[Cite as *Williams v. Time Warner Cable*, 2010-Ohio-1828.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

VELMA WILLIAMS	C. A. No. 25014
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
TIME WARNER CABLE, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. CV 2008 12 8767

DECISION AND JOURNAL ENTRY

Dated: April 28, 2010

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Velma Williams, appeals from the decision of the Summit County Court of Common Pleas, granting summary judgment in favor of Defendants-Appellants, Time Warner Cable ("Time Warner") and the Bureau of Workers' Compensation. This Court affirms.

I

{¶2} Williams works as an administrative assistant at Time Warner. On October 2, 2004, Williams participated on a five-person relay team in the Road Runner Akron Marathon, of which Time Warner was a primary sponsor. In support of the event, Time Warner circulated registration information throughout the workplace, outfitted marathon participants with jogging shorts, shirts, and jackets which displayed the company's name, and permitted employees to meet during work hours to discuss marathon training and other preparation issues. Williams attended her team's two meetings, wore the company-provided marathon attire, and completed

her 7.2 mile portion of the marathon with her relay team. Midway through running her portion of the marathon, Williams' foot started to hurt. When the pain did not resolve after a few days, Williams sought medical care. She was subsequently diagnosed with tendonitis and synovitis in her left foot.

{¶3} On September 28, 2006, Williams filed an application for compensation with the Bureau of Workers' Compensation. Williams' claim was denied by the Industrial Commission's district hearing officer. Williams appealed the denial of her claim, and the matter was heard by a staff hearing officer who reversed the previous denial and granted Williams' application for compensation. Time Warner appealed the staff hearing officer's decision, and the Industrial Commission refused further review of the matter. Time Warner appealed to the trial court and later filed a motion for summary judgment arguing that Williams' injury was not compensable because it did not occur in the scope of or arise out of her employment with Time Warner. Williams filed a combined motion in opposition and cross-motion for summary judgment. The trial court concluded that Williams did not receive her injury in the course of her employment and granted Time Warner's motion for summary judgment.

{¶4} Williams has timely appealed the trial court's decision, asserting two assignments of error. We have consolidated her assignments of error for ease of analysis.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF TIME WARNER CABLE ON VELMA WILLIAMS' CLAIM FOR THE RIGHT TO PARTICIPATE IN THE OHIO WORKERS' COMPENSATION FUND FOR FLEXOR TEND[O]NITIS AND ACHILLES TEND[O]NITIS OF THE LEFT FOOT."

Assignment of Error Number Two

"THE TRIAL COURT ERRED WHEN IT DENIED VELMA WILLIAMS' MOTION FOR SUMMARY JUDGMENT."

{¶5} In her first and second assignments of error, Williams argues that the trial court erred in granting Time Warner's motion for summary judgment and denying her cross-motion because her injuries occurred in the course of and arose out of her employment with Time Warner. Specifically, she argues that the trial court ignored established precedent which recognizes workers' compensation coverage for employees who have been injured in recreational activities related to their job. We disagree.

{¶6} An appellate court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105. It applies the same standard as the trial court, viewing the facts of the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party. *Viock v. Stowe-Woodward Co.* (1983), 13 Ohio App.3d 7, 12. Summary judgment is proper under Civ.R. 56(C) if:

> "(1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in the favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party." *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327.

The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-93. Specifically, the moving party must support its motion by pointing to some evidence in the record of the type listed in Civ.R. 56(C). Id. Once this burden is satisfied, the non-moving party bears the burden of offering specific facts to show a genuine issue for trial. Id. at 293; Civ.R. 56(E).

{¶7} An employee can participate in the Worker's Compensation Fund if the injuries sustained were "received in the course of, and ar[ose] out of, the injured employee's employment." R.C. 4123.01(C). Because the two-prong test is conjunctive in nature, "all elements of the formula must be met before compensation will be allowed." *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277. Furthermore, a party's failure to satisfy one prong of the test eliminates the need to address the other. See *Stivison v. Goodyear Tire & Rubber Co.*, (1997), 80 Ohio St.3d 498, 499 (noting that summary judgment was properly granted based on employee's inability to satisfy the "in the course of" element of his workers' compensation claim).

{¶8} The "in the course of" prong addresses the time, place, and circumstances of the injury. Id. An injury is considered as having occurred "in the course of" employment "if it is sustained by an employee while that employee engages in activity that is consistent with the contract for hire and logically related to the employer's business." *Ruckman v. Cubby Drilling, Inc.* (1998), 81 Ohio St.3d 117, 120, citing *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, 12. The "arising out of" prong requires an employee to establish a causal connection between her employment and her injury. *Fisher*, 49 Ohio St.3d at 277. To determine whether a causal connection exists, a court must look to the "totality of the facts and circumstances surrounding the accident," which includes a review of: "(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, syllabus. A party need not establish the presence of every factor, nor is a court's consideration of the totality of the circumstances limited to these factors alone. *Fisher*, 49 Ohio St.3d at 279, fn. 2. Where the facts

are undisputed, the question of whether an employee is eligible to receive workers' compensation is a question of law. *Young v. State Highway Patrol Dept. of Administrative Services*, 9th Dist. No. 23688, 2007-Ohio-7021, at ¶10. See, also, *Testement v. Natl. Hwy. Express* (1996), 114 Ohio App.3d 529, 532.

{¶9} In her motion for summary judgment, Williams argued that an employee need not be engaged in the actual performance of her job duties in order for her injury to be considered "in the course of" her employment and therefore compensable. She asserted that the Supreme Court's decision in *Kohlmayer v. Keller* (1970), 24 Ohio St.2d 10, supports the conclusion that injuries sustained outside the workplace when employees are engaged in employer-sponsored recreational activities are compensable. Williams' liberal application of *Kohlmayer* to her case is inappropriate, given the many distinguishing facts between the two cases.

{¶10} In *Kohlmayer*, a small business employer sponsored a company picnic for its employees on the employer's premises. The employer paid for the picnic expenses and supervised the picnic events, which included swimming activities. While at the picnic, Kohlmayer dove off the swimming pier and broke his neck. The trial court initially denied recovery to Kohlmayer, but the Supreme Court explained that the purpose of the outing was to "generat[e] friendly relations [amongst] employees" and "improv[e] employee relations" as reflected by the jury interrogatories contained in the record. *Kohlmayer*, 24 Ohio St.2d at 12. Therefore, the court concluded that the picnic was held "primarily as a business function," which created a substantial connection between the picnic and Kohlmayer's employment. Id. Consequently, the court entered judgment in Kohlmayer's favor based on the business-related benefits the picnic brought to the employer, which included intangible benefits such as "a more

harmonious working atmosphere[,] *** [b]etter service[,] and greater interest in the job[,]" and tangible benefits such as an income tax deduction for the business expense. Id.

{¶11} Williams' deposition testimony reveals that, unlike the company picnic at issue in *Kohlmayer*, participation in the marathon was not limited to Time Warner employees, was not held on its property, and was not supervised by the company. Williams failed to demonstrate that Time Warner's purpose in sponsoring the marathon was in any way related to improving employee-employer relations or designed to act as an offsite "business function" for its employees. See, e.g., *Henderson v. Gould, Inc.* (1994), 96 Ohio App.3d 283, 288 (concluding that employee's injury was not compensable under workers' compensation, in part because her participation in the company's bowling league failed to evidence any business-related benefits as were present in *Kohlmayer*); *Kuehr v. Bobbie Brooks, Inc.* (1978), 57 Ohio App.2d 72, 74-75 (reversing the trial court's award of workers' compensation benefits to employee for an injury sustained in retailer's after hours sale, in part, because "the efforts of the appellant were primarily related to its function as a retailer-wholesaler and not as an employer" and noting that there was no evidence that the event was designed "to improve employer-employee relations" or "that the major purpose of the [event was] anything but the sale of goods, whether to employees or to the public").

{¶12} Williams further asserted that in *Columbia Gas of Ohio, Inc. v. Sommer* (1974), 44 Ohio App.2d 69, the Sixth District applied *Kohlmayer* to permit workers' compensation coverage for employees who participated in offsite recreational activities, such as an employer-sponsored basketball league, akin to the employer-sponsored marathon in which she participated. The *Sommer* Court noted that *Kohlmayer* requires a court to look beyond whether the employer supervised the event and to consider whether the business-related benefits the employer derived

from the event were sufficiently related to the injured party's employment. *Sommer*, 44 Ohio App.2d at 73. In doing so, the *Sommer* Court relied on the stipulation of the parties that "[t]he basketball teams were formed *** in order to promote good feeling[s] and good will between the company [and its employees] and to 'bind the wounds' resulting from a bitter strike which had occurred[.]" Id. at 71. Therefore, the Sixth District held that there were sufficient business-related benefits that accrued to the employer by sponsoring the offsite recreational activity to permit it to conclude that Sommer's injury occurred in the course of his employment. Again, we note that central to *Sommer's* holding is evidence that the employer had expressly articulated business-related reasons for its sponsorship of the employee-only basketball team, namely to improve employer-employee relations within the company following a recent strike. Williams has not set forth any evidence that Time Warner held similar motivations in sponsoring the marathon, which was open to the general public and sponsored by other employers as well. Instead, Williams asserts in a conclusory and unsupported manner that Time Warner "received a benefit by cultivating goodwill between the company and its employees *** [and therefore] benefitted from improved employee relationships." This generic and uncorroborated assertion is insufficient to support a conclusion that Time Warner held the marathon race with the intention of achieving any business-related benefits in terms of the company's employee-employer relations.

{¶13} On appeal, Williams' attempts to bolster her argument by relying on the Tenth District's decision in *Griffith v. Miamisburg*, 10th Dist. No. 08AP-557, 2008-Ohio-6611, is similarly flawed. Griffith was a police officer who was injured while playing basketball after work hours while out of town at a two-week specialized training course. The *Griffith* Court reasoned that Griffith's employer had derived a benefit from his attendance at the training

because he was there to enhance his job skills, which would in turn benefit his employer. *Griffith* at ¶14. Moreover, Griffith's employer required he stay at the training academy as a condition of paying for the course and, in doing so, could have reasonably expected he would use the physical fitness facilities while there, as maintaining his physical fitness was consistent with his employment as a police officer. Consequently, the court concluded Griffith's injury was sustained while in the course of his employment. Id. at ¶26.

{¶14} In the case at bar, Williams confirmed in her deposition testimony that she was neither required, nor instructed to participate in the marathon. Unlike a police officer playing basketball while offsite at a training course, Williams has failed to articulate how her participation in the marathon could be considered consistent with her employment as an administrative assistant at Time Warner. See Id. at ¶26. Moreover, this Court, though acknowledging that physical fitness is a requirement of any police officer's employment, has rejected the argument that an off-duty police officer who suffers a basketball injury is eligible for workers' compensation under R.C. 4123.01(C). *Young* at ¶12 (reasoning that "[t]he fact that there is a remote causal connection that may be traced between an injury and the physical fitness requirements of an employer, however, is too tenuous to constitute a compensable workers' compensation claim").

{¶15} Based on the foregoing analysis, it is evident that Williams' case is wholly distinguishable from the body of law upon which she primarily relies. In those cases, the courts allowed workers' compensation coverage for an injured employee who attended an employer-sponsored, employee-only event because the event was held with the express goal of improving employee-employer relations and resulted in some benefit to the employer as a result of the employees' participation. See *Kohlmayer*, supra; *Sommer*, supra. Moreover, it is unclear how

Williams' voluntary participation in a marathon relay team, even if she was outfitted in Time Warner apparel while doing so, would somehow adduce a benefit to Time Warner which was consistent with Williams' employment there. See *Ruckman*, 81 Ohio St.3d at 120. Furthermore, to conclude that Williams' injury was compensable under these facts would not only discourage future employers from sponsoring community-wide events to promote the health and involvement of the general public, but would come dangerously close to establishing workers' compensation as an "insurance fund for the compensation [of employees'] injuries in general[,]" which the Supreme Court has warned against doing. *Lohnes v. Young* (1963), 175 Ohio St. 291, 292. Accordingly, we conclude that Williams' injury did not occur "in the course of" her employment with Time Warner.

{¶16} Because Williams failed to satisfy the first prong of the two-prong test for workers' compensation eligibility, we do not address the claims that her injury arose out of her employment with Time Warner. See *Stivison*, supra, at 499. Consequently, Williams has failed to demonstrate that she is entitled to judgment as a matter of law based on the undisputed facts which led to her injury. Thus, the trial court did not err in denying her motion for summary judgment and granting judgment in Time Warner's favor. Williams' assignments of error lack merit and are overruled.

III

{¶17} Williams' two assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

BETH WHITMORE
FOR THE COURT

CARR, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

M. SCOTT KIDD, Attorney at Law, for Appellant.

CHRISTOPHER C. RUSSELL, Attorney at Law, for Appellee.

VINCENT T. LOMBARDO, Attorney at Law, for Appellee.