

Alexander v. FedEx Ground Package System, Inc. dba FedEx Home Delivery
United States Court of Appeals for the Ninth Circuit
Case No. 12-17509

Facts:

This was a class action lawsuit in California, in which the Named Plaintiffs represented a class of approximately 2300 full-time FedEx delivery drivers in California between 2000 and 2007 who contended that they were employees, while FedEx claims they are independent contractors under California law. The Plaintiffs asserted claims for employment expenses and unpaid wages under the California Labor Code, based on them being improperly classified as independent contractors. FedEx and the Plaintiffs entered into an Operating Agreement which labeled Plaintiffs as independent contractors. The Operating Agreement and FedEx policies and procedures governed the drivers' job requirements, wages and hours, equipment and appearance requirements, and outlined FedEx policies and expectations. The lower court granted summary judgment for FedEx, holding that the Plaintiffs were independent contractors as a matter of law. The Plaintiffs appealed to the Ninth Circuit Court of Appeals, who agreed that the Plaintiffs were employees as a matter of law and entered summary judgment in their favor as to employment status.

Outcome and Analysis:

The parties had agreed that their relationship was controlled by the Operating Agreement and FedEx's policies and procedures, but disputed the extent to which FedEx could control the drivers. The Court held that the Operating Agreement was a contract, but that there were ambiguous parts. The Court held that extrinsic evidence supported the notion that FedEx had the right to control its drivers such that they are employees based on FedEx's right to control its drivers.

The Ninth Circuit granted summary judgment for the plaintiffs, and ruled that the plaintiffs were employees of FedEx (not independent contractors) based on California's "Right-to-Control" test. The basis of the test came from *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, 769 P.2d 399 (Cal. 1989), which held that "the principal test of an employment relationship is whether the person to whom services is rendered has the right to control the manner and means of accomplishing the result desired." The Ninth Circuit

also noted that the California courts also look at “several ‘secondary’ indicia of the nature of a service relationship,” including “(1) the right to termination at will, without cause; (2) whether the one performing services is engaged in a distinct occupation or business; (3) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the principal or by a specialist without supervision; (4) the skill required in the particular occupation; (5) whether the principal or the worker supplies the instrumentalities, tools, and the place of work for the person doing the work; (6) the length of time for which the services are to be performed; (7) the method of payment, whether by the time or by the job; whether or not the work is a part of the regular business of the principal; (8) and whether or not the parties believe they are creating the relationship of employer-employee. *Citing Tieberg v. Unemployment Ins. App. Bd.*, 471 P.2d 975, 979 (Cal. 1970).

Slayman v. FedEx Ground Package System, Inc. dba FedEx Home Delivery

United States Court of Appeals for the Ninth Circuit

Case No. 12-35559

Facts:

This case actually was an appeal of 2 consolidated class action suits. Plaintiffs were former FedEx drivers representing a class of approximately 363 full-time delivery drivers for FedEx in Oregon between 1999 and 2009. FedEx and the Plaintiffs entered into an Operating Agreement which labeled Plaintiffs as independent contractors. The Plaintiffs claimed that they were improperly classified as independent contractors, and were thereby forced to incur business expenses and deprived other employee benefits under Oregon law. The Operating Agreement and FedEx policies and procedures governed the drivers’ job requirements, wages and hours, equipment and appearance requirements, and outlined FedEx policies and expectations. The lower court granted summary judgment for FedEx, holding that the Plaintiffs were independent contractors as a matter of law. The Plaintiffs appealed to the Ninth Circuit Court of Appeals, who agreed that the Plaintiffs were employees as a matter of law and entered summary judgment in their favor as to employment status.

Analysis and Outcome:

The parties had agreed that their relationship was controlled by the Operating Agreement and FedEx’s policies and procedures, but disputed the extent to which FedEx could control the drivers. The Court held that the Operating Agreement was a contract, but that there were ambiguous parts. The Court held that extrinsic evidence supported the notion that FedEx had the right to control its drivers such that they are employees under both the “Right-to-Control” and “Economic-Realities” tests.

The “Right-to-Control” test came from a case called *Stamp v. Dep’t of Consumer & Business Services*, 9 P.3d 729, 731 (Or. Ct. App. 2000), and focuses on four factors: “(1) direct evidence of the right to, or exercise of, control; (2) the furnishing of tools and equipment; (3) the method of payment; and (4) the right to fire.”

The Court also examined the “Economic-Realities” test, which looked to “situations where the worker is not directed or controlled by the employer but, nevertheless, as a matter of economic reality, depends on the employer.” *Cejas Commercial Interiors, Inc. v. Torres-Lizama*, 316 P.3d 389, 394 (Or. Ct. App. 2013).

Take-Away from both cases:

Similar cases were brought in approximately 40 states between 2003 and 2009. The rulings in *Alexander* and *Slayman*, both written by Justice William A. Fletcher, are Federal cases and could therefore be deemed applicable to Florida. While they are not directly discussing Florida workers’ compensation claims, these are important decisions for our trucking clients and other clients who attempt to deny worker’s compensation benefits based on the allegation that a claimant is an independent contractor not entitled to worker’s compensation benefits, rather than an employee. These cases show that even if a claimant enters into an agreement specifically indicating that he/she will be an independent contractor, additional factors will have to be considered before an outright denial of a worker’s compensation claim is issued to ensure the claimant should not be considered an employee as a matter of law.

Hattie Bonner v. Miami Dade Public Schools/Gallagher Bassett Services

Case No. 14-1200 (October 7, 2014)

Facts:

Claimant appealed an order of the JCC which denied her request for a \$2,000.00 advance from the Employer/Carrier. The 1st DCA agreed that the JCC erred in denying the advance, and reversed and remanded the case with direction to award the advance.

Analysis and Outcome:

The 1st DCA referenced that an advance must have a plausible nexus to “medical and related financial needs arising from workplace injuries.” *ESIS/ACE Am. Ins. Co. v. Kuhn*, 104 So.3d 1111, 1114-15 (Fla. 1st DCA 2012). The Claimant’s uncontroverted testimony was that she was out of work for over 18 months on sick leave, that she returned to work with a reduction in total pay, and that an advance would catch her up on her bills. The JCC found that the Claimant had a financial need, but denied the advance because the “nexus” was missing in that the Claimant had difficulty managing her funds that were unrelated to her accident. The 1st DCA found that the Claimant met her burden to establish entitlement to the advance, and that her inability to manage her funds stemmed

from her reduction in earnings caused by the workplace injury. The Court also found that the JCC's opinion that the Claimant's difficulty in managing her funds appeared to be based on some of her monthly bills being categorized as "luxury expenses." The Court noted that Fla. Stat. 440.20(12)(c)(2) does not factor in whether an item is considered a luxury, and that the advances are "merely a stopgap to help a claimant from defaulting with creditors while awaiting the potential distribution of workers' compensation benefits, when the reduction in income is caused by the injury." The Court specifically stated that Claimants are not required to live "a pauper's life" to be eligible for a \$2,000.00 advance. Finally, the Court noted that Fla. Stat. 440.20(12)(c)(3) and (12)(d) mandate a JCC to inquire into the reasonableness of larger advances; but for advances of \$2,000.00 and under, the JCC only needs to consider the Claimant's interests.

In his dissent, Justice Thomas indicated that the Claimant failed to meet her burden for entitlement to a \$2,000.00 advance, and therefore the JCC's ruling was proper.

Take-Away:

This case highlights the fact that Claimants must establish a nexus between medical and financial needs arising from the workplace injuries. However, it shows that the Claimant's burden of proof, especially for requests for advances of \$2,000.00 or less, is less stringent than for requests above \$2,000.00. Additionally, the case seems to hold that Claimant's do not have to be good with managing money, nor do they have to stop buying "luxury items," to qualify for the advance, so long as they can establish the required nexus.

Thomas Silvernail v. City of Tampa/Commercial Risk Management Case No. 13-6203 (October 27, 2014)

Facts:

The Claimant appealed an Order of the JCC denying compensability of his bradycardia condition and payment of medical bills. At the motion for reconsideration, the Claimant raised estoppel for the first time.

Analysis and Outcome:

The 1st DCA affirmed the JCC's denial, and held that the Claimant did not preserve the issue of estoppel for appeal by first raising it in the motion for reconsideration. The Court quoted Holland v. Cheney Bros., Inc., 22 So.3d 648, 649-50 (Fla. 1st DCA 2009), which stated that "for an issue to be preserved for appeal, it must be presented to the lower court and the specific legal argument or ground to be argued on appeal must be part of that presentation."

Take-Away:

This case highlights the importance of a thorough investigation and preparation for trial, as any claims or defenses not plead in a timely manner may be left out as a basis for appeal of an adverse ruling.