

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2017 CA 0703

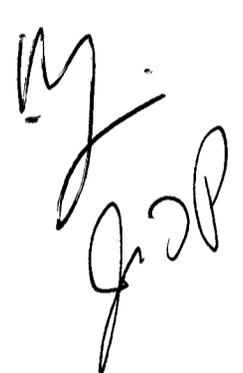
NEVILLE PATTERSON

VERSUS

 RACELAND EQUIPMENT COMPANY, LLC AND RACELAND RAW
SUGAR LLC D/B/A RACELAND SUGAR MILL

Judgment Rendered: APR 18 2018

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 Appealed from the
Seventeenth Judicial District Court
In and for the Parish of Lafourche
State of Louisiana
Suit Number 126414

Honorable Steven M. Miller, Presiding

* * * * *

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* * * * *

BEFORE: GUIDRY, PETTIGREW, AND CRAIN, JJ.

GUIDRY, J.

In this action seeking damages for personal injuries, plaintiff, Neville Patterson, appeals from a judgment of the trial court granting summary judgment in favor of defendants, Raceland Equipment Company, LLC and Raceland Raw Sugar, LLC d/b/a Raceland Raw Sugar Mill, and dismissing his claims against them with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Raceland Raw Sugar, LLC (RRS) is a sugar mill in Lafourche Parish that contracts out the hauling of sugar cane from the field to their mill. RRS formed Raceland Equipment Company, LLC (REC) to offer a way for its contractors to obtain affordable workers' compensation insurance if they did not otherwise have a workers' compensation insurance policy. On September 18, 2013, Patterson, in his individual capacity, signed several documents with RRS and REC in order to haul cane for RRS. Included among these documents was an indemnification agreement and insurance requirements form, signed by Patterson, identifying him as the "contractor" and recognizing RRS and REC's legal status as statutory employers.

At the time Patterson completed the paperwork and signed the indemnification agreement with RRS and REC, he was driving a truck owned by S&S Holmes (S&S). The haul checks from RRS were paid to S&S but were endorsed by Patterson, and Patterson received a separate check from REC for driver wages. Thereafter, on November 4, 2013, Patterson formed N-A-N Trucking, LLC (N-A-N) with the Louisiana Secretary of State's office. Patterson submitted copies of his paperwork to RRS and began operating his own truck. From that point forward, RRS made haul checks payable to N-A-N, which were also endorsed by Patterson, and Patterson continued to receive his driver wages from REC.

Thereafter, on December 23, 2013, while Patterson was unloading his trailer at the RRS sugar mill, the cable used to pick up the trailer broke, causing the trailer to fall back onto the truck. Patterson subsequently filed a petition for damages, naming RRS and REC as defendants and asserting that he was an employee of N-A-N; he sustained physical injuries to his neck and back as a result of the December 23, 2013 accident; and that the accident was caused by the negligence of RRS and REC. RRS and REC filed an answer, alleging several affirmative defenses. Particularly, RRS and REC asserted that at all pertinent times, Patterson was a direct employee of REC and pursuant to contract, was a statutory employee of RRS, and therefore, his tort claims against them were barred by the Louisiana Workers' Compensation Act (the Act).

On March 6, 2015, RRS and REC filed a motion for summary judgment, asserting that because Patterson is a direct employee of REC and a statutory employee of RRS, they are immune from a civil tort action pursuant to the Act. Following a hearing on RRS and REC's motion, the trial court signed a judgment on June 5, 2015, denying the motion. In reasons for judgment, the trial court noted conflicting evidence regarding whether Patterson was a direct employee of REC. Additionally, the court noted inconsistent evidence regarding whether the indemnification agreement established that Patterson was an employee of N-A-N or a contractor with RRS and REC.

Thereafter, following the taking of depositions of the parties and witnesses, RRS and REC filed a renewed motion for summary judgment. In their motion, RRS and REC asserted that the undisputed facts demonstrate that Patterson, in his individual capacity, was an independent contractor of both RRS and REC through a written agreement, and that the agreement is compliant with La. R.S. 23:1061 and conveys statutory employer status upon RRS and REC. Therefore, RRS and REC asserted that they are immune from civil tort liability pursuant to the Act.

Patterson opposed the motion, asserting that he is an employee of N-A-N, and there is no contract between RRS and N-A-N. Both parties submitted copies of the indemnification agreement, LLC documents, payroll checks, and depositions of the parties and other witnesses.

Following a hearing, the trial court signed a judgment granting summary judgment in favor of RRS and REC and dismissing Patterson's claims against them with prejudice.¹ In reasons for judgment, the trial court found that the indemnification agreement, executed by Patterson in his individual capacity and listing him as "contractor," recognized RRS and REC as statutory employers and thereby created a rebuttable presumption of a statutory employment relationship. As such, Patterson bore the burden of showing that the parties severed the contract when he created N-A-N. However, the trial court found that Patterson failed to present any evidence that the contract was revoked as a matter of law.

Patterson now appeals from the trial court's judgment.

DISCUSSION

A motion for summary judgment is a procedural device used to avoid a full scale trial when there is no genuine issue of material fact. M/V Resources LLC v. Louisiana Hardwood Products LLC, 16-0758, p. 8 (La. App. 1st Cir. 7/26/17), 225 So. 3d 1104, 1109, writ denied, 17-1748 (La. 12/5/17), 231 So. 3d 624. A motion for summary judgment is properly granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The only documents that may be filed in support of or in opposition to the motion are pleadings, memoranda, affidavits, depositions, answers to interrogatories, certified medical records, written stipulations and admissions. La. C.C.P. art.

¹ We note that the trial court, in response to a show cause order issued by this court questioning the finality of the trial court's judgment, signed a revised judgment on July 6, 2017.

966(A)(4). The court may consider only those documents filed in support of or in opposition to the motion for summary judgment and shall consider any documents to which no objection is made. La. C.C.P. art. 966(D)(2). In determining whether summary judgment is appropriate, appellate courts review evidence *de novo* under the same criteria that govern the trial court's determination of whether summary judgment is appropriate. M/V Resources LLC, 16-0758 at p. 9, 225 So. 3d at 1109.

On a motion for summary judgment, the burden of proof is on the mover. Nevertheless, if the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover's burden on the motion does not require him to negate all essential elements of the adverse party's claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. The burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. La. C.C.P. art. 966(D)(1).

Under the Act, an employer is liable for compensation benefits to an employee who is injured as a result of an accident arising out of and in the course of employment. La. R.S. 23:1031. Generally, the rights and remedies under the Act, La. R.S. 23:1021-1415, provide an employee's exclusive remedy against the employer for such injury. La. R.S. 23:1032. The Act applies to both a direct employer/employee relationship as well as to a statutory employer/employee relationship. Labranche v. Fatty's, LLC, 10-0475, p. 4 (La. App. 1st Cir. 10/29/10), 48 So. 3d 1270, 1272.

Specifically, La. R.S. 23:1061(A)(1) provides that when a "principal" ... undertakes to execute any work, which is a part of his trade, business, or occupation and contracts with any person, in this Section referred to as a

‘contractor’, for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal, as a statutory employer, shall be granted the exclusive remedy protections of R.S. 23:1032... .”²

The doctrine of “statutory employer” codified in La. R.S. 23:1061, was amended in 1997 to provide that, except in the two-contract situation set forth in La. R.S. 23:1061(A)(2), a statutory employer relationship “shall not exist ... unless there is a written contract between the principal and a contractor ... which recognizes the principal as a statutory employer.” La. R.S. 23:1061(A)(3). It further provides that when there is such a written contractual recognition of the relationship, there shall be a rebuttable presumption of a statutory employer relationship between the principal and the contractor’s employees that may only be overcome by showing the work performed is not an integral part of or essential to the ability of the principal to generate that principal’s goods, products, or services. La. R.S. 23:1061(A)(3).

An employer seeking to avail itself of tort immunity bears the burden of proving its entitlement to immunity. Fleming v. JE Merit Constructors, Inc., 07-0926, p. 8 (La. App. 1st Cir. 3/19/08), 985 So. 2d 141, 145. Furthermore, immunity statutes must be strictly construed against the party claiming the immunity. Labranche, 10-0475 at p. 3, 48 So. 3d at 1272. The ultimate determination of whether a principal is a statutory employer entitled to immunity is a question of law for the court to decide. Fleming, 07-0926 at p. 8, 985 So. 2d at 146.

In the instant case, RRS and REC submitted a copy of the indemnification agreement, which they assert conveys statutory employer status on RRS and REC. The agreement, which was signed by Patterson prior to the formation of N-A-N,

² Under La. R.S. 23:1061(A)(1), “work shall be considered part of the principal’s trade, business, or occupation if it is an integral part of or essential to the ability of the principal to generate that individual’s goods, products, or services.”

lists Patterson as the contractor. Furthermore, the agreement provides that “[t]he parties recognize Raceland as the statutory employers of Contractor’s employees[.]” Despite the clear language of the agreement, Patterson contends that it is of no effect because at the time of the accident, Patterson had formed N-A-N, he was an employee of N-A-N, and RRS and REC had failed to execute a new indemnification agreement with N-A-N as the employer/contractor. However, we find this argument to be without merit. The record demonstrates that at the time Patterson entered into the agreement as the contractor, he was the owner operating through S&S Holmes. Patterson paid the workers’ compensation premium in October 2013, and received payment from REC as a driver and endorsed the haul checks from RRS, which were made payable to S&S. The workers’ compensation policy paid by Patterson in October 2013, continued after the formation of N-A-N, as well as the practice of REC paying Patterson as a driver and Patterson endorsing haul checks from RRS, which were made payable to N-A-N.

Therefore, it is clear from the evidence in the record that Patterson entered into the agreement in his individual capacity as the owner/operator. Because the agreement was entered into individually by Patterson, recognizing RRS and REC as statutory employers, and Patterson was always the owner/operator, it was not necessary to enter into a new contract following the formation of N-A-N.³

Having found that the agreement between Patterson and RRS and REC conveys statutory employer status on RRS and REC, it creates a rebuttable presumption of statutory employer relationships. See La. R.S. 23:1061(A)(3). From our review of the record, Patterson has failed to present any evidence to rebut this presumption, *i.e.*, evidence demonstrating that hauling sugar cane to a sugar

³ We note that Patterson does not contend that the agreement was ineffective prior to the formation of N-A-N, when Patterson was operating through S&S.

mill is not essential to the ability of the principal to generate its goods, products or services.

Therefore, we find that RRS and REC proved their entitlement to immunity from civil tort liability pursuant to the Act, and there is no error in the trial court's judgment granting summary judgment in favor of RRS and REC.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are assessed to Neville Patterson.

AFFIRMED.