

STATE OF MICHIGAN
COURT OF APPEALS

GARY GRAFTON,

Plaintiff-Appellant,

v

GEORGE ANTHROP RACING STABLES,
HAZEL PARK RACEWAY, RICHARD
BOERSEMA, MICHIGAN HARNESS
HORSEMAN'S ASSOCIATION and
HARTFORD INSURANCE GROUP,

Defendants-Appellees.

UNPUBLISHED

June 24, 1997

No. 192797

WCAC

LC No. 280

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach*, JJ.

PER CURIAM.

Plaintiff appeals the November 4, 1994 order of the Worker's Compensation Appellate Commission (WCAC) which affirmed a magistrate's decision holding that defendant Hazel Park Raceway is not a statutory employer. Although this Court initially denied leave to appeal, the Supreme Court in lieu of granting leave remanded to this Court for consideration as on leave granted. We now reverse.

I

Plaintiff was an employee of George Anthrop Racing Stables, which used facilities at Hazel Park Raceway. Plaintiff worked as a groom tending the race horses. He was required to clean the stalls, feed and water the horses, maintain the harnesses and other equipment, and perform other tasks. He was provided a tack room which contained a storage and work area and minimal living facilities.

* Circuit judge, sitting on the Court of Appeals by assignment.

On April 10, 1987 a horse, owned by defendant Richard Boersema bit plaintiff on the hand. Plaintiff washed the hand and cleansed it with alcohol, but did not seek medical attention. Approximately one month later, he experienced flu-like symptoms which worsened. He was hospitalized and diagnosed as suffering from a streptococcal infection of the bloodstream. As a result, he suffered aortic valve damage and underwent valve replacement surgery in May 1987. Additional surgery may become necessary in the future.

Plaintiff filed an application for mediation or hearing contending that he was disabled as a result of a work-related injury. The principal question presented by his claim has always been who is responsible for payment of benefits. Although his employer would ordinarily be liable for benefits, it is uninsured. Plaintiff therefore contended that one or more of the other defendants should be liable for benefits as his "statutory employer" pursuant to §171 of the Worker's Disability Compensation Act, MCL 418.171; MSA 17.237(171), which provides in part:

(1) If any employer subject to the provisions of this act, in this section referred to as a principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this act or who has not complied with the provisions of §611 [regarding insurance coverage], and who does not become subject to this act or comply with the provisions of §611 prior to the date of the injury or death for which a claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any person employed in the execution of the work any compensation under this act which he or she would have been liable to pay if that person had been immediately employed by the principal.

The magistrate concluded that neither Hazel Park Raceway, Mr. Boersema, nor the Horseman's Association were statutory employers. In doing so, the magistrate relied upon the opinion of Justice Williams in *Williams v Lang (After Remand)*, 415 Mich 179, 190-191, 192, 194; 327 NW2d 240 (1982) which in all relevant respects represented the unanimous opinion of the Court. Justice Williams paraphrased and analyzed the statute as follows:

While this provision consists of a fairly lengthy sentence, the various parts do fall together for the purposes of this case to reveal a clear and simple thought. The following language is a fair condensation:

If [the principal an employer covered under WDCA], contracts with [a contractor, a noncovered employer and an employee of the contractor makes a claim for injury] for the execution by or under the contractor...of any work undertaken by the principal, the principal shall be liable [for WDCA benefits].

* * *

The test is: did the plaintiff employee of the uninsured contractor make a claim for benefits for injuries incurred during work executed under the contractor for work "undertaken by the [insured] principal." Careful examination of the language of the provision reveals no other limitation.

* * *

In conclusion, for an employee to recover from a principal, there must be: (1) a contract between the principal who is covered by the WDCA and a contractor employer who is not covered; (2) the injury must occur: (a) during the execution of work under the contractor which (b) had been "undertaken by the principal." In short, the principal must pay benefits to an employee under the following two conditions: (a) where the injury occurs while the employee is working under a contractor, and (b) where the work has been "undertaken by the principal." These are the sole statutory conditions. There is nothing in the statute that limits or explains "undertaken."

Using this test, the magistrate rejected plaintiff's statutory employer claims, and in particular held that Hazel Park Raceway is not a statutory employer for the following reasons:

As to defendant Hazel Park Raceway, I find that they are a principal subject to the Act. I find that George Anthrop Racing Stables was an uninsured on the April 10, 1987 alleged date of injury. I find that there was a contract between Hazel Park Raceway and George Anthrop Racing Stables. While a limited number of stalls and tack rooms are gratuitously allocated upon application, Hazel Park has the benefit of the horse to whom a stall is allocated nearly exclusively racing on their track during their meet season. I find that the plaintiff was an employee of George Anthrop Racing Stables and that he did suffer a personal injury arising out of and in the course of employment with that uninsured employer. I do not find that the work being performed by the George Anthrop Racing Stables was pursuant to contract with Hazel Park Raceway or that it was work undertaken by Hazel Park Raceway. Plaintiff was injured while performing grooming duties for George Anthrop, a horse trainer. Hazel Park Raceway conducts harness horse races on a track with pari-mutuel wagering conducted. Incidental to that, Hazel Park Raceway provides stalls and tack rooms, which it remains responsible for maintaining. It was not arising out of and in the course of any duties in connection with this incidental undertaking of Hazel Park Raceway that plaintiff was injured, but rather it grew out of his grooming duties for the horse trainer. Hazel Park Raceway did not contract for training and grooming of horses or undertake to train and groom horses.

Plaintiff appealed to the WCAC, arguing only that the magistrate erred in finding Hazel Park Raceway not to be a statutory employer. The WCAC disagreed, holding that the magistrate committed no error of law, and that his factual findings are supported by substantial evidence on the whole record.

II

In order to establish liability as a statutory principal, there must be a contract between a principal who is covered by the Worker's Disability Compensation Act and a contractor who is not covered by the Act, and the claimant's injury must occur during execution under the contract of work that was undertaken by the principal. *Viele v DCMA International (On Remand)*, 211 Mich App 458, 462; 536 NW2d 276 (1995).

Plaintiff argues that the magistrate and WCAC erred in "parsing" the jobs and activities undertaken in the contract between Hazel Park Raceway and plaintiff's employer too narrowly. Plaintiff argues that under the contract, by which plaintiff's employer agreed to provide horses to race at the raceway, the care and grooming of horses by plaintiff and others is an incidental, if not necessary, part of the common undertaking. Hazel Park Raceway disagrees, contending that if plaintiff's interpretation of §171 is correct, then the raceway and all other employers are potentially liable as statutory employers for individuals whose activities are only remotely or tangentially related to the business at hand.

We agree with plaintiff that the facts found by the magistrate establish that Hazel Park Raceway was plaintiff's statutory employer. Plaintiff was injured while grooming a horse for his employer, which horse was supplied by the employer to the raceway pursuant to contract. We believe that the grooming of horses obtained for purposes of racing is work "undertaken by the principal," i.e., undertaken by the raceway under the circumstances of this case. Even if Hazel Park Raceway is correct in arguing that some activities are so tangentially or remotely related to the principal's business that it would be unfair to hold the principal liable as a statutory employer, we do not believe that this is such a case. Moreover, the examples given by the raceway are not persuasive. For example, the raceway asks whether the driver of a truck delivering a saddle to be used on a race horse could become the raceway's employee. If the truck driver is not employed by a stable or other entity with which the raceway has a contract, then the raceway could not be liable because there would be no principal-contractor relationship on which to base liability under §171. On the other hand, if the truck driver were employed by a stable, and the stable in turn had a contract with the raceway, we are not convinced that it would be patently unfair or absurd to hold the raceway liable as a statutory employer in the event the stable was uninsured and the truck driver were injured in the course of delivering a saddle to a horse who was about to race.

We therefore reverse and remand to the WCAC for entry of an appropriate award of disability compensation and medical benefits payable by Hazel Park Raceway.

/s/ Michael J. Kelly

/s/ Harry A. Beach