IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5245
Summary Calendar

JIMMIE JOSEPH JOHNSON,

Plaintiff-Appellant,

v.

AMOCO PRODUCTION CO.,

Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Louisiana
(91 1719)

September 1, 1993

Before GARWOOD, JONES, and EMILIO GARZA, Circuit Judges.[*]

PER CURIAM:

Appellant Johnson was employed at all relevant times by Technical Compression Services (Technical). Amoco Production Company (Amoco) contracted with Technical to rebuild an engine and compressor in Lake Charles, Louisiana, then install and adjust the engine and compressor at Amoco's facility at Chalybeat Springs, Arkansas. Johnson was injured on September 17, 1990 while working on the engine and compressor at Amoco's Chalybeat Springs facility.

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

On August 19, 1991, Johnson filed this diversity action against Amoco in the Western District of Louisiana alleging various negligent acts and defective conditions. The district court granted Amoco's motion for summary judgment on November 5, 1992 on the basis that Amoco was Johnson's statutory employer and was thus immunized from any tort liability. Johnson appeals the district court's granting of summary judgment. We have reviewed the grant of summary judgment and affirm.

As an initial matter, we note that this court applies the same standard that governs the district court in reviewing a ruling on a motion for summary judgment. See Reid v. State Farm Mut. Auto Ins. Co, 784 F.2d 577, 578 (5th Cir. 1986). Specifically, we should not affirm a summary judgment ruling unless we are "convinced, after an independent review of the record that 'there is no genuine issue as to any material fact' and that the movant is 'entitled to a judgment as a matter of law.'" See Brooks, Tarlton, Gilbert, Douglas & Kressler v. United States Fire Ins. Co., 832 F.2d 1358, 1364 (5th Cir. 1987) (quoting Fed. R. Civ. P. 56(c)). Finally, in making this determination, we view all of the evidence and the inferences drawn from the evidence in the light most favorable to the nonmovant. See Reid, 784 F.2d at 578.

Under the Louisiana worker's compensation statute, when a "principal" engages a contractor to perform work that is "part of [the principal's] trade, business, or occupation," the principal is liable to pay worker's compensation to the contractor's employees in the amount "which he would have been liable to pay if the

employee had been immediately employed by him." La. Rev. Stat. Ann. §23:1061(A) (West supp. 1993). The statute makes worker's compensation the exclusive remedy for a contractor's employees, and thereby immunizes the "principal" -- commonly referred to as the statutory employer -- from any tort liability. See La. Rev. Stat. Ann. §23:1032 (West 1985).

The appropriate test for determining whether work done by a contractor is part of the principal's "trade, business, or occupation" was recently explained by this court in Salsbury v. Hood Ind., Inc., 982 F.2d 912 (5th Cir. 1993). Analyzing the effect of a 1989 amendment to §23:1061, we concluded that Louisiana has returned to an "integral relation" test under which a statutory employer relationship exists "when the contract work is an integral part of the trade, business, or occupation of the principal." Id. at 916 (emphasis added). Significantly, we found that, through the 1989 amendment, the Louisiana Legislature overruled Berry v. Holston Well Service, Inc., 488 So.2d 934 (La. 1986), in which the Louisiana Supreme Court had specifically abandoned the "integral relation" test and applied a more restrictive, three-level analysis to the statutory employer question.[1] See id. at 914 - 16.

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[1]The Louisiana Legislature amended §23:1061 by adding the following sentence:

> The fact that work is specialized or nonspecialized, is extraordinary construction or simple maintenance, is work that is usually done by contract or by the principal's direct employee, or is routine or unpredictable, shall not prevent the work undertaken by the principal from being considered part of the principal's trade, business, or occupation, regardless of whether the principal has the equipment or manpower capable of performing the work. La. Rev. Stat. Ann. §23:1032 (West supp.

Appellant Johnson errs in suggesting that statutory employer status depends on Berry-type analysis. Johnson mistakenly argues that the statutory employer determination hinges on such factors as the regularity and predictability of the work; the ability of the principal to perform the contract work; and whether the work was part of the principal's day-to-day operation.

Our opinion in Salsbury unequivocally rejects the appellant's analysis:

> [I]n cases where the injury occurred on or after January 1, 1990, the following factors may no longer operate to preclude a finding of statutory employer status: (1) whether the work is specialized or nonspecialized; (2) whether the work is extraordinary construction or simple maintenance; (3) whether the work is usually done by contract or by the principal's direct employee; (4) whether the work is routine or unpredictable; (5) whether the principal is capable of performing the work; and (6) whether the principal was actually engaged in the contract work at the time of injury.

Id. at 916. Under Salsbury, the proper inquiry in this case is whether the contract work being performed by Johnson -- namely maintenance work on an engine and compressor -- is an "integral part of the trade, business, or occupation" of Amoco. Id.

Our review of the record reveals the absence of any genuine dispute as to any material fact relevant to the "integral relation" test. In an uncontroverted affidavit, Amoco field foreman Jimmy D. Wiggins notes first that Amoco is in "the trade, business, and occupation of exploration, production and marketing of oil and gas." Wiggins further observes that the function of the

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compressor and engine upon which plaintiff was working is "to build up pressure in the lines so that gas can be transported." Finally, also uncontroverted is Wiggins'critical statement in the affidavit that Johnson's maintenance work was an "absolutely necessary, essential and an integral part of the operation of the Amoco plant."

By contrast, Johnson's affidavit in opposition to the summary judgment motion essentially attempts to distinguish between routine maintenance work on an engine and compressor and periodic rebuilding of an engine, as was done here. As noted earlier, evidence which goes to the regularity of the work is no longer relevant to the statutory employer determination. Fatal to Johnson's opposition to the motion is the total absence of any evidence controverting the essential nature of the maintenance work he was performing. Because our review finds no genuine dispute as to a material fact relevant to the "integral relation" test, we conclude that the district court correctly granted summary judgment in Amoco's favor.

For the foregoing reasons, we **AFFIRM** the district court's ruling.