

No. 1-13-1906

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

LINDA MASON,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 M1 15370
)	
ADDUS HEALTHCARE, INC.,)	Honorable
)	Mary R. Minella,
Defendant-Appellee.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Hyman concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Court did not err in dismissing personal injury action on grounds that it was barred by the Worker's Compensation Act; the Act bars civil action against employer for alleged intentional physical injury by co-employee absent a well-pled allegation of the employer's intent.
- ¶ 2 Plaintiff Linda Mason appeals from the dismissal of her personal injury action against defendant Addus HealthCare, Inc. (Addus). She contends that dismissal, on the basis that her claim falls under the Worker's Compensation Act (Act)(820 ILCS 305/1 *et seq.* (West 2012)) to

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the exclusion of a civil action, was erroneous because she alleges an intentional tort of battery while the Act applies to unintentional injuries. We affirm.

¶ 3 In her September 2012 complaint, Mason alleged that both she and Adrienne Jackson were employed by Addus on September 16, 2009. Mason was getting her paycheck at Addus's downtown Chicago office where Jackson was a receptionist when, between 3 and 4 p.m., "Jackson assaulted Plaintiff by forcibly grabbing Plaintiff's right hand resulting in injury." The complaint did not name Jackson as a defendant but only Addus. The accompanying civil action cover sheet indicated the action is for "Personal Injury Other" and "Tort Intentional."

¶ 4 Addus appeared and filed a combined motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure. 735 ILCS 5/2-619.1 (West 2012). Addus argued that it was entitled to dismissal under section 2-615 (735 ILCS 5/2-615 (West 2012)) because Mason failed to state a cause of action for battery, and under section 2-619 (735 ILCS 5/2-619 (West 2012)) because her claim arises out her employment by Addus and is barred by the Act. Regarding the former, Addus argued that Mason's allegation that Jackson "assaulted" her by "forcibly grabbing" her hand was conclusory and failed to allege the element of battery that Jackson intended to cause harmful or offensive contact. Regarding the latter argument, Addus contended that the Act provides an exclusive remedy for claims against an employer for accidental injury in the workplace. Addus argued that an injury inflicted intentionally on one employee by another is accidental under the Act when arising out of and occurring in the course of employment; that is, the injury was inflicted by a fellow employee at work during work hours.

¶ 5 On January 14, 2013, the court set a briefing schedule on the motion to dismiss. Mason filed a document, initially titled a "statement of cause of action" but changed in handwriting to a

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"motion to amend." She alleged that she went on September 16, 2009, to "her place of employment" at a specified address in downtown Chicago "to pick up her pay check" when she reached out to pick up a clipboard to sign for her check. "Defendant a co-worker then grabbed Plaintiff's hand squeezing her hand [with] such force while the ink pen was in her hand causing her to scream out in pain, the Defendant continued applying pressure to Plaintiff's hand."

"Defendant finally released the Plaintiff's hand [after] approximately 90 seconds." She was injured by this battery, she alleged, in that she required "medical attention, and also therapy" and "still suffers from her injuries." The caption of the document listed only Addus as defendant, while the body of the document referred to Jackson (albeit never by name) as "the defendant."

¶ 6 In its reply, Addus argued that Mason's filing was an untimely response to its motion and that the document confirmed rather than refuted that Mason's claim was barred by the Act.

¶ 7 While Addus's motion was pending, the case went to mandatory arbitration, which resulted in a finding in favor of Addus.

¶ 8 On May 10, 2013, the court conducted a hearing and granted Addus's motion to dismiss. The court found that, although the Act does not bar a civil action by an employee against a co-employee for an intentional injury, it provides an employee's exclusive remedy against her employer for accidental injury in the workplace. The court further found that, while the Act does not bar civil actions against an employer for injuries intended – ordered or expressly authorized – by the employer, it does bar claims against an employer for one employee's intentional injury of another because the injury is accidental – unexpected and unforeseeable – as to both the employer and the injured employee. The court expressly refrained from ruling on the motion to dismiss pursuant to section 2-615, and it assessed costs against Mason. This appeal followed.

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¶ 9 On appeal, Mason contends the trial court erred in granting the motion to dismiss because her complaint alleges the intentional tort of battery while the Act applies only to unintentional injuries. We disagree.

¶ 10 We address only Addus's motion based on section 2-619 as the affirmative matter raised by Addus is dispositive. Section 2-619 authorizes dismissal when "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9) (West 2012). Our review of a dismissal under section 2-619 is *de novo*. *Garland v. Morgan Stanley & Co.*, 2013 IL App (1st) 112121, ¶ 23.

¶ 11 The object of the Act is "to provide and pay compensation for accidental injuries sustained by *** any employee, arising out of and in the course of the employment according to the provisions of this Act, and thereby relieve [the employer] from any liability for the recovery of damages, except as herein provided." 820 ILCS 305/2 (West 2012). In exchange for the imposition of liability without fault on employers, the Act prohibits employees from pursuing common law actions against their employers. *Meerbrey v. Marshall Field & Co.*, 139 Ill. 2d 455, 462 (1990). The Act thus provides:

"No common law or statutory right to recover damages from the employer *** for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury." 820 ILCS 305/5(a) (West 2012).

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¶ 12 To overcome the bar of section 5(a), a plaintiff must allege and prove that his injury (1) was not accidental, (2) did not arise out of employment, (3) was not incurred during the course of employment, or (4) was not compensable under the Act. *Garland*, ¶ 26, citing *Meerbrey*, 139 Ill. 2d at 463. An injury is "accidental" under the Act when it is traceable to a definite time, place, and cause, and it occurred in the course of employment unexpectedly and without affirmative act or design by the injured employee, so that a plaintiff must establish that his employer or a co-employee acted deliberately and with specific intent to injure the plaintiff. *Garland*, ¶ 29. An injury "arises out of" employment if it originates in some risk incident to – belonging or connected to what an employee has to do in fulfilling his duties – employment, so that there is a causal connection between the employment and the accidental injury. *Kertis v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120252WC, ¶ 14. Generally, a fight at work arising out of a purely personal dispute is not deemed to arise out of employment while a fight arising out of disputes concerning the employer's work is considered incidental to employment and subject to the Act. *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 279-80 (2004). The term "in the course of the employment" refers to the time, place, and circumstances of the plaintiff's injury; injuries sustained where the plaintiff might reasonably have been while performing his duties, and while the plaintiff is at work or within a reasonable time before and after work, are generally deemed to have been received in the course of employment. *Kertis*, ¶ 15.

¶ 13 In *Meerbrey*, the plaintiff went to his workplace "for the purpose of obtaining his payroll check for past earnings" when he was "arrested and forcibly taken to security offices by" security guards employed by their mutual employer, who turned the plaintiff over to the police for an unsuccessful prosecution for criminal trespass. *Meerbrey*, 139 Ill. 2d at 460. When the plaintiff

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sued the employer and one of the guards for false imprisonment, false arrest, and malicious prosecution, seeking compensatory and punitive damages from both defendants, the circuit court dismissed all counts against the employer but not all counts against the co-employee. *Meerbrey*, 139 Ill. 2d at 460-61. Our supreme court affirmed that disposition, holding that:

"injuries inflicted intentionally upon an employee by a co-employee are 'accidental' within the meaning of the Act, since such injuries are unexpected and unforeseeable from the injured employee's point of view. [Citation.] Such injuries are also accidental from the employer's point of view, at least where the employer did not direct or expressly authorize the co-employee to commit the assault. Because injuries intentionally inflicted by a co-worker are accidental from the employer's point of view, the employer has a right to consider that the injured employee's sole remedy against the employer will be under the" Act. *Meerbrey*, 139 Ill. 2d at 463-64.

Similarly, the *Meerbrey* court held that, while the Act does not bar a civil action against an employer for injuries that the employer intentionally inflicted on an employee or that were commanded or expressly authorized by the employer, a plaintiff's allegation that a co-employee was acting within the scope of his authority is not equivalent to alleging that the employer expressly authorized the co-employee to commit the specific acts at issue. *Meerbrey*, 139 Ill. 2d at 464-65. As to the *Meerbrey* plaintiff suing his co-employee, our supreme court held that the Act bars a civil action against a co-employee for injuries negligently inflicted in the course of the co-employee's employment but not for injuries arising out of the co-employee's intentional tort. *Meerbrey*, 139 Ill. 2d at 469-72.

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¶ 14 Here, Mason's complaint alleged that her injury was inflicted by a fellow employee (Jackson) in the employer's workplace (Addus's downtown Chicago office) during work hours and in the course of the co-employee's work (between 3 and 4 p.m. while Jackson was working as a receptionist). Mason did not allege and does not claim that Addus ordered or expressly authorized Jackson to injure her, but only that Jackson's act was intentional. Addus, the sole defendant herein, falls squarely within *Meerbrey* and we therefore conclude that Addus's motion to dismiss was properly granted.

¶ 15 Accordingly, the judgment of the circuit court is affirmed.

¶ 16 Affirmed.