

Summary of SC92202, *Ruth Mendenhall v. Property and Casualty Insurance Company of Hartford and Jay Walker*

Appeal from the St. Louis County circuit court, Judge Maura McShane
Argued and submitted March 7, 2012; opinion issued July 31, 2012

Attorneys: Mendenhall was represented by Amy Lynn Fehr and Mark E. Goodman of Capes, Sokol, Goodman & Sarachan PC in St. Louis, (314) 721-7701; and the insurance company was represented by John L. Hayob and Diane Hastings Lewis of Brown & Ruprecht of Kansas City, (816) 292-7000.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The widow of a man killed when a truck overturned while he was working at another man's farm appeals the trial court's grant of summary judgment in favor of an insurance company. In a 4-3 decision written by Chief Justice Richard B. Teitelman, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case. Ambiguous language in an insurance policy is construed against the insurer and in favor of the insured. This case turns on whether the man was "furnished to" the farm owner for employment. It is not necessary for a business to have an agency or employment relationship with a person to "furnish" him for other employment. Here, a business owned wholly by the farm owner referred the man to the farm owner, who hired the man solely on the basis of that referral. Under these facts, the man was "furnished to" his employer and, therefore, was a "temporary worker" subject to coverage under the policy.

Judge Laura Denvir Stith wrote a dissenting opinion joined by two other judges. She disagrees with the majority's finding that a third party can furnish a temporary worker to an employer merely by recommending or referring the worker and, therefore, would affirm the trial court's grant of summary judgment. "To furnish" is not synonymous with recommending or referring the worker. By holding a person furnishes an employee to an employer by recommending or referring him, all part-time and seasonal employees who are recommended or referred to their employers will be treated as temporary workers not covered by their employers' workers' compensation insurance, which defeats the purpose of the workers' compensation laws.

Judge David C. Mobley, an associate circuit judge in Ralls County in the 10th circuit, sat in this case by special designation in place of Judge George W. Draper III.

Facts: Len Mendenhall interviewed in May 2006 for a job with the Family Center of Farmington Inc. The center did not hire him, but the person who interviewed him told the center's owner, Jay Walker, that he would be a good candidate for a job. Based on this recommendation, Walker hired Mendenhall to work for him on an as-needed basis at a cattle farm Walker owned with his wife. Although Mendenhall always was paid by the farm, Walker occasionally asked him to perform tasks for the Family Center and also let him use a truck and trailer owned by the Family Center and insured by a business automobile liability policy issued by the Property and Casualty Insurance Company of Hartford to the Family Center. Mendenhall was killed in March 2007

when the Family Center truck he was using to haul rock for Walker at the farm overturned as he was unloading the rock. Mendenhall's wife filed a wrongful death lawsuit, obtaining an \$840,000 judgment against Walker and a \$50,000 judgment against the Family Center. Prior to the judgment, she entered an agreement with Walker pursuant to section 537.065, RSMo 2000, providing that she would collect any judgment against Walker from the proceeds of the insurance policy. Hartford, however, denied any obligation to indemnify Walker for claims resulting from Mendenhall's death under the policy's exclusion from liability coverage for Family Center employees. Mendenhall's widow then filed the underlying action for equitable garnishment to satisfy the \$840,000 judgment under the coverage provided by the Family Center's insurance policy. The trial court entered summary judgment (judgment on the pleadings) in favor of Hartford, concluding that Mendenhall was excluded from coverage because he was Walker's "employee" and was not a covered "temporary worker" because he was not "furnished to" Walker by an employment service or similar organization. Mendenhall's widow appeals.

REVERSED AND REMANDED.

Court en banc holds: Given the facts of this case and the policy language, Mendenhall was Walker's "temporary worker" and, therefore, is covered by the Hartford policy insuring the Family Center. Ambiguities in an insurance policy are resolved in favor of the insured, and exclusionary clauses are construed strictly against the drafter. There is no dispute here that Mendenhall worked for Walker to meet seasonal or short-term workload conditions, that the policy covers "temporary workers," and that the phrase "furnished to" requires a third party's involvement. The phrase "furnished to" is not defined in the policy and is susceptible to plausible alternative interpretations. Standard dictionary definitions make "furnished to" synonymous with "provide" and "supply." Neither of these meanings requires the Family Center and Mendenhall to have an employment or agency relationship to support a finding that the Family Center furnished Mendenhall to work for Walker. It is undisputed that Walker did not interview Mendenhall and relied solely on the referral in deciding to hire him. Without the information furnished by the Family Center – a business owned solely by Walker – Walker would not have hired Mendenhall. The plain language of the phrase "furnished to" plausibly can be interpreted to include situations such as this where the employment decision is based solely on a third-party referral. The policy requires a "leased worker" to be qualified by the existence of an agency or employment relationship, while the definition of "temporary worker" does not. Further, courts in other jurisdictions have held the phrase "furnished to" encompasses simply referring a prospective worker to an employer. Because he was "furnished to" Walker by the Family Center, Mendenhall qualifies as a "temporary worker" subject to coverage under the Hartford policy.

Dissenting opinion by Judge Stith: The author disagrees that a third party may "furnish" a temporary worker to an employer by merely recommending or referring the worker. The majority lists no case, statute or dictionary that equates "furnish," "supply" or "provide" with "recommend" or "refer." This is because the terms are not synonymous. Just as one cannot provide or supply a product one does not have, one cannot provide or supply a person to an employer if it does not have any authority to direct the actions of that person. Instead, one without authority merely can provide a recommendation. The majority's redefinition of "furnish" also will have potentially devastating consequences for part-time and seasonal workers who are recommended or referred to their employers. The redefinition of "furnish" will cause them to be

excluded from the workers' compensation act. In addition, as often is the case, when there is no supplemental commercial liability policy as there happens to be here, it will mean such workers will receive no compensation at all. The author would hold that a person does not furnish an employee to an employer simply by recommending him and, therefore, would hold that here the party with the commercial liability policy did not furnish the employee to his employer and the trial court properly granted summary judgment.