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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-592 / 92-1953

DENISE WHITTINGTON,

Plaintiff-Appellant,

vs.

PROCTER & GAMBLE MANUFACTURING COMPANY,

Defendant-Appellee,

and

UNKNOWN EMPLOYEES OF PROCTER & GAMBLE; F.H. LANGSENKAMP CO., INC., Indianapolis, Indiana; and **OMNI TOOL, INC.**, Forest Park, Ohio,

Defendants.

Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge.

Whittington appeals the district court's grant of summary judgment. **REVERSED AND REMANDED.**

Richard H. Zimmermann of the Zimmermann Law Office, Iowa City, for appellant.

Charles T. Traw of Leff, Haupert & Traw, Iowa City, for appellee.

Considered by Donielson, C.J., and Habhab and Huitink, JJ.

DONIELSON, C.J.

Denise Whittington worked for Kelly Services, Inc., an employment service providing temporary employees for various employers. Kelly assigned Whittington to work for Procter & Gamble Manufacturing Company (P&G) as a light industrial worker. While working at Procter & Gamble, Whittington was injured by a centrifuge designed and assembled by Procter & Gamble. Kelly paid Whittington's workers' compensation benefit claims.

Whittington filed a tort action against P&G, employees of P&G and various manufacturers of subcomponents of the centrifuge. Procter & Gamble filed a motion for summary judgment claiming that because it was Whittington's employer for purposes of the workers' compensation act, her sole remedy against it was under the act. Relying primarily upon Jones v. Sheller-Globe Corp., 487 N.W.2d 88 (Iowa App. 1992), the district court granted P&G's motion for summary judgment. It concluded Whittington knew or should have known she would be working for P&G, not Kelly. Whittington appeals.

We review the district court's grant of summary judgment for correction of errors of law. Iowa R. App. P. 4. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Iowa

R. Civ. P. 237(c); Parson v. Procter & Gamble Mfg., 514 N.W.2d 891, 893 (Iowa 1994). Evidence must be viewed in the light most favorable to the resisting party. Thorp Credit, Inc. v. Gott, 387 N.W.2d 342, 343 (Iowa 1986).

We conclude the supreme court's recent decision in Parson controls the disposition of this case. The appellants in both cases were Kelly workers assigned at P&G. Both were injured, received workers' compensation benefits from Kelly's insurance carrier, filed tort claims against P&G, and had summary judgment granted against them on the tort claim on the basis they were P&G employees. The supreme court held in Parson the determination whether an employment contract exists is one of fact, not law. Parson, 514 N.W.2d at 894. Under the circumstances of that case, the supreme court held P&G failed to prove as a matter of law the claimants had a "deliberate and informed intent to enter into an employment relationship with P & G." Id. at 895. Therefore, the court determined a genuine issue of material fact existed, reversed the grant of summary judgment, and remanded the case for further proceedings. Id. at 897. Our conclusions are the same under the circumstances of this case.

We therefore reverse the grant of summary judgment and remand the case for further proceedings.

REVERSED AND REMANDED.