Circuit Court for Prince George's County
Case No. CAL 15-04208

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2026

September Term, 2016

VIVIAN K. CHAVEZ, et al.

v.

CAPITOL VIEW II, LLC, et al.

Eyler, Deborah S.
Friedman,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: March 5, 2018

*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.

The Circuit Court for Prince George's County granted summary judgment for Capitol View, the owner and operator of a Clarion Hotel, after determining that the tort claims brought by Vivian Chavez as the representative of the estate of Jesse Chavez were barred by the exclusivity provision of the Maryland Workers' Compensation Act. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Jesse Chavez worked as a restaurant supervisor in a restaurant attached to the Clarion Hotel National Harbor, which is owned and operated by Capitol View II, LLC. On the night of his death, Jesse was working in the restaurant when he heard screaming from the lobby. He ran to the lobby and encountered an armed robber demanding money from the Hotel's concierge at gunpoint. Jesse confronted the armed robber, but after a brief struggle, the robber shot and killed him.

Following Jesse's death, Vivian filed a lawsuit against Capitol View in the Circuit Court for Prince George's County alleging negligence, negligent supervision, intentional infliction of emotional distress, survival, and wrongful death. Vivian generally argued that the hotel was located in a dangerous neighborhood and that, had Capitol View implemented heightened security measures similar to those adopted by other hotels in the area, Jesse's death could have been prevented.

Capitol View filed a motion for summary judgment, arguing that because Jesse was an employee of Capitol View and his death occurred while he was at work, Vivian could only pursue a remedy under the Maryland Workers' Compensation Act. In support of its motion, Capitol View attached an affidavit from J. Raphael Della Ratta, President of

Capitol View's management company. The affidavit established that Capitol View owned and operated the Clarion Hotel and its attached restaurant at all relevant times. It also established that Jesse was a long-term employee on Capitol View's payroll, that Capitol View set Jesse's wages, work schedule, and oversaw his work, and that Jesse was working a scheduled shift at the time of his death. Vivian did not provide an affidavit of her own to contradict the facts presented by Capitol View.[1]

The circuit court held a hearing on the motion for summary judgment in which it concluded that Vivian had failed to establish any dispute of material fact. The circuit court found that Capitol View was Jesse's employer and that Jesse's death occurred in the course of his employment with Capitol View. Therefore, the circuit court concluded that the Workers' Compensation Act provided Vivian's exclusive remedy. Vivian noted this timely appeal.

DISCUSSION

Vivian raises three challenges to the circuit court's grant of summary judgment. *First*, Vivian argues that no employer-employee relationship existed between Capitol View and Jesse, and therefore that the exclusivity provision of the Maryland Workers' Compensation Act does not apply. *Second*, Vivian argues that, even if an employer-employee relationship did exist, Jesse's death did not occur in the course of his employment, and thus is not a compensable accidental personal injury under the Workers'

[1] Vivian requested a time extension from the circuit court so that she could conduct discovery and supply an affidavit in opposition to Capitol View's motion for summary judgment, but the circuit court denied that request. *See* Md. Rule 2-501(d). {Nov. 7 hearing transcript at 5} That ruling is not challenged in this appeal.

Compensation Act. *Finally*, Vivian argues that the exclusivity provision of the Workers' Compensation Act, as applied in this case, violates Article 19 of the Maryland Declaration of Rights.

I. STANDARD OF REVIEW

We review an order granting a motion for summary judgment without deference to the circuit court. *Todd v. Mass Transit Admin.*, 373 Md. 149, 154 (2003). A grant of summary judgment is proper when the circuit court determines that there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501(f). A motion for summary judgment that is based on facts not contained in the record must be supported by an affidavit. Md. Rule 2-501(a). Likewise, "a response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath." Md. Rule 2-501(b). Appropriate affidavits must be (1) "made upon personal knowledge;" (2) "set forth such facts as would be admissible in evidence;" and (3) "show affirmatively that the affiant is competent to testify to the matters stated." Md. Rule 2-501(c). We construe the facts properly before the court as contained in either the record or a supporting affidavit, along with any inference that may reasonably be drawn from them, in the light most favorable to the non-moving party. *Laing v. Volkswagen of Am., Inc.*, 180 Md. App. 136, 152-53 (2008). Here, if we conclude that no dispute of material fact exists, we must then determine whether the circuit court properly granted judgment to Capitol View as a matter of law. *See Todd*, 373 Md. at 155.

II. WORKERS' COMPENSATION ACT

To qualify for benefits under the Workers' Compensation Act, an individual must be a "covered employee." Md. Code Labor and Employment ("LE") § 9-202. The act provides that "[a]n individual … is presumed to be a covered employee while in the service of an employer under an express … contract of … hire." LE § 9-202(a). If a covered employee suffers a work-related injury that is eligible for compensation under the Act, "the compensation provided under [the Workers' Compensation Act] to a covered employee or the dependents of a covered employee is in place of any right of action against any person." LE § 9-509(b). This exclusivity provision, therefore, bars a covered employee, or his or her estate, from pursuing any legal remedy for the injury outside of workers' compensation benefits.

In light of the Workers' Compensation Act's exclusivity provision, to review whether the circuit court erred in granting Capitol View's motion for summary judgment, we must first consider if a dispute of material fact existed as to whether there was an employer-employee relationship between Capitol View and Jesse. If, as we conclude, there is no dispute, we must then determine whether the circuit court erred in its legal conclusion that Jesse's death was an accidental injury that occurred in the course of his employment with Capitol View and was thus compensable under the Workers' Compensation Act.

1. Employer-Employee Relationship

Vivian argues that the circuit court erred in concluding that an employer-employee relationship existed between Jesse and Capitol View. Specifically, she contends that there are two legal entities that go by the name "Capitol View:" a limited partnership (the "LP"),

and a limited liability company (the "LLC"). She argues that Jesse was employed by the LP, rather than the LLC, because the LP's signature appeared on Jesse's paychecks, tax documents, and unemployment forms. Because she alleges that the LP and LLC are separate, distinct, entities, Vivian argues that the circuit court erred in concluding that there was no dispute of material fact as to the existence of an employer-employee relationship between Jesse and Capitol View.

According to the facts produced in the affidavit that accompanied Capitol View's motion for summary judgment, when Capitol View was formed in 1982, it registered as a limited partnership and did business under the name Capitol View, LP. Capitol View then converted from a limited partnership to a limited liability company in 1999. The conversion, Capitol View's affidavit explains, involved a full transfer of property and assets from the LP to the LLC, the drafting and signing of an operating agreement, and registry with the State of Maryland. Since 1999, the affidavit states that Capitol View has exclusively held itself out to the public as an LLC. Capitol View has, however, continued to file tax documents under the tax ID number originally assigned to it by the IRS when it first formed as an LP.[2]

[2] The IRS has not created a tax classification specific to LLCs. When a partnership converts to an LLC, the LLC is not required to obtain a new tax ID number and may continue to file taxes as a partnership. INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, PUB. NO. 3402, LLC FILING AS A CORPORATION OR PARTNERSHIP (2016), https://perma.cc/4VYB-DCMV, ("Generally, an LLC classified as a partnership is subject to the same filing and reporting requirements as partnerships."). As a result, Capitol View's Employer Identification Number remained the same, despite its conversion to an LLC, so many of Capitol View's documents, including employee W-2 forms, employee paychecks, and unemployment forms continued to bear the LP's name. *Id.*

The affidavit of Della Ratta submitted by Capitol View states that the LP and LLC successfully merged in 1999 and that since that time, the entities are effectively one and the same, doing business as the LLC. Based on these facts, the LLC was, at all relevant times, Jesse's employer. Though Vivian could have opposed Della Ratta's affidavit with facts admissible in summary judgment proceedings, *see* Md. Rule 2-501(b), Vivian conducted no discovery and did not submit an affidavit of her own. Capitol View's factual allegations, therefore, went uncontradicted. In our review of a motion for summary judgment, we are confined to the facts contained in the summary judgment record. *Prince George's Cnty. v. The Washington Post Co.*, 149 Md. App. 289, 305 (2003). As a result, there is no dispute of any material fact with respect to the employer-employee relationship between Capitol View and Jesse because the summary judgment record established that the LLC was Jesse's employer at the time of his death. Md. Rule 2-501(f).[3]

2. Accidental Personal Injury In the Course of Employment

Vivian argues next that Jesse's death was not an accidental work injury suffered in the course of his employment, and therefore his death is not covered under the Workers'

[3] Even if the LP and LLC were, in fact, two separate entities, as Vivian alleged, it is unlikely that she could prevail because either entity—or both—could be treated as Jesse's employer for the purpose of workers' compensation exclusivity under the dual employer doctrine. Maryland law recognizes that an employee can simultaneously serve two employers so long as both those employers have the power to control the employee's work. *Great Atl. & Pac. Tea Co. v. Imbraguglio*, 346 Md. 573, 590-91 (1997); *see also Saf-T-Cab Serv., Inc. v. Terry*, 167 Md. 46 (1934). Under the dual employer doctrine, the Workers' Compensation Act's exclusivity provision extends to both employers. *A & P*, 346 Md. at 594-95. Thus, even if Vivian had adduced evidence that the LP and LLC were still separate entities, Vivian would still be barred from seeking any remedy outside of the act so long as both entities had some control over Jesse's work. *Id.*

Compensation Act. To qualify for benefits under the Workers' Compensation Act, a covered employee must suffer an "accidental personal injury." LE § 9-501(a). The definition of "accidental personal injury" includes "an injury caused by a willful or negligent act of a third person directed against a covered employee in the course of the employment of the covered employee." LE § 9-101(b)(2). There is no dispute that Jesse's death was an "injury caused by the willful … act of a third person." *Id.* We must determine, however, whether the circuit court was legally correct in concluding that Jesse's death occurred in the course of his employment with Capitol View. If so, the Workers' Compensation Act provides the exclusive remedy for Vivian. *See Todd*, 373 Md. at 155.

"[A]n injury is in the course of employment when it occurs during the period of employment at a place where the employee reasonably may be in performance of his or her duties and while fulfilling those duties or engaged in something incident thereto." *Doe v. Buccini Pollin Grp.*, 201 Md. App. 409, 423 (2011) (quoting *Montgomery Cnty. v. Wade*, 345 Md. 1, 11-12 (1997)). Maryland applies this definition broadly.[4] For example, in *Edgewood Nursing Home v. Maxwell*, the Court of Appeals held that a nursing home employee who was shot and killed by her ex-paramour in the nursing home's parking lot had suffered an injury compensable under the Workers' Compensation Act. 282 Md. 422,

[4] Ironically, this policy developed as a way to ensure that injured workers had the best chance to receive compensation for their injuries. *Shapiro and Duncan, Inc. v. Payne*, 215 Md. App. 674, 681 (2014) ("When we set out to interpret of provision of the Workers' Compensation Act, we construe its provisions liberally, where possible … to effectuate the broad remedial purpose of the statutory scheme.") (internal quotation marks and citation omitted). This case presents the rare circumstance in which an employee wants to escape the workers' compensation system.

430-31 (1978). The *Maxwell* Court concluded that because the injury occurred "on the employer's premises at a time when the employee was obliged to be present and at work," the injury occurred within the course of employment. *Id.* at 430. Similarly, in *Giant Food, Inc. v. Gooch*, the Court of Appeals held that a parking lot attendant who was shot and killed on his employer's premises minutes before his shift was scheduled to begin was killed in the course of his employment. 245 Md. 160, 162 (1967). By contrast, in *Doe v. Buccini Pollin Grp.,* this Court held that a covered employee who was shot by a co-worker's friend 13 miles away from the employer's premises and after all relevant parties had finished their shift did not suffer an injury in the course of employment. 201 Md. App. 409 (2011). In reaching that conclusion, the Court reiterated that being present at work is "a necessary part of employment" and that when an injury occurs on an employer's premises, that injury is "inflicted in the course of employment." *Id.* at 426.

These cases reveal that when an employee suffers an injury—or death—while on their employer's premises and during the employee's scheduled work hours, that injury occurs in the course of employment and is compensable under the Workers' Compensation Act. *Maxwell*, 282 Md. at 430. When, however, the injury occurs off the employer's premises and outside scheduled work hours, the injury will likely be found to have occurred outside the course of employment. *Doe*, 201 Md. App. at 424.

Applying this well-developed body of law to the circumstances of Jesse's death, we conclude that Jesse suffered an accidental personal injury in the course of his employment as defined by, and compensable under, the Workers' Compensation Act. *See* LE § 9-101(b)-(2). Jesse's injury occurred when he was in the course of his employment because

he was on his employer's premises and working his scheduled shift at the time of the shooting. *Smith v. Gen. Motors Assembly Div.*, 18 Md. App. 478, 485 (1973) ("[A]n employee is in the course of employment when he arrives on the employer's premises"). Because Jesse's death is compensable under the Workers' Compensation Act, we conclude that the circuit court did not err in granting summary judgment for Capitol View because Vivian's tort claims are barred by the act's exclusivity provision.

III. RIGHT TO A REMEDY UNDER ARTICLE 19

Vivian finally challenges the circuit court's grant of summary judgment to Capitol View on the grounds that if the Workers' Compensation Act exclusivity provision applies, Vivian will be denied a remedy in violation of Article 19 of the Maryland Declaration of Rights. Article 19 provides "[t]hat every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land." MD. CONST., DECL. OF RIGHTS, Art. 19. In the circuit court, Vivian brought a survival claim seeking damages for the conscious pain and suffering that Jesse experienced immediately before his death. The Workers' Compensation Act's calculation of death benefits, however, does not include payment to survivors for pain and suffering. Under the statute, Vivian's recovery would be limited to "the expenses of last sickness and funeral expenses,"[5] which may not exceed $7000. LE § 9-689(b)-(c). Thus, if workers' compensation benefits are her exclusive remedy, she will be denied a remedy for Jesse's pain and suffering, which would, she argues, amount to a violation of Article 19 as applied to these circumstances. *See Powell*

[5] Because Jesse was unmarried and had no children, he has no dependents who would be eligible to receive monthly death benefits. LE § 9-683.3.

v. Md. Dep't of Health, 455 Md. 520, 550 (2017) ("An as-applied challenge is defined as a claim that a statute … is unconstitutional on the facts of a particular case or in its application to a particular party.") (internal citation omitted). We do not agree.

The constitutionality of the Workers' Compensation Act, on its face, was settled long ago and has been repeatedly re-affirmed. *See, e.g., Solvuca v. Ryan & Reilly Co.*, 131 Md. 265 (1917); *State v. Benjamin F. Bennett Bldg. Co.*, 154 Md. 159, 163 (1928) (Court of Appeals considered the facial constitutionality of the workers' compensation legislation and determined that the act "finds its constitutional support in the consideration that the general welfare is promoted and conserved by requiring the employer and the [worker] to yield something of their respective rights toward the establishment of a principle and plan of compensation for their mutual protection and advantage"); CLIFFORD B. SOBIN, MARYLAND WORKERS' COMPENSATION, § 1.1 (Thomson West, ed. 2017) (providing an historical overview of the Maryland Workers' Compensation Act and noting it was approved as constitutional in 1914). Even if the workers' compensation system does not compensate for each cause of action that a claimant could formerly bring in tort, the act still guarantees a remedy for accidental work injuries. *Jirout v. Gebelein*, 142 Md. 692 (1923). The system is intended to offer general, comprehensive compensation for the total or partial physical impairment caused by a work-related injury, rather than to compensate for specific types of injuries. *Id.* at 696 (noting that while some injuries are enumerated in the payment schedules of the act "[t]he usual theory of the [Workers'] Compensation Act is to … leave all other injuries to be compensated for under general provisions" and that "because an injury is not scheduled, does not mean, that it is thereby excluded from the

operation of the act.") (internal citations omitted). Thus, even though Vivian cannot recover payment directly for Jesse's conscious pain and suffering prior to his death, because the general provisions of the Workers' Compensation Act still provide a remedy for the accidental work injury—his death—the act, as applied, does not deny Vivian a remedy in violation of Article 19.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.