[Cite as *Kilbane v. Lutheran Hosp.-Cleveland Clinic*, 2015-Ohio-1459.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101897

PATRICIA M. KILBANE

PLAINTIFF-APPELLEE

vs.

LUTHERAN HOSPITAL-CLEVELAND CLINIC, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-794698

BEFORE: Laster Mays, J., Keough, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 16, 2015

ATTORNEY FOR APPELLANTS

For Lutheran Hospital-Cleveland Clinic

Jeffrey J. Wedel
Squire Patton Boggs (US), L.L.P.
4900 Key Tower
127 Public Square
Cleveland, Ohio 44115

ATTORNEYS FOR APPELLEE

Frank L. Gallucci
Plevin & Gallucci Co., L.P.A.
55 Public Square, Suite 2222
Cleveland, Ohio 44113

Paul W. Flowers
Paul W. Flowers Co., L.P.A.
Terminal Tower, 35th Floor
50 Public Square
Cleveland, Ohio 44113

Also Listed:

ATTORNEYS FOR BUREAU OF WORKERS' COMPENSATION

Mike DeWine
Ohio Attorney General

BY: Michael J. Zidar
Assistant Ohio Attorney General
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113

ANITA LASTER MAYS, J.:

{¶1} Defendants-appellants Lutheran Hospital and the Cleveland Clinic (hereinafter referred to in the singular as "the hospital") appeal from the trial court's decision that plaintiff-appellee Patricia Kilbane, the hospital's employee, is entitled to participate in the workers' compensation fund for injuries she suffered when she fell in the parking lot after exiting her workplace for the day.

{¶2} The hospital presents two assignments of error. It argues that the trial court wrongly determined that Kilbane's injuries occurred while she was in the course of and arising out of her employment. The hospital further argues that the court's findings of fact and conclusions of law lack a basis in the evidence presented at trial.

{¶3} Because a review of the record supports the trial court's decision, the hospital's first assignment of error is overruled. Because the hospital fails to cite any authority as required by App.R. 16(A)(7), this court declines to address the second assignment of error. App.R. 12(A)(2). The trial court's order is affirmed.

{¶4} The evidence presented in the trial court established that Kilbane suffered an injury on April 23, 2012. At that time, Kilbane had been working as a nurse at Lutheran Hospital for 32 years. She testified that she arrived for work that day "between 7:00 and 7:30" a.m., and that she parked as she did every day "in the employee lot on Franklin [Avenue] and West 25th" Street. She stated that only "[h]ospital staff" were allowed to park in that lot.

{¶5} Kilbane testified that, upon her arrival for work, she was required to proceed to the locker room and to "change out of street clothes [in]to a scrub uniform" in

order to perform her duties in the operating room. She stated that she wore a "lab coat" over her scrub uniform when she was walking "in the hallway" of the building. Both the scrub uniforms and the coats were provided to her by the hospital. At the end of her shift, she was required to "change back into [her] street clothes," and to deposit her scrub uniform into a hospital laundry basket.

{¶6} Kilbane testified that as she prepared to leave work that day at approximately 4:30 p.m., she noticed that her lab coat and her shoes were soiled as a result of her operating room duties. Because the hospital neither laundered lab coats nor cleaned nurses' shoes, she obtained a clear plastic bag from the operating room and, after changing her clothing, placed all of her lab coats that needed laundering and her nurses' shoes into the plastic bag. She then retrieved her purse and a Styrofoam container of food, and carrying these items, she "clocked out" and left the hospital to walk to her car.

{¶7} Kilbane testified,

> When I went outside, it was windy. I crossed Franklin over to the employee parking lot, which is across the street. There is a hill that I needed to walk down to get to a flatter surface. It's not a real level parking lot. And it was windy, and I was walking, and the wind was trying to grab the bag. It kind of captured it, and pulled it up to my right, and I stumbled and fell.

{¶8} Kilbane stated that she fell forward and injured her right knee. Subsequently, a physician informed her she had fractured her right "tibial plateau."

{¶9} Kilbane reported the injury to the Bureau of Workers' Compensation, but the hospital declined her claim; therefore, the bureau referred the matter to the Industrial Commission for hearing. Following the hearing, the District Hearing Officer allowed

Kilbane's claim. The hospital then appealed the decision to a Staff Hearing Officer, who vacated the allowance. The Industrial Commission refused to consider further review of Kilbane's claim.

{¶10} Pursuant to R.C. 4123.512, Kilbane filed an appeal in the trial court from the disallowance of her claim, naming the hospital and the bureau as defendants. The matter proceeded to a bench trial at which the parties stipulated to the following facts: (1) at the time of her injury, Kilbane was the hospital's employee, (2) Kilbane suffered a "right knee abrasion, a right knee sprain/strain, and a right lateral tibial plateau fracture" as a result of the incident, and (3) the issue for the trial court to decide was only whether Kilbane's injuries occurred in the scope of and arising out of her employment.

{¶11} After hearing Kilbane's testimony, the trial court issued an order permitting Kilbane to participate in the Workers' Compensation Fund for her injuries. The trial court also issued findings of fact and conclusions of law to support its decision.

{¶12} The hospital appeals from the trial court's decision and present two assignments of error, as follows.

> I. The trial court erred in determining that Kilbane's injuries occurred in the course of and arising out of the scope of her employment.
>
> II. The trial court erred in making findings of fact and conclusions of law unsupported by the evidence.

{¶13} The hospital argues in its first assignment of error that the trial court's decision that Kilbane's injury occurred in the scope of and arising out of her employment is neither supported by the facts nor in accord with law. This court disagrees.

{¶14} In *Friebel v. Visiting Nurse Assn. of Mid-Ohio*, Slip Opinion No. 2014-Ohio-4531, ¶ 12-18, the Ohio Supreme Court recently set forth the relevant analysis for review of the issue the hospital presents in this case in the following terms:

> An injury compensable under the workers' compensation system must have occurred "in the course of, and arising out of, the injured employee's employment." R.C. 4123.01(C). This court has recognized that both prongs of this statutory definition must be met. *Fisher v. Mayfield*, 49 Ohio St.3d 275, 277, 551 N.E.2d 1271 (1990).
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> *The "in the course of" prong relates to the time, place, and circumstances of the injury*. *Id.* This prong limits workers' compensation benefits to employees who sustain injuries while engaged in [either] a required employment duty or [an] activity consistent with their contract for hire and logically related to the employer's business. *Ruckman v. Cubby Drilling, Inc.*, 81 Ohio St.3d 117, 120, 689 N.E.2d 917 (1998).
>
> *The "arising out of" prong refers to the causal connection between the employment and the injury*, and whether the (sic) there is sufficient causal connection to satisfy this prong "'*depends on the totality of the facts and circumstances surrounding the accident*, including: (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.'" *Fisher* at 277, quoting *Lord v. Daugherty*, 66 Ohio St.2d 441, 423 N.E.2d 96 (1981) syllabus. This list of factors is not exhaustive, however, and an employee may fail to establish one or more of these three factors and still be able to establish the requisite causal connection. *Fisher* at 279, fn. 2; *Ruckman* at 122.
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> * * *
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> For employees with a fixed place of employment, the general rule is that the requisite causal connection is absent when an injury occurs while traveling to or from the workplace — the "coming-and-going rule." *MTD Prods., Inc. v. Robatin*, 61 Ohio St.3d 66, 572 N.E.2d 661 (1991), syllabus; *Ruckman*, 81 Ohio St.3d at 119, 689 N.E.2d 917. * * * .
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> Courts recognize *various exceptions to the coming-and-going rule. The exceptions apply, for example, * * * when the totality of the*

> *circumstances * * * demonstrates a causal connection between the injury and employment*. *MTD Prods.*, at 69-70; *Ruckman* at 120, 123. But * * * the causal connection must be established in order for the employee to demonstrate that his injuries arose out of his employment. *See Crockett v. HCR Manorcare, Inc.*, 4th Dist. Scioto No. 03CA2919, 2004-Ohio-3533, ¶ 21.
>
> Because workers' compensation cases are fact specific, no one factor is controlling and "[n]o one test or analysis can be said to apply to each and every factual possibility." *Fisher*, 49 Ohio St.3d at 280, 551 N.E.2d 1271. The *overarching consideration* is that the statute must be accorded a liberal construction *in favor of awarding benefits*. R.C. 4123.95; *Fisher* at 278.

(Emphasis added.) *Friebel* at ¶ 12-18.

{¶15} In this case, the trial court properly determined that Kilbane met the first prong of the test, i.e., she suffered the injury "in the course of" her employment. Kilbane's testimony established that she was required to don nursing garb in performing her duties for the hospital as a registered nurse.

{¶16} This garb included a scrub uniform, nurses' shoes, and a lab coat that she wore when she was not in the operating room. Although the hospital provided the scrub uniform and the lab coats for Kilbane to wear, the hospital laundered only the uniform. Thus, in order to look both professional and presentable for work, Kilbane was required to maintain the other items personally. She could do so only by taking those items with her when she left the hospital for the day. Under these circumstances, the activity in which Kilbane was engaged when she suffered her injury was "consistent with [her] contract for hire" and "logically related to the [hospital's] business." *Friebel*, Slip Opinion No. 2014-Ohio-4531, at ¶ 12; *Pursely v. MBNA*, 8th Dist. No. 88073, 2007-Ohio-1445, ¶ 19.

{¶17} The trial court also determined that Kilbane's evidence met the second prong of the test, i.e., she suffered her injury "arising out of" her employment. The totality of the circumstances supported this determination.

{¶18} Kilbane stated that she was proceeding to her car in the employee parking lot when the wind took hold of the bag of her work clothing and shoes and precipitated her fall. Her testimony proved the "causal connection" between her injury and her employment, because her fall resulted from the bag's hindrance of her safe movement from her workplace to her car. Simply put, as she was in the discharge of one of the duties placed upon her for her employer's benefit, Kilbane encountered the hazard: carrying a clumsy bag of lab coats and nursing shoes to her car in the employee parking lot on a windy day. *Id.*; *compare Jackson v. University Hosp.*, 122 Ohio App.3d 371, 701 N.E.2d 787 (8th Dist.1997) (no causal connection when employee's injury resulted from spilling hot coffee as she walked to her car after finishing her shift).

{¶19} As the court noted in *Friebel*, at ¶ 28-29:

> The proper way to analyze workers' compensation claims, even for employees traveling for both personal and employment purposes, is to apply the "in the course of" and "arising out of" tests described in *Fisher* and its progeny, including the totality-of-the-circumstances tests for causation described in *Lord* and *Ruckman*. * * * .

> And an employee's subjective intent regarding the purposes of her travel is *not determinative* as to whether the injury occurred in the course of and arose out of the employment. Almost all work requires travel, either as part of the employment duties or as part of a commute. * * * Elevating an employee's subjective intent regarding her dual purposes above *an objective review of that employee's actions and the nature of her employment* would distract from the *core analysis*: (1) whether the time, place, and circumstances of the injury demonstrate that it occurred in the course of the employment and (2) whether under the totality of the circumstances, there is sufficient causal connection between the injury and the employment to establish that the injury arose out of the employment.

(Emphasis added.)

{¶20} Based on the analysis *Friebel* provides, Kilbane met her burden to prove that her injury occurred in the scope of and arose out of her employment. The court in this case properly applied the law to the facts presented at trial; accordingly, the hospital's first assignment of error is overruled.

{¶21} In presenting its second assignment of error, the hospital fails to cite any authority for its position as required by App.R. 16(A)(7). This court, therefore, declines to address it. App.R. 12(A)(2).

The trial court's order is affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

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ANITA LASTER MAYS, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR