2019 IL App (1st) 172207-U

No. 1-17-2207

Order filed January 10, 2019

Fourth Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

MARIA ROJAS,	)	
	)	Appeal from the
Plaintiff-Appellant,	)	Circuit Court of
	)	Cook County
v.	)	
	)	No. 15 L 002853
THE WELLNESS CENTER, a CORPORATION;	)	
NORTHWEST COMMUNITY HOSPITAL, d/b/a THE	)	Honorable
WELLNESS CENTER, a CORPORATION,	)	William E. Gomolinski,
	)	Judge Presiding.
Defendants-Appellees.	)	

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice McBride and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the circuit court's dismissal of plaintiff's complaint where the Workers' Compensation Act's exclusivity provision prohibits her from maintaining a civil action against her employer and the dual capacity exception to the Act's exclusivity provision does not apply.

¶ 2 Plaintiff Maria Rojas was employed by defendant Northwest Community Hospital. As an employee of defendant, plaintiff had access to the Northwest Community Hospital Wellness Center (Wellness Center). While using an elliptical machine at the Wellness Center, plaintiff

injured her arm. Plaintiff filed an Application for Adjustment of Claim with the Illinois Workers' Compensation Commission against defendant pertaining to the injuries she received. Subsequently, plaintiff filed the complaint at bar against defendant again seeking redress for the injuries she sustained on the elliptical machine in the Wellness Center. During the pendency of her civil claim, plaintiff and defendant settled her workers' compensation claim whereby plaintiff would be paid a lump sum in exchange for the discharge of her workers' compensation claims. Defendant thereafter filed a motion to dismiss plaintiff's civil law complaint on the basis that she had already recovered for her injuries under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), which prohibits double recovery. The circuit court agreed with defendant and granted its motion to dismiss.

¶ 3 On appeal, plaintiff contends that the circuit court erred in granting defendant's motion to dismiss because the "dual capacity" doctrine subjects defendant to both civil liability and workers' compensation liability for her injury. Plaintiff asserts that, under this doctrine, defendant can be liable for injuries both as her employer and separately as the owner of the Wellness Center. In these two capacities, plaintiff maintains that defendant had a duty as her employer to provide a safe work environment and a duty as the owner of the Wellness Center to provide a safe environment for the public to exercise. Plaintiff contends that the court therefore should have denied defendant's motion to dismiss where its dual capacity subjected it to both civil and workers' compensation liability. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 Plaintiff was employed as an interpreter for defendant at its hospital, serving as a bridge between health care providers and Spanish-speaking patients. As an employee of defendant,

plaintiff was afforded access to the Wellness Center, which was located on the hospital's main campus. Although the Wellness Center was open to the general public, as a benefit of her employment with defendant, plaintiff was required to pay membership dues for the Wellness Center only for her first year of membership. Plaintiff became a member of the Wellness Center in March 2009. As part of her enrollment, plaintiff was required to complete a membership agreement.

¶ 6 On March 20, 2013, plaintiff was injured while using an elliptical machine in the Wellness Center during her off-work hours. Before she started using the elliptical machine, she attempted to use the machine's computer touch screen, but it was malfunctioning. While using the machine, she again reached out to use the machine's computer touch screen and struck her arm with one of the machine's moving handle bars. An occurrence report was completed for the incident, which indicated that plaintiff was on an elliptical machine and "caught arm/wrist in between moving arm [and] stationary arm." The report also indicated that plaintiff had used an elliptical before and "wasn't paying attention and reached around to turn [television] channel."

¶ 7 On May 15, 2013, plaintiff filed an Application for Adjustment of Claim with the Illinois Workers' Compensation Commission. On her application, plaintiff indicated that the accident occurred "while working" and her "right hand; wrist & arm multiple; whole person" was affected. Nearly two years later on March 19, 2015, while her workers' compensation application was pending, plaintiff filed a civil law complaint against defendant in the circuit court. In count I of her complaint, plaintiff identified the Wellness Center as a separate corporate entity from defendant. Plaintiff described the circumstances surrounding her injury asserting that while using the elliptical machine, the touch screen computer malfunctioned, which caused her "to become distracted such that she could not and did not appreciate the proximity of [] one of the elliptical

machine's handle bars which struck [plaintiff] causing her to [lose] her balance and fall." Plaintiff contended that the Wellness Center owed a duty to plaintiff, as an invitee, to provide a facility free from defects and dangerous conditions. Plaintiff asserted that the Wellness Center breached that duty by failing to maintain and repair the elliptical's computer touch screen, which directly and proximately caused her injuries. Count II of plaintiff's complaint repeated the contentions in count I, but was directed at defendant as the owner and operator of the Wellness Center.

¶ 8 On June 20, 2017, plaintiff and defendant entered into a settlement agreement with regard to her workers' compensation claims. The settlement agreement provided that plaintiff's injuries "arose out of and in the course of employment." Under the terms of the agreement, defendant would pay plaintiff "$300.00 in full and final settlement of all claims" under the Act for injuries she incurred on March 20, 2013. The agreement further provided that "[i]ssues exist as to whether these injuries are compensable, and this settlement is made to settle these issues" and that the settlement represented a "full and final settlement of any and all issues and disputes."

¶ 9 On June 26, 2017, defendant filed an emergency motion to dismiss plaintiff's civil law complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). In its motion, defendant contended that in settling her workers' compensation claim, plaintiff had chosen her preferred remedy for her injuries. Defendant asserted that Illinois precedent was clear that where an employee receives payment from an employer for injuries sustained in the course of employment, the employee is precluded from also recovering from the employer for the same injury in an alternative forum. Defendant maintained that plaintiff had agreed to settle all of her claims against defendant and her complaint should therefore be dismissed.

¶ 10 In response to defendant's motion to dismiss, plaintiff asserted that the dual capacity doctrine subjected defendant to both civil liability and workers' compensation liability for her injuries. Plaintiff contended that defendant acted in two capacities, both as her employer, and as the owner and operator of the Wellness Center. As such, plaintiff maintained that the Act's exclusive remedy provision did not preclude her civil law claims against defendant.

¶ 11 After further briefing, the court held oral argument on defendant's motion. At the conclusion of the argument, the court stated "I agree with the defense. I read [the briefs]. I think [dual capacity] doesn't apply in this situation." Accordingly, the court granted defendant's motion and dismissed plaintiff's complaint. This appeal follows.

¶ 12 II. ANALYSIS

¶ 13 On appeal, plaintiff contends that the court erred in granting defendant's motion to dismiss her complaint where the dual capacity doctrine subjected defendant to both civil and workers' compensation liability for her injuries. Plaintiffs asserts that, in this case, defendant was both her employer and, in a separate capacity, the owner of the Wellness Center. Plaintiff maintains that, as such, defendant owed her a duty in both capacities and the settlement agreement did not trigger the exclusive remedy provision of the Act. She further asserts that, in any event, she has filed a petition to rescind the settlement agreement, which would eliminate her compensation under the Act.

¶ 14 A. Standard of Review

¶ 15 Defendant filed its motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code. A motion to dismiss under section 2-619 admits the legal sufficiency of the complaint, but asserts affirmative matters outside of the complaint that defeat the cause of action. *Hoover v. Country Mutual Insurance Co.*, 2012 IL App (1st) 110939, ¶ 31. When ruling on a section 2-619

motion to dismiss, the court must view all pleadings in a light most favorable to the non-moving party (*Snyder v. Heidelberger*, 2011 IL 111052, ¶ 8), and accept as true all well-pleaded facts (*Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31). We review the dismissal of a cause of action pursuant to section 2-619 of the Code *de novo*. *Hoover*, 2012 IL App (1st) 110939, ¶ 31.

¶ 16 B. Dual Capacity Under The Workers' Compensation Act

¶ 17 Plaintiff originally sought relief for her injuries under the Act. The Act is designed to provide financial protection to workers for accidental injuries arising out of and in the course of their employment. *Reichling v. Touchette Regional Hospital*, 2015 IL App (5th) 140412, ¶ 25 (citing *Meerbrey v. Marshell Field & Co.*, 139 Ill. 2d 455, 462 (1990)). "Accordingly, the Act imposes liability without fault upon the employer and, in return, prohibits common law suits by employees against the employer." *Meerbrey*, 139 Ill. 2d at 462. As such, section 5(a) of the Act provides, in pertinent part, that "[n]o 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." 820 ILCS 305/5(a) (West 2012). Thus, this "exclusivity provision" bars an employee from bringing a common law cause of action against an employer except under certain circumstances. *Meerbrey*, 139 Ill. 2d at 462-63.

¶ 18 In this case, plaintiff contends that the dual capacity doctrine serves as an exception to the Act's exclusivity provision. Under that doctrine, " 'an employer normally shielded from tort liability by the exclusive remedy principle may become liable in tort to his own employee if he occupies, in addition to his capacity as employer, a second capacity that confers on him obligations independent of those imposed on him as employer.' " *Ocasek v. Krass*, 153 Ill. App.

3d 215, 217 (1987) (quoting 2A Arthur Larson, Workmen's Compensation § 72.80, at 14-112 (1976)). However, " '[a] mere separate theory of liability against the same legal person as the employer is not a true basis for use of the dual capacity doctrine; the doctrine, instead, requires a distinct separate legal persona.' " *Sharp v. Gallagher*, 95 Ill. 2d 322, 328 (1983) (quoting *Smith v. Metropolitan Sanitary District*, 77 Ill. 2d 313, 319 (1979)). Accordingly, a plaintiff alleging dual capacity has the burden to show: (1) defendant operated in a second capacity, separate and distinct from its first capacity as plaintiff's employer; and (2) plaintiff was injured by defendant as a result of activities performed by defendant while engaged in that second capacity. *Kolacki v. Verink*, 384 Ill. App. 3d 674, 678 (2008) (citing *Kontos v. Boudros*, 241 Ill. App. 3d 198, 200-01 (1993)). A plaintiff cannot satisfy this burden where defendant's duties in its second capacity are related to its duties in its first capacity as employer. *Stewart v. Jones*, 318 Ill. App. 3d 552, 564-65 (2001).

¶ 19 Here, plaintiff contends that defendant's duties as her employer were separate from its duties as the owner of the Wellness Center. Plaintiff asserts that her membership to the Wellness Center was unrelated to her employment, and, as the Wellness Center was open to the general public, defendant, as the owner, owed a duty to all members of the general public who used the Wellness Center. Plaintiff maintains that defendant's duties to her as her employer were thus unrelated and independent from those imposed on it as the owner of the Wellness Center.

¶ 20 Despite plaintiff's contentions, this court has considered and expressly rejected the argument that an employer takes on a separate legal persona merely where it owes a duty to the general public. In *Ocasek*, 153 Ill. App. 3d at 216, an employee of a lamp manufacturer was killed in a plane crash. The plane was being piloted by one of the manufacturer's general partners. *Id.* The crash occurred while the employee and general partner were returning from a

business trip. *Id.* The partner was a licensed pilot and the company reimbursed him for fuel costs when he flew on company business. *Id.* at 218. On appeal, the court expressly rejected the employee's argument that "the dual-capacity doctrine was applicable simply because [the general partner's] status as an airplane pilot created obligations to the general public." *Id.* at 219. The court found that merely because the employer performed functions that imposed upon him the duty to exercise due care, did not "serve to endow him with a second legal persona completely independent from and unrelated to his status as an employer." *Id.* at 218. In upholding that ruling, this court has recognized that "[t]he *Ocasek* court specifically rejected the proposition that an employer takes on a separate legal persona by virtue of owing a duty to the general public." *Garland v. Morgan Stanley & Co., Inc.*, 2013 IL App (1st) 112121, ¶ 43. (citing *Ocasek*, 153 Ill. App. 3d at 218); see also, *Murcia v. Textron, Inc.*, 342 Ill. App. 3d 433, 439 (2003) (stating that the *Ocasek* court found that "the dual capacity doctrine is not applicable simply because the employer's additional capacity creates obligations to the general public"). Thus, we reject plaintiff's contention that the dual capacity doctrine applies to defendant merely because its ownership and operation of the Wellness Center created an obligation to the general public.

¶ 21 We also reject plaintiff's contention that because her injury occurred during her off-work hours, it did not arise out of her employment and thus is not subject to the provisions of the Act. As discussed, plaintiff, an employee of defendant, was injured on her employer's property while using a fitness center that was owned and operated by her employer. The record shows that defendant opened the Wellness Center, on its main hospital campus, in order to encourage employees to exercise more to create a healthier work force. In accordance with this mission, defendant's employees were required to pay membership dues only for the first year of

membership, after which defendant would cover the cost of membership. Plaintiff acknowledged that she took advantage of this benefit. Thus, we cannot say that plaintiff's use of the Wellness Center was so unrelated to her employment with defendant that her injuries were not covered under the Act.

¶ 22 In addition, in its operation of the Wellness Center, defendant acted as merely a landowner rather than a distinct legal entity. " 'It is held with virtual unanimity that an employer cannot be sued [by an employee] as the owner or occupier of land, whether the cause of action is based on common-law obligations of landowners or on statutes such as safe place statutes or structural work acts.' " *Sharp*, 95 Ill. 2d at 328 (quoting 2A Arthur Larson, Workmen's Compensation § 72.82 (1982)). In this case, plaintiff's sole remedy was a claim under the Act and she accepted the settlement agreement, which disposed of her workers' compensation claims. Under the Act's exclusivity provision, she may not now maintain a civil claim against defendant for the same injuries. 820 ILCS 305/5(a) (West 2012). Because we find that plaintiff's civil claim is barred by the section 5(a) of the Act, we need not address her claim that recovery for her civil claim would not result in double recovery for her injuries.

¶ 23 We note, however, that plaintiff raises an alternate theory in support of reversing the circuit court's judgment. She asserts that she has filed a petition to rescind the workers' compensation settlement agreement, which, if granted, would render the Act's exclusivity provision inapplicable in this case. We observe that this argument was not raised before the circuit court, and thus was not preserved for appeal (*Village of Roselle v. Commonwealth Edison, Co.*, 368 Ill. App. 3d 1097, 1109 (2006)), but is also, at best, speculative. Even if we were to consider this argument, there is no indication that the settlement agreement will be rescinded and it would be inappropriate for this court to reverse the circuit court's ruling on this uncertain

basis. In any case, section 5(a) of the Act does not bar civil claims only where the employee has already recovered from the employer under the Act, but prohibits common law suits by employees against employers where the Act applies regardless of whether the employee has already filed a claim under the Act. *Meerbrey*, 139 Ill. 2d at 462 (citing 820 ILCS 305/5(a) (West 2012)). As discussed, plaintiff's claim falls within the provisions of the Act and thus the rescission of the settlement agreement would not circumvent the Act's exclusivity provision.

¶ 24 Accordingly, we find that the circuit court did not err in granting defendant's motion to dismiss plaintiff's complaint. This conclusion "comports with the general rule in our state that any exceptions to the exclusive remedy provision of the Act or any theories which would allow that provision to be circumvented 'must be strictly construed.' " *Garland*, 2013 IL App (1st) 112121, ¶ 51 (quoting *Rosales v. Verson Allsteel Press Co.*, 41 Ill. App. 3d 787, 789 (1976)).

¶ 25 III. CONCLUSION

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.