

SUPREME COURT OF ARKANSAS

Carter v. Georgia-Pacific Resins, Inc., 368 Ark. 19

242 S.W.3d 616 (2006) · No. No. 05-1250 · Decided November 9, 2006

SUMMARY

The Supreme Court of Arkansas held that the circuit court lacked jurisdiction to determine whether asbestos-related employee injuries were covered by the Arkansas Workers' Compensation Act. The Workers' Compensation Commission had exclusive original jurisdiction to make that determination, and the appeal was dismissed with leave for the parties to proceed before the Commission.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Jim Hannah, Chief Justice; Roger D. Rowe, Special Justice
JURISDICTION	Arkansas
DECIDED	November 9, 2006
DOCKET	No. 05-1250
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs appealed an order dismissing their claims against Georgia-Pacific Resins, Inc. under the exclusive-remedy provision of the Arkansas Workers' Compensation Act and dismissing negligent-infliction-of-emotional-distress claims. The circuit court certified the dismissals as final under Arkansas Rule of Civil Procedure 54(b).
STANDARD OF REVIEW	De novo review of the circuit court's jurisdiction; the Workers' Compensation Commission has exclusive original jurisdiction to determine the facts establishing coverage under the Workers' Compensation Act unless the facts are so one-sided that the issue is purely a matter of law.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Cary Lee Carter and Shelley Carter, individually and on behalf of Brett Carter, Bradley Slade Cheek and Tina Michelle Cheek, individually and on behalf of Hunter Slade Cheek, Raymond T. Cheek and Cynthia Gail Cheek, individually and on behalf of Sarah Elizabeth Cheek, Joseph Raymond Cheek, and Stephanie Renee Cheek, Jesse Lee Cooke and Debra Denise Cooke, individually and on behalf of Jessica

Denise Cooke and Draylon O'Bryan Cooke, Mark Wayne Higginbotham and Tonya Higginbotham, individually and on behalf of Marcus Blake Higginbotham and Chase Higginbotham, James Woods and Tammie S. Woods, individually and on behalf of Tara L. Woods and Joshua C. Woods, Armenda Morrison Mason, Thomas Ray Turner v. Georgia-Pacific Resins, Inc., Georgia-Pacific Corporation, Chemical Division, Teadit N.A., Inc., Conventional Sealing Materials, Inc., Teadit Industria E Comercio Ltda, Proamianto Comercio E Exportaoo, S.A., Monroe Rubber & Gasket Co.

TOPICS

workers compensation

administrative law

subject matter jurisdiction

appellate procedure

civil procedure

PRACTICE AREAS

workers compensation

administrative law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the circuit court had jurisdiction to determine whether the employees' alleged asbestos-related injuries were covered by the Arkansas Workers' Compensation Act.
2. Whether the appeal could be decided on the merits after the circuit court made the coverage determination rather than submitting the jurisdictional facts to the Workers' Compensation Commission.

HOLDINGS

1. The circuit court lacked jurisdiction to determine whether the employees' injuries were covered under the Workers' Compensation Act because the Workers' Compensation Commission has exclusive original jurisdiction to determine the facts establishing coverage, absent facts so one-sided that coverage is a matter of law.
2. Constitutional issues concerning the Workers' Compensation Act should first be raised before the administrative law judge or Workers' Compensation Commission, even though the Commission may lack authority to declare statutes unconstitutional.

KEY QUOTATIONS

“the commission has exclusive, original jurisdiction to determine the facts that establish jurisdiction, unless the facts are so one-sided that the issue is no longer one of fact but one of law, such as an intentional tort.” (618)

“Based on the foregoing, we, hold that the circuit court lacked jurisdiction to determine whether the employees' injuries were covered under our Workers' Compensation Act.” (619)

FACTUAL BACKGROUND

Current and former employees of Georgia-Pacific Resins, Inc. alleged that they were exposed to asbestos while working at the company's plant in Crossett, Arkansas. Spouses, children, and other household members asserted derivative claims, and the plaintiffs also sued distributors of asbestos-containing gasket materials used at the plant. The factual record was not so one-sided as to establish as a matter of law that the Workers' Compensation Act did not apply.

PROCEDURAL HISTORY

The plaintiffs filed asbestos-exposure claims in Ashley County Circuit Court against their employer, distributors of asbestos-containing gasket materials, and other defendants. The circuit court dismissed all employee claims against Georgia-Pacific and derivative claims on the ground that they arose out of and in the course of employment and were barred by the Workers' Compensation Act, and also dismissed negligent-infliction-of-emotional-distress claims. After Rule 54(b) certification, the plaintiffs appealed; the Supreme Court of Arkansas dismissed the appeal for lack of circuit-court jurisdiction to decide whether the Workers' Compensation Act applied.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The parties may pursue a determination of Workers' Compensation Act coverage before the Workers' Compensation Commission. The dismissal applies only to the issues certified under Rule 54(b); the remaining circuit-court claims were not before the Supreme Court.

CASES CITED

- VanWagoner v. Beverly Enterprises, 334 Ark. 12, 970 S.W.2d 810 (1998)
- Angle v. Alexander, 328 Ark. 714, 945 S.W.2d 933 (1997)
- Miller v. Ensco, Inc., 286 Ark. 458, 692 S.W.2d 615 (1985)
- Stocks v. Affiliated Foods Southwest, Inc., 363 Ark. 235, 213 S.W.3d 3 (2005)
- Merez v. Squire Court Ltd. P'ship, 353 Ark. 174, 114 S.W.3d 184 (2003)
- Johnson v. Union Pac. R.R., 352 Ark. 534, 104 S.W.3d 745 (2003)
- WENCO Franchise Mgmt., Inc. v. Chamness, 341 Ark. 86, 13 S.W.3d 903 (2000)
- Ark. Health Servs. Agency v. Desiderata, Inc., 331 Ark. 144, 958 S.W.2d 7 (1998)
- Hamilton v. Jeffrey Stone Co., 6 Ark. App. 333, 641 S.W.2d 723 (1982)
- Moses v. Hanna's Candle Co., 366 Ark. 233, 234 S.W.3d 872 (2006)

OPINION

HANNAH, J.

242 S.W.3d 616 (2006) Cary Lee CARTER and Shelley Carter, Husband and Wife, individually, and Cary Lee Carter as the Parent and Natural Guardian of Brett Carter, A Minor Child; Bradley Slade Cheek and Tina Michelle Cheek, Husband and Wife, individually, and Bradley Slade Cheek as the Parent and Natural Guardian of Hunter Slade Cheek, A Minor Child; Raymond T. Cheek and Cynthia Gail Cheek, Husband and Wife, individually, and Raymond T. Cheek as the Parent and Natural Guardian of Sarah Elizabeth Cheek, Joseph Raymond Cheek, and Stephanie Renee Cheek, Minor Children; Jesse Lee Cooke and Debra Denise Cooke, Husband and Wife, individually, and Jesse Lee Cooke as the Parent and Natural Guardian of Jessica Denise Cooke and Draylon O'Bryan Cooke, Minor Children; Mark Wayne.

Higginbotham and Tonya Higginbotham, Husband and Wife, individually, and Mark Wayne Higginbotham as the Parent and Natural Guardian of Marcus Blake Higginbotham and Chase, Higginbotham, Minor Children; James Woods and Tammie S. Woods, Husband and Wife, individually, and James Woods as the Parent and Natural Guardian of Tara L. Woods and Joshua C. Woods, Minor Children; Armenda Morrison Mason; and Thomas Ray Turner, Appellants, v. GEORGIA-PACIFIC RESINS, INC., A Delaware Corporation; Georgia-Pacific Corporation, Chemical Division, A Delaware Corporation; Teadit N.A., Inc., A Texas Corporation; Conventional Sealing Materials, Inc., A Texas *617 Corporation; Teadit Industria E Comercio Ltda, A Brazilian Corporation; Proamianto Comercio E Exportaoo, S.A., A Brazilian Corporation; and Monroe Rubber & Gasket Co., A Louisiana Corporation, Appellees.

No. 05-1250. Supreme Court of Arkansas. November 9, 2006. Richard H. Mays, Heber Springs, Ar, for appellants. Gibson & Hashem, P.L.C., by C.C. Gibson, III, Monticello; Friday, Eldredge & Clark, LLP, by: Frederick S. Urserly and Robert S. Shafer, Little Rock, AR; and Nelson Mullins Riley & Scarborough LLP, by: Richard K. Hines, V and Michelle W. Johnson, Atlanta, GA, for appellees Georgia-Pacific Resins, Inc. and GeorgiaPacific Corporation.

Atchley, Russell, Waldrop & Hlavinka, LL.P., by: Jeffery C. Lewis and J. Dennis Chambers, Texarkana, TX, for appellee Teadit N.A., Inc. JIM HANNAH, Chief Justice. This appeal arises out of the dismissal of claims relating to alleged exposure to asbestos at the workplace.

In a suit filed in the. Ashley County Circuit Court, the plaintiffs-appellants are divided into several separate but related groups. "Plaintiff employees" are current and former employees of appellee GeorgiaPacific Resins, Inc. (G-P) at a plant in Crossett, Arkansas. "Plaintiff family members" are the spouses, children, and other household members of plaintiff employees.

Appellees Teadit, N.A., Inc. and Monroe Rubber & Gasket Co. are distributors of asbestoscontaining gasket materials used by the plaintiff employees in their work. The plaintiffs allege multiple causes of action against multiple parties, some of which are still pending in the circuit court.

However, the circuit court entered an order dismissing (1) all claims of the plaintiff employees against G-P, and all claims of any plaintiff that are derivative of the plaintiff employees' claims, on the basis that the claims arose out of and in the course of employment with G-P, and are barred by the exclusive-remedy provision of the Workers' Compensation Act (WCA), and (2) plaintiffs' claims for negligent infliction of emotional distress.

Subsequently, *618 pursuant to Ark. R. Civ. P. 54(b), the circuit court certified that the dismissals were final for the purposes of appeal. Although several arguments are raised on appeal, we do not reach the merits of the arguments because we must reverse the circuit court for lack of jurisdiction.

Here, the plaintiffs alleged that they were injured due to the plaintiff employees' exposure to asbestos while working at G-P. In response to the plaintiffs' complaint, G-P argued that the Workers' Compensation Commission had exclusive jurisdiction to determine the applicability of the WCA, and that the circuit court did not have jurisdiction to determine jurisdiction.

The circuit court disagreed, concluding that it had jurisdiction. We hold that the circuit court erred. Arkansas Code Annotated section 11-9-105 (Repl.2002) provides in relevant part: (a) The rights and remedies granted to an employee subject to the provisions of this chapter, on account of injury, or death, shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone otherwise entitled to recover damages from the employer....

In *VanWagoner v. Beverly Enterprises*, 334 Ark. 12, 16, 970 S.W.2d 810, 812 (1998), we held: [T]he exclusive remedy of an employee or her representative on account of injury or death arising out of and in the course of her employment is a claim for compensation under § 11-9-105, and... the commission has exclusive, original jurisdiction to determine the facts that establish jurisdiction, unless the facts are so one-sided that the issue is no longer one of fact but one of law, such as an intentional tort.

See *Angle v. Alexander*, 328 Ark. 714, 719, 945 S.W.2d 933 (1997) (citing *Miller v. Ensco, Inc.*, 286 Ark. 458, 461, 692 S.W.2d 615 (1985)) (explaining that, before an employee is free to bring a tort action for damages against an employer, the facts must show that the employer had a "desire" to bring about the consequences of the acts, or that the acts were premeditated with the specific intent to injure the employee).

This rule has been consistently reaffirmed by this court. See *Stocks v. Affiliated Foods Southwest, Inc.*, 363 Ark. 235, 213 S.W.3d 3 (2005); *Merez v. Squire Court Ltd. P'ship*, 353 Ark. 174, 114 S.W.3d 184 (2003); *Johnson v. Union Pac. R.R.*, 352 Ark. 534, 104 S.W.3d 745 (2003); *WENCO Franchise Mgmt., Inc. v. Chamness*, 341 Ark. 86, 13 S.W.3d 903 (2000).

In adopting this rule, we have explained that the Commission has vast expertise in this area, and that the goals of uniformity, speed, and simplicity would best be achieved by granting the

Commission the exclusive, original jurisdiction to determine the applicability of the WCA. See Johnson, 352 Ark. at 541, 104 S.W.3d at 748. See also Stocks, supra, WENCO, supra.

We recognize that this case raises a constitutional issue. Nonetheless, this court has stated that "even though the Workers' Compensation Commission may not have the authority to declare statutes unconstitutional, such constitutional issues should first be raised at the Administrative Law Judge or Commission level because such issues often require an exhaustive analysis that is best accomplished by an adversary proceeding, which can be done only at the hearing level."

Ark. Health Servs. Agency v. Desiderata, Inc., 331 Ark. 144, 148, 958 S.W.2d 7, 8 (1998) (approving the rule adopted by the court of appeals in Hamilton v. Jeffrey Stone Co., 6 Ark.App. 333, 641 S.W.2d 723 (1982)). See also Moses v. Hanna's Candle Co., 366 Ark. 233, 234 S.W.3d 872 (2006). *619 Based on the foregoing, we, hold that the circuit court lacked jurisdiction to determine whether the employees' injuries were covered under our Workers' Compensation Act.

That determination lies exclusively with the Commission, as the facts presented below are not so one-sided as to demonstrate that the WCA does not apply, as a matter of law. See, e.g., Stocks, supra. We dismiss the instant appeal, with leave for the parties to pursue a determination before the Commission.

We wish to emphasize that our ruling applies only to the issues certified pursuant to Ark. R. Civ. P. 54(b); the plaintiffs' remaining claims in the circuit court are not before us at this time. Dismissed. Special Justice ROGER D. ROWE joins. GLAZE, J., not participating.