[Cite as *Phelps v. Dispatch Printing Co.*, 2010-Ohio-2423.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kirk Phelps,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-1118 (C.P.C. No. 08CVD-12-17287)
Dispatch Printing Company,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
Administrator, BWC,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 1, 2010

Chester T. Freeman Co., L.P.A., and *William R. Polhamus*, for plaintiff-appellee.

Porter, Wright, Morris & Arthur, LLP, and *Christopher C. Russell*, for defendant-appellant.

Richard Cordray, Attorney General, and *Andrew J. Alatis*, for defendant-appellee.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, Dispatch Printing Company (the "Dispatch"), appeals the judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of plaintiff-appellee, Kirk Phelps ("Phelps"), and denying the Dispatch's motion for summary judgment concerning Phelps' entitlement to workers' compensation benefits. For the following reasons, we affirm.

{¶2} The facts of this case are undisputed. On May 15, 2008, Phelps, who was employed by the Dispatch as a journeyman/pressman, was on the Dispatch premises to collect his paycheck when he slipped and fell, suffering injuries to his left knee and left hip. At the time of his fall, Phelps was neither "on the clock" nor performing his assigned duties, but was on the Dispatch premises solely to obtain his paycheck for previously performed work. The Dispatch authorized employees to obtain their paychecks in person on the Dispatch premises rather than having their paychecks mailed or directly deposited with a financial institution, and Phelps' normal practice was to personally pick up his paychecks.

{¶3} On December 4, 2008, pursuant to R.C. 4123.512, the Dispatch filed a notice of appeal in the Franklin County Court of Common Pleas from the Industrial Commission of Ohio's denial of the Dispatch's appeal from a staff hearing officer's order recognizing as valid Phelps' workers' compensation claim arising out the injuries he sustained on May 15, 2008. The parties filed a joint stipulation of facts, and both parties moved for summary judgment. The sole issue before the trial court was whether Phelps' injuries were compensable from the workers' compensation fund. On November 9, 2009, the trial court granted Phelps' motion for summary judgment and

denied the Dispatch's motion for summary judgment. The trial court concluded that Phelps' injuries were received in the course of and arising out of his employment and were therefore compensable under the Ohio workers' compensation system.

{¶4} The Dispatch filed a timely notice of appeal and assigns the following as error:

> THE TRIAL COURT ERRED AS A MATTER OF LAW BY GRANTING [PHELPS'] MOTION FOR SUMMARY JUDGMENT [AND] BY DENYING [THE DISPATCH'S] MOTION FOR SUMMARY JUDGMENT AND BY CONCLUDING THAT [PHELPS] HAS A COMPENSABLE WORKERS' COMPENSATION CLAIM WHEN HE WAS INJURED OFF THE CLOCK WHILE PICKING UP HIS PAYCHECK AT HIS PLACE OF EMPLOYMENT.

{¶5} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶6} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action,

show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The parties, who submitted this matter to the trial court on cross-motions for summary judgment, agree that there are no genuine issues of material fact, and both contend they are entitled to judgment as a matter of law.

{¶7} The crux of this case is whether Phelps' injuries are compensable under the Ohio workers' compensation system. "The test of the right to participate in the Workers' Compensation Fund is not whether there was any fault or neglect on the part of the employer or his employees, but whether a 'causal connection' existed between an employee's injury and his employment either through the activities, the conditions or the environment of the employment." *Bralley v. Daugherty* (1980), 61 Ohio St.2d 302, 303. "An injury sustained by an employee is compensable under the Workers' Compensation Act only if it was 'received in the course of, and arising out of, the injured employee's employment.' " Id., quoting R.C. 4123.01(C). Under this coverage formula, "in the course of" relates to the time, place, and circumstances of the injury, whereas "arising out of" contemplates a causal connection between the injury and the employment. *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277-78. The Supreme Court of Ohio has

expressly recognized the conjunctive nature of the coverage formula, both elements of which must be met before compensation will be allowed. Id. at 277.

{¶8} An employee need not be engaged in the actual performance of work for his employer at the time of the injury to be entitled to workers' compensation benefits. It is sufficient that the employee is "engaged in a pursuit or undertaking consistent with his contract of hire and which in some logical manner pertains to or is incidental to his employment." *Sebek v. Cleveland Graphite Bronze Co.* (1947), 148 Ohio St. 693, 698; see also *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 120, 1998-Ohio-455, citing *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, 12. Because the Ohio workers' compensation statutes must be liberally construed in favor of the employee, this court must afford the coverage formula a liberal construction in favor of awarding benefits. *Fisher* at 278, citing R.C. 4123.95 and *Maher v. Workers' Comp. Appeals Bd.* (1983), 33 Cal.3d 729, 733

{¶9} The trial court's analysis and the parties' arguments relate almost exclusively to the question of whether Phelps' injury arose out of his employment, so we first turn to that portion of the coverage formula, which requires a causal connection between the injury and the employment. Whether an employee's injury arose out of his employment is determined by examining the totality of the facts and circumstances, including the following: "(1) the proximity of the scene of the accident to the place of employment; (2) the degree of control the employer had over the scene of the accident; and (3) the benefit the employer received from the injured employee's presence at the scene of the accident." *Lord v. Daugherty* (1981), 66 Ohio St.2d 441, 444. The factors

listed in *Lord* are not exhaustive; they are merely illustrative of factors courts should take into account as part of the totality of the circumstances. *Fisher* at 279, fn. 2.

{¶10} It is undisputed that the first two factors enumerated in *Lord* are satisfied here, based on the parties' stipulation that Phelps was injured when he slipped and fell on the Dispatch premises. The Dispatch's sole argument on appeal is that, in picking up his paycheck during non-work hours, Phelps was performing a personal errand and that the Dispatch received no benefit from Phelps' presence at the scene of the accident. Therefore, the Dispatch contends that the third *Lord* factor has not been satisfied and that Phelps is ineligible for workers' compensation benefits. Phelps, on the other hand, argues that the Dispatch benefited from its informal, longstanding policy of permitting employees to pick up their paychecks in person and that his injuries are compensable.

{¶11} The stipulated facts, which constitute the entire factual record on appeal, contain nothing upon which this court may conclude whether the Dispatch derived a benefit from Phelps' presence to collect his paycheck. Nevertheless, an employee's failure to satisfy all of the factors enumerated in *Lord* does not foreclose further consideration of whether the employee's injury arose out of his or her employment. *Ruckman* at 122 (finding injuries compensable even though "[a]pplication of the *Lord* factors to the present facts does not support compensation"); see also *MTD Prods., Inc. v. Robatin* (1991), 61 Ohio St.3d 66, 68 (noting exceptions to the general rule that an employee with a fixed place of employment is not entitled to participate in the workers' compensation fund for off-site injuries sustained while traveling to or from his or her

place of employment). The Twelfth District Court of Appeals has recognized that some Ohio courts have found injuries to have arisen out of employment even when none of the three *Lord* factors were met. See *Pascarella v. ABX Air, Inc.* (Aug. 10, 1998), 12th Dist. No. CA98-01-002. Because workers' compensation cases are fact-specific, " 'no one test or analysis can be said to apply to each and every factual possibility.' " *Ruckman* at 122, quoting *Fisher* at 280. Accordingly, the absence of evidence demonstrating a benefit to the Dispatch neither ends our analysis nor requires the conclusion that Phelps' injury did not arise out of his employment.

{¶12} Two Ohio appellate courts have considered workers' compensation claims for injuries received when employees traveled to their employers' premises solely for the purpose of collecting their paychecks. First, in *Zingale v. Maria Heckaman & Assoc.* (July 9, 1998), 8th Dist. No. 72914, the plaintiff was employed by a temporary employment agency whose offices were located in a different building of the same office complex as the client to whom the plaintiff was assigned. On the date in question, the employment agency granted the plaintiff permission to pick up her paycheck in person rather than having it mailed, as was the agency's normal procedure. During her unpaid lunch break, the plaintiff drove to the building housing the agency's offices and received her paycheck, but she slipped and fell while walking back to her car. The plaintiff admitted that her injury did not occur on her employer's premises, but argued that "she was injured while on her way to work and her injuries were sustained close in time to her returning to work." The Eighth District Court of Appeals concluded that the plaintiff was not injured in the course of and arising out of her employment.

{¶13} *Zingale* is factually distinguishable. First and foremost, the plaintiff in *Zingale* was not injured on the employer's premises, and there was no suggestion that the employer maintained any control over the scene of the plaintiff's accident. The plaintiff's location at the time of her injury was a determinative factor in the *Zingale* court's analysis. The court held that the plaintiff was a fixed situs employee and that, since she was injured while traveling to her place of employment, she was ineligible for workers' compensation benefits. See *MTD Prods.*, syllabus ("[a]s a general rule, an employee with a fixed place of employment, who is injured while traveling to or from his place of employment, is not entitled to participate in the Workers' Compensation Fund because the requisite causal connection between the injury and the employment does not exist"). The court rejected application of established exceptions to the coming-and-going rule discussed in *MTD Prods*. Here, because Phelps was injured on his employer's premises, the coming-and-going rule expressed in *MTD Prods.* and applied in *Zingale* is inapplicable. Also, unlike in this case, the employer in *Zingale* did not have a policy of permitting employees to pick up their paychecks. Instead, it made special arrangements to accommodate the plaintiff's request to personally collect her check. The court stated that "[t]he inconvenience of making such special arrangements far outweighs the minuscule benefit of saving the cost of a single postage stamp."

{¶14} More recently, in *Hirschle v. Mabe*, 2d Dist. No. 22954, 2009-Ohio-1949, the Second District Court of Appeals addressed a scenario remarkably similar to the facts of this case and concluded that the employee's injury was compensable. Tamara Hirschle was employed by Stillwater, an agency owned and operated by Montgomery

County, Ohio. Stillwater had a policy that allowed an employee to receive her pay either by direct deposit, by mail or by picking up a paycheck at Stillwater's offices on Thursday afternoons before payday. Hirschle, who did not work on Thursdays, drove to Stillwater each Thursday before payday solely to pick up her paycheck. On one particular Thursday, Hirschle drove to Stillwater, parked in the employee parking lot, which was owned, maintained, and controlled by the county, and obtained her paycheck. While walking back to her car, Hirschle slipped in the parking lot and fell, breaking her hip. Like the Dispatch here, the defendants in *Hirschle* argued that Hirschle was injured while engaged in a purely personal errand, noting that it was her day off, and that she was on the employer's premises voluntarily because she was not required to pick up her paycheck. The court of common pleas nevertheless concluded that Hirschle was entitled to workers' compensation benefits, and the Second District affirmed.

{¶15} Seizing on the third factor enumerated in *Lord*, the defendants argued that Hirschle's injury did not arise out of her employment because Stillwater derived no benefit from Hirschle's presence on its premises at the time of the accident. Although the court acknowledged that the defendants' premise was "arguably correct," it reasoned that the defendants' "conclusion [did] not necessarily follow." Id. at ¶16. Remarking that an employee's receipt of her pay is a fundamental aspect of the employment relationship, the court determined that "Hirschle's injury arose out of Stillwater's performance of a duty and her exercise of a right under the employment contract." Id. at ¶15. The court stated, at ¶17, as follows:

> * * * Ms. Hirschle suffered an injury on her employer's premises while exercising a right under her employment contract in a permitted way. This activity bears a definite connection to her employment * * *. Her injury has a causal connection to an important * * * aspect of her employment. Therefore, her injury arose out of her employment, satisfying the coverage formula's first conjunct.

The *Hirschle* court rejected the argument that, because she was not required to pick up her paycheck in person, Hirschle was engaged in a purely personal activity at the time of her injury. The court stated, "An activity engaged in voluntarily is not necessarily engaged in for purely personal reasons," and ultimately found the voluntary nature of the activity irrelevant. Id. at ¶24.

{¶16} In its analysis, the Second District also stated, "Because the reason for [Hirschle's] presence on Stillwater's premises was related to a fundamental aspect of her employment contract, there is no need for Stillwater to have derived a benefit from it." Id. at ¶17. It is not clear from that statement whether the court was attempting to state a blanket rule or, rather, was speaking exclusively to the particular facts of that case. Regardless of the Second District's intentions, however, we do not suggest a blanket rule in that regard here. Instead, we remain cognizant of the Supreme Court's warning that "no one test or analysis can be said to apply to each and every factual possibility. Nor can only one factor be considered controlling." *Fisher* at 280. We further recognize and follow the Supreme Court's instruction that "a reviewing court must examine the separate and distinct facts" of each fact-specific workers' compensation case. Id. Having done so, we reach the same conclusion as the Second District in *Hirschle*.

{¶17} Affording the coverage formula a liberal construction in favor of awarding benefits and considering the totality of the facts and circumstances, including but not limited to the factors enumerated in *Lord*, we conclude that the trial court appropriately determined that Phelps' injury arose out of his employment. Even without evidence that the Dispatch derived a benefit as a result of Phelps' presence to pick up his paycheck, the totality of the circumstances demonstrates a causal connection between Phelps' injury and his employment. Phelps' injury occurred on his employer's premises, and the Dispatch accordingly exercised complete control over the scene of Phelps' accident. Furthermore, the Dispatch undisputedly permitted its employees to pick up their paychecks rather than having the checks mailed or directly deposited into a bank account, and Phelps' receipt of his wages is an integral part of the employment relationship. As in *Hirschle*, the injury arose out of the employer's performance of a duty and the employee's exercise of a right under the employment contract. Accordingly, we agree that Phelps' injury arose out of his employment.

{¶18} We now turn to the question of whether Phelps' injury occurred in the course of his employment. The statutory requirement that an injury occur in the course of employment relates to the time, place, and circumstances of the injury. *Fisher* at 277. "Time, place, and circumstance * * * are factors used to determine whether the required nexus exists between the employment relationship and the injurious activity; they are not, in themselves, the ultimate object of a course-of-employment inquiry." *Ruckman* at 120. An injury occurs in the course of employment if sustained while the employee was engaged in activity that is consistent with the employee's contract of hire

and that is logically related to the employer's business or incidental to the employment. Id., citing *Kohlmayer* at 12; *Fisher* at 278, fn. 1, citing *Sebek*, paragraph three of the syllabus. An employee need not be injured in the actual performance of work for his employer to satisfy the in-the-course-of-employment requirement. *Ruckman* at 120. "Of course, if an employee has no authority to be at the place where he is injured, or is there on no business connected with his employment, but solely for purposes of his own, his injury does not arise out of or in the course of his employment." *Parrott v. Indus. Comm.* (1945), 145 Ohio St. 66, 69. Where, as here, the facts are undisputed and no competing inferences are possible, the issue of whether an employee is acting within the course of employment, ordinarily a question of fact, becomes a question of law. *Osborne v. Lyles* (1992), 63 Ohio St.3d 326, 330.

{¶19} The Dispatch had an undeniable duty to pay Phelps for his services. The very nature of the employment relationship is contractual in that "the employee agrees to perform work under the direction and control of the employer, and the employer agrees to pay the employee at an agreed rate." *Lake Land Emp. Group of Akron, LLC v. Columber*, 101 Ohio St.3d 242, 2004-Ohio-786, ¶17. Moreover, "[t]he contract of employment, as to the matter of wages and their payment, is not fully terminated or satisfied until the [employee's] wages, already earned, are paid." *Parrott* at 71.

{¶20} In *Parrott*, the plaintiff returned to his former employer's premises six days after terminating his employment to collect his final paycheck. He was advised that the bookkeeper was at lunch, and he was instructed to wait a half hour for her return. In the meantime, he called upon a former fellow employee to make a "flower fund" contribution

and went to the boiler room to claim his personal work clothes that had been out for cleaning on his final day of employment. While climbing a ladder from the boiler room to return to the timekeeper's office for his check, the plaintiff fell and fractured his pelvic bone and hip. The Supreme Court concluded that the plaintiff, even though he had resigned from his employment nearly a week before, was acting in the course of his employment for purposes of workers' compensation when he returned to his employer's premises to procure his pay. The court noted that the employer's payment of earned wages is an integral part of the contractual employment relationship and that the employee had a right to go to his employer's premises to collect his wages. In support of its conclusion, the court cited "[t]he English rule * * * that where a workman remains on the premises or returns thereto to obtain his pay after work ceases, he is still acting in the course of his employment." Id. at 72.

{¶21} Phelps' injury occurred while he was on the Dispatch premises for the sole purpose of collecting his paycheck, in accordance with his normal practice and as permitted by the Dispatch. Phelps' presence on the Dispatch premises to collect his paycheck was consistent with his contract of hire and, at least, incidental to his employment. The fact that Phelps was not required to pick up his paycheck in person, but could take advantage of other options, including direct deposit or mailing, does not alter this analysis or our conclusion in this regard, where the Dispatch admittedly permitted its employees to collect their paychecks in person. See *Hirschle* at ¶23-27. Accordingly, Phelps' injury was incurred in the course of his employment.

{¶22} Other state and federal courts that have considered the question presently before us have reached conclusions consistent with the Second District's holding in *Hirschle* and our conclusion here. See *Hoffman v. Workers' Comp. Appeal Bd.* (1999), 559 Pa. 655, 660 ("regardless of other available options, an employee's presence at the workplace to obtain a paycheck pursuant to an employer-approved practice bears a sufficient relationship to a necessary affair of the employer (payment of due wages) to fall within the course of employment"); *Hendricks v. Wal-Mart Stores, Inc.* (W.D.Va.2001), 142 F.Supp.2d 752 (employee's injury from slip and fall while on her employer's premises for the sole purpose of picking up her paycheck arose out of and in the course of employment); *Brooks v. Wal-Mart Stores, Inc.* (Mo.App.1990), 783 S.W.2d 509, 510, citing *Elmer E. Stockman Jr., Constr. Co. v. Indus. Comm.* (Mo.App.1971), 463 S.W.2d 610, 613 (injuries from slip and fall during non-work hours, while employee was on the employer's premises to shop and to pick up her paycheck, were subject to workers' compensation system).

{¶23} In *Nunn v. First Healthcare Corp.* (Sept. 10, 2004), Ky.App. No. 2003-CA-000777-MR, an employee was injured on her day off when she slipped and fell while on her employer's premises for the sole purpose of picking up her paycheck. The *Nunn* court concluded that the employee's injuries were work-related and covered by the workers' compensation system. Like in Ohio, to take advantage of the Kentucky workers' compensation system, an employee's injury must arise out of and in the course of employment. See id., citing KRS 342.0011(1). The *Nunn* court stated: "The cases generally recognize that an employment relationship includes the act of being paid for

one's labor * * *. Injuries received on an employer's premises in connection with collecting pay satisfy the 'arising out of' requirement." The court also stated the general rule that " '[t]he contract of employment is not fully terminated until the employee is paid, and accordingly an employee is in the course of employment while collecting her or his pay.' " Id., quoting 2 Larson & Larson, *Larson's Worker's Compensation Law* § 26.03[1], at 26-10. The *Nunn* court also rejected the argument that the employer must derive a benefit outside the normal incidents of the employment relationship from an employee picking up her paycheck in order for the employee to qualify for workers' compensation benefits.

{¶24} Having concluded that Phelps' injuries were sustained in the course of and arising out of his employment, we further conclude that the trial court did not err in granting Phelps' motion for summary judgment and denying the Dispatch's motion for summary judgment. Accordingly, we overrule the Dispatch's assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.