

Illinois Official Reports

Appellate Court

Kay v. Centegra Health System, 2015 IL App (2d) 131187

Appellate Court Caption	DOMINIQUE KAY, Plaintiff-Appellant, v. CENTEGRA HEALTH SYSTEM, Defendant-Appellee (Dade Behring Inc. and Northern Illinois Medical Center, Defendants).
District & No.	Second District Docket No. 2-13-1187
Filed	April 23, 2015
Decision Under Review	Appeal from the Circuit Court of McHenry County, No. 09-LA-433; the Hon. Thomas A. Meyer, Judge, presiding.
Judgment	Affirmed.
Counsel on Appeal	Alan C. Mendelson, of Chicago, for appellant. Gregory T. Snyder, Joshua G. Vincent, Kimberly A. Jansen, and Jennifer L. Johnson, all of Hinshaw & Culbertson, of Chicago, for appellee.

Panel

JUSTICE McLAREN delivered the judgment of the court, with opinion.
Justices Hudson and Birkett concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, Dominique Kay, appeals from the trial court’s orders denying her motion for summary judgment, granting the motion for summary judgment of defendant, Centegra Health System, and denying her motion to reconsider. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Kay filed a complaint in the circuit court of Lake County alleging negligence on the parts of Centegra, Dade Behring Inc.,¹ and Northern Illinois Medical Center (NIMC) relating to injuries that she sustained on October 6, 2004, when she tripped over a cable while working in a lab at NIMC. Centegra and NIMC filed a joint answer and affirmative defenses, including an affirmative defense claiming that Kay’s claims were barred by the provisions of the Illinois Workers’ Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)).

¶ 4 After the case was transferred to McHenry County, Centegra and NIMC filed a joint motion for summary judgment, arguing that Kay had sought benefits under the Act and that a workers’ compensation arbitrator had decided that Centegra and NIMC were Kay’s “joint employers” at the time of her injury and that both were required to provide Kay with benefits pursuant to the Act. As the Act provided the exclusive remedy for this workplace injury, summary judgment should enter.

¶ 5 Kay filed a response to Centegra’s motion but did not respond as to NIMC. Kay noted that Centegra was not a party to the workers’ compensation case at the time of the hearing and that the decision of the workers’ compensation arbitrator was not a final judgment on the merits, so that neither *res judicata* nor collateral estoppel applied. Kay also filed a motion for summary judgment on Centegra’s second affirmative defense, arguing that no genuine issue of material fact existed as to whether Centegra was her employer at the time of her injury.

¶ 6 The motions came up for hearing in June 2011. NIMC requested a finding that it was “not subject to common law damages.” After Kay’s attorney responded that he did not “mind entering a summary judgment in favor of” NIMC, the trial court entered such judgment and dismissed NIMC with prejudice. When informed that the arbitrator’s decision in the workers’ compensation case was on appeal before the full Illinois Workers’ Compensation Commission, the trial court continued the case until September 2011.

¶ 7 The actual hearing on the motions was not held until September 2013. The court stated that it was considering the motions together and that “anything that’s cited or used in support of either argument can come into play.” The parties agreed to this standard. After hearing argument and reviewing extensive exhibits provided by both parties, the court concluded,

¹The trial court granted summary judgment in Dade’s favor in December 2008. *Dade* is not part of this appeal.

especially in light of the fact that Centegra paid for the workers' compensation insurance that covered Kay, that Centegra was entitled to immunity under the Act. Therefore, the court granted summary judgment in favor of Centegra and denied Kay's motion for summary judgment. The court denied Kay's subsequent motion to reconsider, and this appeal followed.

II. ANALYSIS

Kay now contends that the trial court erred in granting summary judgment in favor of Centegra and denying summary judgment in her favor. A grant of summary judgment is appropriate only when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2012). In determining whether a genuine issue of material fact exists, a court must construe all pleadings and attachments strictly against the movant and liberally in favor of, and in the light most favorable to, the nonmovant. *Hilgart v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943, ¶ 19. "A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 43 (2004). The use of summary judgment is to be encouraged as an aid in the expeditious disposition of a lawsuit; however, as it is a drastic means of disposing of litigation, it should be allowed only when the right of the moving party is clear and free from doubt. *G.I.S. Venture v. Novak*, 2014 IL App (2d) 130244, ¶ 8. We review *de novo* a trial court's grant of summary judgment. *Id.*

Section 5(a) of the Act prohibits a common-law action by an employee against an employer and the employer's agents for an accidental injury arising out of and in the course of employment. 820 ILCS 305/5(a) (West 2004); *Hilgart*, 2012 IL App (2d) 110943, ¶ 23. The immunity afforded by the Act's exclusive remedy provision is based on the proposition that one who bears the burden of providing workers' compensation benefits for an injured employee should not also be required to answer to that employee for civil damages in court. *Ioerger v. Halverson Construction Co.*, 232 Ill. 2d 196, 203 (2008).

The question of whether a person is an employee is "'one of the most vexatious *** in the law of compensation.'" *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 174 (2007) (quoting *O'Brien v. Industrial Comm'n*, 48 Ill. 2d 304, 307 (1971)). The difficulty arises from the "fact-specific nature of the inquiry." *Id.* Illinois courts will examine the following factors to determine whether an employment relationship exists: (1) who has the right to control an individual; (2) who controls the manner in which work is performed; (3) the method of payment; (4) who has the right to discharge; and (5) who furnishes the tools, materials, and equipment. *Dildine v. Hunt Transportation, Inc.*, 196 Ill. App. 3d 392, 394 (1990). While no single factor is dispositive, the most important single factor is the right to control the work. *Roberson*, 225 Ill. 2d at 175. A "joint employee" relationship may exist where two employers share control of the employee and both benefit from the work; in such a case, who hired the employee and paid her salary is a key factor. *Schmidt v. Milburn Brothers, Inc.*, 296 Ill. App. 3d 260, 267 (1998). In addition, when two private, independently organized entities are involved as potential joint employers, the trier of fact must also consider the separate corporate existence of each. See *id.* at 266.

¶ 12 The undisputed facts show that both Centegra and NIMC are organized as not-for-profit corporations. According to the NIMC corporate bylaws, Centegra is the sole member of NIMC. The NIMC board of directors is “comprised of those persons who serve from time to time as members of the board of governors” of Centegra. In addition, Centegra is given the power to: (1) approve all amendments to the articles of incorporation and bylaws of NIMC; (2) approve the incurrence of debt by NIMC outside the ordinary course of business; and (3) approve NIMC operating and capital budgets and the initiation of capital projects. Centegra’s chairman, vice chairman, secretary, and treasurer also hold the same offices in NIMC. NIMC’s chief executive officer is appointed by Centegra’s president and “may be removed, with or without cause,” by the president.

¶ 13 Safety National Casualty Corporation issued an excess workers’ compensation policy to Centegra for the period of December 31, 2003, to December 31, 2004. The policy covered Centegra, Memorial Medical Center, and NIMC, all of which were listed as “Employer” in the “DECLARATIONS” section.

¶ 14 Centegra human resources policy number HR-4.96, entitled “WORKERS’ COMPENSATION PROGRAM,” noted that it:

“encompasses *all* [Centegra] Associates and *all* [Centegra] facilities excluding Advanced Imaging of Northern Illinois, Algonquin Road Surgery Center, LLC, Health Bridge Fitness Center, and Valley Infusion Care, LLC.” (Emphases added.)

¶ 15 According to First Midwest Bank, Centegra “and its Affiliates” used a “Treasury Management sweep structure” since 2001. Under this system, funds were automatically swept from the NIMC bank account to the Centegra bank account “to pay the NIMC division employees.” The Centegra account “funds payroll for *all* of their affiliates, NIMC included, in this manner.” (Emphasis in original.) A Centegra cash sweep flowchart showed 10 separate deposit funds, including that of NIMC, being swept into the Centegra account.

¶ 16 In a deposition, JoAnne Smith-Joyce, corporate counsel at Centegra, stated that, in 2004, Centegra had two affiliated hospitals: NIMC and Memorial Medical Center. NIMC is a not-for-profit hospital with its own tax identification number and its own license to operate as a hospital; Centegra does not have such a license. Smith-Joyce defined an affiliate as “an entity in which you have a connection or level of control through that connection.” Other, non-hospital-affiliated enterprises included a psychiatric care facility, a behavioral health unit, a fitness center, a foundation, a primary care facility, and a real estate “arm,” known as NIMED, which leases space to independent physicians. The NIMC laboratory, where Kay worked and was injured, was located in a building owned by NIMED and attached to the hospital by a hallway.

¶ 17 NIMC had an operating budget “created between it and Centegra” that was separate from the budgets of other Centegra affiliates. This budget included payroll and workers’ compensation benefits. When asked if certain personnel of NIMC (“personnel of the quality resources department”) were employees of Centegra, Smith-Joyce replied, “When you say are they ‘employees of,’ everyone is an employ[ee] of, are employees of Centegra Health System and the hospital where they are located.” When asked whether those same personnel would receive W-2 forms from Centegra or from NIMC, Smith-Joyce responded:

“I’d have to see their form to indicate how their salary is being expensed. They may either be expensed on the Centegra ledger or on NIMC.

At the end of the day, it doesn't matter from a payroll perspective because Centegra pays out the salary, but from an expense accounting perspective for tax reasons, it might be logged under either Centegra or NIMC.

But at the end of the day, it's consolidated for payroll purposes."

Centegra managed "the payout of the payrolls of all the hospitals," and "[t]he expense items on the NIMC budget, which represent salaries, are paid by Centegra Health System to the NIMC associates from the Centegra account."

¶ 18 When asked where Centegra got the funds "to pay the payroll of the persons who are employed at [NIMC]," Smith-Joyce replied:

"On a daily basis, the revenue in the accounts of [NIMC] are swept into a Centegra account, and by virtue of the bylaws of both of the institutions, Centegra will fund the payroll of the individuals which are owed salary for their services."

Further explaining the cash sweep system, Smith-Joyce stated:

"For tax reasons and financial reporting, NIMC, which has its own tax ID number, has to separately record accounts receivable and accounts payable. That's a matter of tax law.

We are a provider of medical services, some of which are governed by Medicare and Medicaid, and we need to be able to allocate the expenses associated with the provision of care at NIMC.

We also have to be able to allocate for our not-for-profit status what the expenses of that institution are, which include the expenses associated with the services provided by Centegra associates who are located at the NIMC campus.

At the end of the day, the money that is received for the medical services rendered, sometimes actual, sometimes apportioned because it's a reimbursed sum, is brought into the NIMC account, properly logged for federal and state tax purposes, and then pursuant to the bylaws of Centegra and NIMC and the policies adopted by the board of governors is swept into a common account so as to pay on a coordinated and controlled basis the obligations of the system, whether they arise out of NIMC or Memorial or some other entity."

¶ 19 In response to a question about who directed and controlled the equipment in the laboratory where Kay worked, Smith-Joyce responded:

"That the equipment was there, how it was paid for, how it was operated, who operated it, how it was maintained, all of that was the subject of mutual interest and obligation by Centegra Health System and Northern Illinois Medical Center as governed by the bylaws and policies and procedures of the institutions."

¶ 20 Kay stated in her deposition that she began working as a medical lab technician for NIMC in September 2001. She interviewed for the job in the laboratory at NIMC. The application for employment that she filled out was entitled "Centegra Health System Employment Application." Her paychecks referenced both Centegra and NIMC; however, her W-2 form listed NIMC as her employer and did not mention Centegra.

¶ 21 Kay also attached a Centegra organizational chart. According to Kay, her manager was Judy Bjurstrom, manager of NIMC's laboratory services. The organizational chart showed that Bjurstrom reported to NIMC's vice president of operations, who in turn reported to the NIMC senior vice president, who reported to the president and chief executive officer. Kay also

attached the invoice for the laboratory analyzer, the cable of which Kay tripped over at the time of her injury. The invoice was sent to NIMC and listed NIMC as the customer. Various other pages related to the piece of equipment, including a “Transfer and Assumption Agreement,” are signed by Gregory Pagliuzza, who is identified as NIMC’s chief financial officer and is also listed as the chief financial officer of “Centegra Health System D/B/A Kishwaukee Valley Medical Group.”

¶ 22 After reviewing the pleadings and attachments, we conclude that no genuine issue as to any material fact existed and that Centegra was entitled to judgment as a matter of law. The evidence clearly shows that Centegra and NIMC were joint employers of Kay and that Centegra provided the workers’ compensation insurance that applied to Kay’s injury. As such, Centegra was immune to a civil action for negligence.

¶ 23 Kay argues that Centegra and NIMC were not her joint employers. As noted, a “joint employee” relationship may exist where two employers share control of the employee and both benefit from the work; in such a case, who hired the employee and paid her salary is a key factor. *Schmidt*, 296 Ill. App. 3d at 267. According to Kay, Centegra neither controlled her nor benefitted from her work. She goes through the NIMC flow chart up to NIMC senior vice president in an attempt to show that the chain of command over her were all NIMC personnel, not Centegra; however, she fails to address the fact that NIMC’s chief executive officer is appointed by Centegra’s president and “may be removed, with or without cause,” by the president. Further, the positions of NIMC’s chairman, vice chairman, secretary, and treasurer are held by the chairman, vice chairman, secretary, and treasurer of Centegra. Finally, the NIMC board of directors is made up exclusively of members of the Centegra board of governors, which also has the authority to approve NIMC operating and capital budgets and the initiation of capital projects. The money that was received for the medical services rendered at NIMC was swept into a common account to pay the obligations of the entire Centegra system, whether they arose out of NIMC or some other entity. Clearly, Centegra controlled all aspects of NIMC’s operation and benefitted from the funds generated by NIMC and the staff assigned there.

¶ 24 Kay asserts that she did not apply to Centegra for employment, because she went to NIMC’s hospital facility to apply for her job. She dismisses the fact that the application form that she filled out was entitled “Centegra Health System Employment Application” as nothing more than the application having Centegra’s name on it. She also fails to address the additional fact that her salary was paid by Centegra from the Centegra account, with paychecks referencing both Centegra and NIMC.

¶ 25 Centegra hired Kay, controlled the facility where she worked, benefitted from her performance of her duties, and paid her salary. There is no genuine issue of material fact as to Kay’s employment by Centegra.

¶ 26 There is also no genuine issue of material fact as to who provided workers’ compensation benefits. Centegra human resources policy number HR-4.96, entitled “WORKERS’ COMPENSATION PROGRAM,” noted that it “encompasses *all* [Centegra] Associates and *all* [Centegra] facilities” (emphases added), with certain exclusions not relevant here. The workers’ compensation insurance policy issued by Safety National Casualty Corporation covered Centegra, Memorial Medical Center, and NIMC, all of which were listed as “Employer” in the “DECLARATIONS” section.

¶ 27 Kay acknowledges that Centegra was billed for the workers' compensation premiums and that the money used to pay those premiums came from the Centegra "common fund account." However, she then argues that there is no indication that Centegra "used its own money to fund workers' compensation benefits for NIMC employees." The fact that the money was in a Centegra bank account is a good indication that the money was, in fact, Centegra's money. Kay seems to insist that any money initially generated by, for example, NIMC is not Centegra's money, even though the money is swept into Centegra's account before Centegra then disburses the money to pay bills, in the words of Smith-Joyce, "whether they arise out of NIMC or Memorial or some other entity."

¶ 28 Kay seeks to diminish the fact that Centegra provided workers' compensation benefits to her by offering this analogy: three law firms, unrelated to each other except for the fact that they are located in the same office building, obtain a single workers' compensation policy; two of the firms (B and C) pay their share to the third firm (A), which obtains the common policy and pays the premium. According to Kay, firm A should not receive workers' compensation immunity against a civil suit if an employee from firm B enters firm A's office and trips over a negligently placed computer cord.

¶ 29 We agree. However, the analogy is inapposite to the facts in the case before us. The partners of firm A were not the partners of firms B and C; firm A did not have the authority to, among other things, approve the operating and capital budgets of firms B and C, nor did it have the authority to "sweep" all of the money in the accounts of firms B and C into its own account and pay the bills of all three firms. Kay's flawed analogy highlights, rather than deprecates, the high degree of control and supervision exercised by Centegra over NIMC. Centegra paid for the workers' compensation insurance that covered Kay, and it is entitled under the Act to immunity to a civil action.

¶ 30 III. CONCLUSION

¶ 31 For these reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 32 Affirmed.