MKRS LAW

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Case Law Update

R.L. Haines Construction, LLC vs. Eva Santamaria, Etc. ET AL.

Case No. 5D13-1937 (September 9, 2014)

An injured worker, Victor Lizarraga, died while working at a construction site after being struck by a 2000 pound steel column. A wrongful death action was filed as a result by the deceased's wife and two children against various parties, one of which was the general contractor, R.L. Haines. While R.L Haines raised workers compensation immunity as a defense, the trial court found an exception to workers compensation immunity, under the circumstances, i.e. an intentional tort, and allowed the matter to be taken before a jury whom found against R.L. Haines. On appeal by R.L. Haines, the 5th DCA found the matter did not fall within the exception to workers compensation immunity and reversed the lower court.

Analysis and Outcome:

The relevant statutory provision to this inquiry is Fl. Stat. §440.11 dealing with Exclusiveness of liability. Therein, the exception clearly notes that it must be shown, by clear and convincing evidence, that the Employer knew death or injury was "virtually certain." The Court goes into a lengthy analysis of the term "virtually certain" as applied in various other cases and ultimately determined that the Appellees, the deceased's wife and children, needed to establish that under the specific facts of this case, the end result was "virtually certain," an "extraordinarily high" standard. Ultimately, the 5th DCA found the record was devoid of clear and convincing evidence to establish that the end result was virtually certain to result in the deceased's injury or death.

Noe Guerra vs. C.A. Lindman, Inc. and Argonaut Insurance Company

Case No. 1D13-5988 (September 10, 2014)

On Motion for Rehearing / Clarification the Court substituted its earlier order, dated July 21, 2014. The 1st DCA stated that in the lower proceeding, the Judge of Compensation Claims incorrectly appointed an expert medical advisor and further erred in relying on his opinion. This matter had previously been litigated wherein an expert medical advisor had been appointed and determined Claimant was not a surgical candidate. The expert medical advisor did caveat this opinion by indicating that, if Claimant's condition worsened, surgery may be warranted. A doctor authorized later in the claim opined the Claimant did require surgery. Based upon the prior expert medical advisor's opinion, and those of prior authorized providers, the Employer/Carrier denied the surgery. Given the conflict in opinion from Claimant's prior authorized providers and the first expert medical advisor, the Judge of Compensation Claims appointed an expert medical advisor.

Analysis and Outcome:

On appeal, the Court found that there was no evidence before the Judge of Compensation Claims upon which it was appropriate for an expert medical advisor to have been appointed. The Employer/Carrier did not offer any testimony from Claimant's prior physicians reflecting a disagreement as to the surgery being recommended by Claimant's new physician. In fact, Claimant's prior doctors indicated they had not evaluated the Claimant in recent history and therefore, could not state if Claimant's condition had deteriorated so as to warrant surgery. The matter was reversed and remanded given Judge of Compensation Claims' error in appointing an expert medical advisor.

Ismael Moreno vs. Palm Beach County School Board and FARA

Case No. 14-1142 (September 11, 2014)

Employer/Carrier filed a motion for a summary final order given that Claimant had filed two prior petitions for permanent and total disability benefits and had dismissed on both occasions. As such, the Judge of Compensation Claims granted the Employer/Carrier's motion and found Claimant's third petition for benefits was barred by *res judicata*. Claimant argued the new permanent and total disability claim was based on Claimant's compensable psychiatric condition whereas Claimant's prior permanent and total disability petitions had been based on Claimant's physical injuries; specifically, her lower back.

Analysis and Outcome:

The 1st DCA found granting the Employer/Carrier's motion for a summary final order was inappropriate given that the Judge of Compensation Claims' inquiry delved into the benefit requested *solely* and did not address that the new permanent and total disability request was based on new facts and evidence. In delving into the principles of *res judicata* the Court noted that the "determining factor in deciding whether the cause of action is the same is whether the facts or evidence necessary to maintain the suit are the same in both actions." As such, the 1st DCA reversed and remanded for further proceedings.