Board reversed the ALJ, finding that there was insufficient evidence that KEMI knew Beacon was leasing employees to Four Star. Further, the Board found that according to the loaned employee doctrine, Hoskins could not be considered an employee of Beacon because he was unaware it even existed. The Court of Appeals affirmed the Board.

The Board and Court of Appeals decided this matter correctly. Hoskins could not have entered into a contract for hire with Beacon because he did not know that entity existed. See KRS 342.640(1); Rice v. Conley, 414 S.W.2d 138, 141 (Ky. 1967). As explained in Lawson's Workers' Compensation, under the loaned employee doctrine a leasing agreement cannot exist if the employee did not consent to be the employee of an entity. Therefore, Hoskins cannot be covered under the KEMI policy, because it only covered those who were employed by Beacon. Further, the only evidence presented to support the existence of an employee leasing agreement was the self-serving testimony of the owners and directors of the companies involved.

Commonwealth of Kentucky, Uninsured Employers' Fund v. Christopher Allen, Sam An Tonio's, et al.
2012-SC-0000099-WC April 25, 2013
Opinion of the Court. All sitting; all concur. Allen was injured while lifting a kettle off of a stove at a now defunct restaurant, Sam An Tonio's. Allen received a settlement from an entity named Crawford & Company as a result of his lower back injury. Several years after the settlement became final, Allen filed a motion to reopen his workers' compensation claim because his physical condition had worsened. After the ALJ determined that Crawford was not a workers' compensation insurer, the UEF was added as a party to the claim, even though it had been dismissed from the original action. The ALJ ultimately found that Allen provided sufficient evidence that his physical conditioned had worsened, and the claim was reopened. The Workers' Compensation Board and Court of Appeals affirmed the sections of the ALJ's decision pertinent to this appeal.

The UEF appealed several aspects of the reopening of Allen's claim. First, the UEF contended that Allen did not present a prima facie case that his medical condition worsened since the finality of his original settlement. However, the record clearly shows that Allen included with his motion to reopen the medical records from his current treating physician, MRI records showing increased degeneration in his lower back, and a personal affidavit outlining his current disabilities.

As a sub issue to the reopening of Allen's claim, the UEF contended that it should not have been joined as a party because it was originally dismissed from the original claim. Yet, KRS 342.780 allows the UEF to be joined as a party to a proceeding once it has been determined that the defendant employer is uninsured. See Brown & Williamson Tobacco Corp. v. Harper, 717 S.W.2d 502 (Ky. App. 1986).

Second, the UEF argued that the ALJ erred by finding that Allen's physical condition had actually worsened. The ALJ based his decision on a comparison of the doctors' reports produced at the time of Allen's injury with the reports produced at the time Allen sought to reopen his claim. The ALJ's finding of a worsened condition was supported by the evidence.