

IN THE COURT OF APPEALS OF IOWA

No. 0-516 / 90-237

FILED

MAY 2nd 1991

CLERK SUPREME COURT

**SAMUEL WATERMAN, Individually and as Administrator of the
Estate of WANDA M. WATERMAN, Deceased,**

Appellant,

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vs.

CITY OF BURLINGTON, IOWA,

Appellee,

and

NATIONAL AMBULANCE BUILDERS, INC.,

Defendant.

Appeal from the Iowa District Court for Des Moines
County, David B. Hendrickson, Judge.

Plaintiff appeals district court finding the industrial
commissioner had exclusive jurisdiction over claims of
nurse's estate against the City after nurse was killed
while working on City of Burlington ambulance. **AFFIRMED.**

J. Bryan Schulte of Ruther, Bauer, Schulte, Hahn,
Swanson & Crowley, Burlington, for appellant.

Craig D. Warner and Patrick L. Woodward of Aspelmeier,
Fisch, Power, Warner & Engberg, Burlington, for appellee.

Considered by Oxberger, C.J., and Hayden and Habhab,
JJ.

HAYDEN, J.

Wanda Waterman was a registered nurse employed by the Burlington Medical Center. She and other nurses were represented by Local 7181 of the Communication Workers of America (Union). The Union and the City entered into an agreement in March 1982 for the nurses to be available as nurse attendants on out-of-town ambulance calls. Under the agreement a nurse could refuse an ambulance call. Nurses were compensated for ambulance calls by the City. They received no fringe benefits, but the City paid workers' compensation insurance on the nurse attendants.

Wanda worked full time for the Burlington Medical Center. She also made herself available as a nurse attendant on the City of Burlington ambulance. On out-of-town ambulance runs the nurse attendant would have supervisory powers over the emergency medical technician and driver.

Wanda was killed while transporting a patient from Burlington to Iowa City. She was riding in a City ambulance and acting as a nurse attendant for the City. Her estate received workers' compensation benefits after her death.

Plaintiff Samuel Waterman, the surviving spouse, filed this suit seeking damages from the City for the death of Wanda. He claimed Wanda was an independent contractor. The City filed a motion for summary judgment claiming Wanda was an employee of the City, and the industrial

commissioner had exclusive jurisdiction over the claims for Wanda's death.

The district court determined when a nurse accepted an ambulance trip, the nurse agreed to be a City employee covered by workers' compensation insurance. The court concluded the nurses were employees, not independent contractors. The court granted the motion for summary judgment because it believed it was without subject matter jurisdiction. Samuel now appeals.

Samuel contends the parties could not determine by contract whether the industrial commissioner had exclusive jurisdiction over personal injury claims. He asserts the court should have looked at the definition of "employee" in the Workers' Compensation Act to determine whether Wanda was a City employee, rather than looking at the contract provisions in the 1982 agreement.

Samuel also contends the court erred in finding Wanda was an employee, not an independent contractor. He states an examination of the factual circumstances surrounding the employment relationship between Wanda and the City shows Wanda was an independent contractor.

Under Iowa Code section 85.20, the rights and remedies provided by the Workers' Compensation Act for an injured employee are exclusive. The act bars an employee's tort suit against his employer. Tigges v. City of Ames, 356 N.W.2d 503, 509 (Iowa 1984). The Act gives the industrial commissioner exclusive jurisdiction and deprives the

district court of subject matter jurisdiction over such cases. Id.

An appellate court's review of proceedings concerning subject matter jurisdiction is at law, not de novo. Jansen v. Harmon, 164 N.W.2d 323, 326 (Iowa 1969).

The question in this case then is whether Wanda should be considered an employee of the City, making her rights under the Workers' Compensation Act her estate's sole remedy against the City. We agree there are none of the regular indicia of a master-servant relationship in this case. However, the type of control test necessary to find a master-servant relationship is inapplicable to determine employment for purposes of workers' compensation. Rouse v. State, 369 N.W.2d 811, 814 (Iowa 1985). The issue of employment is not decided by determining whose work is being done and who has the right to control how it is done. Id. The intent of the parties is the overriding element in determining whether an employment contract existed. Id.

Employment implies the required contract on the part of the employer to hire and on the part of the employee to perform service. Henderson v. Jennie Edmundson Hospital, 178 N.W.2d 429, 431 (Iowa 1970).

In this case, Wanda was a member of the Union, and the Union entered into a contract with the City. The contract provided :

B. Working Conditions

1. While the nurse is employed by the City of Burlington, said nurse shall be considered a city employee with statutory benefits provided by workers' compensation insurance.

This collective bargaining agreement was ratified by a majority of the union members present at the March 22, 1982, general membership meeting of Local 7181. This agreement became a binding contract between the members of the union and the City of Burlington, Iowa.

We determine that when Wanda accepted an ambulance trip, she agreed to be a City employee covered by workers' compensation insurance. Thus, Wanda was an employee of the City at the time of the injury which led to her death. The rights provided by the Workers' Compensation Act are her estate's sole remedy against the City.

We hold the district court did not have subject matter jurisdiction in this case. The decision of the district court in this regard is supported by substantial evidence.

AFFIRMED.