

SUPREME COURT OF VIRGINIA

Vaughan's Landscaping & Maintenance v. Dodson

262 Va. 270 (2001) · No. Record No. 001740 · Decided June 8, 2001

SUMMARY

The Supreme Court of Virginia held that a worker’s injuries sustained while being transported home by his employer arose out of and in the course of employment. The court rejected arguments that the worker’s intoxication and an intervening stop to drink and play horseshoes severed the employment connection, emphasizing that the employer resumed transporting the worker pursuant to the employment-related transportation arrangement.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Senior Justice Henry H. Whiting; Chief Justice Carrico; Justice Lacy; Justice Hassell; Justice Keenan; Justice Koontz; Justice Kinser; Senior Justice Whiting
JURISDICTION	Virginia
DECIDED	June 8, 2001
DOCKET	Record No. 001740
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Court of Appeals of Virginia in a workers' compensation case.
STANDARD OF REVIEW	The Commission's factual findings are not reviewed unless unsupported by credible evidence. The Supreme Court upheld the Commission's factual finding that Vaughan was acting as Dodson's employer when transporting him.
PRECEDENTIAL VALUE	Published opinion with significant precedential value
PARTIES	Vaughan's Landscaping & Maintenance, David Vaughan, Insurance company v. Timothy Jason Dodson

TOPICS

- workers compensation
- employment law

PRACTICE AREAS

workers' compensation

employment law

QUESTIONS PRESENTED

1. Whether Dodson's injury arose out of and in the course of his employment when his employer transported him after work following a period of drinking and pitching horseshoes.
2. Whether Dodson's severe intoxication constituted such an abandonment of employment or deviation from the employment-related purpose of the trip that the injury was not compensable.

HOLDINGS

1. An injury sustained while an employer transports an employee to the employee's requested destination is compensable when the transportation is part of the employer's agreement to provide transportation to and from work.
2. The principle that an employee's advanced intoxication may constitute abandonment of employment did not apply because Vaughan did not expect Dodson to perform additional work after the day's work was completed. The drinking and horseshoes stop did not defeat compensability because the case concerned the employer's resumption of transportation to Luray, not an employee's deviation during the transportation itself.

KEY QUOTATIONS

"If an employer furnishes an employee transportation to and from work, injuries that occur during such transportation are compensable as arising out of and in the course of employment." (at 4)

"In taking Dodson to Luray, Vaughan was fulfilling his agreement as Dodson's employer to provide transportation to and from work." (at 6)

"Accordingly, we hold that Dodson's injuries arose out of and in the course of his employment and that the Commission's award of benefits should be upheld." (at 6)

FACTUAL BACKGROUND

Dodson, a manual laborer for Vaughan's Landscaping & Maintenance, completed lawn-mowing work with Vaughan on June 24, 1995. After work, Vaughan drove Dodson in the employer's truck toward Page County, stopped to pitch horseshoes and drink alcohol, and then resumed transporting Dodson to Luray at Dodson's request. During the resumed trip, Vaughan looked back at a bottle Dodson had thrown from the truck, causing the truck to strike a tree and injure Dodson's arm.

PROCEDURAL HISTORY

A deputy commissioner denied Dodson workers' compensation benefits, finding that his advanced intoxication constituted abandonment of his employment. The Virginia Workers' Compensation Commission reversed and awarded benefits. A panel of the Court of Appeals reversed, but on rehearing en banc the Court of Appeals

affirmed the Commission without an opinion by an evenly divided court. The Supreme Court of Virginia granted Vaughan's appeal and affirmed.

DISPOSITION

affirmed

CASES CITED

- American Safety Razor Co. v. Hunter, 2 Va. App. 258, 261, 343 S.E.2d 461, 463 (1986)
- Provident Life and Accident Insurance Company v. Barnard, 236 Va. 41, 45, 372 S.E.2d 369, 371 (1988)
- Virginia Electric and Power Co. v. Kremposky, 227 Va. 265, 269, 315 S.E.2d 231, 233 (1984)
- Taylor v. Robertson Chevrolet Co., 177 Va. 289, 295, 13 S.E.2d 326, 329 (1941)
- Vaughan's Landscaping & Maintenance v. Dodson, 30 Va. App. 135, 141, 515 S.E.2d 800, 802 (1999)
- Dodson v. Vaughan's Landscaping & Maintenance, 32 Va. App. 667, 667-68, 529 S.E.2d 854, 854-55 (2000)

OPINION

WHITING, J.

Present: Carrico, C.J., Lacy, Hassell, Keenan, Koontz, and Kinser, JJ., and Whiting, S.J. VAUGHAN'S LANDSCAPING & MAINTENANCE, ET AL. OPINION BY SENIOR JUSTICE HENRY H. WHITING v. Record No. 001740 June 8, 2001 TIMOTHY JASON DODSON FROM THE COURT OF APPEALS OF VIRGINIA In this workers' compensation case, we consider whether the worker's injuries arose out of and in the course of his employment.

The following evidence was presented by the worker and his employer at a hearing before a deputy commissioner of the Virginia Workers' Compensation Commission (the Commission). Timothy Jason Dodson (Dodson), a manual laborer who was 19 years old at the time of his injuries, worked for David Vaughan, the owner of Vaughan's Landscaping & Maintenance (Vaughan).

Dodson, a passenger in the employer's pickup truck, was injured on Saturday, June 24, 1995, when the truck, driven by Vaughan, sideswiped a tree. The two men mowed lawns on the morning of the accident. When they completed the last job between 1:00 and 1:30 p.m., Vaughan drove his truck and trailer, loaded with lawn maintenance equipment, to Bentonville where he purchased beer and wine.

While the two men proceeded toward Page County where both lived, they began drinking Vaughan's beer and wine. As they were driving, they noticed friends pitching horseshoes in a yard beside the road. The two men stopped and spent some time there pitching horseshoes and continuing to drink alcohol. While there, one of the owners of the property talked to Vaughan about doing some yard work in the future.

Vaughan testified that when they left this location, Dodson was "[p]retty drunk." Dodson admitted that he was drunk and that probably drinking a little more alcohol would have caused him to "pass out." While Vaughan was driving toward Page County on what he described as a one-lane gravel road, he "took [his] eyes off the road" to glance back at a bottle that Dodson had thrown out the window.

According to Vaughan, this "caused me to get off the road... [j]ust enough that the truck skinned down the side of the tree." When the truck "skinned" the tree, Dodson's arm was injured. Dodson filed a claim for workers' compensation benefits with the Commission, which Vaughan and his insurance company contested.

After a hearing, the deputy commissioner, citing *American Safety Razor Co. v. Hunter*, 2 Va. App. 258, 261, 343 S.E.2d 461, 463 (1986), denied the claim on the ground that Dodson had abandoned his employment by reaching an advanced 2 stage of intoxication that rendered him incapable of engaging in his work-related duties.

On Dodson's appeal, the Commission reversed the deputy commissioner's decision and awarded Dodson benefits. The Commission ruled that the principle set forth in *American Safety Razor Co.* was inapplicable because Vaughan had obviously encouraged and condoned Dodson's conduct by illegally providing the alcohol and facilitating its consumption by the then under- age claimant.

For those reasons, the Commission concluded that Vaughan "will not now be heard to assert the claimant's intoxication as a defense to his claim for benefits." On Vaughan's appeal, a panel of the Court of Appeals reversed the decision of the Commission because the Court concluded that Dodson's injury did not occur in the course of his employment and was therefore not compensable.

The Court reasoned that Dodson's self-induced, severe intoxication was unrelated to any work-related duty or function, and that it rendered him incapable of performing his job duties of operating yard maintenance equipment and other strenuous activities. *Vaughan's Landscaping & Maintenance v. Dodson*, 30 Va. App. 135, 141, 515 S.E.2d 800, 802 (1999). Upon a rehearing en banc, the decision of the Commission was affirmed without an opinion by an evenly divided Court, the panel's opinion was withdrawn, and its mandate was vacated.

3 *Dodson v. Vaughan's Landscaping & Maintenance*, 32 Va. App. 667, 667-68, 529 S.E.2d 854, 854-55 (2000). Because the case has significant precedential value, see Code § 17.1-410, we granted an appeal to Vaughan. Vaughan contends that Dodson's severe level of intoxication rendered him incapable of performing his duties and, therefore, removed him from the course of his employment under the principle articulated in *American Safety Razor*, 2 Va. App. at 261, 343 S.E.2d at 463.

The evidence indicates, however, that Vaughan did not expect Dodson to work any more that day after finishing the job and starting back to Page County. Under these circumstances, we do not

think the principle articulated in *American Safety Razor* is applicable. Hence, we reject this contention.

Here, the evidence was that Dodson's injuries were incurred while Vaughan was taking him to Luray, which is in Page County, at Dodson's request. The evidence also showed that when Dodson finished his work, Vaughan usually returned Dodson to Dodson's home after work.

However, Vaughan sometimes took Dodson to Luray when Dodson requested, as he had on the day of his injuries. If an employer furnishes an employee transportation to and from work, injuries that occur during such transportation are compensable as arising out of and in the course of 4 employment. *Provident Life and Accident Insurance Company v. Barnard*, 236 Va. 41, 45, 372 S.E.2d 369, 371 (1988).

Vaughan recognizes that this accident would normally be considered to have occurred in the course of Dodson's employment. Nevertheless, Vaughan argues that the accident did not arise out of and in the course of Dodson's employment for two reasons.

First, Vaughan contends that when he was driving Dodson to Luray, he was not doing so as Dodson's employer but as his friend after "they had opted to get drunk after work, an activity that was in no way connected to the employment."

We disagree. The Commission made a factual finding that Vaughan discussed future business while they were pitching horseshoes with his friends and that Dodson was under Vaughan's control during the trip to Luray in Vaughan's truck.

The Commission's conclusion that the accident occurred in the course and scope of Dodson's employment implicitly incorporated a factual finding that Vaughan was acting as Dodson's employer when he resumed the trip to Luray.

We do not review the Commission's factual findings unless they are unsupported by credible evidence. See *Virginia Electric and Power Co. v. Kremposky*, 227 Va. 265, 269, 315 S.E.2d 231, 233 (1984). In this case, we cannot say that this evidence was not credible or was insufficient to support 5 the Commission's implied finding that Vaughan was taking Dodson to Luray in his capacity as Dodson's employer.

Vaughan's second reason why the accident did not occur in the course of employment is that the period of drinking and pitching horseshoes was such a deviation "from the business purpose of the ride home, that it effectively broke the nexus to the employment before the return trip home was resumed."

In support of this argument, Vaughan cites cases stating that if an employee so materially deviates from the employment-related purposes of his trip as to constitute a "frolic of his own," any

accident occurring at that time is not considered to have occurred in the course of employment. See, e.g., *Taylor v. Robertson Chevrolet Co.*, 177 Va. 289, 295, 13 S.E.2d 326, 329 (1941).

Here, however, we are not considering an employee's deviation, but whether the employer's resumption of the trip to transport Dodson to the location of his choice was a trip in the course of his employment. In taking Dodson to Luray, Vaughan was fulfilling his agreement as Dodson's employer to provide transportation to and from work.

Accordingly, we hold that Dodson's injuries arose out of and in the course of his employment and that the Commission's award of benefits should be upheld. Therefore, the judgment of the Court of Appeals will be Affirmed. 7