



IN THE SUPREME COURT OF THE STATE OF DELAWARE
~~Case Number 315, 2012~~

MARY SPELLMAN,

Employee-Below, Appellant,

v.

CHRISTIANA CARE HEALTH
SERVICES.,

Employer-Below, Appellee.

No.: 315, 2012

Court Below: Industrial Accident
Board of the State of Delaware in and
for Sussex County
C.A. No. S11A-08-001 RFS

**EMPLOYEE-BELOW, APPELLANT'S
SUPPLEMENTAL ANSWERING MEMORANDA**

DOROSHOW, PASQUALE
KRAWITZ & BHAYA

A handwritten signature, likely of Thomas B. Lackey, is written over a horizontal line.

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DATED:2/15/13

ARGUMENT

In light of Employer's suggestion at Oral Arguments that Coates v. Murphy, 270 A.2d 527 (Del. 1970) and Clough v. Interline Brands, Inc., 925 A.2d 477 (Del. 2007) presented the dispositive rule in this matter, the Court asked that the Appellant and Appellee prepare supplemental memoranda addressing these decisions. Employer's Supplemental Opening Memoranda exceeds the scope of the task given by this Court; much of Employer's Memoranda is spent rearguing issues such as the appropriate standard of review and whether advances in modern technology render the need for a "traveling employee" exception moot. Appellant addressed these issues at length in her Opening and Reply briefs, as well as at Oral Arguments. Accordingly, they will not be revisited here. Appellee's efforts to revive these issues are in service of an argument that is predicated on a misinterpretation of the actions underlying Coates and Clough, as well as of the holdings of this Court in those cases.

In its Opening Memoranda, Appellee summarizes the holdings of Coates and Clough as follows: "In both cases, the Supreme Court held that the mere fact that an individual is a traveling employee, away from their home, does not, in and of itself, automatically entitle them to Worker's Compensation benefits." (Employer's Supplemental Opening Brief p.3). Appellee further summarizes Coates by stating "In Coates, the Court found that the primary purpose was to go home to have lunch with a spouse, which controlled over the simultaneous but incidental, business purpose, resulting in a denial of Worker's Compensation benefits." (ESOB p. 3). Appellee also alleges that in Clough, this Court held that "where there was no indication that the employee was in the course and scope of his employment or acting in furtherance of his employer's business at the time of the accident, there was no entitlement to compensation." (ESOB pp. 3-4). These passages represent an incorrect statement of the factual and procedural postures of the matters reviewed by the Court.

In rendering its decision in Coates, an appeal from a summary judgment in favor of the alleged tortfeasor's employer, the Court provided the following summation of the issues on appeal:

Mr. Coates was killed through the alleged negligence of Timothy S. Murphy, an employee of Litton, who was operating an automobile owned by himself. The Court below held, as a matter of law, that Murphy was not acting within the scope of this employment at the time of the accident. This conclusion is questioned by the appellant, who contends that this issue should be a matter for the jury.

Coates, 270 A.2d 527 at 527.

From a factual and procedural standpoint, the issues in the Clough cases were virtually identical. The Superior Court summarized them as follows:

The issue is whether Defendant William F. Comly, Jr. a traveling salesperson employed by Moving Defendants, was acting within the scope of his employment when he was involved in a motor vehicle accident with the Plaintiff Joyce Clough while driving home from his final business appointment for the day. For the reasons set forth below this Court finds that he was not acting within the scope of his employment when he was driving home after the completion of his workday; therefore, Moving Defendants are not vicariously liable for Comly's actions and the Motion for Summary Judgment is granted.

Clough v. Comly, 2006 WL 2560119 (Del.Super.)

A plain reading of these summaries by the Court makes it evident that Worker's Compensation benefits were not in question before the Court in either of these respective decisions. The holdings of the Clough Superior and Supreme Court decisions stand for the proposition that different tests are used when determining whether an employee is in the course and scope of her employment for purposes of receiving Worker's Compensation benefits as opposed to whether she is in the scope of her employment such that a finding of vicarious liability against the employer to a third party plaintiff is appropriate. In justifying this holding, the Superior Court looked to Larson's, finding persuasive the statement that "[an] example of the distortion of compensation law by tort concepts will be seen in an attempt to define an employee,

for compensation purposes, by tests which were developed to determine when a master should be liable for the torts of a servant to a third person." Clough v. Comly, 2006 WL2560119 at 4.

In affirming the Superior Court's decision, the Supreme Court acknowledged the need for distinction between an employer's obligations to its own employees and its obligations to potential third party plaintiffs, and agreed with the Superior Court's reasoning on this point. The Supreme Court dedicated a footnote to this issue, noting that "Devine is a worker's compensation case. As the Superior Court explained, 'the doctrines relating to potential liability of employers to employees applicable in the case of workers compensation claims do not pertain to the present case.'" Clough v. Interline Brands, Inc., 929 A.2d 783, 783 n.1 (Del. Supr. 2007) (citing Clough v. Comly, C.A. No. 05C-03-263, 2006 WL 2560119, Cooch, R.J. (August 31, 2006)).

Accordingly, these decisions are inapplicable to the question of whether or not Appellant is entitled to Worker's Compensation benefits.

CONCLUSION

For the reasons stated above, as well as those provided in Appellant's Opening Brief, Reply Brief, at Oral Arguments, and in Appellant's Supplemental Opening Memoranda, Appellant respectfully asks that this Honorable Court reverse the decisions of the Industrial Accident Board and Superior Court and hold that she was in the course and scope of her employment at the time of her January 14, 2011 motor vehicle accident.

Respectfully submitted,

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