

SUPREME COURT OF LOUISIANA

Moreau v. Moreau's Material Yard, LLC

98 So. 3d 297 (La. 2012) · Decided September 21, 2012

SUMMARY

The Louisiana Supreme Court considered whether an employee’s surviving spouse could pursue a tort action against the employer based on alleged unsafe working conditions and inadequate safety equipment. The court held that the allegations did not establish an intentional act or substantial certainty of injury sufficient to overcome workers’ compensation exclusivity, reversed the district court, and granted summary judgment for the employer.

CASE DETAILS

COURT	Supreme Court of Louisiana
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Louisiana
DECIDED	September 21, 2012
DISPOSITION	reversed
PROCEDURAL POSTURE	The defendant sought supervisory review of the district court's denial of its motion for summary judgment asserting that the plaintiff's exclusive remedy was workers' compensation. The court of appeal denied supervisory writs, and the Louisiana Supreme Court granted the defendant's application.
PRECEDENTIAL VALUE	Published Louisiana Supreme Court opinion; precedential
PARTIES	Moreau v. Moreau's Material Yard, LLC

TOPICS

workers compensation

summary judgment

wrongful death

personal injury

appellate procedure

PRACTICE AREAS

workers' compensation

tort law

employment law

civil procedure

QUESTIONS PRESENTED

1. Whether the plaintiff sufficiently alleged an intentional act under La. R.S. 28:1032(B) to avoid the workers' compensation exclusive-remedy provision.

2. Whether the employer was entitled to summary judgment because unsafe working conditions, inadequate safety equipment, and knowledge of risk did not establish that the injury was substantially certain to occur.

HOLDINGS

1. An intentional act requires either a conscious desire to produce the physical result or knowledge that the result is substantially certain to follow. Allegations that an employer required work under unsafe conditions and failed to provide safety equipment, without facts showing that injury was inevitable or incapable of failing to occur, do not satisfy the substantial-certainty requirement.

KEY QUOTATIONS

“ ‘Substantially certain to follow’ requires more than a reasonable probability that an injury will occur and ‘certain’ has been defined to mean ‘inevitable’ or ‘incapable of failing’ ” (98 So. 3d at 297)

“Accepting plaintiffs allegations as true, we do not find the accident was substantially certain to occur.” (98 So. 3d at 297)

FACTUAL BACKGROUND

The plaintiff alleged that her husband's employer required him to work under unsafe conditions and failed to provide necessary safety equipment. She asserted that his injuries and death were substantially certain to follow from the employer's conduct, thereby satisfying the intentional-act exception to workers' compensation exclusivity. The court held that, even accepting those allegations as true, the accident was not substantially certain to occur.

PROCEDURAL HISTORY

The plaintiff sued her husband's employer for allegedly failing to follow proper safety procedures, resulting in his death. The district court denied the employer's motion for summary judgment, and the court of appeal denied supervisory writs. The Louisiana Supreme Court granted the writ, reversed the district court, and rendered summary judgment for the employer.

DISPOSITION

reversed

CASES CITED

- Bazley v. Tortorich, 397 So. 2d 475 (La. 1981)
- Reeves v. Structural Preservation Systems, 731 So. 2d 208 (La. 1999)
- Jasmin v. HNV Central Riverfront Corp., 642 So. 2d 311 (La. App. 4 Cir. 1994)
- Armstead v. Schwegmann Giant Super Markets, Inc., 618 So. 2d 1140 (La. App. 4 Cir. 1993), writ denied, 629 So. 2d 347 (La. 1993)
- Tapia v. Schwegmann Giant Supermarkets, Inc., 590 So. 2d 806 (La. App. 4 Cir. 1991)

- *Simoneaux v. Excel Group, LLC*, 936 So. 2d 1246 (La. 2006)

OPINION

PER CURIAM.

PER CURIAM. | plaintiff filed suit against her husband’s employer, alleging its failure to adhere to proper safety procedures which resulted in his death. Defendant moved for summary judgment, alleging plaintiffs exclusive remedy was in workers’ compensation, as she was unable to show an intentional act on its part.

The district court denied summary judgment, and the court of appeal denied supervisory writs. This application followed. To recover in tort against defendant under La.R.S. 28:1032(B), plaintiff must prove decedent’s injury resulted from an “intentional act.” In *Bazley v. Tortorich*, 397 So.2d 475 (La.1981), we explained an intentional act requires the actor to either (1) consciously desire the physical result of his act, whatever the likelihood of that result happening from his conduct; or (2) know that the result is substantially certain to follow from his conduct, whatever his desire may be as to that result.

In the instant case, plaintiff does not allege defendant consciously desired to cause harm to decedent. Rather, she asserts decedent’s injuries were substantially certain to follow from defendant’s conduct. In *Reeves v. Structural Preservation Systems*, 98-1795 at pp. 9-10 (La.3/12/99), 731 So.2d 208, 213, we discussed the “substantial certainty” requirement as follows: | ¿Believing that someone may, or even probably will, eventually get hurt if a workplace practice is continued does not rise to the level of an intentional act, but instead falls within the range of negligent acts that are covered by workers’ compensation. * * * “ ‘Substantially certain to follow’ requires more than a reasonable probability that an injury will occur and ‘certain’ has been defined to mean ‘inevitable’ or ‘incapable of failing’ ” *Jasmin v. HNV Cent.*

Riverfront Corp., supra [642 So.2d 311] at 312 [La.App. 4 Cir.1994]. “[A]n employer’s mere knowledge that a machine is dangerous and that its use creates a high probability that someone will eventually be injured is not sufficient to meet the ‘substantial certainty’ requirement.” *Armstead v. Schwegmann Giant Super Markets, Inc.*, 618 So.2d 1140, 1142 (La.App.

4 Cir.1993), writ denied, 629 So.2d 347 (La.1993). “Further, mere knowledge and appreciation of a risk does not constitute intent, nor does reckless or wanton conduct by an employer constitute intentional wrongdoing.” *Id.* (citing *Tapia v. Schwegmann Giant Supermarkets, Inc.*, 590 So.2d 806, 807-808 (La.App. 4 Cir.1991)).

In the instant case, plaintiff alleges defendant required decedent to work under unsafe conditions, and failed to provide necessary safety equipment. Accepting plaintiffs allegations as true, we do not find the accident was substantially certain to occur.

As we explained in *Simoneaux v. Excel Group, LLC*, 06-1050 at p. 3 (La.9/1/06), 936 So.2d 1246, 1248, an employer's actions in providing poor working conditions "may have been negligent or even grossly negligent, but they were not intentional." Accordingly, the writ is granted.

The judgment of the district court is reversed, and summary judgment is granted in favor of defendant. JOHNSON, J., dissents.