ORIGINAL

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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

ASHLEY DIAZ, as widow of JAVIER DIAZ,

Plaintiff/Appellant,

vs.

SKYLINE COMMUNICATIONS, INC. d/b/a SKYLINE ENERGY SOLUTIONS; and OKLAHOMA GAS AND ELECTRIC COMPANY d/b/a OG&E,

Defendants/Appellees,

and

WEATHERTECH, LLC; OG&E ENERGY CORP. d/b/a OG&E; ONE GAS, INC., d/b/a OKLAHOMA NATURAL GAS and/or ONG; DENNIS WATSON; and JOANNE WATSON,

Defendants,

COMPSOURCE MUTUAL INSURANCE COMPANY,

Intervenor.

Case No. 122,949

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE C. BRENT DISHMAN, DISTRICT JUDGE

VACATED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Plaintiff, Ashley Diaz, as the widow of Javier Diaz, appeals the trial court's grant of summary judgment in favor of defendants Skyline Communications Inc. (Skyline) and Oklahoma Gas & Electric Company (OG&E). Upon review, we find that the motions for summary judgment were improperly granted. The judgments are therefore vacated, and this matter is remanded for further proceedings.

BACKGROUND

In the fall of 2015, OG&E and Oklahoma Natural Gas created a collaborative residential weatherization program which sought to provide weatherproofing upgrades to qualified homes. This program necessitated the use of various contractors. OG&E entered into a contract with Skyline in which Skyline agreed to assess each home to determine what improvements should be performed. While the contract explicitly provides that Skyline could not

subcontract or assign any portion of its work without OG&E's written consent, Skyline apparently subcontracted with another company, WeatherTech LLC, to perform the weatherization on the homes.

Javier Diaz was employed by WeatherTech and was tasked with installing insulation in the attic of Dennis and Joanne Watson's home in Mannford, Oklahoma, on April 24, 2018. During the installation, Mr. Diaz came into contact with an energized television antenna and fell through the attic of the home, sustaining serious injuries. Six days later, Mr. Diaz died from those injuries.

Ashley Diaz, the decedent's wife, brought this action for negligence against Skyline and OG&E.[1] Skyline filed a motion for summary judgment, alleging that it was a "prime contractor" pursuant to 85A O.S. § 5, which would relinquish the plaintiff's common law right to bring an action against it in district court. OG&E also filed a motion for summary judgment, alleging that summary judgment was appropriate because it could not be held vicariously liable for any of Skyline's alleged negligence because Skyline was an independent contractor of OG&E.

The plaintiff responded to both motions, arguing that Skyline was not a prime contractor and that there were disputed material facts precluding summary judgment in favor of OG&E. Without a hearing, the trial court issued orders granting the motions and entered judgment in favor of Skyline and OG&E. The plaintiff appeals both judgments.

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[1] The plaintiff originally brought this action against several other defendants including WeatherTech, the Watsons, ONG, and OG&E Energy Corp. However, the Watsons were eventually dismissed with prejudice and all other parties were dismissed without prejudice. The plaintiff had also filed a workers' compensation claim against WeatherTech which ultimately resulted in an order awarding death benefits issued on October 12, 2018.

STANDARD OF REVIEW

> Although a trial court in making a decision on whether summary judgment is appropriate considers factual matters, the ultimate decision turns on purely legal determinations, i.e. whether one party is entitled to judgment as a matter of law because there are no material disputed factual questions. Therefore, as the decision involves purely legal determinations, the appellate standard of review of a trial court's grant of summary judgment is de novo.

Carmichael v. Beller, 1996 OK 48, ¶ 2, 914 P.2d 1051, 1053. Under such review, the evidentiary materials will be examined to determine what facts are material and whether there is a substantial controversy as to any material fact. *See Sperling v. Marler*, 1998 OK 81, 963 P.2d 577; *Malson v. Palmer Broad. Grp.*, 1997 OK 42, 936 P.2d 940. All inferences and conclusions to be drawn from the materials must be viewed in a light most favorable to the nonmoving party. *Carmichael*, 1996 OK 48, ¶ 2. When genuine issues of material fact exist, summary judgment should be denied, and the question becomes one for determination by the trier of fact. *Brown v. Okla. State Bank & Trust Co.*, 1993 OK 117, ¶ 7, 860 P.2d 230, 233. Because the trial court has the limited role of determining whether there are such issues of fact, it may not determine fact issues on a motion for summary judgment nor may it weigh the evidence. *Stuckey v. Young Exp. Co.*, 1978 OK 128, ¶ 15, 586 P.2d 726, 730.

ANALYSIS

In her petition in error, the plaintiff raises seventeen propositions of error. However, we find the dispositive question to be whether the court properly granted summary judgment in favor of Skyline and OG&E based on its understanding of the test for "prime contractor[s]" under 85A O.S. § 5. Upon

review, we find that the Supreme Court has held "the Legislature substituted the term 'prime contractor' for principal employer." *Strickland v. Stephens Prod. Co.*, 2018 OK 6, ¶ 7, 411 P.3d 369, 374. As discussed below, as the defendants' motions did not attempt to meet the presently existing test regarding principal employers—the necessary and integral test, *see Chamberlain v. Dayton Parts*, LLC, 2025 OK CIV APP 25, ¶ 9—the motions for summary judgment were improperly granted.[2]

As of 2014, pursuant to 85A O.S. § 5, all rights and remedies of an injured employee against his employer are exclusive to the Workers' Compensation Commission. Subsection A of § 5 provides in pertinent part:

> The rights and remedies granted to an employee subject to the provisions of the Administrative Workers' Compensation Act shall be exclusive of all other rights and remedies of the employee, his or her legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the employee against the employer, including a general contractor that provides workers' compensation insurance coverage to a subcontractor pursuant to Section 2 of this act, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer on account of injury, illness, or death.

Thus, the relevant question to be addressed in this appeal is whether Skyline and OG&E enjoy immunity under § 5 due to their respective statuses as "prime contractors" or principal employers.

The Court in *Strickland v. Stephens Prod. Co.*, 2018 OK 6, ¶ 5, 411 P.3d 369, 373, held that under prior versions of the workers' compensation statutes,

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[2] As further discussed below, although OG&E argued it was immune because it hired only independent contractors, an independent contractor might—or might not—be a principal employer. Thus, this analysis applies to both defendants.

"principal employers, or statutory employers as they were known, were secondarily liable to an injured worker for workers' compensation benefits and immune from tort liability in the district court if a statutory employment relationship existed between the injured worker, his immediate employer, and the principal employer." The Court then applied a three-tiered test to determine whether such a statutory employment relationship existed, otherwise known as the "necessary and integral test." *Id.*

This test was first adopted in *Bradley v. Clark*, 1990 OK 73, 804 P.2d 425, and it provided a task-related standard for determining principal or statutory employer status by examining whether the work performed at the time of the accident was "necessary and integral" to the hirer's operations. *Id.* ¶ 5, n.10. The test was later codified in 2011 when the legislature enacted the Workers' Compensation Code. *See* 85 O.S.2011 § 314(1). However, as the Court in *Strickland* noted, the provision codifying the necessary and integral test was later removed. 2018 OK 6, ¶ 6. Additionally, the Court observed that title 85A does not include definitions for terms like prime contractor, principal employer, or intermediate employer. *Id.* ¶ 8. And, for that reason, the Court held that it "must assume that when the Legislature enacted Title 85A it was 'familiar with the extant judicial construction [of those terms] then in force.'" *Id.* (quoting *TXO Prod. Corp. v. Okla. Corp. Comm'n*, 1992 OK 39, ¶ 10, 829 P.2d 964, 970, alteration in the original). "'Unless a contrary intent clearly appears or is plainly expressed, the terms of amendatory acts retaining the same or substantially similar language as the provisions formerly in force will be accorded the identical

construction to that placed upon them by preexisting case law.'" *Id.* (quoting *Maxwell v. Sprint PCS*, 2016 OK 41, ¶ 6, 369 P.3d 1079, 1085). Thus, according to *Strickland* and preexisting case law, "employers seeking immunity from civil liability under the principal employer doctrine must present factual proof that a statutory employment relationship exists pursuant to the necessary and integral test." *Strickland*, 2018 OK 6, ¶ 10.

The necessary and integral test requires courts to examine the following:

> Whether the work being performed by the independent contractor is specialized or non-specialized. If the work is specialized *per se*, then the hirer is not the statutory employer of the independent contractor. If the work is not specialized *per se*, the second tier asks whether the work being performed by the independent contractor is the type of work that, in the particular hirer's business, normally gets done by employees or normally gets done by independent contractors. If the work normally gets done by independent contractors, then the hirer is not the statutory employer of the independent contractor. If the work is normally performed by employees, the third tier focuses on the moment in time when the worker was injured, and asks whether the hirer was engaged in the type of work being performed by the independent contractor at the time the worker was hurt. If not, then the hirer is not the statutory employer of the independent contractor.

Id. ¶ 5. Because Skyline is seeking immunity from civil liability under 85A O.S. § 5, it must present factual proof that a statutory employment relationship exists, *i.e.* that it is a prime contractor, pursuant to the necessary and integral test.

While OG&E did not rely on 85A O.S. § 5 for immunity per se, in its motion for summary judgment it explicitly argued that summary judgment was appropriate because Skyline was its independent contractor. The necessary and integral test makes clear, however, that a statutory employer or principal

employer relationship can still exist regardless of whether an entity was hired as an independent contractor or not. Thus, the relevant question becomes: did OG&E or Skyline "present factual proof that a statutory employment relationship exists pursuant to the necessary and integral test." *Strickland*, 2018 OK 6, ¶ 10.

Upon review of both OG&E's and Skyline's motions for summary judgment and their replies, we find that neither party referenced or discussed the necessary and integral test. There were no statements or evidentiary materials submitted concerning whether the work engaged in was specialized or non-specialized; whether the work being performed was the type of work that, in the particular hirer's business, or normally gets done by independent contractors; or whether the hirer was engaged in the type of work being performed by the independent contractor at the time the worker was hurt. In her response to Skyline's motion for summary judgment, the plaintiff correctly argued that immunity could only be granted to Skyline if it could establish itself as an intermediate or principal employer by satisfying the necessary and integral test.

Finally, we note that OG&E's motion was dedicated to proving that Skyline was the prime contractor, and that OG&E was insulated from vicarious liability because Skyline was its independent contractor. However, it appears from the petition that the plaintiff seeks to hold OG&E *directly* liable for its alleged negligent hiring and supervision. Doc. 1, *Petition*, ¶¶ 12-13. Thus, any grant of summary judgment based on the notion that OG&E cannot be held vicariously liable for the alleged torts of Skyline was erroneous.

* * *

For these reasons, we find that the court's grants of summary judgment in favor of Skyline and OG&E were improper. Those judgments are vacated, and the matter is remanded for further proceedings.

VACATED AND REMANDED.

WISEMAN, P.J., concurs, and FISCHER, J., dissents.

FISCHER, J., dissenting:

The material facts are not disputed. Oklahoma Gas and Electric Company (OG&E) entered into an agreement with Skyline Communications, Inc., to perform work to implement OG&E's Weatherization Residential Assistance Program. The Watsons' home qualified to receive weatherproofing upgrades under OG&E's Program. Skyline hired Weathertech, LLC, Javier Diaz's immediate employer, to perform that work. Mr. Diaz sustained an accidental work-related injury, which resulted in his death on April 30, 2018. The plaintiff, Diaz's wife, pursued a workers' compensation claim against Weathertech and its workers' compensation insurer and received an award of death benefits.

Title 85A O.S. Supp. 2013 § 5(A), in effect at the time of Mr. Diaz's death, provides that "[t]he rights and remedies granted to an employee subject to the provisions of the Administrative Workers' Compensation Act shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents [and] next of kin . . . against the employer, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer . .

. ." The award of workers' compensation death benefits the plaintiff received is her "exclusive" remedy against Weathertech and its prime contractors.

A prime contractor is secondarily liable for a worker's on-the-job injuries if the injured worker's employer hired by the prime contractor is engaged in work that is a "necessary and integral" part of the employer's principal business, where the employer's principal business is covered by workers' compensation law. *Bradley v. Clark,* 1990 OK 73, ¶ 5, 804 P.2d 425, 427. If the independent contractor "is merely a medium" through whom the [prime contractor] is pursuing the day-to-day activity of his own business," employer status is created by operation of law and workers' compensation liability attaches. *Id.* ¶ 5 and n.7, 804 P.2d at 427 (citing *Murphy v. Chickasha Mobile Homes, Inc.,* 1980 OK 75, ¶ 2, 611 P.2d 243, 244-45). Because Skyline hired Weathertech to do all of the work OG&E hired it to do, Mr. Diaz was engaged in work that was necessarily an integral part of Skyline's principal business, and Skyline was the "intermediate employer" of Weathertech and entitled to immunity from tort liability. 85A O.S. Supp. 2013 § 5(E).

The same analysis applies to OG&E. According to its summary judgment motion, OG&E provides electricity to its customers and as part of that service implemented the weatherization program to qualified customers to improve the energy efficiency of their homes. The weatherization program is within the range of activities "customarily done" by one in OG&E's line of business. *Bradley v. Clark,* 1990 OK 73, ¶ 9, 804 P.2d at 429. OG&E hired Skyline to perform this work on the home where Mr. Diaz was injured. Skyline subcontracted all that

work to Weathertech. The work performed by Mr. Diaz for Weathertech was "necessary and integral" to OG&E's weatherization program. *Id.* ¶ 5, 804 P.2d at 427. Consequently, OG&E is entitled to immunity in this case as the "principal employer." 85A O.S. Supp. 2013 § 5(E).

Because the scope of work did not change from OG&E to Skyline to Weathertech, and that work was "necessary and integral" to OG&E's business, I find analysis of the Louisiana Supreme Court's three-tiered test adopted in *Bradley* for "determining an entity's statutory employer status" unnecessary. *Bradley v. Clark,* 1990 OK 73, ¶ 6, 804 P.2d at 245. Afterall, the first level of that test "primarily focuses on the scope of the contract work." *Id.* n.10. If the work subcontracted to another is "necessary and integral" to the principal employer's business, it should not matter whether the work is "specialized or non-specialized." *Id.*

I would affirm the judgments in favor of OG&E and Skyline and, therefore, respectfully dissent.

November 7, 2025