

IN THE SUPREME COURT OF MISSOURI

Case No. SC98251

STATE OF MISSOURI ex rel. BEUTLER, INC. d/b/a GEORGE J. SHAW
CONSTRUCTION CO. and BRIAN HENDERSON,

Relators,

v.

THE HONORABLE SANDRA C. MIDKIFF, Circuit Judge, assigned to the Circuit
Court of Jackson County (Div. 1), Sixteenth Judicial Circuit,

Respondent.

Original Proceeding in Mandamus

**REPLY BRIEF OF RELATORS BEUTLER, INC. d/b/a GEORGE J. SHAW
CONSTRUCTION CO. AND BRIAN HENDERSON**

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CONSTRUCTION CO. AND BRIAN

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Argument

I. A writ of mandamus is the appropriate remedy for this Court to enforce Relators' established right to immunity from civil liability.

“‘Immunity’ connotes not only immunity from judgment *but also immunity from suit.*” *State ex rel. Alsup v. Kanatzar*, 588 S.W.3d 187, 190 (Mo. 2019) (en banc) (emphasis added). Therefore, as this Court has held many times before, “a defendant who is clearly entitled to immunity should not be required to proceed through trial and appeal in order to enforce that protection.” *State ex rel. Mo. Hwy. & Transp. Comm'n v. Dierker*, 961 S.W.2d 58, 60 (Mo. 1998) (en banc). *See also State ex rel. Young v. Wood*, 254 S.W.3d 871, 872 (Mo. 2008) (en banc); *State ex rel. Bd. Of Trustees v. Russell*, 843 S.W.2d 353, 355 (Mo. 1992) (en banc); *et al.* Yet, that is exactly what Respondent’s brief argues Relators should be forced to do in order to enforce their right to immunity as the statutory employer and statutory co-employee of plaintiff Joshua McArthur.¹

Fortunately, this Court is empowered to prevent that abuse of the judicial process by making permanent its preliminary writ of mandamus in this action. It is well-established that an extraordinary writ of mandamus is the means by which this Court will enforce a civil defendant’s right to immunity when faced with a trial court that refuses to grant summary judgment on the valid immunity defense. *See, e.g. Dierker*, 961 S.W.2d at 60; *Young*, 254 S.W.3d at 872.

¹ See Brief of Respondent the Honorable Sandra C. Midkiff In Opposition to Writ of Mandamus (“Respondent’s Brief”), p. 15.

Respondent attempts to distinguish this case from the numerous instances in which this Court has exercised its mandamus powers to enforce defendants' immunity rights by pointing out that *Dierker* and *Russell* involved sovereign immunity claims, while this case involves a different type of immunity arising from statute.² She cites for this proposition *McCracken v. Wal-Mart Stores East*, a case holding that statutory employment under the Workers' Compensation Law is an affirmative defense appropriate for summary judgment as opposed to a question of subject matter jurisdiction that can be decided on a motion to dismiss. 298 S.W.3d 473, 475 (Mo. 2009) (en banc). But this distinction is irrelevant; the propriety of mandamus as a remedy in this context turns on whether the defense is based on **immunity** from suit, not whether that immunity right should be asserted as an affirmative defense or as a jurisdictional objection. *McCracken* says nothing that would suggest that mandamus is not the appropriate procedural vehicle for enforcing statutory employers' immunity rights. *See generally* 298 S.W.3d 473.

Moreover, this Court has in fact used its mandamus powers to enforce other immunity rights—outside the context of sovereign immunity—arising solely from a statute. For example, in *State ex rel. Young v. Wood*, this Court unanimously exercised its mandamus powers to enforce two landowners' statutory right to immunity from suit—under Missouri's Recreational Use Act—in a wrongful death claim arising from a hunting accident after the decedent was permitted to hunt on the defendants' property. *See generally* 254 S.W.3d 871. The application of mandamus to remedy an erroneous

² See Respondent's Brief, p. 12.

denial of summary judgment is not limited to jurisdictional questions, or even to immunity-based defenses; Missouri appellate courts will employ writs of mandamus to compel trial courts to grant summary judgment in cases involving a variety of rights that have nothing to do with subject matter or personal jurisdiction. *E.g. State ex rel. Old Dominion Freight Line, Inc. v. Dally*, 369 S.W.3d 773, 780 (Mo. App. S.D. 2012) (statute of limitations); *State ex rel. City of Blue Springs v. Schieber*, 343 S.W.3d 686, 687 (Mo. App. W.D. 2011) (res judicata).

Respondent also argues that mandamus should not lie due to the supposed “novelty” of the issues presented by the exception to statutory employment, which is limited to the relationship between a for-hire motor carrier and an owner-operator, set forth in Paragraph 4 of Section 287.040.³ But Paragraph 4 has nothing to do with the basis for immunity—and, therefore, for mandamus—alleged by Relators. Relators are entitled to immunity under the general statutory employment rules of Paragraph 1 and the construction-specific statutory employment rules set forth in Paragraph 2 of the statute. Respondent acknowledges that there are “numerous instances of Missouri Courts dealing with [those] statutory employment provisions.”⁴ It was plaintiff McArthur who injected Paragraph 4 into the discussion, despite its inapplicability, presumably because trying to squeeze his claim into that inapposite exception was the only way for him to attempt to avoid summary judgment. Neither McArthur’s desperate recourse to this irrelevant

³ See Relator’s Brief, p. 12.

⁴ Relator’s Brief, p. 12.

subparagraph nor Respondent's misapplication of it makes Relators' immunity rights any less clearly established.

II. Respondent incorrectly relied on an inapplicable exception from Paragraph 4 of Section 287.040.

Respondent's denial of summary judgment was based on a misapplication of a limited exception to Missouri's statutory employment structure, the clear purpose of which is to ensure that statutory employment and workers' compensation do not apply to the relationship between for-hire motor carriers (i.e. trucking companies) and the independent owner-operator drivers they hire on a contract basis. That exception reads:

The provisions of this section shall not apply to the relationship between a for-hire motor carrier [...] and an owner [...] and operator of a motor vehicle.

Mo. Rev. Stat. § 287.040.4.

Curiously, the arguments Respondent now offers as to why this exception should apply are not the same as those offered in her summary judgment order. In the summary judgment order, the exception's application was based on "the relationship between the owner-operator (C-Sharp) and the DOT for-hire carrier (R&B)."⁵ Now, in the mandamus proceedings before this Court, Respondent argues that *Shaw* is actually the "for-hire motor carrier" bringing the case within the exception. Regardless, neither argument provides a convincing basis to deny Relators' their immunity rights.

⁵ EX-0142.

A. The only “relationship” relevant in applying Paragraph 4 is the relationship between the putative statutory employer and the injured worker.

Statutory construction, whether strict or liberal, always requires construction of the statute in a manner “consistent with the obvious purpose of the legislature,” in order to “subserve rather than subvert legislative intent.” *United Asset Mgmt. Trust Co. v. Clark*, 332 S.W.3d 159, 167 (Mo. App. W.D. 2010). It is a fundamental principle of statutory construction that courts will not – at least should not – adopt an interpretation that would lead to “unreasonable, oppressive, or absurd results.” *Id.* Strict construction does not mean that any particular statutory provision should be read in isolation; courts still must “construe the provisions of a legislative act together and read a questioned phrase in harmony with the entire act.” *Id.* Rather, “strict construction of a statute presumes nothing that is not expressed,” so that a statute will be given “no broader application than is warranted by its plain and unambiguous terms.” *Robinson v. Hooker*, 323 S.W.3d 418, 423 (Mo. App. W.D. 2010).

The statutory language of Paragraph 4 states that the section “shall not apply to ***the relationship***,” singular, “between a for-hire motor carrier [and] an owner [...] and operator of a motor vehicle.” The section from which it carves out an exception is entirely devoted to describing the circumstances under which a statutory employment relationship exists. This singular reference to one “relationship” can only be reasonably interpreted to mean one thing: the relationship between the putative statutory employer (in this case, Shaw) and the injured worker (in this case, McArthur).

To construe the statute as Respondent does to exclude statutory employment any time a chain of multiple contractual relationships contains both a for-hire motor carrier and an owner-operator somewhere within the chain is to construe “the relationship” to mean something other than what is written in the statute. This is precisely what strict construction will not allow. *See Shaw v. Mega Industries Corp.*, 406 S.W.3d 466, 472 (Mo. App. W.D. 2013) (discussing strict construction in the context of statutory employer immunity and affirming summary judgment in favor of statutory employer).

Apart from being what the plain language actually says, Relators’ interpretation is the only reading of the statutory language that makes any sense in the overall context of Section 287.040’s statutory employment system. Under the interpretation adopted by Respondent, Shaw would lose its immunity as a statutory employer and McArthur would lose his right to recover workers’ compensation from Shaw, simply because C-Sharp trucking – which simply happens to occupy a place in a “contractual chain” between Shaw and McArthur’s direct employer, R&B Trucking—is an “owner-operator.” This result is especially unreasonably, oppressive, and absurd, in light of the fact that C-Sharp was neither the owner nor the operator of any vehicle involved in McArthur’s alleged injury.⁶ Nothing about C-Sharp being an “owner-operator” of some other truck has anything to do with the statutory employment relationship between Shaw and McArthur, which is the relationship to which all of Section 287.040 speaks.

⁶ McArthur was operating a dump truck owned by R&B Trucking, his direct employer. (EX-0065.)

Respondent never makes any attempt—either in her Order denying summary judgment or in her briefing to this court—to explain what purpose it could possibly serve for a relationship like the one between Shaw and McArthur to be excepted from statutory employment under Paragraph 4, when it so clearly fits within Paragraph 2’s provision making a construction contractor the statutory employer of the employees of both its subcontractors and their subcontractors. But when “the relationship” mentioned in Paragraph 4 is read to refer to only the relationship between putative statutory employer and employee, the purpose of the exception is easy to see: to clarify that workers’ compensation and statutory employment do not apply to injuries sustained by an owner-operator truck driver hired by a for-hire motor carrier to deliver goods over the roads.

This reading also harmonizes with the surrounding sections of the Workers’ Compensation Law. For example, the very next section of the Workers’ Compensation Law provides that a for-hire motor carrier is also not the employer, for workers’ compensation purposes, of a “lessor” or a driver being paid by a “lessor,” with “lessor” being defined as a party granting use of a truck, trailer, or other motor vehicle, with or without driver, to another. *Compare* Mo. Rev. Stat. § 287.041. Then the next section abrogates, for workers’ compensation purposes, the definitions of the word “owner” adopted in two specific appellate cases, both of which are trucking-industry cases dealing with whether an individual driver qualified as an “owner-operator.” *Compare* Mo. Rev. Stat. § 287.043. The commonalities shared by Paragraph 4 and both of these next two sections include: (1) that they are specific to the trucking-transportation industry, (2) that they address the relationship, common in that industry, between independent owner-

operators and companies that contract with them to drive under the for-hire motor carriers' DOT authority, and (3) that they seek to remove that relationship from the purview of workers' compensation.

B. Respondent's interpretation of Paragraph 4 is inconsistent with the undisputed facts.

When construed in the manner described above, the analysis of whether Paragraph 4's exception applies comes down to two questions: Was McArthur an owner-operator of a motor vehicle? And is Shaw a for-hire motor carrier? Here, the answer to both questions is undisputedly no (although a negative answer to either defeats the exception).

As for the first question, there is no dispute. McArthur has never claimed to be an owner of the dump truck he was operating, or any other equipment at the job site. He was an ordinary employee operating a dump truck belonging to his direct employer, R&B. Even C-Sharp, the alleged owner-operator in the "contractual chain," did not own or operate the dump truck plaintiff was driving.⁷

With regard to the second question, although she does not make such a holding in her order denying summary judgment, Respondent now argues in her brief to this Court that **Shaw** is a "for-hire motor carrier." Curiously, to make this argument she cites to Shaw's USDOT Company Snapshot, a document that expressly identifies Shaw as a **private** carrier. In fact, the box for "private" carrier, which is the one checked on Shaw's form, is found directly below the boxes for two "for hire" classifications—both of which

⁷ EX-0048 – EX0049; EX-0063 – EX0065.

boxes are unchecked.⁸ Nothing about this document suggests Shaw is a “for-hire motor carrier.” It actually proves just the opposite.

Respondent’s recent conclusion that Shaw is a “for-hire motor carrier” also requires a distortion of the various motor-carrier classifications defined in Missouri statutes. Paragraph 4 of Section 287.040 cites to Section 390.020 for the relevant definitions. That section does not contain a definition of the phrase “for-hire motor carrier.” *See generally* Mo. Rev. Stat. § 390.020. Instead, it defines “motor carrier” to mean:

(18) “Motor carrier”, any person engaged in the transportation of property or passengers, or both, for compensation or hire, over the public roads of this state by motor vehicle. The term includes both *common and contract carriers*.

Mo. Rev. Stat. § 390.020 (emphasis added). It also contains definitions for the following three classifications of motor carriers:

(6) “Common carrier”, any person which holds itself out to the general public to engage in the transportation by motor vehicle of passengers or property for hire or compensation upon the public highways and airlines engaged in intrastate commerce;

(7) “Contract carrier”, any person under individual contracts

⁸ EX-0124.

or agreements which engages in transportation by motor vehicles of passenger or property for hire or compensation upon the public highways; [and]

(23) “Private carrier”, any person engaged in the transportation of property or passengers by motor vehicle upon public highways, but not as a common or contract carrier by motor vehicle; and ***includes any person who transports property by motor vehicle where such transportation is incidental to or in furtherance of his commercial enterprises.***

Id. (emphasis added) Note that the definition of “motor carrier” expressly includes “common and contract carriers,” but not “private carriers.” *Id.*

Yet Respondent’s brief essentially concedes that Shaw falls into that last classification: “private carrier.” It concedes, that “although transportation of property is not their primary business, Shaw’s company snapshot indicates that they do transport some property as part of the jobs for which they are hired.”⁹ Respondent is describing “transportation [that] is incidental to or in furtherance of [Shaw’s] commercial enterprise” as an excavation and construction company, which is what Missouri statutes define as the type of transportation done by a “private carrier,” not a “for-hire motor carrier.” Respondent does not elaborate or explain what property is transported—or

⁹ Respondent’s Brief, p. 20.

under what circumstances—by Shaw under its DOT authority that would fall outside the scope of Shaw’s DOT designation as a private carrier. Respondent’s argument that Shaw qualifies as a “for-hire motor carrier” because it “transports some property as part of the jobs for which they are hired, thus, for hire”¹⁰ does not withstand statutory scrutiny and does not establish Shaw as a for hire motor carrier.

III. The Workers’ Compensation Law and its statutory employment provisions are constitutional, as this Court has held many times before.

Respondent’s final argument is that the long-standing, entrenched, codified, and judicially recognized statutory employment rules found in Section 287.040 infringe on the right to a trial by jury, which is preserved under Article I, Section 22(a) of the Missouri Constitution. This constitutionality argument is another attack on Relators’ immunity rights that did not factor into Respondent’s summary judgment ruling—likely because it has been rejected many times before. Indeed, Respondent’s Order denying summary judgment did not even pay lip service to this argument.

“Statutes are presumed valid and will not be found unconstitutional unless they clearly violate a constitutional provision.” *Accident Fund Ins. Co. v. Casey*, 550 S.W.3d 76, 81-82 (Mo. 2018) (en banc). Here, Respondent has not and cannot show that the statutory employment provisions of the Workers’ Compensation Law violate any constitutional provision, for several reasons.

First, McArthur has not been deprived of any constitutional right to a jury trial on

¹⁰ Respondent’s Brief, p. 20.

a common-law negligence claim arising from this workplace injury, because no such common-law cause of action exists under Missouri law. As the cases cited in Respondent's brief make clear, this Court has long held that the legislature has every right to abolish tort claims in favor of administrative remedies, which is exactly what the Workers' Compensation Law does:

That the Legislature may regulate or entirely abolish the common-law rules of liability [...] is thoroughly established, and no valid reason exists why it may not require compensation to be made to an employee for accidental injuries received in the course of his employment in hazardous occupations, according to a different rule from that prescribed by the common law, and place the supervision of the new plan in the hands of an administrative commission instead of the courts.

E.g. DeMay v. Liberty Foundry Co., 37 S.W.2d 640, 647 (Mo. 1931) (internal quotation and citation omitted). This Court has held many times that, since the adoption of workers' compensation by the Missouri legislature, there no longer exists any common-law right to assert tort claims for injuries that fall within the scope of workers' compensation. *E.g. Vatterott v. Hammerts Iron Works, Inc.*, 968 S.W.2d 120, 121 (Mo. 1998) (en banc) ("The Workers' Compensation law supplants the common law in determining the remedies for on-the-job injuries."); *Lathrop v. Rippee*, 432 S.W.2d 227, 231 (Mo. 1968) ("The Compensation Act is not supplemental of the common law, but

substitutional.”). Where no common-law cause of action exists, the Missouri Constitution affords no protection for the right to a jury trial. *DeMay*, 37 S.W.2d at 649 (“[W]hen the cause of action cognizable at law is abrogated or removed by the [workers’ compensation statute] the incidental right to a jury trial terminates with the abrogation or removal of the cause of action.”).

Second, Respondent’s argument is premised on the false notion that the Missouri Workers’ Compensation Law abrogated common-law tort claims only against the injured worker’s direct employer, but not against statutory employers.¹¹ This is a demonstrably incorrect statement of the law. The section of the statute abrogating civil actions arising from workplace injuries actually says that the “rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee [...], except such rights and remedies as are not provided for by this chapter.” Mo. Rev. Stat. § 287.120.2. That exclusive remedy provision is not limited to claims against direct employers, and Chapter 287 provides a right to collect workers’ compensation benefits from statutory employers, in addition to direct employers. Mo. Rev. Stat. § 287.040. The statute, which must be strictly construed, also provides that a statutory employer “shall be deemed an employer.” *Id.* Direct employers and statutory employers are **both** required to provide workers’ compensation protection and **both** entitled to civil immunity. *Id.* In fact, when this Court wrote that “the Workers’ Compensation Law supplants the common law in determining remedies for on-the-job injuries,” it did so in a case involving claims against

¹¹ Respondent’s Brief, pp. 22-23.

a statutory employer, not a direct employer. *Vatterott*, 968 S.W.2d at 121. The Workers' Compensation Law replaces employees' negligence claims against statutory employers to the exact same extent it does for those against direct employers.

Third, Respondent's brief does not cite to a single authority from Missouri or any other state in which a workers' compensation structure generally or a statutory employment provision specifically has been held unconstitutional for infringing on the right to a trial by jury. Arguments like this have been presented frequently, but they have uniformly been rejected. For example, early in the history of workers' compensation law, in 1931, the Missouri Supreme Court took up essentially the same question presented by plaintiff's constitutional argument here: whether, by abrogating the right to make a common law negligence claim for a workplace injury, the workers' compensation statute violated the right to a trial by jury guaranteed by the Missouri constitution. *See generally DeMay*, 37 S.W.2d 640. In affirming the constitutionality of the statute, this Court noted that "the constitutionality of [workers' compensation statutes] has been upheld by the courts of the various states with practical unanimity against the contention that they invade the constitutional right of trial by jury." *Id.* at 648. "[O]ur attention has been directed to no decision, and our own research has discovered none, wherein a [workers'] compensation act, either compulsory or elective, has been held unconstitutional because of the denial of a trial by jury." *Id.* at 649. Since then, this Court has examined the statutory employment provisions of the Workers' Compensation Law more than 40 times, and it has never found a constitutional defect. There is no more support for Respondent's constitutional argument now than there was in 1931.

Conclusion

For all of the above and foregoing reasons, Relators ask this Court to make permanent its Preliminary Writ of Mandamus.

Respectfully submitted by:

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CERTIFICATE OF COMPLIANCE AND SERVICE

I, Hal D. Meltzer, hereby certify as follows:

a) The attached brief complies with the limitations contained in Supreme Court Rule 84.06(b). The brief was completed using Microsoft Word 2016 in Times New Roman, size 13 font, and, excluding the cover page, the signature block, and this certificate of compliance and service, it contains 3,858 words.

b) Pursuant to Supreme Court Rule 84.06(c), one correct copy of this brief was served this 4th day of May, as follows:

All filings were sent via U.S. Mail and electronically by email to:
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