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In Rogers v. HHRM Self-Perform, LLC, 2022 Ga. App. LEXIS 514 (October 31, 2022), the employee, Sonny Rogers, was working for his employer, Sunshine Forming, on the construction of Mercedes-Benz Stadium. Sunshine Forming performed concrete work on the stadium as a subcontractor of a joint venture, HHRM Self-Perform. Rogers sustained an on-the-job accident and subsequently died as a result of his injuries. As the administrator of Rogers' estate, Rogers' sister, Abiegale, sued the joint venture along with its corporate members and several individual supervisors, arguing that their negligence caused Rogers' death.

The trial court granted the summary judgment motions of several of the defendants and granted a motion for judgment on the pleadings by two other defendants. Specifically, the trial court granted the summary judgment motions of Skyline Forming (the company that subcontracted with Sunshine Forming) and HHRM as those entities were statutory employers. As to the corporate members of HHRM, the trial court concluded that the exclusive remedy provision barred suit against them because "every joint venturer is responsible for the workers' compensation benefits of each employee of another joint venturer — if that employee is engaged in the activities of the joint venture."

On appeal, Abiegale Rogers argued that summary judgment was improper as to the individual members of the joint venture because the exclusive remedy provision of the Georgia Workers' Compensation Act "extends only to the joint venture itself, but not to the individual members." She argued that "individual venturers cannot be considered 'contractors' who are secondarily liable for workers' compensation benefits," so "they likewise do not enjoy the same tort immunity as contractors."

The Court noted that, according to O.C.G.A. § 34-9-8(a), "A principal, intermediate, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of his subcontractors engaged upon the subject matter of the contract to the same extent as the immediate employer." In return for that liability, the statutory employers are "immune from tort liability for the injury suffered" in accordance with the exclusive remedy provision found in O.C.G.A. § 34-9-11. When an injured employee is engaged in the work of the joint venture, the exclusive remedy provision applies to each member of the joint venture. The Court found that, because the individual members of the joint venture "shared in the obligation to provide workers' compensation benefits," they also "shared in the immunity afforded by the Act's exclusive remedy provision."

Alternatively, Abiegale Rogers argued that a question of fact remained as to whether the joint venture was actually a partnership and therefore whether the exclusive remedy provision would protect the partnership. However, the Court of Appeals determined that, regarding employees of a partnership, the classification as a partnership or joint venture "has no bearing on the employee's entitlement to workers' compensation benefits, so long as the employee was engaged in the joint venture or partnership's business at the time of his injury." Therefore, the exclusive remedy provision shielded HHRM regardless of whether it was considered a partnership or a joint venture.

Abiegale Rogers also argued that the trial court erred in concluding that the exclusive remedy provision barred her suit against two individual supervisors, Necessary and Agnetti. The Court of Appeals noted that, in the case of Long v. Marvin M. Black Company, 250 Ga. 621 (1983), the Supreme Court found that the exclusive remedy provision did not protect an employee of a principal contractor when the injured employee is an employee of a subcontractor, because "the fact that the principal contractor was also the statutory employer did not make the injured employee and the tortfeasor employed by the statutory employer 'employees of the 'same employer' within the meaning of" the exclusive remedy provision.

By contrast, in the case of Pardue v. Ruiz, 263 Ga. 146 (1993), the Supreme Court found that the exclusive remedy provision did protect an employee of the principal contractor "because the employer, who enjoyed statutory immunity, was the source of the safety officer's duty to inspect," so that safety officer "shared in the employer's immunity." The Supreme Court noted that "immunity would not, however, extend to the supervisor when he commits an affirmative act causing or increasing the risk of injury to another employee."

Abiegale Rogers argued that the decisions in Long and Pardue were "irreconcilable" and that the decision in Pardue is inconsistent with the exclusive remedy provision of the Act. The Court of Appeals noted, however, that they are bound by the Supreme Court's decision in Pardue. Under the standard set in Pardue, Necessary and Agnetti would be protected by the exclusive remedy provision unless they "commit[ted] an affirmative act causing or increasing the risk of injury to another employee." Abiegale failed to demonstrate a triable issue of fact as to that issue, as the only conduct she identified did not "constitute the sort of affirmative conduct that would subject Necessary and Agnetti to liability."

Abiegale Rogers next argued that the trial court erred in concluding that the exclusive remedy provision barred her suit against three other individual supervisors, Burr, DeSantiago, and Garcia, because "there remain issues of fact as to the identity of these defendants' actual employer." The Court of Appeals found that those three defendants were entitled to summary judgment regardless of whether they were employed by Skyline or Sunshine, because "the record demonstrates that these employees were acting as the alter ego of the employer." As the Court found, all of the allegations of negligence "arose from the non-delegable duty their employer owed to the employees and arose from their capacities as the employer's representatives." Therefore, their "acts of creating and implementing general construction practices" likewise did not constitute the

sort of affirmative conduct that would subject them to liability under Pardue.

Finally, Abiegale Rogers challenged the grant of motion for judgment on the pleadings in favor of Holder and Moody, two corporate members of the joint venture. A motion for judgment on the pleadings essentially argues that the plaintiff has failed to state a cause of action in the pleadings. The Court of Appeals found that the complaint failed as a matter of law because Holder and Moody were also entitled to tort immunity based on the exclusive remedy provision of the Act.

The writer agrees with the appellant that there does appear to be some tension between the exclusive remedy provision of the Act and the Supreme Court's decisions in Long and Pardue. The Court of Appeals was bound by the Supreme Court's decisions, but I suspect that the appellant is likely to seek to appeal the Court of Appeals' decision, and the Supreme Court may well agree to hear the appeal and address this tension. In the meantime, it is clear that, in return for liability under the Workers' Compensation Act, statutory employers are shielded from tort liability by the exclusive remedy provision of the Act. Whether that protection extends to individual employees of the statutory employers depends on whether those individual employees committed an affirmative act causing or increasing the risk of injury to the injured employee.

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