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Recent Developments: Johnson v. Mountaire Farms of Delmarva: Maryland Fails to Expand Workmen's Compensation Act

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Johnson v. Mountaire Farms of Delmarva: MARYLAND FAILS TO EXPAND WORKMEN'S COMPENSATION ACT

Recently, the Court of Appeals of Maryland declined to take part in a trend occurring in a minority of jurisdictions, towards the expansion of the "exclusive remedy" exceptions under the Workmen's Compensation Act (Act). Md. Ann. Code, art. 101 (1985). In *Johnson v. Mountaire Farms of Delmarva, Inc.*, 305 Md. 246, 503 A.2d 708 (1986), the court held that the intentional tort exception to the Act requires an actual, specific and "deliberate intention" of the employer to injure an employee. *Id.* at 258, 503 A.2d at 712. In so holding, the court affirmed the Circuit Court for Somerset County's decision to dismiss a wrongful death and survivorship action brought against an employer, by the estate of an employee, who was killed during the course of employment.

In *Johnson,* Rodney Adams, a sixteen year old employee of Mountaire Farms of Delmarva, Inc. (Mountaire), was electrocuted while at work. The electrocution occurred as Rodney was "using a sump pump to remove liquid chicken fat and water from a ground depression." *Id.* at 248, 503 A.2d at 709. Approximately two months prior to this accident, Mountaire had been cited by the Maryland Occupational Safety and Health Administration (MOSHA), for a "serious violation" under article 89, §40(b) of the Annotated Code of Maryland (1979). A "serious violation" is defined by the statute as a condition existing in which "there is a substantial probability that death or serious physical harm could result. . . ." *Johnson,* at 248, 503 A.2d at 709, n.1; Md. Ann. Code art. 89, §40(b) (1979). Mountaire was issued this citation because of the defective condition of the sump pump which ultimately caused the electrocution. The pump's extension cord cover was broken and its wires exposed. Also, the cord was improperly spliced and the plug was missing a ground prong. Soon after MOSHA issued the citation, Mountaire deliberately misinformed MOSHA that they had corrected the serious violation. Thereafter, on June 3, 1981, Rodney was electrocuted.

On January 17, 1983, Rodney's mother, Nancy Johnson, individually and as personal representative of the estate of her son, filed a wrongful death and survivorship action against Mountaire. Mrs. Johnson alleged:

> (1) that the deliberate intention exception of Art. 101, §44 does not require the allegation or proof of the employer's actual intent to injure, but requires only that the employer intentionally do the act which happens to cause injury or death; and (2) that the deliberate intention exception includes willful, wanton, or reckless conduct undertaken with a knowledge and appreciation of a high degree of risk to another.

Johnson, at 254, 503 A.2d at 712.

Mountaire filed a special plea requesting dismissal of the action arguing that the allegations in the claimant's declaration did not satisfy the requirement of "deliberate intention to injure" as required under §44 of the Act. *Id.* at 248, 503 A.2d at 709.

On January 31, 1984, Judge Simpkin, of the Circuit Court for Somerset County, filed a Memorandum Opinion agreeing with Mountaire and dismissed the case on May 23, 1984. Johnson appealed to the court of special appeals and also filed a petition for writ of certiorari in the court of appeals. The court of appeals granted certiorari prior to consideration by the intermediate appellate court.

In her appeal, Johnson requested the court to adopt the view that something less than actual specific intention, on the part of an employer to injure an employee, is required to satisfy the deliberate intention requirement of §44 of the Act. This section states in pertinent part that:

> [i]f injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the employee . . . shall have the privilege either to take under this article, or have a cause of action against the employer, as if this article had never been passed.

Johnson alleged that a showing of gross, wanton or reckless negligence, and that the employer provided an unsafe workplace was sufficient under the Act. In support of this proposition, Johnson cited decisions from West Virginia and Ohio.

In *Mandolidis v. Elkins Industries, Inc.*, 161 W.Va. 695, 246 S.E.2d 907 (1978), the West Virginia Supreme Court of Appeals held that an employee could sue his employer for damages when the employers conduct, which causes injury or death, was "willful, wanton and reckless . . ." *Johnson,* at 253, 503 A.2d at 711, citing, *Mandolidis,* 246 S.E.2d at 914. The Ohio Supreme Court in *Blankenship v. Cincinnati Milacron Chemicals, Inc.*, 69 Ohio St.2d 608, 433 N.E.2d 572 (1982), held that an employer could be held liable to an injured employee in tort if the employer knew or should have known that an employee may be injured as a result of unsafe work conditions. *Johnson,* at 253, 503 A.2d at 711.

In declining to expand Maryland's intentional tort exception to the exclusivity rule under the Act, the court first looked to the history and legislative intent of the Workmen's Compensation Act. The court noted that the first legislation in Maryland designed to compensate injured employees was passed by the Maryland General Assembly in 1914. The Workmen's Compensation Act was designed to strike a "balance between workers and employers . . . [whereby] [w]orkers lost their right to sue their employers for negligence but gained the right to quick and certain compensation for injuries sustained during the course of their employment, regardless of fault." *Id.* at 250, 503 A.2d at 710. On the other hand, the employer's liability is limited in exchange for losing the "defenses of contributory negligence, assumption of risk and the fellow servant rule." *Id.*

The court further explained that §15 of the Act outlines the employer's duties and liabilities in the event that an employee is disabled or killed from an accidental injury arising out of and in the course of his employment. This section of the Act states that "[t]he liability prescribed by . . . [this Act] shall be exclusive . . ." Maryland Annotated Code, article 101 §15 (1985). In interpreting the Act, the court held that aside from the exclusions under the Act itself, the remedies under the Act are exclusive of all other remedies.

Finally, the court held that Rodney's death did not fall within any exceptions under the Act. The court found that under §44 there must be a deliberate intention on the part of the employer to injure the employee. The court went on to state that the vast majority of jurisdictions define "deliberate intention" under workmen's compensation statutes as requiring specific intention to cause death or injury, coupled with some action to accomplish this result. *Johnson,* at 252, 503 A.2d at 711; citing, 2A A. Larson, *The Law of Workmen's Compensation,* §68.13 (1983); Restatement (2nd) of Torts, §500 Comment F (1965); *Prosser and Keeton on Torts,* §8 (5th ed. 1984). In adopting the majority view, the court held that Johnson had failed to allege sufficient facts to fall within the exception of §44, and thus the wrongful death and survivorship actions were properly dismissed.

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(Supp. 1985).
[87] *Id.* § 9-102(a)(ii).
[88] *Id.* § 9-102(a)(2).
[89] *Id.* § 9-102(b)(1).
[90] *Id.* § 9-102(2).
[91] *Id.* § 9-102(3)(c).
[92] *Id.* 593 F.2d 815 (8th Cir. 1979).
[93] *Id.*
[94] *Id.* at 817.
[95] *Id.*
[96] *Id.* at 821.
[97] *See, e.g., State v. Sheppard,* 197 N.J. Super. 411, 484 A.2d 1330 (N.J. Super. Ct. 1984) (In prosecution for sexual assault and child abuse the defendant waived his right to confrontation by threatening to kill the victim).
[98] 525 S.W.2d. 336 (1975).
[99] *Id.* at 339.
[100] *Mattox,* 156 U.S. at 237.
[101] *Douglas,* 380 U.S. at 415.
[102] 197 N.J. Super. 411, 484 A.2d 1330 (N.J. Super. Ct. 1984).
[103] *See id.* at 484 A.2d at 1332. Although the court used the term "videotape," the procedures to be employed are analogous to closed circuit television.
[104] *Id.,* 484 A.2d at 1334.
[105] Annot., 80 A.L.R.3d 1212, 1214 (1977).
[106] *Id.*
[107] *Mattox,* 156 U.S. at 243.
[108] *Roberts,* 448 U.S. at 64 (quoting *Chambers,* 410 U.S. at 295).
[109] *See* FED. R. EVID. 403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, . . .").
[110] U.S. CONST. amend. VI.
[111] U.S. CONST. amend. XIV.
[112] U.S. CONST. amend. I.
[113] *Washington v. Texas,* 388 U.S. 14, 23 (1967).
[114] *Id.* at 23 n. 21.
[115] U.S. CONST. amend. VI.
[116] *Globe Newspaper Co. v. Superior Court,* 457 U.S. 596, 604 (1982).
[117] *Id.* at 606-07.
[118] *See California v. Trombetta,* 104 S. Ct. 2528, 2532, (1984) ("Under the due process clause of the fourteenth amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness").
[119] *E.g.,* Some videotape statutes permit the admission of videotape testimony, recorded prior to trial, in lieu of direct testimony at trial.

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Although the court's decision in *Johnson* is in line with the majority of other state holdings, it is at odds with the slowly developing current trend. In fact, on May 31, 1985, the Court of Appeals of Maryland held that §44 of the Act allows an employee to hold his employer's insurer liable under the theory of intentional infliction of emotional distress resulting from the actions of the insurer. *Young v. Hartford Accident & Indemnity,* 303 Md. 182, 492 A.2d 1270 (1985); *see also Gallagher v. Bituminous Fire and Marine Insurance Company,* 303 Md. 201, 492 A.2d 1280 (1985). *Johnson* seems to put an end to any further expanding of the exclusive remedy exceptions under the Act. In Maryland, as in the majority of jurisdictions, without a showing of a "deliberate intention" to injure an employee, an employer will not be held liable outside of the Act, no matter how grossly negligent he might be. The end result in *Johnson* was that Rodney Adams' estate, because Rodney had no dependents, could only recover medical and funeral expenses.

–Stephen A. Markey, III

U.S.V. 1966 Beechcraft Aircraft: COURT UPHOLDS THIRD PARTY FORFEITURE UNDER 21 U.S.C. §881

In *U.S. v. 1966 Beechcraft Aircraft,* 777 F.2d 947 (4th Cir. 1985), the United States Court of Appeals for the Fourth Circuit followed precedents from the Second, Fifth and Eleventh Circuits to hold that the use of an airplane to transport conspirators to the scene of a drug deal exposes that vehicle to forfeiture under 21 U.S.C. §881 (1982). The court further held that an airplane owned by an uninvolved third party was subject to forfeiture because of his "conscious indifference." *Id.* at 952.

In early 1983, an informant in Greenville, South Carolina contacted the Drug Enforcement Agency (DEA) about a possible cocaine sale. The informant was directed to negotiate a buy and a DEA surveillance operation began. The informant arranged a deal with Brown and Montgomery to buy ten kilograms of cocaine for $500,000. In late February, Montgomery flew to Ft. Lauderdale, Florida to meet with Gerant and Butler, the cocaine suppliers, and Coddington, a middleman, to negotiate the purchase. After weighing the cocaine and checking its purity, Montgomery flew back to Greenville.

Gerant and Coddington then flew a 1966 Beechcraft from Ft. Lauderdale to South Carolina. There was circumstantial evidence suggesting that the Beechcraft carried the ten kilograms of cocaine. Butler flew a 1969 Aerostar from Ft. Lauderdale to South Carolina with a passenger, Hanna. All parties involved in the deal met at a Howard Johnson's and eventually all were arrested, with the exception of Coddington, who escaped. In addition to recovering the cocaine from an automobile, a search of the hotel rooms revealed an electric money counter, a microscope, several guns, $4,960 in cash and a marijuana cigarette. A search of the Beechcraft revealed documents indicating that Gerant and Butler were on the plane in the Bahamas three months earlier.

Under authority granted by 21 U.S.C. §881(b)(4), law enforcement officers seized the two airplanes once it was determined they were used to promote the drug transaction. Forfeiture proceedings against Total Time Aircraft, Inc., the owner of the Beechcraft, and Sundance Air, Inc., the owner of the Aerostar, were instituted in federal district court. The consolidated cases were tried without a jury and the district court ruled both aircraft were subject to forfeiture. Sundance Air is a Florida corporation wholly owned by Gerant. The district court determined that by transporting two drug conspirators, Gerant was utilizing the corporation's plane to assist in the illegal act of selling cocaine. Therefore, the Aerostar was used to "facilitate the sale, transportation, possession or concealment of cocaine" which the corporation was aware of through its owner and was subject to forfeiture. *Id.* at 949.

Total Time, is also a Florida corporation owned by David and Virgil Seeright. Total Time allowed Gerant to use the Beechcraft on several occasions, including the trip to South Carolina. The district court found that the Beechcraft transported the cocaine on this particular trip, concluding that it was used to further the "sale, transportation, possession or concealment" of cocaine in violation of 21 U.S.C. §881(a)(4). It further found that David Seeright, the corporation's president, did not inquire into the "purpose of the trip, or what cargo would be carried, required no signed contract, had no clear understanding as to when the plane would be returned, and received no money for its use." *Id.* at 950. In addition, a flight plan was not filed and there was no insurance on the plane. The district court concluded that Total Time did nothing to guard against the illegal use of its plane, and therefore, was not an "innocent owner" within the meaning of the Supreme Court's decision in *Calero-Toledo v. Pearson Yacht*