

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-60172
(Summary Calendar)

CARL JACKSON,

Plaintiff-Appellant,

versus

JFM, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi

(93-CV-578)

(September 9, 1994)

Before JOLLY, DUHÉ, and STEWART, Circuit Judges.

PER CURIAM:¹

Carl Jackson appeals a district court judgment dismissing his claim of negligence against his employer. The district court found that the claim at law against Jackson's employer was barred by a prior workers' compensation settlement with the employer and the employer's workers' compensation insurance carrier. For the following reasons, the district court judgment is affirmed.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

I. BACKGROUND AND PROCEDURAL HISTORY

Carl Jackson was employed as a convenience store clerk by JFM, Inc. ("JFM"). On August 30, 1990, Jackson and a friend visited the store in which Jackson worked in order to purchase some items. Jackson was in the back of the store when he heard items falling to the floor and loud voices near the front of the store. He immediately went to the front of the store to ascertain the source of the noise. He observed the on-duty clerk fighting behind the counter with another individual. Jackson forcibly removed the individual from the store. He then reached for a telephone in an effort to call the police. As he reached for the telephone, he was shot by another individual who had been outside the store. Jackson suffered severe injuries to his arm and abdomen.

On October 1, 1990, Jackson filed a Petition to Controvert with the Mississippi Workers' Compensation Commission. He alleged that his injury had occurred during the course and scope of his employment with JFM, and thus, he was entitled to workers' compensation benefits. JFM and its workers' compensation insurance carrier, United States Fidelity & Guaranty Company ("USF&G"), initially opposed the petition, arguing that the plaintiff was not injured in the course and scope of his employment.

Eventually, the parties compromised their differences and Jackson received workers' compensation benefits from USF&G totaling \$80,000 for the injuries he had sustained in the shooting. In consideration for this settlement amount, Jackson signed a full and final release discharging JFM and USF&G from any further liability

under the Mississippi Workers' Compensation Act. The release also reserved the right to pursue any remedy at law that Jackson may have against "any party."

On August 17, 1993, Jackson filed a complaint against JFM in Hinds County Circuit Court alleging that the shooting was the proximate result of JFM's negligence in providing a safe and proper place for the general public, business invitees, and patrons of the store. The action was removed to federal court on diversity grounds.

JFM filed a motion for summary judgment arguing that Jackson's workers' compensation settlement barred an action at law against it. Jackson counter argued that he had not been injured in the course and scope of his employment. He further contended that he specifically reserved his right to pursue other claims or causes of action he might have at law against any party. The district court granted the summary judgment and dismissed the complaint. Jackson appeals the judgment of the district court.

II. STANDARD OF REVIEW

This court reviews a district court's grant of summary judgment de novo. Topalian v. Ehrman, 954 F.2d 1125, 1131 (5th Cir. 1992), cert. denied, 113 S.Ct. 82 (1992). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits filed in support of the motion, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to

judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552 91 L.Ed.2d 265 (1986).

III. DISCUSSION

Jackson contends that the district court erred in concluding that he was not entitled to pursue a remedy at law. Under the Mississippi Workers' Compensation Act ("MWCA" or the "Act"), an employer shall pay compensation for the "disability or death of an employee from injury or occupational disease arising out of and in the course of employment without regard to fault as to the cause of the injury or occupational disease." Miss. Code § 71-3-7. "The liability of an employer to pay compensation shall be exclusive and in place of all other liability of such employer to the employee...." Miss. Code § 71-3-9. An employee cannot recover both at law and under the MWCA because it is contrary to the intent of the Act to succeed under both theories. Sawyer v. Head, 510 So. 2d 472, 479 (Miss. 1987).

The district court was correct in concluding that Jackson was not entitled to a remedy at law after he received a settlement under the MWCA. The intent of the law was to eliminate an employer's liability at law for the remedies under the Act. See Sawyer, 510 So. 2d at 477. Once JFM and USF&G conceded to a settlement, any liability at law was obviated.

Our analysis is supported by the Mississippi Supreme Court's decision in Freels v. Sanford, 587 So. 2d 262 (Miss. 1987). In this case, the plaintiff had filed a workers' compensation claim against his employer contending that he had been injured while

using one of his employer's products during the course of employment. After the plaintiff died, his widow eventually settled the claim. Subsequently, the widow and her daughter brought a product liability action against the employer for the same injury. The Mississippi Supreme Court held that the action was barred by the exclusivity of remedy provision in the MWCA. Id. at 263-264.

Similarly, in this case, the plaintiff has settled a workers' compensation case and now attempts to bring a tort action against the employer. Therefore, like the plaintiff in Freels, Jackson's action at law is barred.

Jackson contends that he was not in the course and scope of employment when he was injured. Jackson's contention cannot be asserted under the doctrine of election of remedy. Under this doctrine, a litigant adopting facts necessary to recover in one suit waives the right to assert opposite and repugnant facts necessary to maintain another suit. Coral Drilling Inc. v. Bishop, 260 So. 2d 463, 465 (Miss. 1972) cert. denied 409 U.S. 1007, 93 S.Ct. 438, 34 L.Ed.2d 300 (1972).

In order to pursue his workers' compensation claim, Jackson had to maintain that he was in the course and scope of employment when he was injured. Thus, under the election of remedies doctrine, he cannot now maintain that he was not in the course of employment in order to seek further compensation, because it would be totally inconsistent with the previous suit. See Coral Drilling Inc., 260 So. 2d at 465. The fact that the original suit was compromised does not change the outcome. Carson by Chafee v.

Colonial Ins. Co. of California, 724 F.Supp. 1225, 1228, n.2 (1989).

Jackson also contends that his reservation of rights in the release allows him to pursue a remedy at law. We have found that he cannot pursue his negligence claim as a matter of law. The interpretation of the language in the release is not an issue. We therefore find this argument to be without merit.

Jackson contends that the settlement was a voluntary payment. A voluntary payment is a payment of a sum of money in excess of what could have be recovered if the suit were instituted. McDaniels Bros. Construction Co. v. Burk-Hall Co., 253 Miss. 417, 421, 175 So. 2d 603, 604 (Miss. 1965). In the absence of fraud, compulsion, or mistake of fact, such payments cannot be recovered. Id.; 175 So. 2d at 604. This doctrine is inapplicable to the present case. JFM is not seeking to recover a payment; it is seeking to arrest a suit it believed to be barred by law.

IV. CONCLUSION

Because Jackson elected to pursue and obtained compensation under the Mississippi Workers' Compensation Act, he cannot now seek a remedy at law against his employer. The judgment of the district court is affirmed.

AFFIRMED.