Circuit Court for Prince George's County
Case No. CAL 16-02204

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1673

September Term, 2016

ROBERT SCOTT SHANNON,

v.

KG INDUSTRIES, LLC,

Eyler, Deborah S.,
Kehoe,
Arthur,

JJ.

Opinion by Arthur, J.

Filed: October 18, 2017

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A subcontractor's employee suffered an accidental workplace injury. After the employee obtained workers' compensation benefits from his employer's insurer, he brought a common-law tort claim against the primary contractor on the job site on which he was injured. The primary contractor moved to dismiss the complaint or for summary judgment in its favor, on the ground that, as the "statutory employer" of its subcontractor's employees, it is immune from tort liability under the workers' compensation laws.

The Circuit Court for Prince George's County dismissed the complaint. The employee appealed. We affirm.

QUESTION PRESENTED

The employee, Robert Scott Shannon, presents a single question, which we quote: "Did the Circuit Court err when it held that a potential statutory employer,[1] which was never actually exposed to liability under the Workers' Compensation Act, was entitled to the benefit of tort immunity granted to employers under the Act[?]"

For the reasons stated herein, we conclude that the circuit court did not err.

FACTUAL AND PROCEDURAL BACKGROUND

On April 16, 2014, Mr. Shannon was injured when he fell from a ladder on a job site. The ladder, which was affixed to a building, had been previously removed and reinstalled by employees of the primary contractor, KG Industries, LLC. According to

[1] Throughout his brief, Mr. Shannon refers to his adversary as a "potential statutory employer"; however, Mr. Shannon did not dispute, and nothing in our research suggests, that there was anything "potential" about the statutory relationship between him and the principal contractor.

Mr. Shannon, the ladder had been negligently installed.

At the time of his injury, Mr. Shannon was employed by Metal Crafters Sheet Metal Company, Inc. Metal Crafters maintained a policy of workers' compensation insurance, as it was required to do. *See* Maryland Code (1991, 2016 Repl. Vol., 2017 Supp.), § 9-402(a) of the Labor and Employment Article ("LE").

KG Industries had hired Metal Crafters as a subcontractor. Mr. Shannon was performing work under that subcontract when he was injured.

On June 3, 2014, Mr. Shannon filed a workers' compensation claim with the Maryland Workers' Compensation Commission. The claim was accepted both by Mr. Shannon's employer and by the insurer, and the Workers' Compensation Commission issued an order finding compensability on July 15, 2014. Mr. Shannon received workers' compensation benefits, including medical care and temporary total disability benefits. He says that he anticipates receiving permanent disability benefits as well.

Under § 9-508 of the Labor and Employment Article, KG Industries, as the principal contractor on the job on which Mr. Shannon was injured, was deemed to be his "statutory employer." As the statutory employer, KG Industries would have been obligated to pay workers' compensation benefits to Shannon had he sought such benefits from KG Industries. *Id.* § 9-508(a). Shannon, however, did not file a workers' compensation claim against KG Industries.[2]

[2] Had Mr. Shannon pursued his workers' compensation claim against KG Industries, it would have had the right to seek indemnification from Mr. Shannon's employer, Metal Crafters, under LE § 9-508(d). Because Mr. Shannon is Metal Crafters'

Instead, on March 1, 2016, Mr. Shannon filed a lawsuit in the Circuit Court for Prince George's County against KG Industries. Mr. Shannon alleged that KG Industries' employees negligently installed the ladder from which he fell and that their negligence caused his injuries.

KG Industries moved to dismiss the complaint or for summary judgment in its favor. The motion argued that, as Mr. Shannon's statutory employer, KG Industries enjoyed immunity from common-law tort claims alleging that he had suffered an accidental workplace injury.

After a hearing, the circuit court granted the motion. This appeal followed.

DISCUSSION

In its dispositive motion, KG Industries included materials outside of the pleadings, including its contract with Metal Crafters and an affidavit authenticating that document. The circuit court did not exclude those materials. Hence, the court was required to treat the motion as a motion for summary judgment. Md. Rule 2-322(c) ("[i]f, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment"); *see also Trim v. YMCA of Cent. Maryland, Inc*., 233 Md. App. 326, 332 (2017); *Hrehorovich v. Harbor Hosp. Ctr., Inc*., 93 Md. App. 772, 782 (1992).

sole owner, the statutory right of indemnification may have deterred him from pursuing his workers' compensation claim against KG Industries.

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (alterations in original) (citations and quotation marks omitted).

Mr. Shannon admits that there is no dispute as to material fact. We are therefore left to consider whether the circuit court's legal reasoning was correct. Whether the circuit court correctly interpreted a statute is a question of law that we review de novo. *See Beall v. Holloway-Johnson*, 446 Md. 48, 76 (2016).

Under LE § 9-509(a), the workers' compensation regime is ordinarily an injured employee's exclusive remedy against his or her employer. Only in two instances does an injured employee retain the right to assert a common-law claim against an employer: (1) if the employer fails to secure workers' compensation insurance, as required by law (LE

§ 9-509(c)); or (2) if the employee is injured or killed as the result of the deliberate intent of the employer to injure or kill the employee. *Id*. § 9-509(d).

Under LE § 9-508(a), a principal contractor may become a species of employer – i.e., a "statutory employer" – if it meets the following conditions:

> (a) A principal contractor is liable to pay to a covered employee or the dependents of the covered employee any compensation that the principal contractor would have been liable to pay had the covered employee been employed directly by the principal contractor if:
>
> (1) [T]he principal contractor undertakes to perform any work that is part of the business, occupation, or trade of the principal contractor;
>
> (2) [T]he principal contractor contracts with a subcontractor for the execution by or under the subcontractor of all or part of the work undertaken by the principal contractor; and
>
> (3) [T]he covered employee is employed in the execution of that work.

"[T]he purpose of the statutory employer provision is the protection of the injured worker who might otherwise receive no compensation for work-related injuries if the worker's immediate employer had not obtained workers' compensation coverage and had little resources to pay damages in a personal injury action." *Para v. Richards Grp. of Wash. Ltd. P'ship*, 339 Md. 241, 252 (1995).

In Maryland, for almost 90 years, an injured employee has been unable to assert a common-law tort claim against his or her statutory employer. *See State ex rel. Hubert v. Benjamin F. Bennett Bldg. Co*., 154 Md. 159, 166-68 (1928); *see also Para v. Richards Grp. of Washington Ltd. P'ship*, 339 Md. at 253-54; *Honaker v. W.C. & A.N. Miller Dev. Corp.*, 278 Md. 453, 459 (1976); *Roland v.*

Lloyd E. Mitchell, Inc., 221 Md. 11, 13 (1959); *Kegley v. Vulcan Rail & Constr. Co*., 203 Md. 476, 479 (1954); *State ex rel. Reynolds v. City of Baltimore*, 199 Md. 289, 294 (1952). These authorities foreclose Mr. Shannon's claims in this case.

Mr. Shannon does not dispute that KG Industries satisfied the conditions in § 9-508(a) to become his "statutory employer." Nonetheless, he contends that a statutory employer should not partake of immunity from suit at common-law if it was at most "potentially" liable on a workers' compensation claim that the employee actually asserted against his own employer.

Mr. Shannon is incorrect. In the leading case, from 1928, the deceased employee's family received workers' compensation benefits only from the employee's immediate employer, and not from the statutory employer. *Benjamin F. Bennett Bldg. Co*., 154 Md. at 160-61. But even though the statutory employer paid no workers' compensation benefits, the Court of Appeals held that it was still immune from a common-law claim for negligence. *Id.* at 166-68.

Mr. Shannon trains his fire on the Court of Appeals' 1954 decision in *Kegley v. Vulcan Rail & Construction Co*., which he characterizes, incorrectly, as the only case to hold that a statutory employer was immune from tort liability even though it (or its insurer) had not paid the plaintiff's workers' compensation benefits. At oral argument, Mr. Shannon acknowledged that to rule in his favor, we must overrule *Kegley*. We do not, however, have the authority to overrule a decision by the Court of Appeals – whether the decision is *Kegley* or any of the several other cases that hold that a statutory employer

is generally immune from a suit at common-law by a subcontractor's injured employee.[3]

Mr. Shannon contends that it is inconsistent with the beneficent purposes of the workers' compensation statutes to immunize a statutory employer from tort liability even though it has not been required to pay the plaintiff's workers' compensation benefits. His contention is in considerable tension with almost 90 years of legislative acquiescence in the judicial decisions to the contrary. The circuit court did not err in following those decisions and in entering summary judgment against Mr. Shannon: "In return for providing workers' compensation coverage," KG Industries "is immune from civil liability for injuries suffered by covered employees[,]" such as Mr. Shannon. *Para v. Richards Grp. of Wash. Ltd. P'ship*, 339 Md. at 253-54.

JUDGMENT OF THE CIRCUIT COURT FOR CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. APPELLANT TO PAY ALL COSTS.

[3] In fact, we face significant constraints in overruling even our own reported decisions. *See Malarkey v. State*, 188 Md. App. 126, 162 (2009).