NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

EARL PATTON AND SHARON PATTON, HUSBAND AND WIFE, Appellee v. WORTHINGTON ASSOCIATES, INC. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 85 EDA 2011

Appeal from the Judgment entered December 30, 2010
in the Court of Common Pleas of Bucks County Civil Division
at No(s): 03-06581-2602

BEFORE: FORD ELLIOTT, P.J.E., BENDER, J. and MUNDY, J.

MEMORANDUM BY MUNDY, J.: **FILED JULY 03, 2014** Appellant, Worthington Associates, Inc. (Worthington), appeals from the December 30, 2010 judgment entered in favor of Appellees, Earl Patton (Patton) and Sharon Patton (Ms. Patton), in the amount of $1,528,006.54. This case returns to us on remand from our Supreme Court. Consistent with our Supreme Court's opinion in this case, we reverse and remand with instructions.

The relevant facts and procedural history, as set forth by the trial court, are as follows.

> [T]his personal injury action stems from serious injuries sustained by [Patton] while working on a construction site at a church in Levittown, Bucks County. In 2001, the Christ Methodist Church (hereinafter "the Church") hired Worthington to serve as general contractor for the Fellowship Hall

> project. Worthington then hired Patton Construction, Inc. (hereinafter "Patton Construction"), which is wholly owned by Patton, to serve as a carpentry contractor on the project.
>
> On October 26, 2001, Patton was to perform spackling of the soffits located along the ceilings of the Church's fellowship hall (hereinafter "the hall"). To perform the spackling, Patton rented and used a scissor lift. Located on the concrete floors of the hall were large holes, roughly two feet in diameter. Previously, Patton had covered the holes with plywood but they were uncovered the day of the injury. Patton had been in the hall multiple times. However, he had not been in the hall for three days prior to the date of the fall and when he arrived at work on this date[,] he discovered that elevator equipment had been placed on the hall floor. While maneuvering the lift to complete the spackling, a wheel on the lift fell into one of the holes in the hall floor causing the lift to fall over. Patton fell fourteen feet and was pinned by the lift resulting in serious injuries including fractured vertebrae. On October 14, 2003, [] Patton, [] and [Ms.] Patton [], husband and wife, filed a lawsuit against Worthington alleging that Worthington was negligent in failing to provide a safe work place and for failing to cover the holes in the concrete.

Trial Court Opinion, 4/29/10, at 2-3 (citations to notes of testimony omitted).

On November 17, 2006, Worthington filed a motion for summary judgment averring it was "the Statutory Employer of Mr. Patton under the Pennsylvania Workmen's Compensation Act, 77 P.S. Section 52[, and] ***McDonald v. Levinson Steel Company***, 302 Pa. 287, 153 A. 424 (1930)[,]" and therefore immune from tort liability. ***See*** Worthington's

Summary Judgment Motion, 11/17/06, at ¶ 14. On January 30, 2007, the trial court denied Worthington's motion.

On November 30, 2009, a three-day jury trial commenced. "During the trial, Worthington stipulated that it owed a duty to Patton to provide a safe workplace and breached that duty when it failed to do something that a reasonable careful person would do, or did something that a reasonable careful person would not do." Trial Court Opinion, 4/29/10, at 3. "Worthington also stipulated that Patton's medical expenses were $57,234.71 and that his past lost wages were $21,059.02." ***Id.***

On December 2, 2009, the jury reached a verdict, and found as follows: (1) Worthington was negligent; (2) Worthington's negligence was a factual cause in bringing harm to Patton; (3) Patton was contributorily negligent; (4) Patton's contributory negligence was a factual cause in bringing about his harm; (5) 80% of the causal negligence was attributable to Worthington, and 20% of the causal negligence was attributable to Patton; (6) Patton was awarded damages in the amount of $1,000,000.00; (7) Ms. Patton was awarded damages in the amount of $500,000.00 for loss of consortium; and finally the jury specifically found that (8) Patton was an independent contractor, not an employee, of Worthington. ***See*** Jury Verdict Sheet, 12/2/09. On December 2, 2009, the trial court molded the jury verdict, awarding $800,000.00 to Patton and $400,000.00 to Ms. Patton, for a total award of $1,200,000.00.

Thereafter, on December 11, 2009, Worthington filed post-trial motions requesting, *inter alia*, a grant of judgment notwithstanding the verdict (JNOV) on the basis that Worthington was Patton's statutory employer, a new trial on liability, a new trial on damages, or that the trial court grant remittitur and substantially lower the damages awarded. By opinion and order dated May 5, 2010, the trial court denied Worthington's post-trial motions.

On November 24, 2010, the trial court entered an order directing judgment in Patton's favor in the amount of $1,528,006.54.[1] That same day, the Patton's praeciped for judgment, and on December 30, 2010, the judgment was entered.

On January 3, 2011, Worthington filed a timely notice of appeal to this Court. On March 27, 2012, a split three-judge panel of this Court affirmed the December 30, 2010 judgment. ***Patton v. Worthington Assocs., Inc.***, 43 A.3d 479 (Pa. Super. 2012), *reversed*, 89 A.3d 643 (Pa. 2014). On April 26, 2013, our Supreme Court granted Worthington's petition for allowance of appeal, and on March 26, 2014, reversed this Court's March 27, 2012 decision, and remanded for any further action as may be necessary to

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[1] Following a dispute over delay damages, the trial court stated the $1,200,000.00 verdict "is hereby molded to reflect the addition of delay damages in the amount of $327,789.04[,]" plus "costs in the amount of $217.50[,]" for a total of $1,528,006.54. Trial Court Order, 11/24/10.

conclude this case. ***Patton v. Worthington Assocs., Inc.*** 89 A.3d 643, 650 (Pa. 2014). In said opinion, our Supreme Court solely addressed Worthington's first issue arguing it was entitled to an entry of JNOV on the basis that Worthington "is a statutory employer per the Workers' Compensation Act and, as such, enjoys immunity from civil liability for injuries sustained by Appellee Earl Patton." ***Id.*** at 644. Accordingly, as this issue is dispositive, we need only address this portion of Worthington's original arguments. ***See*** Worthington's Brief at 5.

Our review of a trial court's order denying JNOV is guided by the following.

> A JNOV can be entered upon two bases: (1) where the movant is entitled to judgment as a matter of law; and/or, (2) the evidence was such that no two reasonable minds could disagree that the verdict should have been rendered for the movant. When reviewing a trial court's denial of a motion for JNOV, we must consider all of the evidence admitted to decide if there was sufficient competent evidence to sustain the verdict. In so doing, we must also view this evidence in the light most favorable to the verdict winner, giving the victorious party the benefit of every reasonable inference arising from the evidence and rejecting all unfavorable testimony and inference. Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact. If any basis exists upon which the [court] could have properly made its award, then we must affirm the trial court's denial of the motion for JNOV. A JNOV should be entered only in a clear case.

V-Tech Servs., Inc. v. Street, 72 A.3d 270, 275 (Pa. Super. 2013) (citations omitted).

In its decision in the instant matter, our Supreme Court concluded that, "[h]ere, as a matter of law, Patton Construction, Inc., was a subcontractor and not an 'independent contractor' relative to Sections 203 and 302(b) of the Act, particularly since it is undisputed that the company's contract was with the general contractor (Worthington) and not the owner (Christ United Methodist Church)."[2] ***Patton***, ***supra*** at 649. Accordingly, as there can be no dispute as a matter of law as to whether Patton was a

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[2] As our Supreme Court notes "[p]ursuant to Section 302(b) of the Workers' Compensation Act, 77 P.S. §462, general contractors bear secondary liability for the payment of workers' compensation benefits to injured workers employed by subcontractors." ***Patton***, ***supra*** at 645 (footnote omitted). Further, the statutory employer immunity defense arises pursuant to 77 P.S. § 52 of the Workers' Compensation Act (the Act), formerly section 203, which provides as follows.

> **§ 52. Employers' liability to employe of employe or contractor permitted to enter upon premises**
>
> An employer who permits the entry upon premises occupied by him or under his control of a laborer or an assistant hired by an employe or contractor, for the performance upon such premises of a part of the employer's regular business entrusted to such employe or contractor, shall be liable to such laborer or assistant in the same manner and to the same extent as to his own employe.

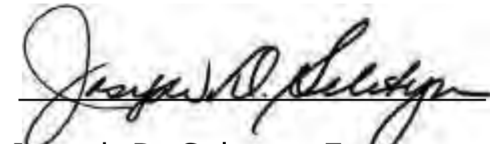
77 P.S. § 52 (emphasis added).

subcontractor, the trial court erred in denying Worthington's post-trial motion for JNOV. ***See V-Tech Sers., Inc.***, ***supra*** at 275.

Therefore, based on the foregoing, we are constrained to reverse the trial court's December 30, 2010 judgment, and remand with instructions for the trial court to enter judgment in favor of Worthington.

Judgment reversed. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/3/2014