

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 31, 2000 Session

BILLY RAY HOLLEY v. BOBBY HOLLEY, ET AL.

**Direct Appeal from the Circuit Court for Shelby County
No. 61108-4 T.D. James E. Swearingen, Judge**

No. W1998-00737-WC-R3-CV - Mailed November 27, 2000; Filed January 22, 2001

This workers' compensation appeal has been referred to the Special Workers' Compensation Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1999) for a hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The issue presented for review is whether or not Mississippi Boulevard Christian Church was the plaintiff's statutory employer as defined by Tennessee Code Annotated § 50-6-113. We reverse the judgment of the circuit court and dismiss the cause as to Mississippi Boulevard Christian Church.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court is Reversed and Dismissed.

WIL V. DORAN, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and J. STEVEN STAFFORD, SP. J., joined.

Ralph T. Gibson, Memphis, Tennessee, for the appellants, Mississippi Boulevard Christian Church and Liberty Mutual Insurance Company.

Jack V. Delany, Memphis, Tennessee, for the appellee, Billy Ray Holley.

MEMORANDUM OPINION

This case involves an unfortunate situation created by the bifurcation of the trial on the issues of compensability and damages, and by the subsequent illness of the trial judge. The bifurcation caused a hiatus of two and one-half years from the time that the case was tried and the time that the trial judge was asked to authenticate the record. There was no court reporter at trial and counsel for the parties could not agree on a statement of the evidence.

The issue is whether or not the plaintiff was the statutory employee of the Mississippi

Boulevard Christian Church (hereinafter referred to as “the Church”) when he fell from a ladder, sustaining a serious injury to his arm. The trial court found compensability and awarded damages. Each side moved the Court to approve its version of the statement of facts. The trial judge indicated that he could recall enough of the testimony to justify his decision and a hearing (argument only) was held to determine what evidence the judge would authenticate. A transcript of that hearing has been made a part of the record as a transcript of the trial evidence.

The Church was the owner or tenant of real property in Memphis, Tennessee, where the church was located. Bobby Holley, a painting contractor, contracted with the Church to paint the Church premises. The plaintiff, Billy Ray Holley, was one of Bobby Holley's employees. Bobby Holley did not have workers' compensation insurance. The trial judge concluded, from his recollection of the testimony, that an official of the Church directed the painters when and where to paint and otherwise exercised some control over the conduct of the work. This situation seems to have been brought about by the fact that Bobby Holley apparently had other jobs in progress and he would drop his employees off in the morning and leave to take care of other business. However, there is no evidence that the Church had the right to control the conduct of the work. Bobby Holley furnished the paint and all of the tools and he was the only one who had the right to terminate the employees. Bobby Holley paid the painters and he was the one that determined which painter would be taken to a specific job. The Church was not in the contracting business and did not do work for others. It would not be unusual for one who contracts with a painting contractor to take some part in the conduct of the work such as directing painters to paint on a certain part of the building to accommodate church schedules or something of that nature. This does not make the painters employees of the Church.

It is true that a business which undertakes to act as its own general contractor and contracts directly with subcontractors for various phases of construction on its own premises is liable in workers' compensation benefits for injuries to employees of such contractors. Carpenter v. Hooker Chemical & Plastics Corp., 553 S.W.2d 356 (Tenn. Ct. App. 1977). However, in Tolan v. Brown, 1996 Tenn. LEXIS 726, No. 03S01-9603-CH-00027 (Tenn. Nov. 5, 1996), Judge Loser, speaking for the court, stated as follows:

The undisputed fact of this case is that Brown is not a general contractor or a business undertaking to contract directly with subcontractors for various phases of construction on its own premises. Instead, Brown is an owner of property that needed a new roof, so he contracted with a roofer to do the work. That is not the type of situation contemplated by Tenn. Code Ann. § 50-6-113 and Brown is not liable to Tolán for workers' compensation benefits.

In the case at bar, it is clear that the Church is not a general contractor or a business undertaking to contract directly with subcontractors for various phases of construction on its own premises. Instead, the Church is an owner or tenant of property that needed some painting work so it contracted with a painting contractor to do the work.

It seems to us that the reasoning of the Tolan case is applicable to the case under consideration. Accordingly, we reverse the judgment of the circuit court and dismiss the cause as to the Church. Costs on appeal are assessed against the Plaintiff.

WIL V. DORAN, SPECIAL JUDGE

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Plaintiff, Billy Ray Holley, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM