

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Case No. ~~2013-001212~~
2015-000766

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MAY 12 2015

Unpublished Opinion No. 2015-UP-068
Heard December 11, 2014-Filed February 11, 2015
Petition for Rehearing Denied March 13, 2015

S.C. Supreme Court

Joseph Mickle,

Respondent,

v.

Boyd Brothers' Transportation, Inc., Employer,
And Lumbermans' Underwriting Alliance,
Carrier

Petitioners.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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The Claimant Joseph Mickle was injured on July 12, 2010, in Vernon, Alabama, while directly employed as a truck driver by WTI Transport, Inc. The Claimant injured his back while removing a tarp from a load on a flatbed truck he was driving for WTI. Although the accident happened in Alabama, the Claimant's residence and base of operations for his employment with WTI was in South Carolina.

Before the Workers Compensation Commission the parties stipulated Claimant's direct employer WTI did not regularly employ four or more employees in South Carolina at the time of Mickle's injury. The parties further stipulated, however, WTI was a wholly-owned subsidiary of Boyd Brothers' Transportation, Inc. The Commission went on to determine Boyd Brothers was a statutory employer of the Claimant and South Carolina had jurisdiction of Mickle's workers compensation claim. The Commission further determined Mickle, as a result of his admitted back injury, was totally disabled and entitled to payments for total and permanent disability and medical treatment.

Boyd Brothers' Transportation appealed the decision of the Commission to the Court of Appeals, arguing South Carolina did not have jurisdiction over the claim. Boyd Brothers' further argued the Commission erred in determining Mickle was totally and permanently disabled. By Unpublished Opinion issued on February 11, 2015, the Court of Appeals affirmed the decision of the Workers' Compensation Commission in all respects.

Boyd Brothers now seeks certiorari on the basis the Workers' Compensation Commission did not have jurisdiction of Mickle's claim. Employer no longer contests the issue of total disability.

Initially Boyd Brothers argues WTI, the direct employer of Mickle, did not have four employees in South Carolina. This was a stipulated fact before the Commission. Boyd Brothers next argues Mickle was not a statutory employee of Boyd Brothers so as to give South Carolina of the workers compensation claim.

The decision of the Workers Compensation Commission took into account the standards set forth by the South Carolina Court of Appeals in Poch v. Bayshore Concrete Products, 86 SC 13, 686 SE2d 689 (Ct.App. 2009). Subsequent to the final decision of the Commission, the Supreme Court modified the decision of the Court of Appeals in Poch v. Bayshore Concrete Products, 405 SC 359, 247 SE2d 757 (2013). In its decision in this appeal the Court of Appeals referred to the second case as Poch II. Although neither party in their briefs raised the different standards issue of Poch II, the Court of Appeals proceeded to review the record in this appeal using the Poch II standards.

The decision of the Court of Appeals in this matter thoroughly discusses the factual circumstances which, under the Poch II test, require a finding South Carolina has jurisdiction of Mickle's claim. The full discussion by the Court of Appeals will not be set forth herein as it is fully explained in that opinion. It is important to note, however, Boyd Brothers, as the sole owner of WTI, regularly comingled functions of both companies.

The truck driven by Mickle bore the insignia "WTI Subsidiary of Boyd Brothers". The Boyd Brothers internet website, advertised Boyd Brothers and WTI had trucks available and gave one number to call in order to arrange trucking services by either company. Finally, and most significantly, Boyd Brothers offered a retirement plan and self-insured medial insurance coverage through Boyd Brothers to employees of WTI.

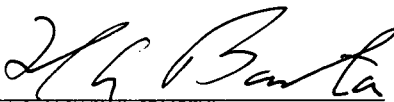
WTI had absolutely no connection to the plans run solely by Boyd Brothers which provided retirement plans and insurance coverage to employees of WTI. It is obvious Boyd Brothers considered the drivers of WTI to be part of its company and could not offer these services to persons that were not employees of Boyd Brothers. They were not an insurance company.

Finally, Boyd Brothers argues the business of WTI was not part of the trade, business, or occupation of Boyd Brothers. This is patently incorrect as Boyd Brothers and WTI offered the same business services of trucking transportation. Again, Boyd Brothers actually advertised the services of WTI on its website.

It is respectfully submitted the Court of Appeals correctly decided the Claimant Mickle was a statutory employee of Boyd Brothers. Therefore, SC has jurisdiction of this workers compensation claim. For all of the above reasons the petition of Boyd Brothers should be dismissed.

Respectfully submitted,

May 12, 2015
Columbia, South Carolina



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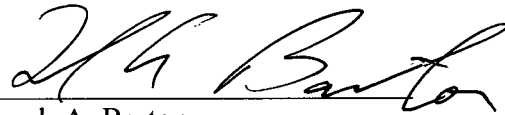
Petitioners.

PROOF OF SERVICE

The undersigned does hereby certify one copy of the **RETURN TO PETITION FOR WRIT OF CERTIORARI** was served in the foregoing action by regular mail on May 12, 2015, to the following address:

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S.C. Supreme Court

RE: Court of Appeals Appellate Case No.: 2013-001212
Joseph Mickle v. Boyd Brothers Transportation, Inc.
Unpublished Opinion No. 2015-UP-068
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Dear Mr. Shearouse:

Enclosed for filing are the original and six copies of our Return to Petition For Writ of Certiorari. By copy of this letter I am also serving a copy on opposing counsel.

Truly Yours,



Frank A. Barton

FAB/lfm

cc: Duke K. McCall, Jr., Esquire
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