

SUPREME COURT OF PENNSYLVANIA

John Brown v. George Gaydos, an Individual t/d/b/a Gaydos Construction

Brown v. Gaydos · No. 22 WAP 2024 · Decided February 18, 2026

SUMMARY

The Supreme Court of Pennsylvania considers whether co-employee immunity under Section 72 of the Pennsylvania Workers' Compensation Act requires the allegedly negligent employee to have been acting in furtherance of employment duties when the injury occurred. The Court concludes that summary judgment was improper because a genuine issue of material fact existed regarding whether George Gaydos's alleged acts or omissions occurred while he was in the same employ as John Brown. The Court affirms the Superior Court's order and remands for further proceedings.

OPINION

MUNDY, SALLIE, J.

[J-14-2025] IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT TODD, C.J., DONOHUE, DOUGHERTY, WECHT, MUNDY, BROBSON, McCAFFERY, JJ. JOHN BROWN,; No. 22 WAP 2024 Appellee: Appeal from the Order of the: Superior Court entered December 7,; 2023, at No. 1132 WDA 2021, v.: reversing and remanding the Order: of the Court of Common Pleas: Allegheny County Civil Division GEORGE GAYDOS, AN INDIVIDUAL,; entered April 16, 2021, at No. GD T/D/B/A GAYDOS CONSTRUCTION,; 18-006991.

Appellant: ARGUED: April 8, 2025 OPINION JUSTICE MUNDY DECIDED: FEBRUARY 18, 2026 We granted allowance of appeal to consider whether the Superior Court properly reversed the trial court's grant of summary judgment in favor of Appellant George Gaydos, an individual t/d/b/a Gaydos Construction (Gaydos) based on Section 205 of the Workers' Compensation Act (WCA), 1 77 P.S. § 72, which provides for co-employee immunity as follows: If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission 1 Act of June 2, 1915, P.L.

735, as amended, 77 P.S. § 1-1041.1, 2051-2626. The WCA contains section numbers that are the official citation to the WCA. These section numbers are distinct from the section numbers in Purdon's Pennsylvania Statutes, an unofficial codification of Pennsylvania law. Section 205 of the WCA is a citation to the Act, and 77 P.S. § 72 is a citation to the same section in Purdon's Pennsylvania Statutes.

For clarity, we will refer to Section 205 of the WCA by its Purdon's citation, i.e., "Section 72." occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong, 77 P.S. § 72.

Because we conclude summary judgment was improper due to a genuine issue of material fact regarding whether Gaydos's allegedly negligent acts or omissions occurred while he was in the same employ as Appellee John Brown, we affirm the order of the Superior Court and remand for further proceedings.

I. FACTUAL AND PROCEDURAL HISTORY On September 1, 2016, Brown, while on his first day of employment with American Concrete Solutions, Inc. (ACS), was injured on an ACS job site. Complaint, 5/31/18, at ¶ 6. The accident occurred when Brown attempted to enter a skid loader, a construction vehicle with "the appearance of a small bulldozer.

The operator can only enter the cab, where the controls are located, from the front after stepping over the bucket/shovel." Trial Ct. Op., 7/13/21, at 2 n.1; see also Complaint, 5/31/18, at ¶ 9. As Brown attempted to enter the skid loader, the skid loader's hydraulic arm caught his body, crushing him between the top of the cab and the arm of the bucket, and then Brown dropped to the ground.

Complaint, 5/31/18, at ¶ 10. Brown suffered numerous severe injuries in the accident. *Id.* at ¶¶ 35-38. ACS is owned by Gaydos and his cousin, Mark Raymond, subject to a partnership agreement. Before forming ACS, Gaydos operated a sole proprietorship under the name Gaydos Construction.

For his sole proprietorship, Gaydos had acquired a variety of construction equipment, including the skid loader. After forming ACS, Gaydos continued to individually own and insure the skid loader and other equipment. He and Raymond, who also owned construction equipment, agreed they would provide their individually owned equipment to ACS as needed, and ACS would not own or pay for the use of the equipment.

[J-14-2025] - 2 On the day of Brown's injury, Gaydos had been present at the ACS job site in the morning but left to go pay a vendor on behalf of ACS before Brown arrived. Gaydos was also not present on the ACS job site at the time of Brown's accident involving his skid loader. Brown filed a claim for workers' compensation against ACS, which was not contested, and he received workers' compensation benefits from ACS.

Then, on May 31, 2018, Brown filed a civil action against Gaydos for negligence in, among other acts, maintaining the skid loader and failing to train and supervise the ACS employees operating it. Complaint, 5/31/18, at ¶ 30. Gaydos filed a motion for summary judgment asserting the WCA provided him immunity from civil suit as either Brown's employer² or co-employee.

Brown filed a cross-motion for summary judgment arguing Gaydos was not his employer. The trial court initially denied both motions for summary judgment, but upon reconsideration, granted Gaydos's motion. In its July 13, 2021 opinion, the trial court explained that it found Gaydos was immune under the WCA because he, as an owner of ACS, was Brown's employer, and, alternately, he was Brown's co-employee.

Trial Ct. Op., 7/13/21, at 5. After procedural clarifications, Brown appealed to the Superior Court. In a 6-2 en banc opinion, the Superior Court reversed the trial court and remanded for further proceedings. 3 *Brown v. Gaydos*, 306 A.3d 883, 895 (Pa. Super. 2023) (en banc 2 "The liability of an employer under this act shall be exclusive and in place of any and all other liability to such employees... entitled to damages in any action at law or otherwise on account of any injury or death as defined in section [411(a)]." 77 P.S. § 481.

3 The three-judge panel of the Superior Court that first heard the appeal unanimously concluded there was a genuine issue of material fact whether Gaydos was Brown's employer under Section 481. However, the panel divided on the question of whether there was a genuine issue of material fact on co-employee immunity under Section 72, with the majority affirming the trial court's conclusion that co-employee immunity applied.

The Superior Court granted Brown's request for en banc review of the issue of co-employee immunity. [J-14-2025] - 3 banc). The majority opinion, authored by then-Judge, now-Justice McCaffery, noted that reversal of a grant of summary judgment is warranted only when the trial court commits an error of law or abuse of discretion. Further, the court explained a trial court may grant summary judgment only when, upon viewing the facts and all reasonable inferences in a light most favorable to the non-moving party, the record clearly contains no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.

As relevant background to the co-employee immunity issue, which is the only issue we accepted for review, 4 the Superior Court indicated that the WCA requires employers to pay workers' compensation benefits to employees who are injured at work regardless of negligence, i.e., the "Grand Bargain." *Id.* at 887; see also *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159, 1180-83 (detailing the Grand Bargain underlying the WCA).

The court further opined that "the WCA provides immunity [from civil liability] to a co-employee whose negligent actions caused the claimant's injuries, so long as the injury occurred while the co-employee was 'in the same employ' as the injured claimant." *Brown*, 306 A.3d at 888 (quoting 77 P.S. § 72; citing *Apple v. Reichert*, 278 A.2d 482, 485 (Pa. 1971)).

Additionally, the court found "the term 'co-employee' includes managers, executives, and even those who have an ownership interest in the employer." *Id.* (citing 77 P.S. § 22; *Jadosh v. Goeringer*, 275 A.2d 58, 59-60 (Pa. 1971)). Analyzing Section 72's co-employee immunity

provision, the Superior Court first concluded that, pursuant to this Court's decision in *Apple*, immunity applies only when "at 4 Before addressing the co-employee immunity issue, the Superior Court determined Gaydos was not entitled to summary judgment on the alternative basis that he was immune as Brown's employer.

Brown, 306 A.3d at 890. On this issue, the court explained that, "[i]n light of the fact that Gaydos did not directly employ Brown and did not exert exclusive control over ACS,... there remain[ed] a genuine issue of material fact as to whether Gaydos was Brown's 'master' under the WCA." *Id.* (citing 77 P.S. § 21).

Accordingly, it reversed the trial court order granting summary judgment and remanded for further proceedings. As this issue is not before us, we do not discuss it further. [J-14-2025] - 4 the time of the defendant's negligent act, both parties were not only working for the same employer[], but also performing acts in furtherance of their duties... in a manner approved by their employer[.]" *Id.* at 893.

5 It explained that in *Apple*, the plaintiff and defendant, two teachers employed by the same school district, met their classes to take attendance in one school building and were traveling together in the defendant's car to a second school building when they were involved in a car accident injuring the plaintiff. *Id.* at 892-93 (citing *Apple*, 278 A.2d at 483).

The plaintiff, who received workers' compensation benefits from the school board, subsequently filed a civil action against the defendant. *Id.* at 893. The trial court granted nonsuit in favor of the defendant, finding Section 72's co-employee immunity applied because the parties were acting within the scope and course of their employer's business at the time of the defendant's alleged negligence.

Id. On appeal, this Court rejected the plaintiff's argument that co-employee immunity applied only to acts in the "scope of employment" and did not apply to acts within the "course of employment." *Id.* The *Apple* Court explained the plain language of Section 72 did not draw such a distinction and instead used only the phrase "in the same employ:" [V]iewing the evidence here, we entertain no doubt whatsoever that the injuries in this case were caused while the appellant and appellee were 'in the same employ'.

Both parties were proceeding from one place of employment to another during their working day, acting in furtherance of their 5 Although the Superior Court ultimately relied on *Apple* for this principle, it first discussed its prior decisions in *Bell v. Kater*, 943 A.2d 293 (Pa. Super. 2008), and *Fern v. Ussler*, 630 A.2d 896 (Pa. Super. 1993) (plurality), appeal granted, 652 A.2d 1326 (Pa.

1994) (granting allocatur but no subsequent history of the appeal's outcome). The court explained the *Bell* Court found the defendant waived the Section 72 defense of co- employee immunity, but

nonetheless stated that for Section 72 to apply the negligent act or omission must occur while both employees are acting within the scope and course of their employment duties.

Brown, 306 A.3d at 892. The court also noted that Bell cited Fern for the scope and course of employment language, but the “precedential value of [Fern] is debatable” because it was a plurality decision. *Id.* Despite the limited precedential value of Bell and Fern, the Superior Court noted those cases relied on Apple and proceeded to discuss Apple as summarized herein.

Id. [J-14-2025] - 5 duties at the time, and in a manner approved by their employer. Since the language of the statutory provision sets up a clear and simple test—‘the same employ’—and such words as scope of employment and course of employment are not used, we are not free to speculate that a more restrictive intention was envisioned by the legislature. Apple, 278 A.2d at 484 (emphasis added).

Accordingly, the Superior Court in this case concluded Apple stood for the proposition that Section 72’s co-employee immunity applies when the parties, working for the same employer, were performing acts in furtherance of their duties at the time of the negligent act. Brown, 306 A.3d at 893. Applying Apple to this case, the Superior Court found “there is a genuine issue of material fact as to whether Gaydos was acting within ‘the same employ’ as Brown—that is, acting in furtherance of his duties as an employee/co-owner of ACS and in a manner approved by ACS—at the time of Brown’s injury.” *Id.* The court proceeded to highlight several disputed material facts that it found precluded summary judgment.

First, Gaydos operated a sole proprietorship that independently owned, insured, and performed maintenance on the skid loader. *Id.* In fact, the court explained, Gaydos merely loaned the skid loader to ACS as needed and instructed ACS employees that he was to be its sole operator. *Id.* at 894.

Second, the Superior Court found the record did not support Gaydos’s claim that the skid loader was on the ACS job site the morning of Brown’s injury for that job because Gaydos’s deposition testimony did not specify the purpose for which the skid loader was onsite, and an equally reasonable inference could be drawn that Gaydos did not intend to use the skid loader that day because he left the job site and explained there was other work ACS employees could perform in his absence.

Id. Third, the court emphasized that Brown sued Gaydos based on Gaydos’s personal negligence in maintaining the skid loader, including his failure to warn Brown that the skid loader’s safety mechanisms were not working, and Brown did not sue Gaydos in his capacity as Brown’s employer or co-employee. *Id.* at 894-95.

For these reasons, the Superior Court [J-14-2025] - 6 concluded that whether Gaydos was acting “in the course of [his] performance of duties for the employer[,]’ ACS, is a genuine issue of

material fact” and the trial court erred in granting summary judgment based on Section 72’s co-employee immunity provision. *Id.* at 895 (quoting *Bell v. Kater*, 943 A.2d 293, 298 (Pa.

Super. (2008)). Judge Stabile filed a dissenting opinion, joined by Judge Olson. *Id.* (Stabile, J., dissenting). Contrary to the majority, Judge Stabile opined that the dispositive inquiry under Section 72 was whether Gaydos and Brown were “in the same employ” at the time of the accident. *Id.* (quoting 77 P.S. § 72).

Because he concluded they were, he opined that Gaydos is immune from Brown’s negligence suit under Section 72. *Id.* at 896. To support this position, Judge Stabile relied on the Apple Court’s final sentence that Section 72 protects “all co-employees in all situations where negligent conduct of one employe may cause injury to a fellow employ[.]” *Id.* (quoting *Apple*, 278 A.2d at 485).

As both Brown and Gaydos were acting in furtherance of their duties for ACS, Judge Stabile found this case falls squarely within Section 72 under *Apple*. Additionally, Judge Stabile remarked that all the facts discussed by the Majority had “no bearing on whether Gaydos and Brown were in the same employ under [Section] 72 as construed by *Apple*.” *Id.* at 898.

In his view, “[t]he point is that Brown’s WCA-compensable injury happened at an ACS jobsite when Brown and Gaydos were co-employees of ACS. Section 72 protects all co-employees in such situations.” *Id.* Accordingly, Judge Stabile advocated affirming the trial court’s judgment on co-employee immunity. *Id.* at 899. II. ISSUE AND STANDARD OF REVIEW Gaydos filed a petition for allowance of appeal to this Court and we granted review, limited to the following issue: Where the record is clear that the plaintiff and defendant were employed by the same company and the plaintiff’s injury was compensable under the Worker’s Compensation Act, must the court consider whether the defendant was working in the [J-14-2025] - 7 course of his performance of duties for the employer to determine if the defendant is entitled to immunity as a co- employee?

Brown v. Gaydos, 322 A.3d 1286 (Pa. 2024) (per curiam). As this question arises in the context of a trial court order granting summary judgment, we note “[s]ummary judgment may be entered only when, even after examining the record in the light most favorable to the non-moving party and resolving of all doubts as to the existence of a genuine issue of material fact against the moving party, the moving party is clearly entitled to judgment as a matter of law.” *Pyeritz v. Commonwealth*, 32 A.3d 687, 692 (Pa.

2011). “On review, an appellate court may reverse a grant of summary judgment if there has been an error of law or an abuse of discretion.” *Weaver v. Lancaster Newspapers, Inc.*, 926 A.2d 899, 902-03 (Pa. 2007). “[T]he issue as to whether there are no genuine issues as to any material fact presents a question of law, our standard of review is *de novo*; thus, we need not defer to the determinations made by the lower tribunals.

Our scope of review, to the extent necessary to resolve the legal question before us, is plenary.” *Toy v. Metropolitan Life Ins. Co.*, 928 A.2d 186, 195 n.11 (Pa. 2007). III. CO-EMPLOYEE IMMUNITY UNDER SECTION 72 A. PARTIES’ ARGUMENTS Gaydos’s position is that Section 72 and Apple control because the statute provides immunity to co-employees who are “in the same employ” as the injured worker, and the Apple Court broadly interpreted “in the same employ” as covering all employees employed by the same employer.

Gaydos’s Brief at 13. Gaydos emphasizes that the Apple Court rejected arguments that the co-employee must be acting in the course and scope of their employment with the injured worker. *Id.* at 18. Further, Gaydos notes that the legislature has not amended Section 72 since Apple was decided in 1971, which implicates the doctrine of “legislative acquiescence,” i.e., that legislative inaction following [J-14-2025] - 8 a court’s interpretation of a statute creates a presumption that the court’s interpretation was correct.

Id. at 40. In this case, Gaydos maintains that the undisputed facts showed: (1) Gaydos and Brown were employed by the same employer; and (2) Brown received workers’ compensation benefits as a result of the accident. These two facts alone, in Gaydos’s view, trigger immunity under Section 72 and Apple. *Id.* at 14. Along these lines, Gaydos proceeds to criticize the Superior Court for narrowly interpreting the phrase “in the same employ” and interjecting an additional requirement that the defendant co-employee was acting within the “course and scope of employment” for immunity to apply.

Id. at 29. Gaydos argues the “course and scope” requirement is not delineated in Section 72 and reading it into the statute conflicts with Apple. *Id.* Additionally, Gaydos notes the Apple interpretation of “in the same employ” has been cited in numerous co-employee immunity cases. Gaydos’s Br. at 19-22 (discussing *Gardner v. Erie Ins. Co.*, 722 A.2d 1041 (Pa.

1999); *Ducjai v. Dennis*, 656 A.2d 102 (Pa. 1995); *Evans v. Hostetter*, 293 A.3d 623 (Pa. Super. 2023) (non-precedential); *O’Donnell v. R.M. Shoemaker & Co.*, 816 A.2d 1159 (Pa. Super. 2003); *Albright v. Fagan*, 671 A.2d 760 (Pa. Super. 1996); *Babich v. Pavich*, 411 A.2d 218 (Pa. Super. 1979)).

Here, Gaydos asserts the Superior Court was bound to follow Apple, but the court instead ignored that and imposed additional requirements to trigger immunity, which was error. To reach its result, Gaydos accuses the Superior Court of relying on *Bell* and *Fern*, which he emphasizes are not precedential and conflict with Apple. *Id.* at 24.

For example, Gaydos explains, *Bell* relied on waiver to dismiss the co-employee immunity claim and then summarily held that immunity applies only when the co-employees were acting within the course and scope of their employment. *Id.* at 25. Gaydos suggests that *Bell*’s discussion of the

“course and scope” requirement was dicta because the Bell Court decided the case on waiver grounds.

Id. Further, Gaydos notes Bell’s discussion of the [J-14-2025] - 9 “course and scope” requirement relied on Fern, which was a plurality opinion that is not precedential. Id. at 26. In all, Gaydos argues that Bell and Fern misconstrue and conflict with Apple, reiterating that Apple rejected the argument that establishing course and scope is required for immunity.

Id. at 27. In sum, Gaydos claims the Apple test focuses on the conduct of the workers’ compensation claimant because “[t]he only necessary considerations are whether the plaintiff and defendant were employed by the same employer and whether the injury was compensable.” Id. at 29-30.

In this regard, Gaydos insists that the Superior Court erroneously focused on the conduct of the defendant co-employee. Id. at 30. Accordingly, he asks us to reverse the Superior Court’s judgment and affirm the order of the trial court granting his motion for summary judgment.

In contrast, Brown’s argument highlights Section 72’s language providing immunity to co-employees for “any act or omission occurring while such person was in the same employ” as the injured worker. Id. at 5 (quoting 77 P.S. § 72). Brown claims this plain language alone requires a connection between the defendant co-employee’s negligence and their employment duties to trigger immunity.

Id. Brown refutes Gaydos’s reliance on Apple by noting that the Apple Court interpreted the phrase “in the same employ” within the factual context of both employees acting within the course and scope of their employment when the negligent “act or omission” occurred. Id. at 8-9. Brown asserts Apple did not address whether co-employee immunity applies to acts outside the course and scope of employment because the facts did not necessitate it.

Id. at 11-12. Consequently, Brown advocates reading Apple and Bell to reach the conclusion that the defendant’s conduct must have occurred while performing employment-related duties to obtain immunity from civil suit. [J-14-2025] - 10 In Brown’s reading of Apple, the decision “rested on the assumption that the co- employee’s conduct was intimately tied to the employer’s affairs, leaving no occasion to consider the very question posed here: what if the defendant’s acts or omissions were wholly personal and unrelated to any employment duties?” Brown’s Br. at 10.

Brown claims that the Apple Court’s statement that Section 72 applies “to all co-employees in all situations” was not its holding because the court had already found the defendant was “in the same employ” because she was “acting in furtherance of [her] duties and in a manner approved by [her] employer” at the time of the accident. Id. (quoting Apple, 278 A.2d at 494).

Brown suggests that the “all co-employees in all situations” statement should have read that “co-employees who are furthering the interests of their employer are immune at all times.” Id. at 10-11 (emphasis in original). Stated differently, in Brown’s view, the act or omission that caused the harm must have occurred while the defendant was “in the same employ” such that co-employee immunity does not extend to conduct “completely divorced from workplace duties.” Id. at 11.

6 Brown contends his interpretation is supported by the plain language of Section 72 “when read as [a] whole, clearly and unambiguously establishes that a co-employee seeking immunity must have been actively working in the same employ as the injured worker when that co-employee commits the negligent act or omission.” Id. at 14-15 (emphasis in original). Section 72, according to Brown, contains two requirements for co- employee immunity: “(1) When the act or omission occurs, the person seeking immunity 6 Amicus Pennsylvania Association for Justice (PAJ) argues that Section 72’s immunity applies only when both the injured worker and the co-employee are acting under the employer’s direction and control in the course of employment at the time of the negligent act.

PAJ’s Brief at 18. Addressing Apple, PAJ suggests that its final sentence, “[w]e read the amending Act as clearly phrased to protect all co-employees in all situations where negligent conduct of one employe may cause injury to a fellow employe, provided only that the injury in question is one that is compensable under the Act[,]” is dicta. Id. at 20- 21 (quoting Apple, 278 A.2d at 485).

Because the defendant in Apple was in the course of employment, PAJ believes we should disavow the dicta in Apple in this case. Id. at 23. [J-14-2025] - 11 (2) has to be in the same employ as the person injured.” Id. at 15 (citing Bell, 943 A.2d at 297). Applied to this case, Brown maintains the Superior Court’s decision was correct because “the negligent acts or omissions at issue in this civil action were committed by Gaydos, not when he was in ‘the same employ’ as Brown, i.e., when employed by ACS, but rather [] when he was acting in a personal capacity as the owner of the skid loader, which was not the property of ACS.” Id. (emphasis removed).

Although Brown primarily advocates a plain language reading of Section 72, he also argues that the principles of statutory construction support his interpretation if we were to find the statute ambiguous. Id. at 15.

First, Brown asserts Gaydos’s proposed interpretation leads to an absurd result in that it would grant civil immunity to a co- employee who commits an act or omission that has nothing to do with the parties’ employment and limit the injured worker’s remedy to the WCA. Id. at 16.

To illustrate, Brown proposes a hypothetical: a nurse working a night shift traveling between two hospital buildings to provide care is injured in a car accident with a “nine to five” employee recklessly driving for personal reasons. Id. at 17.

Under Gaydos's reading, Brown claims, the nurse would not be able to bring a civil action against the reckless co-employee even though the co-employee's actions have no connection to his employment, which is an absurd result in Brown's view. *Id.* at 18.

Second, Brown argues Gaydos's interpretation does not give effect to the entirety of Section 72 because his reading would be the same if the phrase for "any act or omission occurring" was removed. *Id.* Because Gaydos's interpretation renders that phrase superfluous, Brown argues it is impermissible. *Id.* Third, Brown notes the WCA is remedial, and we should not interpret it to favor the person causing the work injury over the injured worker.

Id. [J-14-2025] - 12 Moving on, Brown characterizes Bell as the "seminal case" on the parameters of co-employee immunity. *Id.* at 22. Brown acknowledges Bell was decided on waiver but notes the court nevertheless proceeded to explain that to obtain immunity under Section 72, "the defendant is required to establish that its act or omission occurred while it was in the same employ as the plaintiff, that is, in the course of her performance of duties for the employer." *Id.* at 23 (quoting Bell, 943 A.2d at 297-98).

Brown maintains Bell and the Superior Court's decision in this case are consistent with Apple because Apple never approved extending Section 72's co-employee immunity to acts that are not in furtherance of the employer's interests. *Id.* at 24-25. Applying Bell, Brown maintains Gaydos's allegedly negligent conduct was independent of his role as an ACS employee because Gaydos's failure to maintain the skid loader was not related to his employment duties with ACS.

Id. at 26-28. Accordingly, Brown asks us to affirm the Superior Court. In his reply brief, Gaydos accuses Brown of attempting to rewrite Section 72—after Apple decided it was "clear"—which is a legislative function. Gaydos's Reply Brief at 1. Gaydos further asserts Brown's position is based on a misreading of Apple because the Apple Court rejected the argument that Section 72 applies only where the act or omission occurs within the scope of the defendant co-employee's employment and issued a broad holding that Section 72's test is "the same employ." *Id.* at 3.

Gaydos emphasizes that the Apple Court determined Section 72 was "clearly phrased." *Id.* (quoting Apple, 278 A.2d at 485). Refuting Brown's argument that Gaydos's purported negligence was independent of his role at ACS, Gaydos contends that "[t]he alleged actionable negligence occurred only when the skid loader was used on the job site resulting in a work-related accident." *Id.* at 13.

Further, Gaydos asserts that the focus of this appeal is whether the fact that Gaydos may not have been involved in work-related activities is relevant to Section 72's [J-14-2025] - 13 co-employee immunity. *Id.* at 13 n.10.

In this respect, Gaydos maintains Section 72 reflects a legislative policy choice to enact broad immunity for "all co-employees in all instances where a workplace injury is compensable under

the [WCA].” Id. at 15. Gaydos emphasizes Section 72 is clear and unambiguous, and this Court should decline Brown’s invitation to rewrite the statute. Id. at 16. B. DISCUSSION Our resolution of the issue here requires us to address this Court’s 1971 holding in Apple, particularly the Apple Court’s concluding sentence that Section 72 is “clearly phrased to protect all co-employees in all situations where negligent conduct of one employee may cause injury to a fellow employee, provided only that the injury in question is one that is compensable under the [WCA].” Apple, 278 A.2d at 485.

Relying on Apple, Gaydos argues that Section 72 provides immunity to every co-employee employed by the same employer, seemingly regardless of any consideration for when the negligent act occurred or the time, place, or circumstances of the accident. See, e.g., Gaydos’s Brief at 13.

We, however, are not compelled to read Apple as providing such a broad interpretation of Section 72. “[I]t is axiomatic that the holding of a judicial decision is to be read against its facts. This precept protects against an unintentional extension of governing principles beyond scenarios to which they rationally relate.” *Lance v. Wyeth*, 85 A.3d 434, 453 (Pa.

2014) (citation omitted). The Apple Court was confronted with a case in which nonsuit was entered in favor of the defendant based on the trial court’s conclusion that Section 72’s co-employee immunity provision applied because the parties were acting within the scope and course of their employment at the time of the accident. Apple, 278 A.2d at 483. Indeed, in that case, the Court was confronted with the issue of whether to draw a distinction between the course of employment and the scope of employment such that [J-14-2025] - 14 acts taken outside of the scope of employment, although within the course of employment, did not qualify as “in the same employ” under Section 72.

Id. at 484. The Apple Court concluded there was no doubt that the injuries were caused while the parties were “in the same employ” because “[b]oth parties were proceeding from one place of employment to another during their working day, acting in furtherance of their duties at the time, and in a manner approved by their employer.” Id. In other words, the Apple Court defined “in the same employ” by highlighting facts demonstrating the parties were acting within the course and scope of their employment.

See *Salsberg v. Mann*, 310 A.3d 104, 124 (Pa. 2024) (noting “scope of employment” is defined in Section 228 of the Restatement (Second) of Agency as conduct: (a) “of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master....”); *Hoffman v. W.C.A.B.*

(*Westmoreland Hosp.*), 741 A.2d 1286, 1287 (Pa. 1999) (observing that Section 301(c)(1) of the WCA defines “arising in the course of employment” as including “injuries sustained in

furtherance of the business or affairs of the employer, as well as certain other injuries which occur on premises occupied or controlled by the employer, or upon which the employer's business affairs are conducted").

Read against its facts, Apple clearly did not interpret "in the same employ" as granting the form of unlimited immunity that Gaydos advocates. Instead, the Apple Court found the defendant was acting "in the same employ" as the injured party because she was acting within the course and scope of her employment at the time of the accident. Apple, 278 A.2d at 484 n.3 (explaining it "could [] not conclude that appellee was acting outside the scope of her employment at the time of the accident" because the trial court found the parties were acting in the course and scope of their employment).

[J-14-2025] - 15 Our reading of Apple is consistent with the cases the Apple Court cited as support for its statement that Section 72 "clearly provides that a co-employee is immune from liability for his negligent act resulting in injury to his fellow employee." Id. at 483-84. Those cases uniformly held that a co-employee is immune when acting within the course of employment.

See Knauss v. Gaines, 49 Pa.D.&C.2d 269, 273 (C.P. Lehigh 1970) (holding Section 72 immunity "extends only to employees who were acting in the course of their employment at the time of the negligent act which resulted in injuries to a fellow employee"); see also Stillwell v. McGrath, 204 A.2d 385, 387 (N.J. Super. 1964) (finding two fire rescue squad members, although members of different squads, were co- employees because they were engaged in the same mission at the time of accident); Konitch v. Hartung, 195 A.2d 649, 652 (N.J.

Super. 1963) (concluding the test for "in the same employ" is whether the co-employee was acting in the course of employment); Groves v. Marvel, 213 A.2d 853, 855 (Del. 1965) (defining "person in the same employ" as "a person employed by the same employer and acting in the course of his employment at the time of the injury to the co-employee"); Solomon v. Russo, 229 N.E.2d 231, 232 (N.Y.

App. 1967) (finding immunity applied when "the accident arose out of an incident of plaintiffs' employment"); Lambiase v. Schechter, 22 A.D.2d 648, 649 (N.Y. App. 1964) (concluding immunity applied when the defendant was acting in the course of employment). Collectively, these cases support the holding in Apple, which, as stated above, was based on a finding that the defendant was immune from civil liability under Section 72 because she was acting in the course and scope of her employment.

Notably, while reaching this conclusion, the Apple Court counseled against the broad application of "in the same employ" for which Gaydos now advocates. This conclusion is further supported by the plain language of Section 72.

In conducting statutory interpretation, we are guided by the provisions of the Statutory [J-14-2025] - 16 Construction Act, under which we must give effect to both the legislature's intent and all the statute's provisions. 1 Pa.C.S. § 1921(a).

The statute's plain language is the best indication of the legislature's intent, and to determine the statute's plain meaning, we consider its operative language in context and interpret words and phrases according to their common and approved usage. *Crown Castle NG E. LLC v. Pa. Pub. Util. Comm'n*, 234 A.3d 665, 674 (Pa. 2020). Courts must give effect to a clear and unambiguous statute and cannot disregard the statute's plain meaning to pursue its perceived objectives.

Id. "Only if the statute is ambiguous, and not explicit, do we resort to other means of discerning legislative intent." *Matter of Private Sale of Prop. by Millcreek Twp. Sch. Dist.*, 185 A.3d 282, 291 (Pa. 2018); see also 1 Pa.C.S. § 1921(c) (listing factors to consider when "the words of a statute are not explicit"). With these principles in mind, we examine the language of Section 72, titled "liability of fellow employee," which provides in full, as set forth above: If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.

77 P.S. § 72. Broken down to its essence, Section 72 provides a person is immune from civil suit "for any act or omission occurring while such person was in the same employ as the person disabled or killed[.]" *Id.* Significantly, the statute contains a temporal requirement for its grant of immunity in that it provides immunity for any act or omission "occurring while" the allegedly liable person was "in the same employ" as the injured worker.

Id. This leaves no ambiguity as it relates to the timing of the act or omission forming the basis for the asserted civil liability. Accordingly, pursuant to the plain language of Section 72, to obtain co-employee immunity in a civil negligence lawsuit, the defendant must establish that: (1) the disability or death was compensable under the [J-14-2025] - 17 WCA; and (2) the act or omission forming the basis of civil liability occurred while the defendant was in the same employ as the injured party.

As an additional point, turning back to the parties' arguments, we do not find Gaydos's interpretation of Section 72 persuasive. As he reads it, co-employee immunity requires only a showing that the injury was compensable under the WCA, and the person claiming immunity and the injured worker were employed by the same employer. See, e.g., Gaydos's Brief at 29-30.

In our view, Gaydos's interpretation ignores the temporal requirement in Section 72 that the negligent act or omission "occur[] while" the party invoking immunity was in the same employ as the injured worker. 77 P.S. § 72.

We cannot endorse this reading of the statute, as it clearly does not give effect to all the words in Section 72 and renders the “occurring while” language superfluous. See, e.g., *Ball v. Chapman*, 289 A.3d 1, 26-27 (Pa. 2023) (noting the statutory interpretation canon instructing courts “to construe a statute’s language so that effect is given to all its provisions, [and] so that no part will be inoperative or superfluous, void or insignificant.”) (brackets in original) (internal quotation marks and citation omitted)).

To give effect to the entirety of Section 72, a party seeking co-employee immunity must satisfy not only the “in the same employ” requirement but must also show that the act or omission occurred while the party was in the same employ as the injured worker. Applying Section 72 to this case, there is a genuine issue of material fact regarding whether the allegedly negligent act or omission occurred while Gaydos was in the same employ as Brown.

As noted above, Brown’s civil negligence complaint asserted numerous theories for Gaydos’s negligence. Complaint, 5/31/18, at ¶ 30. For the purpose of determining whether any of those allegations created a genuine issue of material fact precluding summary judgment on the grounds of co-employee immunity, we focus on the allegations that Gaydos was negligent in “improperly maintaining the subject [J-14-2025] - 18 skid loader,” and in “inspecting and/or reviewing the subject skid loader prior to [Brown’s] usage[.]” *Id.* at 30(a), (b).

Here, the undisputed facts were that Gaydos personally owned the skid loader and insured it under the name of his sole proprietorship. Gaydos’s Deposition, 9/10/20, at 18 (R.R. at 55a). Gaydos acknowledged that he performed maintenance on the skid loader himself, and he stored it on property he owned when it was not in use. *Id.* at 82, 88-89 (R.R. at 119a, 125-26a).

On the other hand, ACS did not own, maintain, or insure the skid loader. *Id.* at 42 (R.R. at 79). Nor was there a lease agreement or transfer of money between ACS and Gaydos or ACS and Gaydos Construction for the use of the skid loader. *Id.* at 47 (R.R. at 84a). During proceedings related to Brown’s civil suit, Gaydos speculated that the skid loader’s seat sensor safety mechanism failed during Brown’s accident, and he admitted that he did not frequently check that the sensor was functioning.

Id. at 77, 84 (R.R. at 114a, 121a). Additionally, he hypothesized that the foot pedal controlling the skid loader’s hydraulic arm must have stuck when Brown was entering the machine, a mechanical issue of which he was aware occurred at least twice prior to Brown’s accident but did not fix. *Id.* at 80-81, 95 (R.R. 117-18a, 142a).

The foregoing presents a genuine issue of material fact regarding whether Gaydos’s alleged negligence in maintaining and inspecting the skid loader occurred while he and Brown were in the same employ or whether they occurred in Gaydos’s separate and independent role as an individual or as the owner of a sole proprietorship.

Moreover, we find Apple to be consistent with our decision here and the plain language of Section 72. As emphasized above, the Apple Court did not focus on Section 72's temporal requirement that the act or omission "occur[] while" the parties were in the same employ, nor did it address negligence allegations that may not have occurred while the parties were in the same employ.

Our conclusion that the act or omission for which [J-14-2025] - 19 the defendant seeks Section 72 co-employee immunity must occur while the parties were in the same employ therefore supplements Apple's analysis of the phrase "in the same employ." As a result, we hold that Section 72 co-employee immunity applies to an act or omission that occurs while the defendant and the injured worker were in the same employ, i.e., acting in the course or scope of their employment.

IV. CONCLUSION For these reasons, we conclude there remains genuine issues of material fact related to whether some of Gaydos's allegedly negligent acts or omissions occurred while he was in the same employ as Brown.

Accordingly, we affirm the order of the Superior Court reversing the trial court's order granting summary judgment, and we remand for further proceedings consistent with this opinion. 7 Chief Justice Todd and Justices Donohue and Dougherty join the opinion. Justice Brobson files a concurring and dissenting opinion. Justice Wecht files a dissenting opinion. Justice McCaffery did not participate in the consideration or decision of this matter.

7 To the extent our analysis differs from that of the Superior Court, which viewed the pertinent inquiry as whether Gaydos and Brown were in the same employ at the time of Brown's injury, we do so based on the unambiguous language of Section 72. Regardless, "[i]t is well settled that this Court may affirm the decision of the immediate lower court on any basis, without regard to the basis on which the court below relied." *Shearer v. Naftzinger*, 747 A.2d 859, 861 (Pa.

2000); see also *Toy*, 928 A.2d at 195 n.11. [J-14-2025] - 20

BROBSON, P. KEVIN, J, concurring in part and dissenting in part.

[J-14-2025] [MO: Mundy, J.] IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT JOHN BROWN,; No. 22 WAP 2024 Appellee: Appeal from the Order of the: Superior Court entered December 7,; 2023, at No. 1132 WDA 2021, v.: reversing and remanding the Order: of the Court of Common Pleas: Allegheny County Civil Division GEORGE GAYDOS, AN INDIVIDUAL,; entered April 16, 2021, at T/D/B/A GAYDOS CONSTRUCTION,; No. GD18-006991.

Appellant: ARGUED: April 8, 2025 CONCURRING AND DISSENTING OPINION JUSTICE BROBSON DECIDED: FEBRUARY 18, 2026 The General Assembly promulgated the Workers' Compensation Act (Act) 1 to address employers' and employees' "mutual dissatisfaction with the

common law negligence system for remedying workers for their work-related injuries.” *Herold v. Univ. of Pittsburgh*, 329 A.3d 1159, 1181 (Pa.

2025). Under the Act, an employer is required to compensate its employees for any disability arising from a work-related injury, regardless of the employer’s fault. See Section 301(a) of the Act, 77 P.S. § 431 (“Every employer shall be liable for compensation for personal injury to, or for the death of each employee, by an injury in the course of his employment, and such compensation shall be paid in all cases by the employer, without regard to negligence[.]”).

In exchange, the injured employee may only recover from the employer what the employee is entitled to under the Act. See Section 303 of the Act, 77 P.S. § 481(a) (“The liability of an employer 1 Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.4, 2501-2710. under this act shall be exclusive and in place of any and all other liability to such employees... on account of any injury or death as defined in section 301(c)(1) and (2)[.]”).

In other words, the injured employee cannot also sue the employer in tort. If a third party had a role in the employee’s injury, however, the Act does not prevent the employee from suing that third party and recovering damages. Any recovery from a third party is subject to the employer’s right to subrogation to the extent of any compensation paid under the Act.

See Section 319 of the Act, 77 P.S. § 671 (“Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee... against such third party to the extent of the compensation payable under this article by the employer[.]”).

Moreover, employers act through their employees and agents. At common law, employers can be held vicariously liable for the acts and omissions of their employees acting within the course and scope of their employment. See *Scampone v. Highland Park Care Ctr., LLC*, 57 A.3d 582, 597-98 (Pa. 2012).

The Act expressly codifies vicarious liability, holding “[t]he employer... liable for the negligence of all employees, while acting within the scope of their employment...; and such employees shall be the agents and representatives of their employers and their employers shall be responsible for the acts and neglects of such employees.” Section 202 of the Act, 77 P.S. § 51 (emphasis added).

As this liability of the employer is statutory under the Act, it is subject to the Act’s exclusivity provision. In other words, if an employee of an employer acts negligently within the scope of his employment, causing injury to a fellow employee, the employer is liable to compensate the injured employee for any disability resulting therefrom under the Act.

The injured employee cannot also sue the employer in tort outside of the Act to hold the employer vicariously liable for the negligent act of the fellow employee that caused the injury. [J-14-2025]

[MO: Mundy, J.] - 2 Section 205 of the Act provides: If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the same employ as the person disabled or killed, except for intentional wrong.

77 P.S. § 72. Section 205 is a companion provision to Section 202 of the Act. Like Section 202, it ensures that employers who are liable under the Act to an injured employee do not also become liable outside of the Act for the acts and omissions of employees that led to that compensable injury, upholding the Act's exclusive remedy vis-à-vis the injured employee and the employer.

Whereas Section 202 makes the employer liable for those acts and omissions for which the injured employee's exclusive remedy lies within the Act, Section 205 shields the negligent employee from civil suit for the liability that the employer assumes under Section 202. Stated otherwise, where an employer is vicariously liable for the act or omission of an employee that led to another employee's injury under Section 202, the negligent employee is shielded from liability under Section 205.

The injured employee, as claimant, receives a single recovery from the employer for the workplace injury. Here, there is no question that Appellee John Brown's injury was compensable under the Act. Brown's employer, American Concrete Solutions, Inc. (ACS), did not contest Brown's claim and paid benefits to Brown under the Act. At issue here is whether the alleged act or omission of Appellant George Gaydos that caused or contributed to the workplace injury occurred while Gaydos was "acting within the scope of [his] employment" with ACS.

2 If so, ACS is vicariously liable for Gaydos's negligent acts or omissions under 2 In the absence of a definition in the Act for the phrase "scope of employment," the common law inquiry applies. See McGuire ex rel. Neidig v. City of Pittsburgh, 285 A.3d (...continued) [J-14-2025] [MO: Mundy, J.] - 3 Section 202 of the Act, ACS satisfied that liability by paying Brown the compensation to which he is entitled under the Act, and Gaydos is entitled to co-employee immunity under Section 205 of the Act.

If not, then ACS has no liability for the acts or omissions of Gaydos, Gaydos cannot be considered a co-employee for purposes of Section 205, and Brown is free to pursue a civil action against Gaydos. Should Brown succeed in that action, ACS would have a subrogation lien against any recovery on account of benefits Brown received from ACS under the Act. Like the Majority, I believe there are genuine issues of material fact as to whether the acts or omissions that form the basis of Brown's claim against Gaydos occurred while Gaydos was in the same employ as Brown with ACS.

The answer to this question turns on whether Gaydos was in the scope of his employment with ACS at the time of those acts or omissions. 3 Such an approach is in keeping with the "Grand

Bargain,” which this 887, 892 (Pa. 2022). Adopting the Restatement (Second) of Agency, this Court in *Neidig* held that an employee’s conduct falls within the scope of his employment if: (a) it is of the kind he is employed to perform; (b) it occurs substantially within the authorized time and space limits; (c) it is actuated, at least in part, by a purpose to serve the master; and (d) if force is intentionally used by the servant against another, the use of force is not unexpected by the master....

[T]he “[c]onduct of a servant is not within the scope of employment if it is different in kind from that authorized, far beyond the authorized time or space limits, or too little actuated by a purpose to serve the master.” *Id.* at 892-93 (second alteration in original) (citation omitted). 3 Here, I disagree slightly with the Majority, which would look not just to whether Gaydos acted within the scope of his employment with ACS at the time of the alleged acts or omissions, but whether he also acted in the course of his employment—i.e., a course and scope inquiry.

(Maj. Op. at 16.) As noted above, statutory vicarious liability for employers under the Act looks only to scope of employment. I confine my analysis to this statutory text. As for *Apple v. Reichert*, 278 A.2d 482 (Pa. 1971), which the Majority discusses extensively, I find *Apple* to be instructive but not dispositive here.

The facts in *Apple* were (...continued) [J-14-2025] [MO: Mundy, J.] - 4 Court has recognized as the bedrock of Pennsylvania’s workers’ compensation scheme. See *Herold*, 329 A.3d at 1182-83. so undisputed that the Court had no qualms about concluding that the driver and injured passenger in the vehicle were in the same employ at the time of the accident. *Apple*, 278 A.2d at 484.

If forced to consider the scope of the driver’s employment at the time, the Court in *Apple* held that its decision to afford co-employee immunity under the Act in that case would not change: “[W]e could still not conclude that appellee was acting outside of the scope of her employment at the time of the accident.” *Id.* The factual disputes in this case, unlike *Apple*, require a closer examination of what it means to be a co-employee for purposes of Section 205 of the Act immunity.

As stated above, I believe the factual inquiry should turn on scope of employment. [J-14-2025] [MO: Mundy, J.] - 5

WECHT, DAVID N., J, dissenting.

[J-14-2025] [MO: Mundy, J.] IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT JOHN BROWN,: No. 22 WAP 2024 Appellee: Appeal from the Order of the: Superior Court entered December 7,: 2023, at No. 1132 WDA 2021, v.: reversing and remanding the Order: of the Court of Common Pleas: Allegheny County Civil Division GEORGE GAYDOS, AN INDIVIDUAL,: entered April 16, 2021, at No. GD T/D/B/A GAYDOS CONSTRUCTION,: 18-006991.

Appellant: ARGUED: April 8, 2025 DISSENTING OPINION JUSTICE WECHT DECIDED: FEBRUARY 18, 2026 George Gaydos, co-owner of American Concrete Solutions, Inc., claims co- employee immunity from civil liability for injuries John Brown suffered while working at an American Concrete Solutions jobsite.

The Majority concludes that Brown raised “genuine issues of material fact related to whether some of Gaydos’s allegedly negligent acts or omissions occurred while he was in the same employ as Brown.”¹ Thus, the Majority affirms the Superior Court’s reversal of the trial court’s order which had granted summary judgment to Gaydos. I disagree. Section 205 of the Workers’ Compensation Act (“WCA” or “the Act”), immunizes co-employees from civil liability as follows: If disability or death is compensable under this act, a person shall not be liable to anyone at common law or otherwise on account of such disability or death for any act or omission occurring while such person was in the 1 Maj.

Op. at 20. same employ as the person disabled or killed, except for intentional wrong.² In *Apple v. Reichert*, we affirmed the application of this statutory immunity to those “in the same employ.”³ Apple and Section 72 demonstrate that immunity should apply. Hence, I respectfully dissent.

The Majority misconstrues *Apple*. The Majority asserts that *Apple* held that the defendant there was immune pursuant to Section 72 “because she was acting in the course and scope of her employment.”⁴ I disagree. A brief review of *Apple* is instructive. Bonner, a teacher, was driving her colleague *Apple* from one school to another, whereupon they were involved in an accident with another car.

Apple sued Bonner and the other driver for her injuries. The trial court determined that both *Apple* and Bonner “were acting within the scope of their employment and in the course of their employer’s business.”⁵ Therefore, the trial court ruled that immunity applied and that Bonner was entitled to a compulsory nonsuit.

Before this Court, *Apple* argued that, while she and Bonner were acting within the course of their employment, they were not acting within the scope of their employment when the accident occurred. As such, *Apple* maintained, immunity should not apply.² 77 P.S. § 72. Some cases refer to Section 72 as Section 205. This is because there is a tradition in workers’ compensation law to refer to the section number in the original enacting legislation and the amendments thereto rather than the section number as later codified.

Like the Majority, I refer to this as Section 72 for purposes of this opinion.³ 278 A.2d 482 (Pa. 1971).⁴ Maj. Op. at 16.⁵ *Apple*, 278 A.2d at 483. [J-14-2025] [MO: Mundy, J.] - ² This Court disagreed. The Court focused upon whether the two teachers “were ‘in the same employ.’”⁶ It concluded that they were.⁷ The Court explained that *Apple* and Bonner were “proceeding from

one place of employment to another during their working day, acting in furtherance of their duties at the time, and in a manner approved by their employer.”⁸ The Court stated: Since the language of the statutory provision sets up a clear and simple test—‘the same employ’—and such words as scope of employment and course of employment are not used, we are not free to speculate that a more restrictive intention was envisioned by the legislature.⁹ This Court suggested that, had scope of employment been relevant, there would have been no doubt that the teachers were both acting within that scope.

¹⁰ The Court concluded that the Act “protect[s] all co-employees [sic] in all situations where negligent conduct of one employe [sic] may cause injury to a fellow employe [sic], provided only that the injury in question is one that is compensable under the Act.”¹¹ Rather than adopting course and scope of employment, the Apple Court concluded that the Act made “in the same employ” the only relevant consideration.

Although the Court conceded that the two teachers were acting in the scope of their employment, it refused to add terms that were not in the statute. Thus, I cannot accept the Majority’s characterization of Apple’s holding as dependent upon both the course and the scope of employment. ⁶ Id. at 484. ⁷ Id. ⁸ Id. ⁹ Id. (emphasis added). ¹⁰ Id. ¹¹ Id. at 485. [J-14-2025] [MO: Mundy, J.] - 3 Regardless, “course of employment” necessarily is an inherent component of Section 72.

The section limits co-employee immunity to circumstances in which “disability or death is compensable under this act.” Because the Act provides for compensation for injuries occurring “in the course of [the injured worker’s] employment,”¹² co-employee immunity necessarily can apply only when the injury occurs during the course of employment. This, in turn, limits the scope of immunity available under the Act.

After reviewing Apple, the Majority examines the plain language of Section 72. It concludes that there is a temporal element to the act or omission that causes the injury. Therefore, in order to gain immunity, the Majority reasons, one must prove that there was a compensable injury under the Act and “must also show that the act or omission occurred while the party was in the same employ as the injured worker.”¹³ Gaydos argues for a much broader immunity.

He maintains that the only relevant considerations are “a showing of co-employment and a compensable injury under the WCA.”¹⁴ The Majority describes it this way: “Gaydos argues that Section 72 provides immunity to every co-employee employed by the same employer, seemingly regardless of any consideration for when the negligent act occurred or the time, place, or circumstances of the accident.”¹⁵ The Majority is correct that there is a temporal element to Section 72, and that this element provides a limiting factor to immunity.

But I would describe it differently. An injury must be one that is compensable, which means that it must be one that occurs in the course of employment, not simply while the parties are in the same employ. The 12 77 P.S. § 431. 13 Maj. Op. at 18. 14 Gaydos' Brief at 36. 15 Maj. Op. at 14. [J-14-2025] [MO: Mundy, J.] - 4 temporal element refers to the fact that the employees must be acting as employees at the time of the accident.

A hypothetical will illustrate the point. Suppose two law clerks who work for the same judge are running personal errands on a Saturday and happen to suffer a car accident. Section 72 would not apply. Any resulting injury would not be compensable, since that injury did not occur during the course of employment. If, on the other hand, the same law clerks were driving separately to a court session and suffered a car accident en route, Section 72 immunity would apply; they were acting within the course of their employment and were in the same employ at the time of the accident.

However, if one law clerk was driving to a court session and suffered a car accident along with a second law clerk who was taking a personal day, then Section 72 immunity likely would not apply. The first law clerk would have a WCA-compensable injury because that clerk was in the course of employment.

The second law clerk was not acting in the course of employment and therefore was not in the same employ at the time of the accident. Immunity would not apply. The relevant question per Section 72 is whether the employees were "in the same employ" at the time that the compensable disability occurred. I share the Apple Court's reticence to add to this, or to any, statute.

Section 72 is written broadly, encompassing any act (absent intentional harm) which causes a compensable injury that occurs at a time when the parties are in the same employ. A broad reading comports with the Act's broad grant of immunity to employers. It makes sense for a commensurately broad immunity to apply to co-employees.

As the Apple Court warned, "we are not free to speculate that a more restrictive intention was envisioned by the legislature." 16 However, the scope of immunity for which Gaydos argues is too broad, and it is unnecessary for such immunity to apply in this case. 16 Apple, 278 A.2d at 483. [J-14-2025] [MO: Mundy, J.] - 5 The Majority concludes that there is a material issue of fact because it is alleged that Gaydos owned and maintained the skid loader as an individual, thereby raising the possibility that the negligent maintenance may have occurred when Gaydos and Brown were not in the same employ.

The Majority views the relevant time as the juncture at which the maintenance took place. However, the relevant act or omission for the purpose of applying Section 72 was the use of the skid loader. This occurred at the job site, while Brown and Gaydos were furthering the business of their employer. Gaydos owed Brown no duty of care outside of the workplace.

If Gaydos is negligent in how he maintains his personal equipment, that is his own concern. Such negligence would become relevant only when the equipment is brought to the job site and Brown uses it. Returning to my prior hypothetical, if the accident on the way to a court session is caused by one law clerk's negligent failure to maintain the personal vehicle, this does not mean that the two law clerks are not in the same employ at the point in time that the accident occurs.

As to whether there are remaining genuine issues of material fact, I largely agree with the dissent below. There, Judge Stabile opined that the facts (particularly those upon which the Superior Court majority relied to conclude summary judgment was improper) are generally irrelevant to this analysis.

The dissent states: The Majority lists some admissions from Gaydos that it believes create a genuine issue of material fact. Among these are that Gaydos owned and maintained the skid loader, that his sole proprietorship, Gaydos Construction, paid for the insurance policy on it, and that he occasionally loaned the skid loader to ACS [American Concrete Solutions, Inc.] for use in its work.

Brown v. Gaydos, 306 A.3d 883, 894–95 (Pa. Super. 2023). The Majority also notes that the agreement between Gaydos and [the co- owner of ACS] to loan their personal tools to ACS was not in writing, and that there was no lease agreement or transfer of money between ACS and [the co-owner] or Gaydos whenever one of them lent a tool or piece of equipment to ACS.

Id. at 893–94. Common amongst all these facts is that they have no bearing on whether Gaydos and Brown were in the same employ under § 72 as construed by Apple. Gaydos' ownership, maintenance, and insurance of the skid loader, and the terms under which he lent his personal equipment to ACS for use in ACS jobs, is beside the [J-14-2025] [MO: Mundy, J.] - 6 point.

The point is that Brown's WCA-compensable injury happened at an ACS jobsite when Brown and Gaydos were co-employees of ACS. Section 72 protects all co-employees in all such situations. Apple, 278 A.2d at 484. The Majority also relies on Gaydos' instruction that no one but him was to operate the skid loader. Brown, 306 A.3d at 893–95. But the Majority fails to explain how the apparent lack of adherence to that instruction strips Gaydos of § 72 immunity.

The Apple Court's description of the parties' conduct in that case—that both parties were acting in a manner approved by their employer (Apple, 278 A.2d at 484)—might be relied upon to strip a defendant of § 72 immunity if the defendant co-employee causes an injury while acting contrary to the employer's express instructions. But that is not the case before us.

Here, the evidence is that Gaydos and [the co-owner] agreed that they would supply their personal equipment for ACS jobs, and that Gaydos' skid loader had been used at ACS jobs on multiple occasions in the past. Thus, Gaydos was acting in accord with ACS practice in providing his skid

loader. His instruction regarding its use has no bearing on whether he and Brown were in the same employ.

The Majority also reaches the extraordinary conclusion that there is a “genuine issue of material fact as to whether Gaydos actually intended to use the skid loader at the jobsite on the morning in question.” Brown, 306 A.3d at 894, 895. This is because Gaydos, in his deposition, “did not mention whether he brought the skid loader to the job site that morning for a particular purpose which related to that particular job.” Id. at 894.

The Majority’s conclusion is unsupportable under both law and fact. The law provides that we must draw all reasonable inferences in favor of Brown, as the non-moving party against whom summary judgment was granted. The facts, as the Majority acknowledges, are that that Gaydos commonly (on 15 occasions between April and September of 2016) lent his skid loader to ACS for use in its jobs, and that Gaydos’ skid loader was at an ACS jobsite on the morning of Brown’s injury.

Yet the Majority concludes that it is reasonable to infer from these facts that Gaydos’ skid loader was present at the ACS jobsite on the morning of Brown’s injury for some purpose other than the job at hand. To state that conclusion is to refute it. Furthermore, the purpose of the skid loader’s presence at the jobsite, like the other facts discussed just above, is beside the point.

It has no bearing on whether Brown and Gaydos were within the same employ when Brown was injured. Finally, the Majority notes that Brown sued Gaydos in his own right as owner of the skid loader; he did not sue Gaydos as his employer or co-employee. Id. at 894–95. Again, this issue is beside the point.

The language in Brown’s pleading does not and cannot answer the substantive question before us. [J-14-2025] [MO: Mundy, J.] - 7 Brown v. Gaydos, 306 A.3d 883, 898–99 (Pa. Super. 2023) (Stabile, J., dissenting) (citations modified or omitted; emphasis in original). 17 Today’s Majority relies upon some of these same circumstances on its way to finding a genuine issue of material fact.

18 Like Judge Stabile, I fail to see how the ownership of the skid loader or the question of whether there was a written agreement between the co-owners of the company regarding equipment rental have any bearing on whether Brown and Gaydos were in the same employ.

The Apple court focused the inquiry not upon scope of employment, but upon whether the parties were “acting in furtherance of their duties at the time, and in a manner approved by their employer.” 19 Here, Gaydos and Brown were both furthering their duties — Brown at the worksite and Gaydos off-site, paying a vendor. 20 Nothing suggests that the two were not acting in a manner approved by their employer.

I see no question as to whether they were acting in the same employ. Section 72 extends immunity. Thus, I would reverse. 17 The Superior Court dissent also criticized the panel majority for relying upon *Bell v. Kater*, 943 A.2d 293 (Pa. Super. 2008), and *Fern v. Ussler*, 630 A.2d 896 (Pa. Super. 1993). See *Brown*, 306 A.3d at 897-98 (Stabile, J. dissenting) (stating that “Bell and Fern are of no precedential value for the issue presently before us, a fact the Majority seems reluctant to acknowledge.”).

Today’s Majority concedes “the limited precedential value of those cases.” Maj. Op. at 5 n.4. I, too, question the Superior Court’s use of those cases. Bell’s commentary on co-employee immunity is dicta at best, as the Bell court determined that the defense of immunity had been waived.

The Bell court speculated as to whether immunity might have applied had it not been waived. In these musings, the Bell court relied upon Fern without noting that Fern was a plurality decision with no precedential value on this issue. More pertinent case law existed, as cited by the dissent below, so there was no reason to rely upon dicta offered in Bell, based upon the nonprecedential decision in Fern.

18 Maj. Op. at 18-19. 19 Apple, 278 A.2d at 484. 20 See Trial Court Opinion, 7/13/2021, at 6. [J-14-2025] [MO: Mundy, J.] - 8