UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-3351
Summary Calendar

DEBBIE NATIONS, wife of/and
GORDON NATIONS,

Plaintiffs-Appellants,

INSURANCE COMPANY OF NORTH AMERICA,

Intervenor-Appellant,

VERSUS

NICHOLS CONSTRUCTION CORPORATION,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
(92-CV-2947-M1)

(December 27, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

DUHÉ, Circuit Judge:[1]

This Louisiana diversity personal injury case raises the question whether the nominal employer of an allegedly negligent employee can be held liable for the negligence of that employee if the allegedly negligent employee is the borrowed employee of

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

another. This in turn raises the question whether the requirements of the Louisiana borrowed employee doctrine have been met. The district court granted summary judgment for the nominal employer finding that the allegedly negligent employee was the borrowed employee of another and that, therefore, the nominal employer was not responsible. We agree and affirm.

The undisputed facts relied upon by the district court establish that:

Gene Bueche (the allegedly negligent employee) was a crane operator working with a Harmony Construction Corporation crew under the direct supervision of a Harmony supervisor who directed his activities and who had the power to dismiss him from the job site. The job site was the Exxon Refinery in Baton Rouge and the work was being done pursuant to a construction contract between Harmony and Exxon. Bueche worked the same hours and in the same conditions as the Harmony crew and had been working with them on this basis for more than a year before the accident. Nichols Construction Corporation was Bueche's nominal employer and paid him his wages. Nichols asserted no control over Bueche or his activities at the job site, had no other employees at the job site, took no issue with the employment relationship between Bueche and Harmony and furnished no tools or equipment. Harmony furnished the crane which Bueche operated. The work being done was Harmony's work in fulfillment of its contract with Exxon.

The district court considered these undisputed facts in the light of the ten factors specified in Brumbaugh v. Marathon Oil

Co., 507 So.2d 872, 875 (La. Ct. App.), cert. denied, 508 So.2d 824 (La. 1987), and concluded that the employment relationship had been effectively transferred from the nominal employer Nichols to the borrowing employer Harmony and, therefore, Nichols could not be held responsible for negligence of Bueche under the theory of respondeat superior. The district court's analysis and conclusion were correct.

Appellants make a number of arguments to support their position that the district court erred. First, they contend that Bueche was a special employee possessing special skills which would preclude borrowed employee status. The cases cited in support of that proposition are factually completely inapposite to the situation here.

Next, Appellant contends that based upon our decision in Kiff v. Travler's Ins. Co., 402 F.2d 129 (5th Cir. 1968), there can be no borrowing of the employee in this case because Nichols and Harmony are closely related corporations. Unfortunately for Appellant, there is no evidence to support such a relationship.

Apparently fearing the worst, Appellant has moved this Court to certify the question presented to the Louisiana Supreme Court. We find the law of Louisiana clear and certification unnecessary.

Motion to certify DENIED. The judgment of the district court is AFFIRMED.