

Court of Claims of Ohio

The Ohio Judicial Center
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MELISSA S. HANSEN

Plaintiff

v.

BOWLING GREEN STATE UNIVERSITY

Defendant

Case No. 2013-00050

Judge Patrick M. McGrath

JUDGMENT ENTRY

{¶1} Plaintiff brought this action alleging negligence. On June 3-4, 2014, the court conducted a trial on both the issues of liability and damages, and on September 19, 2014, the magistrate issued a decision recommending judgment in favor of defendant.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On October 3, 2014, plaintiff filed objections to the magistrate’s decision, and defendant filed a memorandum contra on October 9, 2014.

{¶3} According to the magistrate’s decision, plaintiff was employed as a cook at Coyote Jack’s, a restaurant located on defendant’s campus. Although plaintiff was an employee of Chartwells, an independent contractor which operates within the campus, she was supervised by employees of defendant.

{¶4} In December 2010, plaintiff complained about a loose metal grate that covered a floor drain in the middle of the kitchen floor. Plaintiff informed her supervisors that occasionally the grate would detach from the drain and slide across the floor when she stepped on it. Subsequently, plaintiff’s supervisors told plaintiff that a

maintenance request had been submitted for the grate. The contract between Chartwells and defendant specified that Chartwells was responsible for repairs and maintenance for all food related areas in defendant's buildings. Accordingly, Chad Carper, plaintiff's supervisor and defendant's employee, testified that he requested the work order, and that he received an email from Larry Holland, an employee of Chartwells, that the drain cover had been repaired on December 30, 2010.

{¶5} Magdy Abdu-Zeid, the general manager of the building in which Coyote Jack's was located, also testified that maintenance work orders were submitted to Chartwells and that after the repair was made, he conducted a site check of the drain cover and found that the repair had been completed successfully. However, on January 27, 2011, the grate slipped off of the drain and plaintiff injured her left knee and foot. Plaintiff's lost wages and medical bills were paid under a workers' compensation claim.

{¶6} Plaintiff objects to the magistrate's decision based on the grounds that the magistrate erred by finding that plaintiff was an employee of defendant as a loaned servant and that there were errors in the magistrate's factual findings surrounding the negligent repair of the drain cover.

{¶7} As an initial matter, the court notes that plaintiff did not file a transcript of the proceedings before the magistrate. Civ.R. 53(D)(3)(b)(iii) states that "[a]n objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available."

{¶8} "If an objecting party fails to submit a transcript or affidavit, the trial court must accept the magistrate's factual findings and limit its review to the magistrate's legal conclusions." *Triplett v. Warren Corr. Inst.*, 10th Dist. Franklin No. 12AP-728,

2013-Ohio-2743, ¶ 13. Accordingly, the court is required to accept the magistrate's factual findings, and the court's review is limited to the magistrate's legal conclusions. Based on the foregoing, to the extent plaintiff challenges the magistrate's factual findings, such objections are without merit and are **OVERRULED**.

{¶9} With regard to plaintiff's objection regarding the magistrate's dual employer finding, plaintiff argues that the contract between Chartwells and defendant made no mention of "loaned servants." The magistrate determined that workers' compensation immunity applied to plaintiff because of her dual employment status. Although there was no official discussion of loaned servants in the contractual relationship between Chartwells and defendant, an employee can have dual employment when the non-employer exercised control over the employee in his day-to-day employment duties. *Wolf v. Big Lots Stores, Inc.*, 10th Dist. Franklin No. 07AP-511, 2008-Ohio-1837. The magistrate concluded that the testimony presented at trial showed that plaintiff worked on defendant's premises, that her supervisors were employees of defendant, and that "defendant retained the right to manage the day-to-day control over plaintiff as she worked." Magistrate's decision, p. 3. The court agrees with the magistrate's analysis and conclusion that workers' compensation immunity applies to this case.

{¶10} Even if the magistrate did not find that workers' compensation immunity applied to plaintiff, the magistrate concluded that plaintiff failed to prove her negligence claim by a preponderance of the evidence. In support of her conclusion, the magistrate relied on the testimony of plaintiff's supervisors who stated that a work order was requested, completed on December 30, 2010, and confirmed to have been completed successfully through a site check. The magistrate also relied on plaintiff's own testimony that after the repair was made, she walked on the grate for eleven work days without incident. The magistrate further found that defendant did not have actual

or constructive notice that the repair was not successful until after plaintiff was injured and that defendant exercised ordinary care in its actions to repair the drain cover. Based upon the magistrate's findings of fact, the court agrees with the magistrate's conclusion that plaintiff failed to prove negligence by a preponderance of the evidence.

{¶11} Accordingly, upon review of the record, the magistrate's decision, and plaintiff's objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law in this case. Therefore, the objections are OVERRULED, and the court adopts the magistrate's decision and recommendation as its own, including findings of fact and conclusions of law contained therein. Judgment is rendered in favor of defendant. Court costs are assessed against plaintiff.

The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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