ENTERED 3-21-11

11-0031

IN THE CIRCUIT COURT OF BOONE COUNTY, WEST VIRGINIA

ROBERT L. MEADOWS, II and
RHONDA K. MEADOWS, his wife,

Plaintiffs,

v.

Civil Action No. 08-C-185
Judge William S. Thompson

MASSEY COAL SERVICES, INC., a West Virginia corporation, and INDEPENDENCE COAL COMPANY, INC., a West Virginia corporation,

Defendants.

OPINION ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This matter came before the Court on the 28th day of February, 2011, on the Defendant's Motion for Summary Judgment pursuant to Rule 56 of the *West Virginia Rules of Civil Procedure*. The Defendants appeared by counsel, Jeffrey Phillips, Jonathan Ellis, and Robert Bailey; and the Plaintiffs appeared by counsel, Charles M. Love.

The Court has considered the motion, the Plaintiffs' response, the Defendants' reply in opposition to the Plaintiffs' response, and the memoranda of law, affidavits, depositions, and exhibits submitted by the parties; considered all papers of record, heard the arguments of counsel, and reviewed pertinent legal authorities. As a result of these deliberations, for the reasons set forth in the following Opinion, the Court has concluded the Defendants are entitled to Summary Judgment.

Factual Summary

This lawsuit arises from a workplace injury suffered by the Plaintiff, Robert L. Meadows. The Plaintiff, Robert Meadows, was operating a dump truck at Defendant's, Independence Coal Company, Inc., surface mine in Twilight, West Virginia. During the early morning of July 18, 2007, the Plaintiff was backing a dump truck up to a dump site, when the dump truck traveled over the hill and fell approximately 150 feet to the bottom of the fill pit.

Plaintiffs, Robert and Rhonda Meadows, sued Defendants, Independence Coal Company, Inc., and Massey Coal Services, Inc., for negligence (Count I), deliberate intention (Count II), and worker's compensation discrimination (Count III). The worker's compensation discrimination count was subsequently dismissed during the February 28th hearing with no objection from the Plaintiffs, leaving only the first two counts for the Court to decide upon.

The Plaintiffs' contend that Massey Coal Services, Inc. is at the very least a joint venture partner with Independence Coal Company, Inc. Plaintiffs further contend that most likely, the Defendants are the alter ego of one another. Plaintiffs state that Massey Coal Services, Inc. and Independence Coal Company have common directors and officers, which create a question of material fact as to whether the Defendants are the alter ego of one another. This would only be applicable if the Court were attempting to "pierce the corporate veil" for personal jurisdiction and substantive purposes. Here, the Court is not attempting to do either, as Plaintiffs did not assert veil-piercing as a theory in their Complaint. *Plaintiffs' Amended Complaint* asserts only that Defendants were "engaged in a partnership or joint venture or joint enterprise." Am. Compl. ¶ 4.

Additionally, Defendant Massey Coal Services, Inc. has not moved to dismiss for lack of personal jurisdiction.

As to the issue of the Defendants operating a joint venture, Plaintiffs merely cite case law and suggest there are substantial questions of material fact, without citing any examples which would give rise to those questions. The Court cannot infer what questions of material fact exist when none are presented by the Plaintiffs[1]. Further, Defendants contend, and the Court agrees, that if Defendants were engaged in a partnership or joint venture, then they would be Robert Meadows employer, thereby making Massey Coal Services, Inc. statutorily immune from Plaintiffs' negligence claim.

Addressing Count II, deliberate intent, Plaintiffs identified the inadequacy of the dump site's berm, the illumination of the site, and the absence of a spotter as their three alleged specific unsafe working conditions. There were no other specific unsafe working conditions alleged by the Plaintiffs. Plaintiffs must carry at least one of the unsafe working conditions through all five of the elements of a deliberate intent claim listed in *W. Va. Code* § 23-4-2(d)(2)(ii). Examining Plaintiffs' arguments for the three conditions against each of the five elements reveals that no one condition meets all five elements.

The Plaintiffs cannot prove that any of the conditions identified proximately caused Robert Meadows' injuries. The Plaintiff's own testimony he stated, "As I backed that truck up going towards the berm, it sunk in and gave way, fell in front of the berm, before the berm." *R. Meadows Dep.* at 64.[2] The Court takes Plaintiff's own words to be

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[1] The Court is perplexed as to Plaintiffs' request to note that Resource Fuels owns 100% of Midland Trail, owns all capital, has common directors and officers, and provides substantially all of the business of Midland Trail. This issue is not relevant to the instant case, nor does it present a substantial question of material fact.

[2] The Court acknowledges conflicting testimony by other witnesses. However, even when viewing facts in a light most favorable to the Plaintiffs, the Court takes Robert Meadows' testimony as true. If not, Plaintiffs

the truth. Therefore, the three specific unsafe working conditions, inadequacy of the dump site's berm, inadequate illumination, and the absence of a spotter, could not have been a direct and proximate cause of Plaintiff's injuries, required by *W. Va. Code* § 23-4-2(d)(2)(ii)(E). Plaintiff's injuries would have occurred even if all three specific unsafe working conditions had been remedied. A higher berm, more lighting, and a spotter would not have prevented the dump site from caving in, and more importantly, the Plaintiff's injuries. Therefore, the action for deliberate intent fails as a matter of law with respect to proximate cause.

Plaintiffs allege that Rhonda Meadows possesses standing to sue for deliberate intention. The *West Virginia Code* provides:

> If injury or death result to any employee from the deliberate intention of his or her employer to produce the injury or death, the employee, the widow, widower, child or dependant of the employee has the privilege to take under this chapter and has a cause of action against the employer, as if this chapter had not been enacted, for any excess of damages over the amount received or receivable in a claim for benefits under this chapter, whether filed or not.

W. Va. Code § 23-4-2(c) (emphasis added). It is established in our courts that a § 23-4-2(d) claim is statutory and is, therefore, governed exclusively by the express language of the statute. Rhonda Meadows is not a widow as Robert Meadows did not die as a result of his injuries, nor is he deceased. Rhonda Meadows' claim in Count II, therefore, fails as a matter of law.

Standard of Review

"Summary Judgment is proper only if, in the context of the motion and any opposition to it, no genuine issue of material fact exists and the movant demonstrates

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would be forced into the unenviable position of impeaching Plaintiff's own testimony. Therefore, there is no genuine issue of material fact with respect to where the truck fell into the pit.

entitlement to judgment as a matter of law." Syllabus Point 2, in part, *Gentry v. Mangum*, 195 W.Va. 512, 466 S.E.2d 171 (1995). Further, The 1983 amendment to *W. Va. Code* § 23-4-2 reveals a legislative preference for summary judgments and directed verdicts in this type of action. *Handley v. Union Carbide Corp.*, 620 F. Supp. 428, 431 (S.D.W.Va. 1985).

No dispute exists as to the facts material to the adjudication of the sole issues of this case, whether Defendants were engaged in a partnership or joint venture; or whether the Defendants deliberately intended to injure the Plaintiff, or to the standing of Rhonda Meadows. The Court has concluded the Defendants are entitled to judgment as a matter of law, and that the Defendants' Motion for Summary Judgment should be granted.

Conclusions of Law

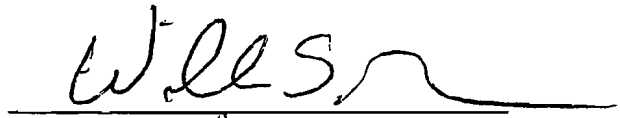
1. Massey Coal Services, Inc. and Independence Coal Company, Inc. are not engaged in a partnership or a joint venture. Even if they were either partners or joint venturers, Defendants would be immune from a suit claiming negligence.
2. Plaintiff Robert Meadows was injured when his dump truck fell into the fill pit. The cause of the fall was a collapse of the dump site, before the berm, where Plaintiff was operating the dump truck.
3. Count III, worker's compensation discrimination, was dismissed during the February 28th hearing with no objection from the Plaintiffs, subsequently only Count I and Count II remained to be ruled upon.
4. Plaintiff Rhonda Meadows lacks standing to sue for deliberate intention.

Based on the foregoing, it is therefore **ADJUDGED** and **ORDERED** as follows:

1. That the Defendants' Motion for Summary Judgment is GRANTED, and the Plaintiffs' suit against the Defendants is DISMISSED with prejudice.

2. That the Circuit Clerk provide certified copies of this Opinion Order to: Jeffrey K. Phillips, P.O. Box 910810, 1010 Monarch Street, Suite 250, Lexington, KY 40591, Jonathan Ellis and Robert L. Bailey, P.O. Box 1588, Charleston, WV 25326, and Charles M. Love IV, 181 Summers Street, Charleston, WV 25301, and remove this case from the Court's docket.

Entered on the 21st day of March, 2011.



Judge, 25th Judicial Circuit

A COPY ATTEST

Sue Ann Zickefoose

CIRCUIT COURT

APPENDIX A – REVISED RULES OF APPELLATE PROCEDURE

Case Name: Robert L. Meadows, II, et al. v. Massey Coal Services, Inc., et al.

APPELLATE TRANSCRIPT REQUEST FORM

INSTRUCTIONS:

1. If a transcript is necessary for your appeal, you must complete this form and make appropriate financial arrangements with each court reporter from whom a transcript is requested.
2. Specify each portion of the proceedings that must be transcribed for purposes of appeal. *See* Rule of Appellate Procedure 9(a).
3. A separate request form must be completed for each court reporter from whom a transcript is requested. If you are unsure of the court reporter(s) involved, contact the circuit clerk's office for that information.
4. Failure to make timely and satisfactory arrangements for transcript production, including necessary financial arrangements, may result in denial of motions for extension of the appeal period, or may result in dismissal of the appeal for failure to prosecute.

Name of Court Reporter, ERO, or Typist: Shelly Kelley, Court Reporter
Address of Court Reporter: 200 Court Street, Madison, West Virginia 25130
Case No. 08-C-185 County: Boone Date of Final Order: March 21, 2011

Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Portions Previously Prepared
2/28/11	Pretrial Hearing	20 pages	William Thompson	

CERTIFICATIONS

I hereby certify that the transcripts requested herein are necessary for a fair consideration of the issues set forth in the Notice of Appeal.

I hereby further certify that I have contacted the court reporter and satisfactory financial arrangements for payment of the transcript have been made as follows:

☐ Private funds. (Deposit of $ _____ enclosed with court reporter's copy.)
☐ Criminal appeal with fee waiver (Attach order appointing counsel or order stating defendant is eligible.)
☐ Abuse & neglect or delinquency appeal with fee waiver (Attach order appointing counsel.)
☒ Advance payment waived by court reporter (Attach documentation.)

March 30, 2011
Date mailed to court reporter

Counsel of record or unrepresented party

From: "WVCourtReporter" <wvcourtreporter@aol.com>
Subject: Re: Transcript Request
Date: Wed, March 30, 2011 10:47 am
To: jennifer@TheMastersLawFirm.com,cml@TheMastersLawFirm.com

Mr. Love,

In regards to the appellate transcript request in the case of Meadows v. Massey, et al., Civil Action No. 08-C-185, the estimated length of the 2/28/11 hearing is 20 pages, and advanced payment will not be necessary.

If I can be of further assistance, please let me know.

Thank you.

SHELLY KELLEY, RPR
Official Court Reporter
Twenty-Fifth Judicial Circuit
Boone County Courthouse
200 State Street
Madison, WV 25130
(304) 369-7401 - Office
(304) 610-2653 - Cell