

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(May 17, 1996 Session)

HAZEL MANESS FLATT,)
)
 Plaintiff/Appellant,)
)
 v.)
)
 THE INSURANCE MART, INC.,)
)
 Defendant/Appellee.)

CHESTER CHANCERY
)
 Hon. Joe C. Morris,
 Chancellor
)
 No. 02S01-9601-CH-00007
)

FILED

November 1, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

For Appellant:

Joe Hailey
Hailey & Seaton
Selmer, Tennessee

For Appellee:

Carthel L. Smith, Jr.
Lexington, Tennessee

MEMORANDUM OPINION

Members of Panel:

Lyle Reid, Justice, Supreme Court
Hewitt P. Tomlin, Jr., Senior Judge
Cornelia A. Clark, Special Judge

AFFIRMED

Tomlin, Senior Judge

This workers' compensation appeal was heard by the Special Workers' Compensation Panel in accordance with provisions of T.C.A. § 50-6-225(e)(3). We have by this opinion reported our findings of fact and conclusions of law to the Supreme Court.

Hazel Maness Flatt ("plaintiff") was employed by Gary Wright and his sister Nita Middleton to care for their mother, Lorene F. Wright, at her residence in Chester County. As part of her employment, plaintiff lived in Ms. Wright's home from Monday through Friday. Other sitters provided care for Ms. Wright on weekends. Plaintiff's job duties included fixing meals, cleaning the house, sweeping, vacuuming, washing clothes, taking Ms. Wright on errands, and generally just watching after her. On about October 5, 1990, plaintiff injured her back while assisting Ms. Wright into plaintiff's car.

The record reflects that Gary Wright served as president of The Insurance Mart, Inc. ("defendant"), a company engaged in the sale of automobile insurance in Nashville. Wright and his wife were the sole shareholders of the defendant company. His sister, Nita Middleton, was an employee of defendant. Plaintiff was paid her weekly checks from defendant's payroll for her services to Ms. Wright. Her W-2 Wage and Tax Statement for 1990 listed defendant as her employer. However, defendant listed plaintiff regularly on its Non-Employee Compensation Report. For these apparent reasons, plaintiff filed suit against defendant in the Chancery Court of Chester County.

Following a bench trial, the chancellor denied plaintiff's claim for workers' compensation benefits on the grounds that (1) plaintiff was a domestic servant and not an employee of defendant, and (2) that she was also an independent contractor. This appeal followed.

The sole issue on appeal is whether the evidence preponderates the chancellor's finding that plaintiff was both a domestic servant and also an independent contractor and therefore was not covered by the Workers' Compensation Act. For the reasons hereinafter stated, we affirm.

On appeal, our scope of review of findings of fact by the trial court is de novo upon the record of the trial court, with a presumption that the judgment is correct unless preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). T.C.A. § 50-6-106(3) reads in pertinent part as follows:

50-6-106. Employments not covered.—The Workers' Compensation Law shall not apply to:

. . . .

(3) Domestic servants and employees thereof.

On appeal, plaintiff contends that she is not within the excluded class of domestic servants for two reasons (1) her employer was defendant, not Ms. Wright, and (2) her duties in caring for Ms. Wright were in the realm of practical nursing, not those of a domestic servant.

In addressing plaintiff's first contention, the proof is undisputed that plaintiff never sold insurance for defendant, nor did she ever render any services to or for defendant at or about its premises. By her own testimony, it was established that her duties consisted solely of performing household duties in Ms. Wright's home for Ms. Wright. The testimony is also uncontradicted that shortly after being employed, plaintiff indicated to Wright and Middleton that she wished to have taxes withheld from her paycheck. Ms. Middleton testified that as a matter of administrative convenience for all parties involved, plaintiff was paid through

defendant's payroll for tax withholding purposes. The record also reflects that on various applications for disability insurance, plaintiff listed Ms. Lorene F. Wright as her employer.

Plaintiff's reliance upon the only reported case in this state dealing with the domestic servant exception, Sharp v. Jenkins, 367 S.W.2d 464 (Tenn. 1963), is misplaced. In Sharp, an employee of a lumber company was injured while mowing the company owner's lawn. This Court rejected the employer's argument that the employee should be excluded from coverage under the Act because he was working as a domestic servant at the time of the injury. Although the employee spent one day a week working at the owner's house, this court held that the employee's work at the time of his injury was incidental to his sole employment as a general laborer at the lumber yard. Moreover, the employee was paid by the company and was injured during his regular working hours. Id. at 466-68. However, in this case it is uncontradicted that plaintiff's duties consisted solely of caring for Ms. Wright at her home, and that plaintiff never sold insurance or provided any other services for defendant. We find Sharp to be inapplicable to this case.

Plaintiff alleges further that the trial court erred by determining that she was an independent contractor, and therefore excluded from coverage under the Workers' Compensation Act. We begin by noting that it was superfluous for the trial court to make such a finding after having determined that plaintiff was already excluded from the Workers' Compensation Act under the domestic servant exception. We further note that there is no evidence in this record that defendant had any relationship with plaintiff other than the fact that Guy Wright and Nita Middleton paid plaintiff from defendant's payroll for tax withholding purposes. The proof is uncontradicted that plaintiff was hired by Wright

and Middleton for the exclusive purpose of caring for their mother. There is no evidence in the record of an employer-employee or independent contractor relationship between plaintiff and defendant. This contention is without merit.

For the above-stated reasons, the judgment of the trial court is affirmed in all respects. Costs in this cause on appeal are taxed to plaintiff, for which execution may issue if necessary.

HEWITT P. TOMLIN, Jr., SENIOR JUDGE

CONCUR:

LYLE REID, JUSTICE

CORNELIA A. CLARK, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

HAZEL MANESS FLATT,)	Chester Chancery
)	Trial Court No. 8076
Plaintiff/Appellee,)	
)	
VS.)	Hon. Joe C. Morris, Chancellor
)	
THE INSURANCE MART, INC.,)	No. 02S01-9601-CH-00007
)	
Defendant/Appellee.)	AFFIRMED.

<p>FILED</p> <p>November 1, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

JUDGMENT ORDER

This case is before the Court upon a motion for review 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, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; 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 will be paid by the plaintiff/appellant, Hazel Maness Flatt, and her surety, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of November, 1996.

PER CURIAM

Reid, J., Not Participating