

Cooke v. Palmetto Health Alliance
S.C.App.,2005.

Court of Appeals of South Carolina.
John E. COOKE and Barbara Cooke, Respondents,
v.
PALMETTO HEALTH ALLIANCE d/b/a Palmetto
Richland Memorial Hospital, and Latisha C. Cor-
ley, Appellants.
No. 4054.

Heard Oct. 11, 2005.

Decided Dec. 12, 2005.

Rehearing Denied Jan. 19, 2006.

Background: Pilot, who was employed by helicopter transportation company, brought negligence action against hospital and hospital employee, seeking recovery for personal injuries that allegedly were sustained when pilot tripped and fell over metal rod that employee had used to prop open door at hospital. Following a hearing, the Circuit Court, Richland County, Alison Renee Lee, J., issued order finding that pilot was not a statutory employee or borrowed servant of hospital, for purposes of exclusive remedy provision of Workers' Compensation Act. Hospital and employee appealed.

Holdings: The Court of Appeals, Hearn, C. J., held that:

- (1) interlocutory order was immediately appealable;
- (2) pilot was not a statutory employee; and
- (3) pilot was not a borrowed servant.

Affirmed.

West Headnotes

[1] Workers' Compensation 413  **187**

413 Workers' Compensation
413IV Employers Within Acts
413IV(A) In General
413k187 k. Statutory Employers. Most

Cited Cases

Workers' Compensation 413  **1939.11(3)**

413 Workers' Compensation
413XVI Proceedings to Secure Compensation
413XVI(T) Review by Court
413XVI(T)12A Questions of Law or Fact,
Findings, and Verdict
413k1939 Review of Decision of De-
partment, Commission, Board, Officer, or Arbitrat-
or

413k1939.11 Particular Findings

413k1939.11(3) k. Employ-
ments, Employers, and Employees. Most Cited
Cases

Determination of whether a worker is a statutory employee, for purposes of Workers' Compensation Act, is jurisdictional, and therefore the question on appeal regarding that determination is one of law. Code 1976, § 42-1-400.

[2] Workers' Compensation 413  **1939.11(3)**

413 Workers' Compensation
413XVI Proceedings to Secure Compensation
413XVI(T) Review by Court
413XVI(T)12A Questions of Law or Fact,
Findings, and Verdict
413k1939 Review of Decision of De-
partment, Commission, Board, Officer, or Arbitrat-
or

413k1939.11 Particular Findings

413k1939.11(3) k. Employ-
ments, Employers, and Employees. Most Cited
Cases

When reviewing question of law as to whether worker is statutory employee, for purposes of Workers' Compensation Act, appellate court reviews entire record and decides jurisdictional facts in accord with preponderance of the evidence. Code 1976, § 42-1-400.

[3] Workers' Compensation 413  **2242**

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)5 Actions and Proceedings

413k2242 k. Appeal and Error. Most Cited Cases

Interlocutory order that rejected hospital's defense that was based on exclusive remedy provision of Workers' Compensation Act was immediately appealable in helicopter pilot's personal injury action that was brought against hospital and hospital's employee; order involved merits of case since trial court finally determined substantial matter forming part of hospital's defense. Code 1976, §§ 14-3-330, 42-1-540.

[4] Appeal and Error 30 ↪105

30 Appeal and Error

30III Decisions Reviewable

30III(E) Nature, Scope, and Effect of Decision

30k105 k. Dismissal, Nonsuit, or Direction of Verdict. Most Cited Cases

Order denying a motion to dismiss for lack of subject-matter jurisdiction is not immediately appealable.

[5] Workers' Compensation 413 ↪2084

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(A) Between Employer and Employee

413XX(A)1 Exclusiveness of Remedies Afforded by Acts

413k2084 k. In General. Most Cited Cases

Exclusivity provision of the Workers' Compensation Act does not involve a court's subject-matter jurisdiction. Code 1976, § 42-1-540.

[6] Appeal and Error 30 ↪70(.5)

30 Appeal and Error

30III Decisions Reviewable

30III(D) Finality of Determination

30k67 Interlocutory and Intermediate Decisions

30k70 Nature and Scope of Decision

30k70(.5) k. In General. Most Cited

Cases

To involve the merits, as would support immediate appealability of an interlocutory order, the order must finally determine some substantial matter forming the whole or a part of some cause of action or defense. Code 1976, § 14-3-330.

[7] Workers' Compensation 413 ↪2161

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)1 Right of Action of Employee or Representative Generally

413k2160 What Persons Liable as Third Persons

413k2161 k. In General. Most Cited Cases

Pilot, who was employed by helicopter transportation company, was not a statutory employee of hospital, and thus exclusive remedy provision of Workers' Compensation Act did not apply to pilot's personal injury action that was brought against hospital and hospital's employee, although air transportation of patients helped facilitate hospital's treatment of critically injured patients; hospital was in business of providing health care, not transportation, helicopter service was not necessary, essential, or integral to hospital's operation, hospital did not have Federal Aviation Administration (FAA) certificate, and hospital had never directly employed helicopter pilots. Code 1976, §§ 42-1-400, 42-1-540.

[8] Workers' Compensation 413 ↪281

413 Workers' Compensation

413V Employees Within Acts

413V(C) Casual Employees and Employment in Trade or Business of Employer

413V(C)2 Employment in Trade or Business

ness of Employer

413k281 k. Test and Determination of Employment in Usual Course of Business in General. Most Cited Cases

For purposes of Workers' Compensation Act, under which worker qualifies as statutory employee if worker is engaged in activity that is part of employer's trade, business, or profession, a particular activity is part of the putative employer's trade, business, or occupation if it (1) is an important part of the employer's business or trade, (2) is a necessary, essential, and integral part of the employer's business, or (3) has previously been performed by the employer's employees. Code 1976, § 42-1-400.

[9] Workers' Compensation 413 ⚡2161

413 Workers' Compensation

413XX Effect of Act on Other Statutory or Common-Law Rights of Action and Defenses

413XX(C) Action Against Third Persons in General for Employee's Injury or Death

413XX(C)1 Right of Action of Employee or Representative Generally

413k2160 What Persons Liable as Third Persons

413k2161 k. In General. Most Cited Cases

Pilot, who was employed by helicopter transportation company, was not a borrowed servant of hospital, and thus exclusive remedy provision of Workers' Compensation Act did not apply to pilot's personal injury action that was brought against hospital and hospital's employee, although hospital provided pilot with helicopter; pilot was paid by company, and methods and details of each flight were not left up to hospital. Code 1976, § 42-1-540.

[10] Workers' Compensation 413 ⚡205

413 Workers' Compensation

413IV Employers Within Acts

413IV(B) Particular Employers

413k202 General and Special Employers; Employers of Lent Employees

413k205 k. Liability of Special Employer. Most Cited Cases

Under the borrowed-servant doctrine, when a general employer lends an employee to a special employer, that special employer is liable for workers' compensation if: (1) there is a contract of hire between the employee and the special employer, (2) the work being done by the employee is essentially that of the special employer, and (3) the special employer has the right to control the details of the employee's work.

[11] Workers' Compensation 413 ⚡208

413 Workers' Compensation

413IV Employers Within Acts

413IV(B) Particular Employers

413k202 General and Special Employers; Employers of Lent Employees

413k208 k. Power of Direction and Control. Most Cited Cases

When determining whether a special employer has the right to control the details of an employee's work, as would support liability of special employer for workers' compensation benefits under borrowed-servant doctrine, courts consider the following four factors: (1) direct evidence of the right to, or exercise of, control, (2) method of payment, (3) furnishings of equipment, and (4) right to fire.

****440** Charles E. Carpenter, Jr., George C. Beighley, S. Elizabeth Brosnan and Drew Hamilton Butler, all of Columbia, for Appellants.

John S. Nichols and Robert B. Ransom, both of Columbia, for Respondents.

HEARN, C.J.:

***170** This is an appeal from the order of the circuit court, finding John E. Cooke was not a statutory employee of Palmetto Health Alliance (the Hospital) when he was injured. Because of this ruling, the circuit court found Cooke's negligence action and his wife's loss of consortium action were not barred by the exclusive remedy provision of the Workers' Compensation Act. We affirm.

FACTS

Cooke was employed as a pilot for Petroleum Helicopter, Inc., which contracted with the Hospital to transport critically ***171** injured patients to the

emergency room. On December 13, 1999, Cooke tripped and fell over a metal rod that Latisha Corley, an employee of the Hospital, allegedly used to prop open a door at the Hospital. Because Cooke's injury occurred while in the course of his employment with Petroleum Helicopter, Cooke filed for and received workers' compensation benefits.

In addition to his workers' compensation claim, Cooke and his wife, Barbara, filed a complaint against the Hospital, alleging negligence and loss of consortium. After the court ruled that the Hospital could not be sued for punitive damages because of its status as a charitable organization, the Cookes amended their complaint to add Latisha Corley individually, alleging her method of propping open the door amounted to gross negligence.

In their answer, the Hospital and Corley (collectively Appellants) asserted, among other things, that Cooke was either the Hospital's statutory employee or borrowed servant at the time of the accident, and therefore, the exclusive remedy provision of the Workers' Compensation Act served as a complete bar ****441** to the Cookes' tort action.FN1 After filing their answer, Appellants notified the Cookes of their intent to seek summary judgment. However, before the summary judgment motion was heard, Appellants, with the consent of the Cookes, made a motion for a hearing on the merits to determine whether "the exclusive jurisdiction and exclusive remedy" was with the workers' compensation commission or with the circuit court.

FN1. Section 42-1-540 of the South Carolina Code (1985) provides that workers' compensation is the exclusive remedy against an employer for an employee's work related accident.

At the hearing, the circuit court judge characterized the action before her as a "motion hearing" on "jurisdictional issues." The Appellants' attorney did not agree with the judge's characterization and said: "Your honor, this [is] not a motion. It was originally a motion for summary judgment. We're here today on the merits of whether ... Mr. Cooke quali-

fies as a statutory employee of the hospital; and, therefore, barred under workmen's (sic) compensation." The attorney for the Cookes added: "We're here today to decide the merits of that. It's a question of law anyway, so it would be ***172** for your decision. But we decided to tee this issue up before we go further with the case, since this issue may decide the-will obviously decide the future course of the case." After hearing those explanations, the circuit court judge stated: "Well, that's why it seems to come up as a motion to dismiss the case ... I didn't consider it to be a hearing on the merits where there would be testimony from an individual who would provide information about who his employer was and the contract, and all that information."

The hearing then proceeded, and although there were no live witnesses, both parties submitted deposition testimony in support of their respective positions. The Appellants argued that Cooke was a statutory employee because helicopter transport allows paramedics to reach critically injured patients more quickly than other forms of transportation, and therefore, helicopter service is essential to the Hospital's business of saving lives. The Appellants further argued that Cooke was a borrowed servant of the Hospital because there was a contract for hire, the work Cooke performed benefited the Hospital, and the Hospital had control over Cooke. To illustrate that control, the Appellants' attorney pointed out that Cooke had a uniform and identification tag issued by the Hospital, and the Hospital told Cooke where to pick up and deliver patients.

The Cookes' attorney argued Cooke was not a statutory employee because the Hospital was not in the business of transporting patients, the helicopter service was only a miniscule part of the overall business of the Hospital, and the Hospital and Petroleum Helicopter entered a contract in which they agreed that pilots were not employees of the Hospital. In regards to the Hospital's borrowed servant argument, the Cookes' attorney pointed out that the Hospital does not decide "if or when the helicopters ever fly," nor does the Hospital have any say in who Petroleum Helicopters hires as pilots.

After hearing arguments, the circuit court judge issued a written order, finding Cooke was not a statutory employee or borrowed servant of the Hospital. In her order, the judge characterized the action as “a motion to dismiss for lack of subject matter jurisdiction,” and the last sentence of her order *173 denied “Defendant's Motion to Dismiss.” This appeal followed.

STANDARD OF REVIEW

[1][2] “The determination of whether a worker is a statutory employee is jurisdictional and therefore the question on appeal is one of law.” *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) (citing *Glass v. Dow Chemical Co.*, 325 S.C. 198, 482 S.E.2d 49 (1997)). Thus, the appellate court reviews the entire record and decides the jurisdictional facts in accord with the preponderance of the evidence. *Id.*

LAW/ANALYSIS

The Appellants argue the circuit court erred by failing to find Cooke was either a statutory employee or borrowed servant of the Hospital. The Cookes argue, initially, that the order of the circuit court is not immediately appealable. Thus, before delving**442 into the merits of the Appellants' arguments, we first address the threshold issue of appealability.

I. Appealability

[3][4][5] An order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. *Deskins v. Boltin*, 319 S.C. 356, 461 S.E.2d 395 (1995); *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392 (1995), *overruled on other grounds by Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). However, the issue before the circuit court was not brought via a motion to dismiss; rather, both parties consented to have a non-jury hearing on the merits of the Hospital's exclusivity defense. Furthermore, pursuant to *Sabb v. South Carolina State University*, the exclusivity provision of the Workers' Compensation Act does not involve subject matter jurisdiction. 350

S.C. at 423, 567 S.E.2d at 234.

Here, the circuit court held a hearing to determine the merits of the Hospital's exclusivity defense. The circuit court rejected this defense, but the merits of the Cookes' action has yet to be determined. Thus, the circuit court's order is interlocutory.

*174 [6] For an interlocutory order to be appealable, the order must “involve the merits.” S.C.Code Ann. § 14-3-330 (1985). To involve the merits, an order “‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense....’” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)). Here, the circuit court weighed the evidence and concluded that the exclusivity provision did not apply because Cooke was neither a statutory employee nor a borrowed servant of the Hospital. In so holding, the circuit court “finally determined a substantial matter forming a part of the Hospital's defense,” and thus, the order is appealable.

II. Statutory Employee

[7] On the merits, the Appellants first argue the trial court erred in failing to find Cooke was a statutory employee of the Hospital. We disagree.

[8] To qualify as a statutory employee under the Workers' Compensation Act, an individual must be engaged in an activity that “is a part of [the employer's] trade, business or occupation.” S.C.Code Ann. § 42-1-400 (1985). A particular activity is part of the putative employer's “trade, business or occupation” if it “(1) is an important part of the [employer's] business or trade; (2) is a necessary, essential, and integral part of the [employer's] business; or (3) has previously been performed by the [employer's] employees.” *Olmstead v. Shakespeare*, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003).

We agree with the circuit court's determination that none of these criteria is met. First, as is apparent from its articles of incorporation, the Hospital is in

the business of providing health care, not transportation.^{FN2} While air transportation of patients helps facilitate the Hospital's treatment of critically injured patients, that alone does not make transportation an important or essential part of the Hospital's general business. See *Abbott v. The Limited*, 338 S.C. 161, 163-64, 526 S.E.2d *175 513, 514 (2000) (holding that a truck driver who delivered goods to a clothing store was not a statutory employee of the store because, even though it was important for the store to receive those goods, the store was in the business of retail sales not transportation). Second, helicopter service is not "necessary, essential, or integral" to the Hospital's operation because less than one percent of the Hospital's patients use the service and the Hospital's emergency room services do not cease when the helicopter cannot fly. Finally, the Hospital did not have an FAA certificate and has never directly employed helicopter pilots. Thus, the preponderance of the evidence supports the circuit court's determination that Cooke was not a statutory employee of the Hospital.

FN2. According to the Hospital's articles of incorporation, its corporate purpose is to "provid[e] hospital facilities and health care services for inpatient medical care of the sick and injured."

II. Borrowed Servant

[9] The Hospital next argues the circuit court erred in failing to find Cooke was a borrowed servant. We disagree.

****443** [10] Under the borrowed servant doctrine, when a general employer lends an employee to a special employer, that special employer is liable for workers' compensation if: (1) there is a contract of hire between the employee and the special employer; (2) the work being done by the employee is essentially that of the special employer; and (3) the special employer has the right to control the details of the employee's work. *Eaddy v. A.J. Metler Hauling & Rigging Co.*, 284 S.C. 270, 272, 325 S.E.2d 581, 582-83 (Ct.App.1985). While the circuit court found that the first two prongs of the borrowed ser-

vant doctrine were met, it found the Hospital did not control the details of Cooke's work, and therefore, the third prong was not satisfied.

[11] When determining whether a special employer has the right to control the details of an employee's work, courts consider the following four factors: "(1) direct evidence of the right to, or exercise of, control; (2) method of payment; (3) furnishings of equipment; and (4) right to fire." *Chavis v. Watkins*, 256 S.C. 30, 33, 180 S.E.2d 648, 649 (1971). Although the hospital provided Cooke with a helicopter, Cooke was paid by Petroleum Helicopters, which was also charged with hiring (and presumably firing) its pilots. Furthermore, pursuant to the contract between the Hospital and Petroleum *176 Helicopters, "the methods and details" of each flight were not left up to the Hospital. Thus, we agree with the circuit court's determination that Cooke was not the Hospital's borrowed servant.

CONCLUSION

Based on the foregoing, we find Cooke is neither a statutory employee nor a borrowed servant of the Hospital. Accordingly, the circuit court's order resolving the merits of the Hospital's exclusivity defense is

AFFIRMED.

STILWELL and KITTREDGE, JJ., concur.
S.C.App.,2005.

Cooke v. Palmetto Health Alliance
367 S.C. 167, 624 S.E.2d 439

END OF DOCUMENT