THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Courtney Clyburn Pope
Circuit Court Judge

Appellate Case No. 2025-000808
Circuit Court Case No. 2023-CP-10-02263

Jeronimo Hernandez Jimenez……..……..Appellant,

v.

Rolando Medrano……..Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Plaintiff, Jeronimo Hernandez Jimenez (hereinafter, "Mr. Hernandez"), brought an action for negligence and gross negligence against Defendant Rolando Medrano (hereinafter, Defendant or "Mr. Medrano"). Mr. Hernandez alleged that after witnessing him severely injure himself after a fall, Defendant attempted to move and transport him, instead of calling emergency medical services. Defendant's attempt to do so resulted in Mr. Hernandez suffering paraplegia from which he is never expected to recover. While previously denying that Mr. Hernandez was employed with Medrano Tree Services, LLC, of which Defendant was a member, during a workers' compensation claim Mr. Hernandez brought against the LLC, Defendant asserted that Mr. Hernandez was an employee of his business. However, in addition to denying that Mr. Hernandez was an employee of the LLC during a workers compensation claim against the LLC, the LLC did not secure workers' compensation insurance coverage as required under the Workers' Compensation Act (hereinafter, the Act). Defendant filed a motion for summary judgment arguing that because Mr. Hernandez was an employee of the LLC and that because he brought a workers' compensation claim against

the LLC, he was barred from bringing an action against the Defendant. In opposition to Defendant's motion, Mr. Hernandez argued, *inter alia*, that he was not barred from bringing a civil action against Defendant due to the exclusive remedy provision of the Act or any election of remedies, because Mr. Hernandez brought and resolved a claim against the LLC, a legal person distinct from Defendant, and through the UEF; that he never received or accepted compensation or benefits from the LLC or the Defendant; that the claim against the Defendant stemmed from conduct unrelated to work or any employment relationship; and that the "dual persona" doctrine applied to the present case such that Defendant was not immune from tort liability. Defendant's Motion for Summary Judgment was heard on March 20th, 2025. On March 27, 2025, the court issued a Form 4 granting Defendant's motion without addressing the issues as set forth by Mr. Hernandez. This appeal followed.

FACTS

On June 30, 2020, Mr. Hernandez was injured in an accident after he fell from a tree that he was trimming. Defendant, who was on site with employees of Medrano Tree Service, LLC (hereinafter, "the employer" or "the LLC") trimming trees, noticed that Mr. Hernandez had fallen from the tree. Despite the fact that Defendant knew that Mr. Hernandez had potentially suffered a catastrophic back injury due to the fall, Defendant directed LLC employees to physically lift Mr. Hernandez and place him in Defendant's work truck to transport him off site, and after leaving him on the ground for 20-30 minutes. Depo. of Rolando Medrano (May 20, 2024), p. 30, ln. 10-18. At no point did Defendant call, or attempt to call, for emergency medical services, and instead took it upon himself to transport Mr. Hernandez. Where Defendant was attempting to transport Mr. Hernandez is unclear, as he passed multiple hospitals on his route and finally settled upon taking him to a fire station, from whence Mr. Hernandez was ultimately taken to the hospital.

Memorandum in Opposition to Summary Judgment, Ex. 1. One rationale, or excuse, for stopping at a fire station provided by Defendant was that he had previously noticed mechanical issues, specifically with acceleration, in the truck he operated to transport Mr. Hernandez. Depo of Rolando Medrano (November 17, 2020), p. 64, ln. 8 – 20.

Mr. Hernandez filed a workers' compensation claim against Medrano Tree Services, LLC. In the process of litigating the workers' compensation claim, it was discovered that neither Mr. Medrano nor Medrano Tree Services, LLC maintained workers compensation insurance as required by the South Carolina Workers' Compensation Act (hereinafter, "the Act"), despite the LLC having the requisite number employees to be subject to the Act. Defendant also denied that Mr. Hernandez was an employee of his or the LLC. Mr. Hernandez reached a settlement with the South Carolina Uninsured Employer's Fund (UEF). The present action against the Defendant followed. Mr. Hernandez has alleged that Defendant was grossly negligent in his attempt, or lack thereof, to render aid to Mr. Hernandez, and that he was also grossly negligent in the use, maintenance, and operation of his automobile in doing so, or failing to do so, which caused him injuries. When Mr. Hernandez finally received emergency medical treatment, Mr. Hernandez was diagnosed with a burst fracture of the thoracic spine, and he was rendered paraplegic due to injuries sustained as a result of Defendant's grossly negligent behavior. It was later determined by Dr. Shailesh Patel that due to the "lack of following proper spinal cord injury protocol at the onset of his work injury surely worsened the magnitude of his spinal cord injury from an incomplete injury . . . to a complete spinal cord injury." Memorandum in Opposition to Summary Judgment, Ex.2.

STANDARD OF REVIEW

Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56 SCRCP. To determine whether

any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. See *Fronenberger v. Smith*, 406 S.C. 37, 748 S.E.2d 625 (S.C. App. 2013). Summary judgment may only be granted when the pleadings, depositions, affidavits, and discovery in the record show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 340, 611 S.E.2d 485, 488 (2005); *Fleming v. Rose,* 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

ARGUMENTS

I. THE CIRCUIT COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT EXISTED REGARDING THE NATURE OF MR. HERNANDEZ' CLAIMS AGAINST DEFENDANT AND HIS EMPLOYMENT STATUS AT THE TIME OF INJURY

Defendant asserted that Mr. Hernandez was barred from bringing a civil claim because he was an employee of Defendant at the time of the accident. This assertion is erroneous for several reasons. First, Mr. Hernandez was not an employee of Defendant. He was an employee of Medrano Tree Service, LLC, which is an entity legally distinct and separate from the Defendant in the present case. Defendant is, thus, a third-party tortfeasor, and Mr. Hernandez is not forced to make an election of remedies between an employer and a third party. Additionally, a genuine issue

of material fact exists regarding any employment relationship because in Mr. Hernandez workers' compensation claim against the LLC, the Defendant denied that there was an employment relationship and attempted to coerce another to admit that Mr. Hernandez was the employee of this third party. Memorandum in Opposition to Summary Judgment, Ex. 3. Based on his denial of the employment relationship, Defendant should further be judicially estopped from asserting it in the present action.

Importantly, Mr. Hernandez' complaint alleges, and he intends to prove, that the Defendant's gross negligence caused Mr. Hernandez' injuries that were separate and distinct from those initially sustained by Mr. Hernandez when he fell from a tree that he was trimming. Mr. Hernandez has not alleged negligence by the Defendant causing his fall. Rather, Mr. Hernandez alleged that Defendant's acts of gross negligence occurring after Mr. Hernandez' fall, which were completely unrelated to the work being done or the LLC's business, caused him injuries separate from those caused by the fall. Defendant directed the LLC's employees to move Mr. Hernandez in a grossly negligent manner by picking him up and putting him in Defendant's truck, after Mr. Hernandez suffered a severe back injury due to the fall. The Defendant was also grossly negligent in his use, maintenance, and operation of the vehicle, causing Mr. Hernandez injury while transporting him to a fire station instead of a hospital or simply calling emergency services, which is what any reasonably prudent person would do in that situation. Moreover, Mr. Hernandez has alleged negligent maintenance and operation of Defendant's vehicle, which Defendant himself attributed to his inability to transport Mr. Hernandez to a hospital instead of a fire station Depo of Rolando Medrano (November 17, 2020), p. 64, ln. 8 – 20); Depo of Rolando Medrano (May 20, 2024), p. 19, ln. 12-22. At the time of these grossly negligent actions by Defendant, neither he nor the LLC

were in the business of emergency medical treatment, nor did providing emergency medical assistance have any connection to the Defendant or the LLC's business of tree trimming.

Additionally, genuine issues of material fact exist regarding the nature and mechanism of the injury that caused Mr. Hernandez' complete paraplegia, as one of Mr. Hernandez' physicians, Dr. Patel opined that due to the lack of proper spinal cord injury protocol immediately after the accident (attributable to Defendant's grossly negligent conduct), Mr. Hernandez suffered complete paraplegia, rather than incomplete paraplegia. Thus, because Mr. Hernandez is alleging separate occurrences not related to or arising out of any work, Mr. Hernandez is also not barred from bringing a tort claim against the Defendant due to an election of remedies, as there is no employment relationship at the time of the alleged gross negligence.

II. ASSUMING MR. HERNANDEZ HAD AN EMPLOYMENT RELATIONHIP WITH THE LLC AT THE TIME OF THE INJURY CAUSED BY DEFENDANT'S GROSSLY NEGLIGENT CONDUCT, MR. HERNANDEZ IS NOT LEGALLY BARRED FROM SUIT BY THE EXCLUSIVE REMEDY OR AN ELECTION OF REMEDIES

Because the employer LLC did not secure workers' compensation insurance at the time of Mr. Hernandez workplace injury, the employer LLC is not protected by the Act's exclusive remedy provision. The exclusive remedy provision of the Act states that "the rights and remedies granted by this title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee." S.C. Code Ann. § 42-1-540. Such immunity described in that section is "part of the broader *quid pro quo* arrangement imposed upon the employer and employee by the Act." *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 326 (1999). As part of this *quid pro quo*, which is referred to as the "Grand Bargain" between employer and employee, the employee "receives the right to swift and sure compensation in exchange for

giving up the right to sue in tort; the employer receives such tort immunity in exchange for complying with those provisions of the Act that insure swift and sure compensation for the employee." *Id* (quoting *Parker v. William and Madjanik, Inc.*, 275 S.C. 65, 70, 267 S.E.2d 524, 526 (1980) (internal quotations omitted)). However, an employer loses its immunity in tort for refusing or neglecting to secure payment of compensation under the Act, and "shall be liable during continuance of such refusal or neglect to an employee either for compensation under this title or at law in an action instituted by the employee or his personal representative against such employer for personal injury or death." S.C. Code Ann. § 42-5-40. Because the Defendant was not compliant with the Act in securing payment of compensation by purchasing workers' compensation insurance, the Defendant is not shielded from tort liability under the Act.

While Defendant concedes that he is not entitled to immunity under the exclusive remedy, he asserted in his motion for summary judgment that he is entitled to immunity from suit due to Mr. Hernandez' election of remedies. In support of this position, Defendant cited *Harrell*, wherein the Supreme Court held that an employee could sue an upstream statutory employer when they failed to secure compensation, although he had chosen to accept compensation under the Act from his direct employer. Defendant claimed that Mr. Hernandez could not bring suit against the Defendant because "an employer that fails to secure such compensation becomes liable either under the Act or in an action at law," thus, the settlement with the Uninsured Employers' Fund (UEF), acted as acceptance of benefits and an election of remedies under the Act. *Harrell*, 337 S.C. at 227, 523 S.E.2d at 773. However, in the present case, there is a genuine issue of material fact as to the employment relationship between Mr. Hernandez and the LLC, and there was no employment relationship between Mr. Hernandez and the Defendant. Additionally, the LLC, of which Defendant was a member, did not offer to pay, and Plaintiff never received, the "swift and

sure compensation" guaranteed him under the Act; rather, the LLC denied Mr. Hernandez' claim for benefits leaving him without necessary medical treatment due to a catastrophic injury. Due to the LLC's evasion of its duties to Plaintiff under the Act, it was nearly three years before he entered a settlement agreement with the UEF, in his workers' compensation claim. The fact that the UEF, which is not an insurance carrier under the Act, settled a claim with Mr. Hernandez does not evince an election of remedies as suggested by Defendant at summary judgment. Additionally, Mr. Hernandez is proceeding in an action at law for completely separate acts of negligence not stemming from work or a workplace accident and having no relationship with the LLC's work or any employment relationship, much less any employment relationship with the Defendant.

III. THE "DUAL PERSONA" DOCTRINE APPLIES SUCH THAT DEFENDANT IS NOT IMMUNE FROM TORT LIABLITY

Key to the inquiry in the present case into whether Defendant is immune from suit due to Mr. Hernandez' election of remedies is that Defendant was a member of the LLC, and not the employer. Although Defendant denied that Mr. Hernandez was an employee of the LLC during the prosecution of the workers' compensation claim, any employment relationship would have existed between Mr. Hernandez and the LLC. Medrano Tree Services, LLC, is a legal entity separate from Defendant as a natural person. Regardless of Defendant's relationship to the employer LLC, South Carolina recognizes the "dual persona" doctrine, under which another entity associated with or related to the employer may be sued in tort if a "second set of obligations that forms the basis of the tort suit is entirely independent of the defendant's obligations as an employer." *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 738 S.E.2d 251, 254 (2013). For the "dual persona" doctrine to apply, there must be separate duties that arise "solely from the nonemployer persona." *Id.*

The employer LLC is in the business of trimming trees and Defendant and Mr. Hernandez were engaged in tree trimming at the time of Mr. Hernandez' workplace accident. However, as discussed above, Mr. Hernandez is not claiming injuries stemming from negligence related to his fall from a tree. Rather, he is claiming injuries from Defendant's grossly negligent conduct in his ill-conceived attempt to transport Mr. Hernandez someplace to receive medical attention, which Mr. Hernandez suspects was also an attempt to conceal information to avoid legal responsibility for Mr. Hernandez' accident. The employer LLC's business of trimming trees has absolutely no relationship with Defendant's individual responsibilities and duties to act in good faith and with reasonable prudence as a bystander to an accident and witness to an injury, when rendering or attempting to render first aid to an injured person. Moreover, no part of the employer LLC's business involved emergency medical attention or transport. After Mr. Hernandez' initial fall and injury, Defendant could have chosen to act in a reasonably prudent manner by immediately calling emergency medical services. Instead, Defendant, a natural person, separate from the legal entity that may have employed Mr. Herandez, decided to take on duties of rendering emergency medical aid and transport, which bore no relationship to any duties that he may have had as a member of the employer LLC. The only way in which Defendant's role as a member of the employer LLC could be said to have any relationship to the duties he chose to undertake as a third-party bystander to Mr. Herandez' injuries, was in taking the opportunity to insert himself into Mr. Hernandez' emergency situation in an attempt to conceal the nature and whereabouts of his accident, and to avoid liability to himself and the LLC. Besides that relationship, Mr. Hernandez' tort claims against the Defendant and his status as an employee of the LLC can be said to be merely incidental.

Thus, Mr. Hernandez would submit that the "dual persona" exception to employer immunity applies, or at the very least, genuine issues of material fact regarding the relationship between

Defendant's duties as a member of the LLC and his duties as a reasonably prudent bystander exist such that the circuit court erred in granting summary judgment. Mr. Hernandez would also submit that granting summary judgment in favor of Defendant, without any explanation of why the dual persona doctrine would not apply in the present case, acts to reward Defendant for grossly negligent, selfish, and potentially criminal behavior, as the circumstances of Defendant's actions after Mr. Herandez accident give rise to significant questions surrounding Defendant's motivations, when he chose to have Mr. Hernandez transported in his truck to a fire station, rather than calling emergency medical services.

IV. MR. HERNANDEZ' EXECUTION OF A RELEASE IN HIS WORKERS' COMPENSATION CLAIM DID NOT BAR HIM FROM BRINGING THE PRESENT ACTION AGAINST DEFENDANT

Contrary to Defendant's assertions in his motion for summary judgment, Mr. Hernandez is not contractually foreclosed from bringing the present claim by the settlement agreement with the UEF in his workers' compensation claim. As noted by the Defendant in his motion for summary judgment, the settlement agreement was a settlement of "every liability of whatsoever nature or kind ***under the Workers' Compensation Act***, growing out of or in any way connected with, said injury by accident occurring on or about June 30, 2020." Memorandum in Opposition to Summary Judgment, Ex. 4. This settlement agreement, which was entered upon a doubtful and disputed" basis after Mr. Hernandez workers' compensation claim was denied, only foreclosed any claims "under the Workers' Compensation Act." Moreover, the settlement agreement explicitly provides that "[n]othing in this agreement shall be construed against the claimant to bring any additional claims, suits, causes of action, etc." *Id*. Therefore, the plain language of the settlement agreement does not foreclose Mr. Hernandez' rights to bring claims against the Defendant in the present case.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Order granting Defendant Summary Judgment in this matter be REVERSED.

RESPECTFULLY SUBMITTED,

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