

NEBRASKA SUPREME COURT

Aboytes-Mosqueda v. LFA Inc.

306 Neb. 277 (2020) · No. No. S-19-967 · Decided June 26, 2020

SUMMARY

The Nebraska Supreme Court affirmed dismissal of Cesar Aboytes-Mosqueda’s workers’ compensation claim arising from a roofing accident. The court held that he failed to prove he was an employee of Ismael Huerta rather than an independent contractor, and therefore Nebraska’s statutory-employer provision did not apply to LFA Inc. The court applied the statutory and common-law factors distinguishing employees from independent contractors.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	June 26, 2020
DOCKET	No. S-19-967
DISPOSITION	affirmed
PROCEDURAL POSTURE	Aboytes-Mosqueda appealed the Nebraska Workers’ Compensation Court’s dismissal of his workers’ compensation claim against Huerta and LFA Inc.
STANDARD OF REVIEW	Under Neb. Rev. Stat. § 48-185, the Supreme Court may modify, reverse, or set aside a Workers’ Compensation Court decision only if the court acted without or in excess of its powers, the decision was procured by fraud, there was insufficient competent evidence to support it, or the factual findings did not support the order or award. Factual findings have the effect of a jury verdict and will not be disturbed unless clearly wrong. The evidence is viewed in the light most favorable to the successful party, with controverted facts and reasonable inferences resolved in that party’s favor; the Workers’ Compensation Court is the sole judge of witness credibility and evidentiary weight.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential

PARTIES

Cesar Aboytes-Mosqueda v. LFA Inc., Ismael Huerta

TOPICS

workers compensation

employment law

appellate procedure

standard of review

PRACTICE AREAS

workers' compensation

employment law

appellate procedure

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Court clearly erred in finding that Aboytes-Mosqueda was not an employee of Huerta.
2. Whether LFA could be treated as a statutory employer under Neb. Rev. Stat. § 48-116 based on an alleged scheme to avoid workers' compensation liability.

HOLDINGS

1. The Workers' Compensation Court did not clearly err in finding that Aboytes-Mosqueda failed to prove he was Huerta's employee. The evidence, considered under Nebraska's employee-versus-independent-contractor factors, supported independent-contractor status.
2. Section 48-116 did not apply because liability under that provision presupposes that the injured worker was an employee of the subcontractor. Because Aboytes-Mosqueda was not an employee of Huerta, LFA could not be held liable as a statutory employer based on the alleged scheme.
3. The Workers' Compensation Court properly dismissed the action because Aboytes-Mosqueda failed to prove employee status, which was necessary to invoke the court's jurisdiction and obtain relief under the Nebraska Workers' Compensation Act.

KEY QUOTATIONS

"On appellate review, the factual findings made by the trial judge of the Workers' Compensation Court have the effect of a jury verdict and will not be disturbed unless clearly wrong." (282)

"Although we have never made this point explicit, it is clear from our case law and the language of § 48-116 that liability under § 48-116 presupposes that the injured worker was an "employee" of the subcontractor" (285)

"There is no single test for determining whether one performs services for another as an employee or as an independent contractor" (285-286)

FACTUAL BACKGROUND

Aboytes-Mosqueda was injured when he slipped and fell from a roof while working on a roofing job involving Huerta and LFA Inc. LFA had subcontracted the roofing work and arranged with Huerta to recruit a crew; the crew members were paid by the job and generally worked on a job-by-job basis. The evidence conflicted

regarding who supplied certain tools and safety equipment and the extent of Huerta's control, but the Workers' Compensation Court found that Aboytes-Mosqueda had not proved an employment relationship with Huerta.

PROCEDURAL HISTORY

Aboytes-Mosqueda was injured while working on a roofing job and filed a workers' compensation claim against Huerta and LFA. The Workers' Compensation Court found that he failed to prove he was Huerta's employee and therefore could not invoke the statutory-employer provision of Neb. Rev. Stat. § 48-116; it dismissed the action. The Nebraska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Eddy v. Builders Supply Co., 304 Neb. 804, 937 N.W.2d 198 (2020)
- Martinez v. CMR Constr. & Roofing of Texas, 302 Neb. 618, 924 N.W.2d 326 (2019)
- Pettit v. State, 249 Neb. 666, 544 N.W.2d 855 (1996)
- Hiestand v. Ristau, 135 Neb. 881, 284 N.W. 756 (1939)
- Bohy v. Pfister Hybrid Co., 179 Neb. 337, 138 N.W.2d 23 (1965)
- Gardner v. Kothe, 172 Neb. 364, 109 N.W.2d 405 (1961)
- Standish v. Larsen-Merryweather Co., 124 Neb. 197, 245 N.W. 606 (1932)
- Duffy Brothers Constr. Co. v. Pistone Builders, Inc., 207 Neb. 360, 299 N.W.2d 170 (1980)
- Kaiser v. Millard Lumber, 255 Neb. 943, 587 N.W.2d 875 (1999)
- Omaha World-Herald v. Dernier, 253 Neb. 215, 570 N.W.2d 508 (1997)