

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

January 16, 2004 Session

**EDWIN R. OLIVER EX REL. EDWIN C. OLIVER v. PROLOGIS TRUST, ET  
AL.**

**Direct Appeal from the Circuit Court for Shelby County  
No. CT-000671-WC-00-DIV I John R. McCarroll, Jr., Judge**

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**No. W2003-00670-SC-WCM-CV - Mailed May 20, 2004; Filed August 31, 2004**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with *Tenn. Code Ann.* § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of facts and conclusions of law. In this case the trial court held that ProLogis Trust and Steve Graves were employers of the employee, Edwin C. Oliver pursuant to *Tenn. Code Ann.* § 50-6-113 and awarded workers' compensation benefits for an injury to his left lower extremity. The sole issue presented for review is whether the defendant ProLogis Trust, at the time of the employee's accident, was the employee's statutory employer as defined by *Tenn. Code Ann.* § 50-6-113, and therefore liable for workers' compensation benefits. For the reasons discussed in this opinion, we find that the judgment of the trial court should be reversed as to the defendant, ProLogis Trust

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

JAMES L. WEATHERFORD, SR.J., delivered the opinion of the court, in which JOE H. WALKER, III, SP.J., and JANICE M. HOLDER, J., joined.

John Robert Cannon, Jr., Memphis, Tennessee, for appellant, ProLogis Trust.

Clyde W. Keenan, Memphis, Tennessee, for appellee, Edwin R. Oliver, Individually as next friend of Edwin C. Oliver, a minor.

**MEMORANDUM OPINION**

ProLogis Trust is a global company that leases, owns and manages industrial buildings. They have approximately 45 buildings in the Memphis - Shelby County area with approximately seven

million square feet.

At the time the employee was injured, Steve Graves owned a company called ABC Roofing and Tree Service. The name of his company was later changed to ABC Repair because he did not do much tree work anymore. Mr. Graves described his work as cleaning, repair, fix-up and paint-up. An employee of ProLogis described Graves' work as putting up sheetrock, building some type of office, installing carpet, cleaning up the space, cleaning the windows, and pressure washing the inside of a building to get cobwebs down.

On July 19, 1999, Plaintiff, Edwin C. Oliver, called Defendant, Steve Graves, and inquired about summer work with Mr. Graves. Mr. Oliver and Mr. Graves had not met before, but they attended the same church. At this time, Mr. Oliver was 17 years of age. Mr. Graves instructed Mr. Oliver to come to a warehouse owned and operated by ProLogis Trust. When Mr. Oliver arrived at the warehouse, Mr. Graves was not there. Mr. Oliver began to sweep floors in the warehouse.

When Mr. Graves arrived, Mr. Graves and Mr. Oliver began to straighten concrete poles. The poles were approximately 4 feet tall and 12 inches in diameter. As a pole was being straightened, the pole broke and struck Oliver's left foot, causing injury to his foot. This injury necessitated the amputation of three toes and the tip of the fourth toe.

At the conclusion of the proof, the trial court found that ProLogis Trust and Steve Graves were employers of Mr. Oliver pursuant to *Tenn. Code Ann.* § 50-6-113.<sup>1</sup>

The trial court found that Graves had an obligation to provide workers' compensation coverage, which he didn't. Further, the trial court found that ProLogis knew that Graves did not have coverage as required under the contract between ProLogis and Graves, and allowed Graves to work nevertheless. The trial court found that Mr. Oliver suffered a disability of 50 percent to the left lower extremity.

## ANALYSIS

Our review of the findings of fact made by the trial court is *de novo* upon the record of the

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<sup>1</sup>Tennessee Code Annotated § 50-6-113 provides in pertinent part:

(a) A principal, or intermediate contractor, or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the principal, intermediate contractor, or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

.....

(d) This section applies only in cases where the injury occurred on, in, or about the premises on which the principal contractor has undertaken to execute work or which are otherwise under the principal's control or management.

trial court, accompanied by a presumption of correctness, unless the preponderance of the evidence is otherwise. *Tenn. Code Ann.* § 50-6-225(e)(2). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988). Conclusions of law are reviewed de novo without any presumption of correctness. *Ivey v. Trans Global Gas & Oil*, 3 S.W.3d 441, 446 (Tenn. 1999).

The only issue presented in this case is whether ProLogis Trust is a principal contractor within the meaning of *Tenn. Code Ann.* § 50-6-113 and liable for workers' compensation benefits as a statutory employer.

Our courts have employed several factors to be considered in determining if the relationship of statutory employer-employee exists and no one factor is necessarily dispositive: 1) right to control the conduct of work; 2) right of termination; 3) method of payment; 4) whether alleged employee furnishes his own helpers; 5) whether alleged employee furnishes his own tools; 6) whether one is doing work for another; 7) whether the work being performed by the contractor in question is the same type of work usually performed by the company or is a part of the regular business of the company; 8) whether Defendant hired Plaintiff; and 9) whether Defendant possessed or exercised any control or authority over how Plaintiff was to perform his work. See *Murray v. Goodyear Tire & Rubber Co.*, 46 S.W.3d 171 (Tenn. 2001); *Stratton v. United Inter-Mountain Telephone Co.*, 695 S.W.2d 947 (Tenn. 1985); *Barber v. Ralston Purina*, 825 S.W.2d 96 (Tenn. Ct. App. 1991).

ProLogis Trust had 5 employees in its Memphis office which consisted of a property manager, marketing officer, marketing representative, administrative assistant, and a maintenance technician. ProLogis Trust relied upon outside firms and companies to perform construction projects, maintenance and maintaining of warehouse space.

The record in this case established that ProLogis Trust did not control the conduct of Graves' work, nor did they have the right to control the day-to-day activities of Graves or his employees. Graves set his own hours for himself and his employees. Graves also had the right to offer his services to others, without interference from ProLogis Trust.

When Graves would bid on a job to sweep out a warehouse, it was typically an area of 20,000 to 40,000 square feet. Graves would bid on jobs with ProLogis Trust. After he reviewed the "spec sheet," he would make a bid and submit it to ProLogis Trust for their approval or rejection.

ProLogis Trust would pay a set contract amount to Graves for the work performed and he was responsible for paying wages to any employee he might have. ProLogis Trust never told Graves who to hire or fire and if there had been a problem with an employee, this was Graves' responsibility. ProLogis Trust did not provide any tools, equipment or material on the jobs that Graves had submitted a bid for that were accepted by ProLogis Trust.

After careful review and consideration of the record, we find that the trial court's finding that

ProLogis Trust was the statutory employer of employee, Edwin C. Oliver, is not supported by the evidence.

#### CONCLUSION

The judgment of the trial court is reversed as to ProLogis Trust. Costs of this appeal are taxed to the appellee, Edwin R. Oliver.

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JAMES L. WEATHERFORD, SR.J.

IN THE SUPREME COURT OF TENNESSEE  
AT JACKSON

**EDWIN R. OLIVER, EX REL. EDWIN C. OLIVER**  
**v. PROLOGIS TRUST, ET AL.**

**Circuit Court for Shelby County**  
**No. CT-000671-WC-00-DIV I**

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**No. W2003-00670-SC-WCM-CV - Filed August 31, 2004**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by appellant, Edwin R. Oliver ex rel. Edwin C. Oliver, pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the appellee, Edwin R. Oliver ex rel Edwin C. Oliver, and his sureties, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Holder, J., not participating