Anderson v. A.H. Bennett Co.

Court of Appeals of Minnesota

January 27, 2025, Filed

A24-0914

Reporter
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Allan N. Anderson, Jr., et al., Respondents, vs. A.H. Bennett Company, et al., Defendants, Westrock Minnesota Corporation f/k/a Waldorf Corporation, Appellant.

Core Terms

exposure, exposed, exclusivity provision, ***asbestos***, occupational disease, summary judgment, exposed to ***asbestos***, mesothelioma, ***asbestos*** exposure, issue of fact, workers' compensation, pipefitter, significant way, industrial, abatement, district court, cumulative, products, hazard

Opinion

[*1] Filed January 27, 2025

Affirmed and remanded

Smith, John, Judge *

Ramsey County District Court

File No. 62-CV-23-1720

Chad C. Alexander, Michael R. Strom, Sieben Polk, P.A., Eagan, Minnesota; and

Todd Barnes, Dean Omar Branham Shirley LLP, Indianapolis, Indiana (for respondents)

Mark R. Bradford, Elizabeth Euller, Bradford Andresen Norrie & Camarotto, Bloomington, Minnesota; and

Jon P. Parrington, Pustorino & Parrington, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Bentley, Judge; and Smith,

John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to *Minn. Const. art. VI, § 10*.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's denial of appellant's motion for summary judgment to dismiss ***asbestos***-related claims on the ground that they are barred by the exclusivity provision of the *Workers' Compensation Act (WCA), Minn. Stat. § 176.031* (2022) because there remain unresolved issues of fact.

FACTS

Appellant Westrock Minnesota Corporation f/k/a Waldorf Corporation (Waldorf) challenges the district court's denial of summary judgment on respondent's ***asbestos***-related claims and argues that they are barred by the exclusivity provision of the *Workers' Compensation Act, Minn. Stat. § 176.031*. In 2023, respondent Allan N. Anderson, **[*2]** Jr. was diagnosed with mesothelioma-a cancer caused by exposure to ***asbestos***. On March 30, 2023, he filed a complaint against 34 separate defendants, including Waldorf, under various tort theories. Mr. Anderson claimed that defendants manufactured, sold, or distributed the ***asbestos***-containing products to which he was exposed or that they owned buildings containing the ***asbestos***-containing products to which he was exposed. Mr. Anderson alleged that those exposures, collectively, caused his mesothelioma. Mr. Anderson's wife, respondent Cynthia Anderson, asserted a loss-of

consortium claim arising from Mr. Anderson's injury.

The Andersons alleged that Mr. Anderson "worked as a Pipefitter Apprentice, Pipefitter, Journeyman Welder, and Foreman from approximately the early 1960s to the mid[-]1990s." They further alleged that, during that time, Mr. Anderson "performed a

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variety of tasks throughout his worksites" and that "[a]ll of these activities exposed [Mr. Anderson] to ***asbestos*** and ***asbestos*** dust." Mr. Anderson's occupational ***asbestos*** exposure began in the Navy, where he served from 1966 to 1968.

After his discharge in 1968, Mr. Anderson worked for a union as a pipefitter apprentice, a job **[*3]** he began before enlisting in the Navy. From 1968 to 1975, Mr. Anderson repaired and maintained ***asbestos***-laden pipes, boilers, chillers, pumps, and other equipment at various industrial sites. Mr. Anderson refers to this period as "hands on" years. It was "very common" for Mr. Anderson to be exposed to ***asbestos*** during his time as a pipefitter apprentice. In 1975, Mr. Anderson left the pipefitter's union to join his father's company, Pioneer Power, as a maintenance foreman. In that job, Mr. Anderson was no longer doing "hands on" maintenance work. He supervised repair crews in the field. That work took him to several different industrial sites, including a St. Paul paper mill. Mr. Anderson was there "two[-]to[-]three times a week" for three-to-four hours at a time.

Although he was not doing hands-on work, Mr. Anderson testified that he was exposed to ***asbestos*** because he would "have to walk through areas that you knew contained ***asbestos***." For most of that time, Champion International owned the St. Paul paper mill. Champion sold the mill to Waldorf in 1985. Three years later, in 1988, Mr. Anderson left Pioneer Power to work for Waldorf at the mill. Waldorf wanted to proactively abate ***asbestos*** **[*4]** in the facility. The company hired Mr. Anderson as its "***asbestos*** abatement manager" and as a piping engineer. Mr. Anderson's Waldorf duties did not require him to perform any abatement work himself. Rather, his job was to "find a firm that could come

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in and physically sample everything we had." Mr. Anderson then oversaw abatement work performed by other companies. Although Mr. Anderson did not perform the abatement

work himself, he testified he was nevertheless exposed to ***asbestos*** dust during his Waldorf

employment from 1988 to 1993:

Q: All right. And did that work, being performed by others that you observed, create dust in [the facility]?

A: Oh, I'm sure.

. . . .

THE WITNESS: Yes.

Q: And did you breathe that dust?

A: I'm sure.

The Andersons used Mr. Anderson's employment-related exposure to assert

liability claims against the companies that manufactured or distributed the

asbestos-containing products to which he was exposed. In their amended complaint, the

Andersons alleged:

Plaintiff Allan N. Anderson was exposed to Defendants' ***asbestos***-containing products through his work as a foreman in charge of piping and insulation specs and abatement for Waldorf . . . from approximately the late 1980s to **[*5]** the mid[-]1990s, at the Waldorf paper facility in St. Paul, Minnesota. All of these activities exposed Plaintiff to ***asbestos*** and ***asbestos***-dust.

The Andersons also served and filed a preliminary statement of factual basis which stated

that Mr. Anderson was exposed to ***asbestos*** "while working at Waldorf Paper" from 1988

to 1993. The Andersons claimed, for example, that Mr. Anderson was exposed to ***asbestos***-

containing products made, supplied, or installed by defendant A.H. Bennett Company

during that five-year time-period. The Andersons made similar factual statements with

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respect to defendants A.O. Smith Corporation, Cape, Plc, Cleaver Brooks, Inc., Dezurik,

Inc., Flowserve US, Inc., FMC Corporation, Foster Wheeler Energy Corporation, Gagon,

Inc., General Electric Company, Goulds Pumps, LLC, Goulds Pumps, Inc., Guard-Line,

Inc., IMO Industries, Inc., ITT, LLC, Paramount Global, Paul W. Abbott Company, Redco

Corporation, The Goodyear Tire & Rubber Company, and Viking Pump, Inc. Mr.

Anderson was not exposed to ***asbestos*** anywhere after leaving Waldorf in 1993.

Leading up to trial the Andersons engaged Brent Staggs-an expert pathologist-

to evaluate Mr. Anderson's exposures and resulting injury. Dr. Staggs **[*6]** issued a report that

summarized Mr. Anderson's long history of ***asbestos*** exposures, including as a five-year

Waldorf employee:

Mr. Anderson was exposed to ***asbestos*** through his father's work on industrial sites, through his direct work as a pipefitter/pipefitter's apprentice on various power plants and other industrial sites in the Minneapolis/St. Paul area, through his work as an employee of Pioneer Construction where he had bystander exposure to pipefitting work, exposure to the work from other trades around him, and also some direct exposure at industrial locations in the Minneapolis/St. Paul area, and as an employee of Waldorf Paper.

Dr. Staggs opined that Mr. Anderson's cumulative ***asbestos*** exposures caused a single

injury: mesothelioma. His report explained:

Scientifically and medically speaking, it is not one ***asbestos*** fiber or one exposure, to the exclusion of other exposures that causes a person's mesothelioma. Mesothelioma is caused by the totality of ***asbestos*** exposures, often called cumulative dose, that an individual is exposed to over his or her lifetime, taking into account an appropriate latency period. A mesothelioma occurs only after repeated exposures to ***asbestos*** over time, **[*7]** which in turn causes repeated damage to

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the mesothelial DNA and leads to mutations. . . . Based on the information available to me, that I have reviewed in this case and is described above, Mr. Anderson had significant exposures to ***asbestos*** over his lifetime. It is my opinion to a reasonable degree of medical certainty that Mr. Anderson has a malignant mesothelioma that was caused by these identified and substantial exposures to ***asbestos***.

In a motion for summary judgment, Waldorf claimed that if the Andersons proved their claims, Mr. Anderson's injury necessarily arose out of ***asbestos*** exposures that occurred during his Waldorf employment. Thus, the Workers' Compensation Act provided the exclusive remedy against Waldorf.

The Andersons opposed the motion and stipulated that Mr. Anderson's exposures while working as a Waldorf employee "are governed by the provisions of Minnesota's workers' compensation act." Nevertheless, the Andersons sought to disclaim the employment-related exposures and only pursue claims against Waldorf for exposures at the St. Paul paper mill from 1985 to 1988-the brief time window when Waldorf owned the mill and Mr. Anderson was periodically there as a Pioneer Power **[*8]** employee (not as a Waldorf employee). The district court agreed with the Andersons, adopting the analysis in

Strong v. A.H. Bennett Co., No. 62-CV-16-5141 (Minn. Dist. Ct. Nov. 29, 2017), and concluding that [t]here is no justification under Minnesota law to allow Westrock to benefit from the exclusivity provision of the workers' compensation law when it did not employ Mr. Anderson during the alleged injurious exposure at issue, which in this case is 1985 to 1988. The court permitted the Andersons to proceed with their negligence- and premises-liability claims against Waldorf stating that the Anderson's were seeking relief for the injurious exposure at a time when Mr. Anderson was not employed. Waldorf now appeals.

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See *McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830, 833 (Minn. 1995)* (holding that an interlocutory order denying a motion for summary judgment based on the exclusivity provision of the Workers' Compensation Act is immediately appealable because it implicates the district court's subject-matter jurisdiction).

DECISION

This court reviews a district court's summary-judgment decision de novo.

Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). In reviewing a summary-judgment decision, we determine "whether there are genuine issues of material fact that preclude summary judgment." *Id.* Summary judgment is appropriate when "there is no genuine issue **[*9]** as to any material fact and the movant is entitled to judgment as a matter of law." *Minn. R. Civ. P. 56.01*. "If there is any doubt as to the existence of a genuine issue of material fact, that doubt must be resolved in favor of finding that a fact issue exists." *Jonathan v. Kvaal, 403 N.W.2d 256, 259 (Minn. App. 1987)*, *rev. denied* (Minn. May 20, 1987). "Summary judgment should not be granted if reasonable persons might reach different conclusions after reviewing the evidence." *Id.*

The supreme court has stated that "[s]ummary judgment is a blunt instrument" that "should be employed only where it is perfectly clear that no issue of fact is involved."

Donnay v. Boulware, 144 N.W.2d 711, 716 (Minn. 1966) (quotation omitted). Appellate courts do not determine issues of fact rather only if there are issues of fact to be determined.

Kucera v. Kucera, 146 N.W.2d 181, 183 (Minn. 1966); *Fontaine v. Steen, 759 N.W.2d 672,679 (Minn. App. 2009)* ("It is not within the province of [appellate courts] to determine issues of fact on appeal") (quoting *Kucera 146 N.W.2d at 183*).

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It is clear by applying the foregoing rules to this case that there are triable issues of fact, which precludes summary judgment. The case before us asks that we determine whether the exclusivity provision of the WCA, *Minn. Stat. § 176.031*, bars Mr. Anderson's complaint against Waldorf. Under the WCA, when an employee is injured in the course of their employment, the WCA requires the employer to compensate **[*10]** the injured employee regardless of the fault of the employer. *Minn. Stat. § 176.021, subd. 1* (2022) ("Every employer is liable . . . to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence."). The WCA is premised on the theory that employers, rather than employees, should bear the financial burden of employee injuries as a cost of doing business. *SeeArens v. Hanecy, 269 N.W.2d 924, 926 (Minn. 1978)* ("Worker's compensation coverage was premised on the theory that the cost of employee accidents should be absorbed by the industry and passed along to the consumer in the price of the product, a theory inapplicable to domestic service."). The MWCA "is based on a mutual renunciation of common law rights and defenses by employers and employees alike." *Minn. Stat. § 176.001* (2022).

When the injury manifests in the form of an occupational disease "the employer in whose employment the employee was last exposed in a significant way to the hazard of the occupational disease" is liable for the employee's compensation. *Minn. Stat. §176.66, subd. 10* (2022). This provides a liberalized approach in considering occupational diseases and is intended to cover diseases that: (1) arise out of the employment; (2) bear a direct **[*11]** and causal connection to the work performed; and (3) follow as a natural incident of the work and as a result of the exposure occasioned by the employment such that they may be

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classified as occupational diseases. *Gray v. City of St. Paul, 84 N.W.2d 606, 615 (1957)*. The disablement from an occupational disease is regarded as a personal injury within the meaning of the WCA. *Minn. Stat. §176.66, subd. 1*.

Furthermore, within the WCA is an exclusivity provision that states that "[t]he liability of an employer prescribed by this chapter is exclusive and in the place of *any otherliability* to such employee . . . or other person entitled to recover damages on account of such injury." *Minn. Stat. § 176.031* (emphasis added). Under the exclusivity provision, when there is an injury compensable under the WCA, the exclusivity provision provides that the "liability of an employer prescribed by this chapter is exclusive." *Id*. The exclusivity provision "has been a part of workers' compensation law in Minnesota since its inception in 1913." *U.S. Specialty Ins. Co. v. James Courtney Law Office, P.A., 662 N.W.2d 907, 911 (Minn. 2003)*. If the provision applies, the injured party may not seek other remedies against the employer and a district court lacks jurisdiction in any action by the employee seeking those remedies. *McGowan, 527 N.W.2d at 832*.

This is the quid pro quo of the WCA. Employees benefit because they may **[*12]** recover for employment-

related injuries without the burdens and uncertainties of having to establish fault. Employers benefit because the WCA protects them from the risks, uncertainties, and costs of litigation. *Boryca v. Marvin Lumber & Cedar, 487 N.W.2d 876, 879 n.3 (Minn. 1992)* ("[T]he whole scheme of workers' compensation is one of reciprocal concessions by the employer and employee," which "some call an industrial bargain.").

Based on its finding that the "injurious period" lay outside Mr. Anderson's employment with Waldorf, the district court concluded that the Anderson's claim was not

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barred by the WCA and, therefore, denied Waldorf's motion for summary judgment. We disagree with the district court's reasoning. Regardless of whether the "injurious period" relevant to Mr. Anderson's tort claims fell outside of his employment with Waldorf, the WCA is still the exclusive remedy for Waldorf's liability if he was last exposed to ***asbestos*** in a significant way while employed by Waldorf. We nevertheless affirm the denial of summary judgment because there are genuine issues of material fact as to whether he was exposed to ***asbestos*** in a significant way at Waldorf.

When dealing with occupational diseases like Mr. Anderson's, it is the employer that "last **[*13]** exposed" the employee "in a significant way" who is responsible for compensation, and it is the last employer in the line of those that exposed the employee to the hazard who receives the protection of the exclusivity provision. *Minn. Stat. 176.66*. This is not because the statute is attempting to "benefit" an employer, but it is the employer of *last significant exposure* who is liable for the entirety of the occupational disease, despite the length of employment. *See generally Halverson v. Larrivy Plumbing & Heating Co.,*

322 N.W.2d 203, 205 (Minn. 1982) (determining that the second-to-last employer was liable for the occupational disease because the last employer did not significantly expose the employee to the hazard).

Because Mr. Anderson alleges that he was intermittently exposed to ***asbestos*** at the Waldorf mill while working as a contractor (before the start of his employment with Waldorf), whether the Andersons' tort claims are barred by the WCA requires findings of fact that have yet to be determined. If the *injury* is compensable under the WCA, then the WCA is the exclusive remedy and precludes "any" other liability "on account of such

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injury." *Minn. Stat. § 176.031*; *see also Daniel v. City of Minneapolis, 923 N.W.2d 637, 647 (Minn. 2019)* (noting the exclusivity provision bars claims of personal injury to include mental impairment or physical injury which **[*14]** can be causally linked to the employment.). The MWCA ties an individual's claim to their injury or in this case Mr. Anderson's mesothelioma-a culmination of exposures both non-employment and employment related. The MWCA is thus exclusive as to the entire injury. *Frank v. Anderson Bros., 51 N.W.2d 805, 807 (1949)* ("An injury is compensable and subjects the employe[e] to coverage by the Workmen's Compensation Act as his sole and exclusive remedy if by reason thereof he is entitled to receive [a]ny compensation under the act[.]").

It is the injury that determines whether the exclusivity provision applies, not the employee's litigation choices about which exposures to pursue. A plaintiff cannot avoid the exclusivity provision by ignoring the employment related causes of an occupational disease. *See* Lex K. Larson, *Larson's Workers' Compensation Law § 100.01[4]* (Matthew Bender Rev. ed. 2017) (stating that "[t]he operative fact in establishing exclusiveness is that of actual coverage, not the election to claim compensation in a particular case").

However, the record does not resolve whether Mr. Anderson's condition (1) arose out of his employment at Waldorf; (2) there was a direct causal connection between the condition and work performed; and (3) the **[*15]** disease follows as a natural incident of the work and as a result of the exposure occasioned by the employment to result in an occupational disease. *Gray, 84 N.W.2d at 615*. Furthermore, the application of the MWCA is conditioned on whether Mr. Anderson was "exposed in a significant way to the hazard of the occupational disease" while employed by Waldorf. *Minn. Stat. § 176.66*.

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The parties contest whether Mr. Anderson was exposed while employed and to what degree. The record includes reports from an expert pathologist, obtained by Mr. Anderson, summarizing Mr. Anderson's long history of ***asbestos*** exposures, including as a five-year Waldorf employee. Dr. Staggs opines that Mr. Anderson's cumulative ***asbestos*** exposures caused a single injury: mesothelioma. He states that "it is not one ***asbestos*** fiber or one exposure, to the exclusion of other exposures that causes a person's mesothelioma.

Mesothelioma is caused by the totality of ***asbestos*** exposures, often called cumulative dose, that an individual is exposed to over his or her lifetime," further supporting that Mr. Anderson's disease is the result of a lifetime of cumulative exposures. However, Mr. Anderson's claim denies any significant exposure while employed by Waldorf. Mr. **[*16]** Anderson contends that while employed at Waldorf he was educated as to ***asbestos*** and therefore limited his exposure while employed by Waldorf. The record provides no findings in which we can refer to determine whether Mr. Anderson was significantly exposed while an employee of Waldorf nor are there any findings by the district court to affirm or deny such a claim.

As stated before, we do not determine issues of fact rather only if they exist. *Kucera,*

146 N.W.2d at183. It must be determined if Mr. Anderson's injury arose from his employment, whether there exists a direct causal connection between the condition and work performed, and if so whether Mr. Anderson was "exposed in a significant way to the hazard of the occupational disease" while employed by Waldorf. These fact issues remain and therefore the denial of summary judgement was proper.

Affirmed and remanded.

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