

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, JULY 1996 SESSION

FILED
October 15, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

GREENE COUNTY, TENNESSEE)
)
Plaintiff/Appellee)
)
v.)
)
LISA WARD, JARROD WARD and)
JORDAN WARD,)
)
Defendants/Appellants)
)
GREENE COUNTY, TENNESSEE)
)
Plaintiff/Appellee)
)
v.)
)
Robert Jules Desormeaux and)
LORRAINE DESORMEAUX,)
)
Defendants/Appellants)

GREENE CHANCERY)
)
)
)
)
)
HON. DENNIS H. INMAN
CHANCELLOR

NO. 03S01-9510-CH-00116

For the Appellants:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Penny J. White, Justice
Roger E. Thayer, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED.

THAYER, Special Judge

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 fact and conclusions of law.

These cases were instituted by Greene County, Tennessee, plaintiff, against the dependents of William Guy Ward, deceased, and Robert John Desormeaux, deceased, defendants, to determine whether the deaths of the two individuals are compensable under the Workers' Compensation laws of our state.

The trial court determined the claims were not compensable as their deaths did not arise out of and in the course of their employment. Defendants have appealed insisting the evidence preponderates against this finding.

William Guy Ward and Robert John Desormeaux were part-time auxiliary officers of the Greene County Sheriff's Department. They died as a result of an airplane crash on the night of July 11, 1994, at about 11:00 p.m. The airplane was being operated by Officer Desormeaux and Officer Ward was riding as a passenger.

The record indicates auxiliary officers received limited training as compared to the training of a regular certified deputy sheriff. As auxiliary officers, they were scheduled to work twice a month for 8-16 hours, and this assignment was on weekends because the Sheriff's Department was usually busier at this time during the week. Auxiliary officers were always assigned to work with a regular certified deputy sheriff on patrol and were paid \$5.00 per hour when performing scheduled work. The evidence indicates an auxiliary officer could work at other times with permission but would not be compensated for this work activity. Officers Ward and Desormeaux had been auxiliary officers for about one year, and their work activity with the Sheriff's Department had been riding with and assisting a regular deputy on patrol. As auxiliary officers, they were bonded deputies.

The Auxiliary Organization Manual Of The Greene County Sheriff's Department provided auxiliary personnel shall follow the direction of full-time

officers when working with the department except when authorized by the Sheriff. Also, all auxiliary personnel shall accompany a full-time officer when working their duty schedule unless directed by the Chief Deputy or shift leader.

Section D, Responsibilities.

The manual also provided off-duty enforcement of laws by auxiliary personnel is prohibited, the only exception being an emergency situation that requires immediate attention. In such cases, the auxiliary member should take only that action necessary to contain the situation until the arrival of a full-time deputy. *Section D, Responsibilities.*

On the evening in question, the Sheriff's Department had received a call from a citizen who had heard a distress call from some unknown person in a field behind the citizen's residence. Also, the citizen reported a car horn seemed to sound out a S.O.S. signal. Lt. Jakie Christy was dispatched to the scene, and he arrived there about 8:53 p.m.

Auxiliary officers Ward and Desormeaux were not scheduled to work on this day; they were together at the residence of Officer Ward enjoying a "barbecue." While listening to a police scanner, they became aware of the search mission by the Sheriff's Department; they decided to join the search party about 9:30 p.m. as they thought it would be helpful to rent an airplane and fly low over the search area. Being aware it was necessary to get permission to perform non-scheduled work, Officer Ward placed a call to the dispatcher of the Sheriff's Department indicating their intentions to aid in the search. Dispatcher Lori Rader testified she advised Ward to contact Lt. Jakie Christy, the shift commander, concerning their request.

Officer Christy told the trial court that after arriving at the scene, he realized the Sheriff's Department was not trained in search and rescue missions as was the Greene County Rescue Squad, and he requested assistance from the rescue squad. He said that after the search had been going on for some period of time without finding anyone in need of help, he and the leader of the rescue squad had agreed to terminate the effort shortly when he observed an

airplane flying at “tree top level and at a slow speed.” He said Officer Desormeaux called him saying they had come to help and could see good from the air and then there was static on the radio. Christy responded by saying the search area was to their right, but the plane crashed less than a minute later.

Officer Christy also testified the situation did not justify calling in auxiliary officers; that auxiliary or even regular officers did not have training in rescue work; when asked if he had ever considered calling for aircraft in the search, he replied it was not necessary; he also said he was not aware Officer Desormeaux was a licensed pilot.

Officer John Huffins, chief deputy, testified concerning the duties of an auxiliary officer and when asked if the two auxiliary officers were engaged in authorized or unauthorized activity at the time of their deaths replied that the activity was unauthorized. He also added that riding or piloting an airplane at nighttime would not be a part of a regular deputy’s employment.

The review of the case is *de novo* on the record accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2).

T.C.A. § 50-6-102(a)(5) states the injury or death, in order to be compensable, must be one “arising out of” and “in the course of” employment.

The phrase “in the course of” refers to time and place and “arising out of” to cause or origin; an injury by accident to an employee is “in the course of” employment if it occurred while the employee was performing a duty the employee was employed to do, and it is an injury “arising out of” employment if caused by a hazard incident to such employment. *Travelers Ins. Co. v. Googe*, 397 S.W.2d 368, 371 (Tenn. 1965); *Bell v. Kelso Oil Co.*, 597 S.W.2d 731, 734 (Tenn. 1980).

The injury or death need not have been foreseen or expected in order to be compensable. However, after the event, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence and reasonably have been considered a risk if thought of

at the time of employment. *Jackson v. Clark & Fay*, 270 S.W.2d 389 (Tenn. 1954); *Ward v. Ward*, 378 S.W.2d 754, 758 (Tenn. 1964).

In considering the facts of the case under these general principles, we find the auxiliary officers were part-time employees of the Greene County Sheriff's Department; they were not officially on duty when the airplane crashed causing their deaths; they had not received permission to participate in the work of the search being conducted by their employer; and the nature of their activity in renting an airplane for a night flight was far removed from what would generally be considered a risk of their employment.

We fully concur with the statement that they gave their lives in the pursuit of this search and rescue mission. However, there are legal limitations to the liability of employers under our workers' compensation statutes.

We find the activity which they were engaged in at the time of their deaths was a substantial deviation from their regular duties and was beyond the scope of their employment, either express or implied.

The judgments are affirmed, and the costs of the appeal are taxed to the defendants in each case.

Roger E. Thayer, Special Judge

CONCUR:

Penny J. White, Justice

Joe C. Loser, Jr., Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE

GREENE COUNTY, TENNESSEE)	GREENE CHANCERY
)	
Plaintiff-Appellee,)	No. 94179
)	
vs.)	No. 03S01-9510-CH-00116
)	
)	Hon. Dennis H. Inman,
)	Chancellor
)	
LISA WARD, JARROD WARD and)	AFFIRMED
JORDAN WARD)	
)	
Defendants-Appellants,)	
)	
GREENE COUNTY, TENNESSEE)	
)	
Plaintiff/Appellee)	
)	
vs.)	
)	
ROBERT JULES DESORMEAUX and)	
LORRAINE DESORMEAUX)	
)	
Defendants/Appellants)	

JUDGMENT ORDER

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 defendants in each case, for which execution may issue if necessary.

10/15/96

