

IN THE SUPREME COURT OF FLORIDA

MATRIX EMPLOYEE LEASING, INC. and
FIRST COMMERCIAL CLAIMS SERVICES,

Petitioners,

CASE NO.: SC07-1826

D/A: 12/14/2004

v.

DAVID WARD,

BLUE STONE,

AND

ENTERPRISE HR AND
INSURANCE COMPANIES OF AMERICA

Respondents.

PETITIONERS' JURISDICTIONAL BRIEF

On Review from the First District Court of Appeal
State of Florida
Case No. 1DO6-5282

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SUMMARY OF THE CASE AND FACTS

Claimant began working for E & L Concrete through Matrix Employee Leasing, Inc. (“Matrix”), an employee leasing company and professional employer organization in August of 2004. He filled out the employment application and gave it to Steve McMahon, who was the owner of E & L Concrete. (App. G-17). Claimant received his paychecks from Matrix up until October 4, 2004. (App. G-17). At that point, Steve McMahon and the Claimant went to New York to do some work for Mr. McMahon’s brother. (App. G-18). The Claimant was paid directly by Steve McMahon and/or his brother during that period. (App. B-34). The worker's compensation insurance policy obtained by Matrix does not provide coverage for injuries outside the State of Florida. (App. G-19, C-11, E-22). According to Matrix payroll manager, Melissa Ashe, once a client of Matrix returns to Florida and wants to start re-using Matrix’s services, they must contact their broker and submit a new deal as if that company were a new client. (C-11, E-30). Furthermore, those contracts for the new deal would have to be signed by an owner of Matrix before any payroll could be processed. (App. C-16). In fact, the owners of Matrix are the only people with the authority to bind Matrix legally to a client service agreement, such as would have been executed with E & L Concrete. (App. C-24). There were no notes within Matrix’s file that E & L Concrete even tried to run payroll with them post-October 4, 2004 (App. C-22).

In addition, while there is no record that Matrix notified the Claimant that he was no longer an employee of Matrix, the “Client Contract” specifically provides on page 7, paragraph X (a) that should the client have been terminated for any reason or should the client fail to timely pay Matrix for its services, the employees of that client shall be deemed to have been laid off, and immediate notification of this shall be provided by *the client*. (App. E-13, C – Employer Exhibit 1).

Upon Mr. McMahon and the Claimant’s return to Florida, approximately two months after they left for New York, they went to do some work at The Plantation construction site. (App. J-7). There was a delay in their being able to perform work there because there was not a current worker's compensation insurance certificate on file for E&L Concrete. (App. J-7). A certificate was faxed over to The Plantation by Sam Davis, the broker who originally signed E & L Concrete up with Matrix. (App. F-6). However, nowhere on that certificate does it mention Matrix as the employer or First Commercial Claims Services as the insurance carrier. (App. F-6,7). That certificate was apparently enough for E & L Concrete to commence working at The Plantation, however. (App. J-8).

Following that, E & L Concrete proceeded to another job site to pour concrete for Blue Stone, a general contractor. (App. J-12). Blue Stone had on file a copy of the certificate of coverage issued by Matrix for a period covering April 1, 2004 to April 1, 2005. However, during this time period, Steve McMahon was aware that he had not yet gotten coverage from Matrix as he was in the process of

filling out all of the re-sign paperwork and contracts and was unable to run his payroll through Matrix until all of that paperwork had been approved (App. F-11, 33; J-14, 44, 54, 61).

It was during this period that the Claimant sustained his industrial accident on December 13, 2004, a right ankle fracture requiring surgery. (App. B-31). He testified that he has been out of work since the date of accident. (App. B-31,32).

At the time the accident was reported to Matrix on December 14, 2004, Claimant was still erroneously listed as an active employee on the payroll system, despite not having received a paycheck through Matrix since October 4, 2004, almost 2 and a half months. (App. D-8, E-8). As such, Matrix authorized medical treatment and paid some medical bills until they realized that Claimant was not an employee of theirs on the date of injury. (App. D-8, E-8).

The Claimant had testified that he knew that Matrix “wouldn’t cover us up in New York.” The Claimant further testified that upon his return to the State of Florida, he was aware of [workers’ compensation] coverage issues when he and his employer, E & L Concrete, were “kicked out” of the Plantation because he was not covered. (App. G-19; H-42). The Claimant also testified at least three (3) times during his two depositions and at least once during the hearing regarding compensability that he was an employee of E & L Concrete, not Matrix. (App. B-34, 35; G-17; H-13, 14). The Claimant additionally stated during the hearing on

compensability that he never considered himself to be an employee of Matrix. (App. B-34, 35).

This claim went to final hearing on compensability on August 24, 2006 in front of Judge Murphy, who held that the Claimant's employment with Matrix ended as of October 4, 2004 and that he had actual notice that his employment with Matrix had ended. (App. B-14). Judge Murphy also held that Blue Stone was the statutory employer because E & L Concrete was a subcontractor of Blue Stone who did not have workers' compensation coverage. (App. B-16). Blue Stone subsequently appealed this decision.

The First District Court of Appeals, in an opinion filed July 20, 2007, reversed the decision of Judge Murphy, holding that the law requires: (1) that Matrix provide the Claimant with notice of his termination and (2) that there was no competent substantial evidence in the record to support the conclusion that the Claimant was given notice of the termination of his employment.

The Petitioners subsequently applied for rehearing and rehearing *En Banc*, pursuant to a Motion for Rehearing and Motion for Rehearing *En Banc* filed on August 2, 2007. The First District Court of Appeals denied both of those motions in an order entered August 28, 2007, rendering the decision of July 20, 2007 final. The Petitioners filed their Notice to Invoke Jurisdiction of the Supreme Court on September 27, 2007.

SUMMARY OF THE ARGUMENT

This case is of great importance to business owners all over the State of Florida and does not just affect employee leasing companies. With the decision in this case, the First District Court of Appeals has created a confusing mix of decisions dealing with employee leasing companies. The First District Court of Appeals overlooked its own line of binding legal precedent regarding employee leasing companies, which holds that if there is no employment relationship between the leasing company and the injured worker on the date of accident, then the actual employer, not the employee leasing company, becomes liable for providing worker's compensation benefits.

In addition, the decision of the First District Court of Appeals in the instant case appears to expressly declare valid F.S. §468.525(4)(f)(2004), which reads that an employee leasing company's contract with its clients must provide for "written notice of the relationship between the employee leasing company and the client company to each leased employee it assigns to perform services at the client's worksite," despite the fact that the statute is facially clear that the requirement of "written notice of the relationship" is for notification of the onset of the relationship.

For the foregoing reasons, among others, the Supreme Court should review the decision of the First District Court of Appeals in the instant case.

ARGUMENT

The Florida Supreme Court has a lawful basis for asserting discretionary jurisdiction under Art. V, §3(b)(3), Fla. Const. The Supreme Court can and should review this case, not merely to correct the particular decision under review, but also because there is a need to resolve broad issues with far-reaching implications.

First, in its opinion in the instant case, the First District Court of Appeals overlooked its own line of binding legal precedent, in particular Specialty Employee Leasing v. Davis, 737 So. 2d 1170 (Fla. 1st DCA 1999), which holds that if there is no employment relationship between the leasing company and the injured worker on the date of accident, then the actual employer, not the employee leasing company, becomes liable for providing worker's compensation benefits. The Davis Court based its ruling on the fact that the injured worker was being paid by an employer other than Specialty Employee Leasing, an employee leasing company, on the date of accident. See id. at 1172. The Court should have followed its own line of precedent in the instant case. The Court in the instant case departed from controlling legal precedent with its decision that the Claimant was an employee of Matrix at the time of the accident. Thus, the decision in the case below directly conflicts with the First District Court of Appeals' own ruling in Specialty Employee Leasing v. Davis, 737 So. 2d 1170 (Fla. 1st DCA 1999) and should therefore be subject to review by the Supreme Court of Florida.

The opinion of the court below also conflicts with F.S. §627.192, which requires that an employer who leases some or all of its workers properly obtain workers' compensation coverage for all of its employees, specifically F.S. §627.192(7) which states that,

This section shall not have any effect on the statutory obligation, if any, of a lessee to secure workers' compensation coverage for employees that the lessee does not co-employ or lease pursuant to an employee leasing arrangement.

F.S. §627.192(7)(2004)

This statute section appears to squarely place the burden for obtaining workers' compensation insurance for non-leased employees on the employer, not on the employee leasing company. The holding of the First District Court of Appeals in the decision below places the burden on the employee leasing company in direct dispute with F.S. §627.192(7)(2004).

Moreover, this case is of exceptional importance as its impact could be felt by every employer in the State of Florida. By definition, under Chapter 440 of the Florida Statutes, employee leasing companies qualify as "employers." See F.S. §440.02(16)(a)(2004). As such, it is of grave concern that the ruling in the instant case sets dangerous precedent that appears to have no logical end. If the Claimant in the instant case can move outside of the State of Florida for over two months, receive paychecks from an employer other than the employee leasing company for over two months after it received its last paycheck from the employee leasing

company, admit that he knew his workers' compensation insurance terminated at the time he moved outside the State of Florida, admit that he knew there were workers' compensation insurance coverage issues upon his return to the State of Florida, and then claim to be an employee of the leasing company that employed him prior to all of the foregoing, simply because he received no termination letter, then is there any set of facts whereby a claimant would be found to have actual knowledge of the termination of his employment with an employee leasing company short of receipt of a termination letter? This decision leaves the answer to that question open-ended and sets the stage for similar claims against all employers, not just employee leasing companies.

In addition, the decision of the First District Court of Appeals in the instant case appears to expressly declare valid F.S. §468.525(4)(f)(2004), which reads that an employee leasing company's contract with its clients must provide for "written notice of the relationship between the employee leasing company and the client company to each leased employee it assigns to perform services at the client's worksite." However, F.S. §468.525(4)(f)(2004) intentionally does not address a requirement that employee leasing companies inform leased employees that the employment relationship has been terminated. The statute is facially clear that the requirement of "written notice of the relationship" is for notification of the onset of the relationship. If it had been the true intent of the legislature to mandate that employee leasing companies provide notice of termination to *every* leased

employee, then language to that effect would have been included in the statute. See F.S. §468.529(3)(2004)(a licensed employee leasing company shall within 30 days after initiation or termination notify its workers' compensation insurance carrier, the Division of Workers' Compensation of the Department of Financial Services, and the state agency providing unemployment tax collection services . . .of both the initiation or the termination of the company's relationship with any client company). The Legislature was very clear in other portions of Section 468 of the Florida Statutes as to when notice of termination was a requirement. Thus, the First District Court of Appeals bases a portion of its ruling on an inference that was clearly not the intention of the Legislature. The First District Court of Appeals in the decision in the instant case, holds that pursuant to F.S. §468.525(4)(f)(2004), employee leasing companies are required to notify both their clients and employees when they intend to terminate the employment relationship, despite the fact that nowhere in the statute is that required.

Finally, there is competent substantial evidence in the record to support the ruling of JCC Murphy at the trial level. The job of the appellate court is not to weigh the evidence, as they seem to have done in the instant case, but to ensure that the correct decision was made at the trial level. This is an issue of such great importance to the way business is done in the State of Florida that for that reason and those referenced above, the Supreme Court can and should review this case.

CONCLUSION

The Supreme Court of Florida has jurisdiction over the matters in the instant case under Art. V, §3(b)(3), Fla. Const. and should review the decision of the First District Court of Appeals in the instant case. The First District Court of Appeals has not followed its own line of binding legal precedent, and also case appears in its decision to expressly declare valid F.S. §468.525(4)(f)(2004), which reads that an employee leasing company's contract with its clients must provide for "written notice of the relationship between the employee leasing company and the client company to each leased employee it assigns to perform services at the client's worksite." Therefore, the Supreme Court of Florida should find that it has jurisdiction in this matter and should review this decision.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the foregoing has been furnished by U.S. Mail this ____ day of _____, 2007, by U.S. Mail to: Supreme Court of Florida, Clerk of the Court, 500 South Duval Street, Tallahassee, Florida 32399-1927; Steven Hovsepain, Esquire, 1802 West Cleveland Street, Tampa, Florida 33606; Katherine Stone, Esquire, 1802 West Cleveland Street, Tampa, Florida 33606; Bill McCabe, Esquire, 1450 S.R. 434 West, Suite 200, Longwood, FL 32750; David Rickey, Esquire, 20 North Orange Avenue, 16th Floor, Orlando, FL 32801 and Gregory D. White, Esquire, 1560 Orange Avenue, Suite 500, Winter Park, FL 32789.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font requirements of Rule 9.210(a) Rules of Appellate Procedure have been complied with in this Jurisdictional Brief on this ____ day of _____, 2007.

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