IN THE COURT OF APPEALS OF IOWA

No. 2-635 / 92-797

FILED
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CLERK SUPREME COURT
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DEBRA PARSON and HAROLD PARSON,
Plaintiffs-Appellants,

vs.

PROCTOR & GAMBLE MANUFACTURING CO.,
Defendant-Appellee.

PAMELA C. USHER and MARSHALL DEAN USHER,
Plaintiffs-Appellants,

vs.

PROCTOR & GAMBLE MANUFACTURING CO.,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Kristin L. Hibbs, Judge.

Plaintiffs appeal a district court's ruling granting summary judgment to defendant on the ground plaintiffs' sole remedy is through workers' compensation. **AFFIRMED.**

Gregory T. Racette and Anne L. Clark of Hopkins & Huebner, P.C., Des Moines, for appellants.

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

Considered by Donielson, P.J., and Hayden and Sackett, JJ.

PER CURIAM

This case involves two suits which have been consolidated. Both Debra Parson and Pamela C. Usher are employees of Kelly Temporary Services. Kelly is a labor broker which provides temporary workers for its customers. Kelly has a contract to provide light industrial workers for Proctor & Gamble Manufacturing Company at its plant in Iowa City.

Proctor & Gamble pays Kelly an agreed hourly rate for the employees. From these payments, Kelly pays the workers' wages and payroll expenses, including workers' compensation premiums and applicable taxes. Kelly performed all of the paperwork concerning the employees. Kelly chose which employees to assign to work at the plant. However, Proctor & Gamble could refuse to accept an employee. Proctor & Gamble supervised the employees at the plant.

Parson was assigned to work at the Proctor & Gamble plant from March 1989 to February 8, 1990. She became injured during her employment. Usher was assigned to work at the plant from October 16, 1989 to January 11, 1990. She also became injured during her employment. Parson and Usher received workers' compensation benefits from Kelly for their injuries.

Parson and Usher each filed a tort suit against Proctor & Gamble on December 28, 1990. Proctor & Gamble filed a consolidated motion for summary judgment. It claimed the

district court lacked subject matter jurisdiction because plaintiffs were employees and the Industrial Commissioner had exclusive jurisdiction.

On April 21, 1992, the district court granted the motion for summary judgment. The court found plaintiffs were "borrowed" employees, and thus barred under workers' compensation law from filing a tort suit against the customer company. The court concluded plaintiffs' sole remedy is through workers' compensation. Plaintiffs have appealed.

In reviewing the grant or denial of a summary judgment motion, we view the underlying facts contained in the pleadings and the inferences to be drawn therefrom in the light most favorable to the party opposing the motion, and give to such a party the benefit of any doubt as to the propriety of granting summary judgment. Harrington v. Chicago & Northwestern Transportation Co., 452 N.W.2d 614, 615 (Iowa App. 1989). Our task on appeal is to determine only whether a genuine issue of material fact exists and whether the law was correctly applied, and to reverse the grant of summary judgment if it appears from the record there is an unresolved issue of material fact. Id.

Iowa Code section 85.20 bars an employee's tort suit against his or her employer. Tigges v. City of Ames, 356 N.W.2d 503, 509 (Iowa 1984). Chapter 85 provides the Industrial Commissioner exclusive jurisdiction and deprives the district court of jurisdiction of the subject matter in such cases. Id.

The provisions of the workers' compensation law are applicable only when a relationship of employer and employee exists between the injured claimant and the defendant. Farris v. General Growth Development Corp., 354 N.W.2d 251, 255 (Iowa App. 1984). An independent contractor is not considered to be an employee for purposes of the workers' compensation act. Id.

Thus, the pertinent question before us is whether there was a relationship of employer and employee between plaintiffs and Proctor & Gamble. Plaintiffs contend the district court should not have granted summary judgment because there were genuine issues of material fact concerning their relationship with Proctor & Gamble. Plaintiffs also contend the court should not have applied the "borrowed" employee doctrine.

In its ruling, the district court relied upon Jones v. Sheller-Globe Corp., 487 N.W.2d 88 (Iowa App. 1992). In that case, the plaintiff was employed by Manpower, Inc., which is a worker-broker company. Id. at 89-90. Manpower assigned plaintiff to Sheller-Globe Corporation and plaintiff became injured while working there. Id. at 89. We held that the employer of a brokered employee, including the entity directing the work for whose benefit the work is done, may be an employer under the workers' compensation statutes. Id. at 91.

We stated:

> In our changing labor environment, labor brokers are filling an apparent need for temporary

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> shortages of laborers at crucial times. The employee knows at the beginning that he or she will be working for someone other than the temporary labor broker. In many respects, the labor broker acts as a mere conduit for the person who desires employment and the company that is looking for prospective employees.

Id. at 92.

We determined the plaintiff was an employee of Manpower and Sheller-Globe while working for Sheller-Globe in contract with a labor broker. Id. at 93. Therefore, the plaintiff's sole remedy was provided by the workers' compensation statute. Id. We concluded the plaintiff could not bring a separate tort action against Sheller-Globe, the customer of the labor broker. Id.

We find the present case is indistinguishable from the situation found in Jones. The plaintiffs in this case are employees of a labor broker who were working for a customer company. Thus, for purposes of our analysis, they were employees of Kelly and Proctor & Gamble. We conclude their sole remedy is provided by workers' compensation. The district court lacked subject matter jurisdiction to address their tort claims. We affirm the grant of summary judgment to Proctor & Gamble.

Costs of this appeal are assessed to appellants.

AFFIRMED.