1972

Mark C. Doyle v. Facilities, Inc. : Brief of Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

MARK C. DOYLE,
Plaintiff-Appellant,

vs.

FACILITIES, INC., a Utah corporation,
Defendant-Respondent.

Case No. 12912

BRIEF OF RESPONDENT

Appeal from Judgment of the Third Judicial District Court in and for Salt Lake County
Honorable Ernest F. Baldwin, District Judge

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NATURE OF THE CASE

This is a case for personal injuries allegedly sustained in an accident on a construction job when the appellant, an employee of Steel Components, Inc., fell off the roof of a school building which he was assisting to construct.

DISPOSITION IN LOWER COURT

Summary Judgment was granted in favor of the defendant, Facilities, Inc.

RELIEF SOUGHT ON APPEAL

Defendant, Facilities, Inc., seeks affirmance of the Summary Judgment in its favor.

STATEMENT OF FACTS

On May 5, 1969, Reed L. Oyler entered into a contract with the Weber County School District for the construction of the Hooper School to be located at 5500 South 5900 West, Hooper, Utah. (Exhibit D-3).

On May 12, 1969, Reed L. Oyler entered into a subcontract agreement with Tech Steel, Inc., wherein Tech Steel, Inc. agreed to furnish all labor and materials, tools, implements and equipment, scaffolding, permits, fees, etc., to do the steel joists, structural steel, steel roof deck and miscellaneous metal work on the Hooper School Building (Exhibit D-2).

In performing its subcontract agreement, Tech Steel, Inc. hired Facilities, Inc., the respondent herein, to furnish and erect the structural steel and steel roof decking in the school. This was done by way of purchase order (Exhibit D-1). Facilities, Inc., in turn, hired Steel Components, Inc., to place the steel decking (Pre-trial Record, p.2). The plaintiff, Mark C. Doyle, was an employee of Steel Components, Inc.

On October 20, 1969, while placing the steel roof decking on a portion of the Hooper School Building, the plaintiff fell and sustained injuries. His Complaint alleges that the cause of his fall was the negligent installation of the structural steel by the employees and agents of Facilities, Inc.

Plaintiff filed for and received compensation and other benefits afforded him under the Workmen's Compensation Act (Pre-trial Record, p.6)

ARGUMENT

BENEFITS RECEIVED BY PLAINTIFF UNDER THE WORKMEN'S COMPENSATION ACT CONSTITUTE HIS EXCLUSIVE REMEDY.

The Workmen's Compensation Act encompasses two primary objectives. The first is to assure that an injured employee will receive the necessary medical and hospital care and modest, but certain, compensation for his injuries with resulting benefits to himself and his family. The second objective is to afford an employer protection against possible disastrous claims for injuries which he may otherwise be unable to bear.

The definition of "employer" in the Workmen's Compensation Act is broad. It is designed to provide workmen's compensation coverage to persons other than those regularly on the "employer's" payroll. It 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 work 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 subcontractors, shall be deemed, within the meaning of this section, employees of such original employer . . . .

Utah Code Ann. § 35-1-42 (Repl. vol. 1966).

Two recent Supreme Court cases hold that the exclusive remedy of an employee of a subcontractor on a construction project is that provided by the Workmen's Compensation Act. In *Smith v. Alfred Brown Co.,* 27 Utah 2d 155, 493 P.2d 994 (1972), this Court discussed the significance of the sub-con-

tract agreement between Alfred Brown Company and the subcontractor. In the present case Clause 2 of the subcontract agreement between Reed L. Oyler and Tech Steel, Inc., provided that:

> The Subcontractor shall prosecute the work undertaken in a prompt and diligent manner whenever such work, or any part of it, becomes available, or in such time or times as the contractor may direct, and so as to promote the general progress of the entire construction, and shall not, by delay or otherwise, interfere with or hinder the work of the contractor or any other subcontractor, and in the event that the Subcontractor neglects and/or fails to supply the necessary labor and/or materials, tools, implements, equipment, etc. in the opinion of the Contractor, then the Contractor shall notify the Subcontractor in writing setting forth the deficiency and/or delinquency and five days after date of such written notice, the Contractor shall have the right if he so desires to take over the work of the Subcontractor from any further participation in the work covered by this agreement; or, at his option, the Contractor may take over such portion of the Subcontractor's work as the Contractor shall deem to be in the best interest of the Contractor, and permit the Subcontractor to continue with the remaining portions of the work . . . .

(Exhibit D-2).

The foregoing clause is identical to the provision determined "significant" in the *Alfred Brown Co.* case, where this Court said:

> If the total situation shown in this case, including the supervisory authority given the General Contractor Brown by the Clause 3 just quoted, is viewed in the light of the principles herein discussed as applied to the controlling statutes, the trial court was justified in

> viewing the situation thus: that the defendant General Contractor Brown had sufficient supervision and control over the 'subcontractors under him' that 'all persons employed by any such subcontractor' should be deemed an employee of the general contractor defendant Brown; and that consequently the plaintiff would be covered by workmen's compensation as an employee of the latter and thus precluded from maintaining this suit. Accordingly, the summary judgment was properly granted. 493 P.2d at 996.

On the same day that the Court handed down the decision in the *Alfred Brown Co.* case, it also decided *Peterson v. Fowler,* 27 Utah 2d 159, 493 P.2d 997 (1972). Suit was filed by the dependents of a man who was killed when scaffolding on which he was working at the Special Events Center at the University of Utah collapsed, against an independent subcontractor, Lauren Burt, Inc., who furnished and installed ceiling tile in the dome of the Sports Center. The deceased was employed by the general contractor. An award was made to the dependents of the deceased employee under the Workmen's Compnsation Act.

The defendant, Lauren Burt, Inc., was using rented scaffolding to aid in the installation of the ceiling tile. The deceased was employed by the general contractor to clean some large supporting beams in the dome. An arrangement existed between the general contractor and Lauren Burt, Inc., whereby the deceased performed his cleaning work from the scaffolding. The scaffolding failed and the workman was killed.

In affirming the decision of the trial court which had dismissed the action as to Lauren Burt, Inc., this Court said:

> To be fellow servants, they must be engaged in the same line of work and labor together in such personal relations that they can exercise and influence upon each other promotive of proper caution in respect of their mutual safety. They should be at the time of the injury directly operating with each other in the particular business at hand, or they must be operating so that mutual duties bring them into such coassociation that they may exercise an influence upon each other to use proper caution and be so situated in their labor to some extent as to be able to supervise and watch the conduct of each other as to skill, diligence, and carefulness. When workmen are so engaged, we think they are working in the same employment.

In the present case, Facilities, Inc., had the job of placing and erecting the structural steel in the Hooper School. This included the erection of steel supports, I-beams which rested on the supports, and steel joists which spanned from I-beam to I-beam. As the structural steel was place into position, the workmen from Steel Components, Inc., placed corrogated steel sheets which formed the decking on the top of the steel joists and welded them into place. The decking could not be installed until the structural steel had been erected. The deposition of the plaintiff shows that while the structural steel was being erected in one area of the building, steel decking was placed by him and his fellow employees in other portions of the building. (Depos., Mark Doyle, pp. 38-39). Obviously, both of the subcontractors and their employees had to coordinate their efforts so as to perform the job in accordance with the contract and with regard to the safety of each other.

The appellant contends that the present case is distinguishable from the *Alfred Brown Co.* and the *Peterson* cases because he worked for a "fourth tier" subcontractor. However,

the deposition of the general contractor demonstrates that the same degree of control and supervision was exercised over a fourth tier subcontractor as would be exercised over a first tier subcontractor. Mr. Oyler testified that he had control, among other things, of the coordination of the subcontractor; the safety of all workmen on the job; and the quality of the product. (Depos., Reid Oyler, pp. 10-12). Reid Oyler also testified that on a construction project such as was under completion at the time of the accident, the efforts of all subcontractors and their workmen must be coordinated. (Depos., Reid Oyler, pp. 15-16).

The function of Steel Components, Inc. and its employees, and that of Facilities, Inc. and its employees, along with all other subcontractors, was to perform an integral part of the construction of the school building. It was the function of the general contractor to complete the contract according to the plans and to insure that all employees were working toward this goal.

Respondent contends that under the principle of *Alfred Broun Co.* and *Peterson,* the employees of Steel Components, Inc., and the employees of Facilities, Inc., were fellow servants and were in the same employ. Therefore, the plaintiff's exclusive remedy is that provided by the Workmen's Compensation Act.

CONCLUSION

The general contractor, Reed L. Oyler, was exercising supervision and control over the work being done by all of the subcontractors and their workmen. All employees were in the "same employment" as defined in the Act. The general con-

tractor reserved the right of supervision and control of all subcontractors and their employees. Further, the deposition of the appellant, himself, establishes that there was a close working relationship between the workmen installing the structural steel and those installing the corrogated steel decking. All workmen on the project were required to collaborate and work together under the general supervision of the general contractor.

Because the plaintiff was in the "same employment" as the defendant, the Workmen's Compensation Act provides his exclusive remedy. The Summary Judgment issued by the Trial Court should be affirmed.

Respectfully submitted,

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