

1989

## White v. Jess Aylett Construction : Unknown

Utah Court of Appeals

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Allen G. White.

Jess Aylett.

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COURT OF APPEALS  
BRIEF

UMENT

Allen G. White

v-

CKET NO.

890189

Jess Aylett Construction  
+ Drywall

Court of Appeals No: 890189

Allen G. White  
2665 So. Martinez Way  
Riverton, Utah 84065

Jess Aylett  
11613 So. High Mt. Dr.  
Bandy Utah 84092

IN THE UTAH COURT OF APPEALS

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Jess Aylett Construction	)	
Petitioner,	)	
v.	)	
Board of Review of the	)	BRIEF
Industrial Commission of	)	
Utah.	)	
Respondent.	)	

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The appellant files this brief as follows:

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(Utah 1977)

Harry L. Young & Son Inc. v. Ashton, 538 P. 2d 316 (Utah 1975)

Bambrough v. Bethers, 552 P. 2d 286 (Utah 1976)

Pinter Construction Co. v. Frisby, 678 P. 2d 305 (Utah 1984)

STATEMENT SHOWING JURISDICTION OF COURT

This case has been brought before the Utah Court of Appeals after being heard and ruled upon by the Industrial Commission. The appellant feels that the Commission erred in its ruling

### NATURE OF THE PROCEEDINGS

Allen White, who was injured on a job site of George Hobbs Construction is suing Jess Aylett Construction for compensation,, contending that he was an employee of Jess Aylett Construction, whereas Jess Aylett Construction states that Allen White was an employee of George Hobbs Construction.

STATEMENT OF ISSUES PRESENTED ON APPEAL

Jess Aylett Construction is not the original employer or general contractor on the job where Allen White was injured. George Hobbs, Construction was the general contractor and original employer.

# STATEMENT OF THE CASE

Allen White was injured on job site of George Hobbs Construction and is suing Jess Aylett Construction for compensation, contending that he was an employee of Jess Aylett Construction, whereas Jess Construction states that Allen White was an employee of George Hobbs Construction. The following absolve Jess Aylett Construction from any liability to Allen White:

U.C.A. 1953-35-1-42 (2) is pertinent to our disposition, and reads in part as follows.

Where any employer procures any work to be done wholly or in part for him by a contractor over whose work he retains supervision or control, and such is a part or process in the trade or business of the employer, such contractor, and all persons employed by him, and all subcontractors under him, and all persons employed by any such subcontractor, shall be deemed, within the meaning of this section, employees of such original employer.

This clearly proves that Jess Aylett was not the original employer of general contractor. The entity in the present case who fits the definition of "general contractor" or "original employer" is George Hobbs.

In light of all supreme court cases that have used and relied upon 35-1-42, it can be correctly pointed out that the persons against whom 35-1-42 (2) was construed, are all either original employers on a given project or general contractors, not subcontractors down the line like Jess Aylett.

See, Bennett v. Industrial Commission of Utah 726 P.2d



427 (Utah 1986); Russler lodge v. Industrial Commission of Utah 562 P.2d 227 (Utah 1977); Harry L. Young and Sons, Inc. v. Ashton, 538 P. 2d 316 (Utah 1975); Bambrough v. Bethers, 552 P. 2d 286 (Utah 1976); Pinter Construction Co. v. Frisby, 678 P. 2d 305 (Utah 1984). The only entity liable under 35-1-42 (2) in the instant case is George Hobbs Construction; It is Hobbs Construction, not Jess Aylett, who is the original employer or general contractor in the project in which Allen White was hurt.

Careful reading of III of the Bennet opinion (starting at page of 431 of volume 726 P. 2d) reveals the statutory intent and the supreme courts recognition of the intent that 35-1-42 (2) is meant for general contractors. The Supreme Court in Bennett stated among other things as follows:

According to Proffessor Larson, statutes of this kind 35-1-42 (2) were passed to protect employees of irrespon- and uninsured subcontractors by imposing ultimate liability on the presumably responsible, principal contractor, who has it within his power, in choosing subcontractors, to pass upon their responsibility and insist on appropriate compensation protection for their workers'

Id.pg 431

The Court further quoted as follows:

Under 35-1-42 (2) a subcontractor's employee is deemed an employee of the general contractor if (1) the general contractor retains some supervision or control over the subcontractor's work, (2) The work done by the subcontractor is a 'part or process in the trade or business

of the employer.' (Citing the Pinter, Rustler Lodge, and Harry L. Young & Sons cases). A subcontractor's work is a 'part or process in the trade or business of the employer, if it is part of the operations which directly relate to the successful performance of the general contractor's enterprise.

...

The trade or business of a general contractor in the construction business is construction....and any portion of a general contractor's construction project which is subcontracted out will ordinarily be considered 'part or process in the trade or business' of the 'general contractor.

Id.pg 431

Further quoting, from the Bennett case:

The Requirement in 34-1-42 (2) That the general contractor as a 'statutory employer' retain 'supervision or control' over the work of the subcontractor who hired the 'statutory employee' cannot, by definition, be equated with the common law standard for determining whether a person is an employee or an independent contractor.

Id.pg 428

Under statute, subcontractor's employee is deemed employee of general contractor if general contractor retains some supervision or control over subcontractor's work and work done by subcontractor is part or process in trade or business of employer.

Term supervision or control in workmen's compensation

statute requires only that general contractor retains ultimate control over project in order to retain "supervision or control" so as to make general contractor a statutory employer."

As long as subcontractor's work is part or process of general contractor's business, an inference arises that general contractor has retained supervision or control over subcontractor sufficient to meet requirement of worker's compensation statute.

Rather than quote the entire opinion, we submit that careful reading of the balance of III of the opinion will bring up repeated references to general contractors and discussion of how those general contractors are, or are not "statutory employers" of a subcontractor's employee.

We again would submit the policy explanations given by Professor Larson, which policy explanation was quoted by the Supreme Court in the Bennet case: i.e., the statutory employer provision is meant to point directly to the presumably responsible principal contractor. We therefore, respectfully submit that the application of the statutory employer doctrine against Jess Aylett in the present is not grounded in controlling or case law.

The whole notion of the legislative enactment 35-1-42(2) was to place the weight of responsibility for irresponsible uninsured subcontractors, on the shoulders of the principle general contractor. The supreme court law interpretation 35-1-42(2) was meant for general contractors, not Jess Aylett. The conclusion must be that there is no statutory basis for

imposing statutory employment on a mid tier subcontractor.

## SUMMARY OF ARGUMENT

Jess Aylett Construction was not the statutory employer or employer of Allan White. George Hobbs was the principle and statutory employer of Allan White.

# ARGUMENT

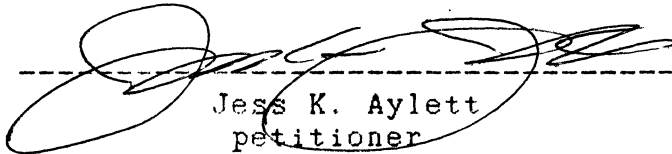
Jess Aylett submits that the evidence submitted supports the fact that Allen White was an employee of George Hobbs Construction. With respect to the rulings of the Supreme court which quoted from the Bennett case 35-1-42(2) clearly proves that Jess Aylett was not the employer of Allen White and therefore is not responsible or liable for compensation in anyway to him for injuries suffered on the job.

The evidence proves that Allan White was an employee of George Hobbs Construction as shown in Sec. 35-1-42(2) and as the employer and statutory employer, George Hobbs is liable for all compensation due.

## CONCLUSION

In conclusion with the exidence given previosly in this brief, we feel that we have proven that Jess Aylett is not liable to Allan White for injurys suffered on the job. We also feel that we have proven that George Hobbs is the Statutory employer of Allan White. In light of these findings, this suit should have never been brought against Jess Aylett and thereby pray the court dismiss this case with prejudice.

Dated this 5th day of August, 1989

  
-----  
Jess K. Aylett  
petitioner

CERTIFICATE OF SERVICE

**This** is to certify that I caused a true and correct copy of  
**the** foregoing BRIEF, dated August 5th, 1989 to be served upon  
**the** following herein by mailing, postage prepaid, this 5th  
day of August, 1989.

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