[Cite as *Watkins v. Metrohealth Sys.*, 2002-Ohio-5961.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 80567

MAUDEST WATKINS,	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
THE METROHEALTH SYSTEM,	:	
	:	
Defendant-Appellant	:	
	:	
and	:	
	:	
THE INDUSTRIAL COMMISSION,	:	
	:	
Defendant	:	

DATE OF ANNOUNCEMENT OF DECISION	:	OCTOBER 31, 2002
CHARACTER OF PROCEEDING:	:	Civil appeal from Common Pleas Court Case No. 418662
JUDGMENT	:	VACATED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

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MICHAEL J. CORRIGAN, J.:

{¶1} The material facts of this workers' compensation case are undisputed. Claimant Maudest Watkins injured herself while parking her car in a garage owned by her employer, defendant Metrohealth Systems. Dissatisfied with the way she had pulled her car into a parking space, Watkins backed out of the space and tried to park the car again. While doing so, her foot slipped off the brake and onto the accelerator, causing her car to ram another parked car. Watkins filed a claim for workers' compensation benefits. The matter was tried to the court and the court found Watkins eligible to participate in the workers compensation fund. Metrohealth appeals, claiming that Watkins was not legally entitled to benefits.

{¶2} This case is governed by the "coming and going" rule, which states that an employee with a fixed place of employment, who is injured while traveling to or from his or her place of employment, is not entitled to participate in the workers' compensation fund. See *MTD Products v. Robatin* (1991), 61 Ohio

St.3d 66, 68. There are three exceptions in which the coming and going rule does not apply: (1) the injury occurs within the zone of employment; (2) the employment creates a special hazard or (3) there is a causal connection between the employee's injury and employment based on the totality of circumstances surrounding the accident. *MTD Products*, 61 Ohio St.3d at 69. None of these exceptions to the coming and going rule apply in this case.

{¶3} Watkins was not in the "zone of employment." Even though Metrohealth owned the parking lot where the accident occurred, Watkins was not required to use the parking lot. She did so at her discretion, admitting that she chose to drive her car and park at that lot as a matter of convenience, not necessity. She had several options in parking available to her, including parking on a public street. See *Johnston v. Case Western Reserve Univ*. (2001), 145 Ohio App.3d 77, 84.

{¶4} It has been suggested to us that *Donnelly v. Herron* (2000), 88 Ohio St.3d 425, stands for the proposition that an employer's parking lot can be the zone of employment for an injury occurring while an employee left work for the day. *Donnelly* is highly distinguishable because the injured employee worked for a rental car company in the same lot where he parked his vehicle – the parking lot *was* his place of business, so any injuries he sustained were necessarily within the zone of danger. It would be

disingenuous to hold *Donnelly* up as authority for the proposition that a "zone of employment" includes an employer's parking lot.

{¶5} Watkins also fails the special hazard test because she cannot show that the risk of injury to her was greater than that faced by the public. The evidence showed that Watkins was parking her car in a public garage, much like any other person would do. In no way did this expose her to any greater risk of injury than that faced by any other person who was using the parking garage. Id.

{¶6} Finally, Watkins fails the totality of the circumstances test because she cannot show that Metrohealth derived some particular benefit from her presence within the garage. In *Johnston,* we considered a very similar issue when an employee/pedestrian was killed after being struck by a motorist as she exited her place of employment. We held that Case Western did not derive any particular benefit from Johnston's presence on a sidewalk after leaving work. The same facts apply here. Metrohealth did not derive any benefit from Watkins' presence in the parking garage at the time she rammed the other car.

{¶7} Because Watkins failed to show that she fell within any of the exceptions to the coming and going rule, the court erred by finding her eligible to participate in the workers' compensation fund. The assigned error is sustained.

{¶8} Judgment vacated.

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This cause is vacated.

It is, therefore, ordered that said appellant recover of said appellee its costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN

JUDGE

TIMOTHY E. McMONAGLE, A.J., CONCURS.

DIANE KARPINSKI, J., DISSENTS WITH SEPARATE DISSENTING OPINION.

KARPINSKI, J., DISSENTING:

{¶9} I dissent because the "coming and going" rule[1] does not in any way whatsoever apply to the facts in this case. In claiming that this rule governs this case, moreover, the majority ignores this court's own precedent in *Thompson v. Crestmont* (Cuyahoga App. No. 79385), 2001 Ohio App. LEXIS 5175. *Thompson* clearly rejects applying the "coming and going" rule to cases in which the injuries occurred on property owned by the employer. The "coming and going" rule applies solely to fixed-situs employees injured in traffic accidents on public roads or to slip and fall accidents which occur on public sidewalks." Until now, the rule has not been applied to cases in which the employee is injured on the employer's property.[2]

Not only does the majority ignore its own precedent, it also ignores the precedent of the Ohio Supreme Court in *Griffin v. Hydra-Matic Division, General Motors Corp.* (1988), 39 Ohio St.3d 79, 529 N.E.2d 436. In *Griffin*, the employee was able to recover workers' compensation benefits because she was injured when she

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[1]**{¶a}** As this court noted in *Meszaros v. Legal News Publ'g Co.* (2000), 138 Ohio App.3d 645, 742 N.E.2d 158:

{¶b} "As 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." (Emphasis added.) *Meszaros,* supra, citing *MTD Products, Inc. v. Robatin* (1991), 61 Ohio St.3d 66, 68, 572 N.E.2d 661.

[2]*Thompson* further notes that courts have generally found employee injuries compensable when they have occurred on the employer's property. See, generally, *Gregory v. Indus. Comm. of Ohio* (1935), 129 Ohio St. 365, 369, 195 N.E. 699; *Kasari v. Indus. Comm. of Ohio* (1932) 125 Ohio St. 410, 181 N.E. 809, paragraphs one and two of the syllabus.

slipped and fell in her employer's parking lot after her work shift had ended. The Supreme Court stated as follows:

{¶10} "An injury sustained by an employee *upon the premises of her employer* arising during the course of employment is compensable pursuant to R.C. Chapter 4123 irrespective of the presence or absence of a special hazard thereon which is distinctive in nature or quantitatively greater than hazards encountered by the public at large." *Thompson* at *6-7 citing *Griffin* at 80. (Emphasis added.)

{¶11} In the case at bar, the "coming and going" rule does not apply because the garage where Ms. Watkins suffered her injuries is neither a public road nor a public sidewalk. The garage is, however, privately owned by her employer. Because the garage is owned by Metrohealth, Ms. Watkins' injuries occurred on her employer's premises. That ownership puts this case squarely within the binding authorities of *Thompson* and *Griffin*.

{¶12} Ignoring this threshold issue, the majority analyzes the facts of this case under the three exceptions to the "coming and going" rule. See *MTD Products v. Robatin* (1991), 61 Ohio St.3d 66. The majority ignores that none of the exceptions even comes into play when an employee suffers an injury on an employer's property. In *MTD*, the only reason the court looked at the applicability of the "special hazard" rule was that the employee's injuries occurred on a public road.

{¶13} The majority also mistakenly relies on the case of *Johnston v. Case Western University* (2001), 145 Ohio App.3d 77. By relying on *Johnston,* the majority highlights its disregard of the threshold question: Was the worker injured on the employer's premises? Unlike the case at bar, in *Johnston* the employee was killed on a public sidewalk, not on her employer's property. Because of this fundamental difference neither *MTD* nor *Johnston* is authoritative in the case at bar. As a matter of law, therefore, the majority decision is clearly erroneous.

{¶14} Moreover, contrary to the majority's analysis, even the general rule does not operate as a complete bar to an employee who is injured traveling to and from work if:

{¶15} "(1) the injury occurs within the "zone of employment" *MTD Products,* supra at 69; (2) the employment creates a "special hazard" Id., citing *Littlefield v. Pillsbury* (1983) 6 Ohio St.3d 389, 453 N.E.2d 570; or (3) there is a causal connection between the employee's injury and the employment based on the "totality of circumstances" surrounding the accident. *MTD Products*, supra, at 70 citing *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277, 551 N.E.2d 1271." *Weiss v. University Hospitals of Cleveland* (2000), 137 Ohio App.3d 425, 431, 738 N.E.2d 884.

{¶16} In *Weiss*, supra, this court delineated the parameters of the "zone of employment."

{¶17} "Where the conditions under the control of [the employer] are such that the employee has no option but to pursue a given course with reference to such conditions and environments, the pursuance of such course is an implied obligation of the employee in his contract with such employer, and when he, for the purpose of entering upon his employment, has entered into the sphere or zone controlled by his employer, and is pursuing a course with reference to which he has no option, he is then *** in the course of his employment." *Weiss*, supra, citing *Morris v. City of Cleveland* (1945), 44 Ohio L. Abs. 215, 64 N.E.2d 134.

{¶18} In its analysis of whether Ms. Watkins is outside the "zone of employment," the majority draws an artificial factual distinction in the recent decision by the Ohio Supreme Court in *Donnelly v. Herron* (2000), 88 Ohio St.3d 425. In *Donnelly*, plaintiff and defendant worked as security guards for the same employer. On the night in question, defendant had just completed his shift and was leaving his employer's parking lot when he backed into the plaintiff's vehicle.

{¶19} The majority says *Donnelly* is inapposite because the employees in that case were assigned to work in the employer's parking lot. I find it perplexing that the majority makes much of this fact when the Ohio Supreme Court does not. In reaching its decision, the Court stated:

{¶20} "[A]ny employee who seeks workers' compensation benefits must be in the service of a qualifying employer, and if we held that a coemployee is not in the service of a qualifying employer *while driving in the employer's parking lot on his way to and from work,* we would put in serious jeopardy the rights of an entire class of injured claimants who seek workers' compensation benefits under similar circumstances." (Emphasis added.) *Donnelly,* supra at 428.

{¶21} An objective reading of *Donnelly* shows quite clearly that the Court focused on the location where he was injured, not merely where he was performing his work.[3] In fact, the Court expressly described the qualifying employee as "driving in the employer's parking lot on his way to and from work." *Donnelly,* supra, affirms that generally the "zone of employment" includes an employer's parking lot.

{¶22} Even though, as a matter of law, the area where the employee parks does not have to be owned or controlled by an employer to be within the "zone of employment," the majority ignores the fact that both circumstances exist in this case.

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[3] **{¶a}** The Court followed its earlier decision in *Marlow,* supra, where it held that an employee who was injured in a parking lot owned, maintained, and controlled by his employer for the exclusive use of its employees was, when he was injured, in the course of his employment. The Court stated:

{¶b} "The application of this principle has even more force in the present case because the Avis parking lot was the situs of Herron's employment. Thus, Herron was acting in the course of, and arising out of, his employment ***."

Meszaros, supra; *Sloss v. Case Western University* (1985), 23 Ohio App.3d 46, 491 N.E.2d 339. The control element is satisfied when the conditions created by the employer in the "zone of employment" leave the employee limited choice as to how to travel to his or her employment.

{¶23} In *Sloss v. Case Western University* (1985), 23 Ohio App.3d 46, this court cited to *Marlow v. Goodyear Tire & Rubber Co.* (1967), 10 Ohio St.2d 18, finding it analogous to the case at hand. *Sloss* stated:

{¶24} "In *Marlow,* the court rejected the view that an injury outside the immediate premises of the employer could be compensable only if it occurred in connection with a single access to the premises. The court said at 21:

{¶25} "'*** The point appears to be illogical. If an employer provides two accesses and the employee has his choice, an injury on either may not be compensable because the other was available for use.' We reject that view as did that court. Equally illogical is the contention that to be compensable an injury must occur at or immediately adjacent to the place of employment. Had appellant selected another parking lot from the choice offered by the university and one that was adjacent to the medical school, would her injury be any more compensable under the circumstances of this case?" *Sloss* at 48.

{¶26} This court sustained plaintiff's claim that the trial court erred in denying her benefits because she was not within the zone of employment when she sustained her injuries.

{¶27} In the case at bar, Watkins parked in the employee garage Metrohealth assigned to her and which was the most convenient location to where she worked. This assignment evidences Metrohealth's intention that she use only that garage when parking for work. The garage is one of several parking garages designated exclusively for employee parking by Metrohealth. Under the circumstances, I reject the majority's claim that Watkins was not within the zone of employment because she could have parked somewhere else. It is beside the point that Ms. Watkins had other parking possibilities available to her on the day she was injured. The fact is she was injured in Metrohealth's parking garage, not somewhere else.

{¶28} I would, therefore, affirm the judgment of the trial court.