1966

Leah Richins v. The Industrial Commission of Utah, Otto A. Wiesley, Carlyle F. Gronning, and John R. Schone, Its Members, and Richard G. Mitchell : Brief of Appellant

INDEX

POINTS

CASES AND AUTHORITIES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

LEAH RICHINS,

Plaintiff,

vs.

THE INDUSTRIAL COMMISSION OF UTAH, OTTO A. WIESLEY, CARLYLE F. GRONNING, and JOHN R. SCHONE, its members, and RICHARD G. MITCHELL,

Defendants.

Case No.

10504

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This proceeding is an appeal from the Order of the Industrial Commission of Utah denying the Petition for Re-hearing of the Plaintiff.

STATEMENT OF FACTS

On April 8, 1963, the defendant, Richard G. Mitchell, hired the plaintiff to work in a Day-Nite Laundercenter in Salt Lake City, Utah.

The plaintiff was assisting the defendant Mitchell on July 2, 1963, with certain repairs to an overhead air conditioner in the building. The grille from the air conditioner fell, striking the plaintiff on the head. The plaintiff was hospitalized and suffered severe and disabling injuries.

On June 21, 1964, the plaintiff filed an application for benefits before the Industrial Commission of Utah. It was subsequently determined that the defendant Mitchell carried no insurance as required by 35-1-46 *Utah Code Annotated,* 1953, as Amended. The case was noticed for hearing on October 21, 1964.

At the hearing, the question was raised by defendant Mitchell whether the plaintiff had brought the proceeding against the right party, that is, her employer, inasmuch as at the time of the accident defendant Mitchell was the receiver of the business, having been appointed in Case No. 141335, in the Third Judicial District Court, in and for Salt Lake County, State of Utah. The Commission terminated the hearing, indicating that a medical panel should be convened to determine injuries. It was stipulated by counsel for the plaintiff and counsel for the defendant Mitchell that the accident in question arose out of and during the

course of plaintiff's employment. No testimony was taken, nor argument heard, on the question of whether the defendant Mitchell, receiver of the Laundercenter, was the employer of the plaintiff under the Workmen's Compensation Statutes.

By Order of December 10, 1964, the Industrial Commission denied the claim of plaintiff. The Commission suggested in that Order that the claim for compensation for injuries would properly lie against Loren and Edith Nelson, the party defendants in the civil action in which Richard G. Mitchell was appointed receiver.

Plaintiff petitioned the Industrial Commission for a re-hearing of her cause on January 6, 1965. Plaintiff supplied, at the request of the Commission, a Brief in support of her position. The Petition for Re-Hearing was denied by Order of the Commission of February 3, 1967.

RELIEF SOUGHT ON APPEAL

Plaintiff respectfully prays that this Court reverse the Order of the Industrial Commission, holding as a matter of law that defendant Richard G. Mitchell was the employer of the plaintiff; that the Court remand this case to the Industrial Commission for further hearing and an appropriate award of compensation.

ARGUMENTS

POINT I.

THE INDUSTRIAL COMMISSION OF UTAH ACTED IN AN ARBITRARY AND CAPRICIOUS MANNER IN THAT IT ERRED IN HOLDING THE RECEIVER IS NOT AN EMPLOYER UNDER WORKMEN'S COMPENSATION LAW.

A. A receiver may be an employer under Workmen's Compensation law.

The limited case law authority is clear that a receiver may be an employer, and liable to a workmen's compensation claimant. The Michigan case of *Bredeweg vs. First State Bank of Holland, et al,* 280 Mich. 247, 273 N.W. 550 (1937), involves an injured employee claiming against a receiver of a national bank. Judge Butzel states therein, "It is entirely within the spirit of the Act (Workmen's Compensation Statute) that such receiver and conservators remain liable under the Act until they withdrew . . . Undoubtedly, the employees had a right to believe that they were being protected under the Act and the liability thus created."

In the case of *Urine v. Salina Northern R.R. Co.,* 104 Kan. 236, 178 Pac. 614 (1919), the defense of a receiver was raised by a railroad company and was expressly disallowed. Text authority is found at 99 C.J.S. *Workmen's Compensation,* #40 and #55, wherein it is pointed out,

". . . one who makes a contract of employment as a receiver is liable to the employee injured on the job . . ."

Further authority is found at *Annotation,* 111 A.L.R. 328, "Undoubtedly a receiver may be an 'employer' within the meaning of that term as used in the State Compensation Act, but whether he is an employer in a particular case is to be determined from an examination of the existing facts and circumstances." 58 Am. Jur. *Workmen's Compensation* §346, "A receiver appointed or empowered to operate a business may be an employer, within the meaning of that term used in a Compensation Act, and liable as such for the payment of compensation for an injury to an employee . . ."

The Courts of Georgia and New Jersey have passed on the question of whether the definition of employer under Workmen's Compensation extends to receivers. Both states, as set out in *Minchew v. Huston, et al,* 193 Georgia 272, 18 S.E. 2d 487 (1942), and in *Michell v. Haines,* 122 N.J.L. 292, 5 A. 2d 68 (1939), have ruled in favor of inclusion of receivers as employers. In 1936, the Pennsylvania Court also ruled that a receiver, or conservator of a bank, may be an employer for purposes of Workmen's Compensation.

Indiana has an express statutory provision in its Workmen's Compensation law that includes a reciever. Acting thereunder, the Indiana Supreme Court in *Barker v. Eddy,* 97 Ind. 94, 185 N.E. 878 (1933), ruled that an employer, "includes a receiver who uses the services of another for pay in the business of the receivership." The case of *An-*

derson v. Polleys, 53 R.I. 182, 165 A. 436 (1933), also holds that a receiver of a corporation is an employer under the Workmen's Compensation law, when the employee was not given notice of any change in the relationship of employment.

B. A basic policy of Workmen's Compensation Act is inclusion of coverage, not exclusion.

There are many cases arising under Workmen's Compensation statutes which are not covered by the express language of the statutes. The basic policies of the statutes are best furthered by inclusion of the employers-employees than by exclusion.

The case of *Caughman v. Columbia YMCA*, 212 So.C. 337, 47 S.E. 2d 788 (1948), clearly states that the definition of employer should be broadly or liberally construed in order to effectuate the policies of the Act. Any doubt as to jurisdiction should be resolved in favor of inclusion rather than exclusion. *Hopkins v. Darlington Veneer Co.*, 208 So.C. 307 38 S.E. 2d 4 (1946).

C. The policy of Workmen's Compensation of protecting a worker from injuries sustained in the job would not be effectuated by granting immunity to a receiver.

The policy of Workmen's Compensation is clear that a person who hires another and agrees to pay for the service of the other must afford some protection to the employee for on the job injuries. The ruling of the Industrial

Commission, however, would allow the receiver an immunity from the rigors of compliance. A receiver, under the ruling of the Industrial Commission, could hire, directly supervise and control, pay, or even fire an employee, all without affording the protection to an employee every other employer must bear. The statutes would never have been drawn contemplating such a manifestly inequitable result.

In this case, the plaintiff was hired by the defendant Mitchell. The supervision, direction and control over plaintiff's on-the-job activities was exercised by the defendant Mitchell. The plaintiff was given checks for her services from the defendant Mitchell. The withholdng tax or W-2 form was given plaintiff by defendant Mitchell.

All of these facts, plus further facts which could be developed at a full hearing, are persuasive that the defendant Mitchell was employing the applicant. Mitchell was apprised of the claim of plaintiff; in fact, he made direct payment of some of her medical bills. The receivership, however, was allowed to terminate without resolving the claim of plaintiff. Plaintiff contends that a reasonable inference to be drawn from such an action is that Mtichell himself considered the liability, rights, and obligations arising from the accident attached to him personally.

D. Section 35-1-42, *Utah Code Annotated,* 1953, as Amended, can reasonably be interpreted to include a receiver as employer.

The pertinent parts of the statutory section are as follows: "The following shall constitute employers subject to the provisions of this title: (2) Every person, firm and private corporation, including every public utility, having

in service one or more workmen or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire, express or employed, oral or written, . . ." Plaintiff submits that "every person" must include the defendant-receiver in order to promote the policy of Workmen's Compensation. In *Ortega v. Salt Lake Wet Wash Laundry*, 108 UTAH 1, 156 P.2d 885 (1945), the Chief Justice Larson states, "The Compensation Act, first enacted in 1917, is predicated upon the police power, the right of the State to regulate the status of employer and employee, for the general welfare of the people of the state. (Citing cases) It is a beneficent act, passed to protect employees, and those dependent upon them, and to tax the costs of human wreckage against the industry which employs it, such burden being added to the price of the products and thereby spread over the general consuming users of the product of the industry." p. 887. "It is to be liberally construed in favor of the injured workman." p. 888. Further, Chief Justice Larson states, "As far as the 'employer' is concerned, the term is broad enough to cover all employment relationships." With this policy and liberal rule of construction in mind, the Commission was arbitrary and capricious in denying the claim of plaintiff on the basis that the receiver was not the employer.

POINT II.

THE INDUSTRIAL COMMISSION OF UTAH DENIED PLAINTIFF DUE PROCESS OF LAW BY DENYING HER CLAIM WITHOUT A FULL HEARING.

At the initial hearing in the Industrial Commision, the following events took place: The parties convened, in per-

son and represented by counsel, before Otto A. Weisley, one of the members of the Industrial Commission. The question was raised by the Commission whether the accident occurred during the course of plaintiff's employment. The parties agreed that the accident happened in the course of employment.

At this point, counsel for Richard G. Mitchell raised the question whether the claim of plaintiff was properly against Mr. Mitchell, since he was a receiver of the business. An informal discusison was had on this question and the hearing terminated. Thereafter, the Commission denied plaintiff's claim.

The Commission heard virtually no testimony, received no evidence, examined no exhibits, and entertained little argument before its decision to deny the claim. While plaintiff will concede the expertise of the Commission in matters relating to employment relationships, it is also clear that their decision must be based upon competent evidence, from even a minimal record, and cannot be arbitrarily given on no evidence at all.

Due process of law requires that any valuable rights, such as those herein of plaintiff, must not be denied without a reasonable basis in fact and law. The decision herein was based upon a paucity of fact and, plaintiffs submits, was directly contrary to law.

POINT III.

A RECEIVER MAY BE PERSONALLY LIABLE ON CONTRACTS AND THUS LIABLE UNDER WORKMEN'S COMPENSATION ACT FOR INJURIES TO AN EMPLOYEE INJURED ON THE JOB.

A corollary and necessary determination is whether a receiver may be personally liable on his contracts, and thus personally liable to an employee for Workmen's Compensation. The definitive *Tardy's Smith on Receivers* points out on page 169, "A receiver may be personally liable in a contract entered into by him without the sanction of the Court, even though in relation to a matter which otherwise would be a charge against the receivership." Further, on page 269, "In other words, a receiver has no principal behind him in the sense of an ordinary agent, for whom he can promise and hence, unless authorized so to do by the Court which appointed him, his promises and contracts will bind him individually."

Plaintiff contends that there are sufficient facts before the Court to hold the defendant Mitchell personally liable on the contract of employment of plaintiff. The result of this finding would clearly leave the plaintiff entitled to an award from the Industrial Commission.

The claim of an injured workman has its basis on the contract and fact of employment. It necessarily follows that if Mitchell, as receiver, was the employer of plaintiff, and the fact of employment existed, the receiver must be held

personally liable for this claim. The plaintiff submits that enough fact has been established for the finding of personal liability.

The property and business transferred in the District Court proceeding to the receiver was never returned to the prior owners. The initial claim herein was processed against the "Mitchell Laundercenter." Although it subsequently developed that defendant has no Workmen's Compensation insurance, defendant Mitchell at one time advised the plaintiff that insurance was available. If further facts are necessary to find the personal liability of defendant, a hearing could be had for this purpose upon remand.

Denial of plaintiff's claim would have a curious and inequitable result. Plaintiff, an injured worker entitled to the protection of the statutes, would have no right of recovery. Plaintiff submits that the suggestion of the Commission that the claim should be processed against Loren and Edith Nelson, the prior owners of the laundercenter, is entirely without legal merit. The Workmen's Compensation claim must have a direct relationship to a status of employer-employee. Here, the Nelsons neither hired, supervised, paid, or in any way controlled the activities of plaintiff at the laundercenter. Law and equity would not be served by shifting the responsibility and liability of the one who hired plaintiff to strangers to this proceeding.

75 *C.J.S. Receivers* #157, clearly points out that a receiver who hires agents or employees to assist him in the conduct of the business, without specific approval of the

Court, does so "at his peril." "His authority to enter into such employment contracts includes the usual obligations of such contracts." p. 797.

CONCLUSION

1. The Industrial Commission acted in excess of its powers in determining as a matter of law that defendant Mitchell was not the employer of plaintiff.

2. The Commission acted in excess of its powers by denying plaintiff's claim without a full hearing as required by due process of law.

3. The Order of the Commission is arbitrary and capricious and has no basis in fact or law; and the findings of fact herein do not support denial of plaintiff's claim.

4. The cause should be remanded to the Industrial Commission for an appropriate award of compensation.

Respectfully submitted,

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