

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**David Snyder and Mary Snyder,  
personal representatives of the  
Estate of Michael Snyder, deceased  
Plaintiffs Below, Petitioners**

**FILED**  
**June 24, 2011**  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

vs) **No. 101580** (Jefferson County 06-C-243)

**Huntfield, L.C., CHS Traffic Control  
Services, Inc., VIP Limousine Service, Ltd.,  
and Glen M. Lee, d/b/a VIP Limousine  
Service, Ltd., Defendants Below, Respondents**

**MEMORANDUM DECISION**

Petitioners David and Mary Snyder (“petitioners”), plaintiffs below, appeal from the trial court’s denial of their motion for partial summary judgment seeking a finding of *prima facie* negligence against respondent Huntfield, L.C. (“Huntfield”) and their motion for partial summary judgment seeking a finding regarding agency against respondent V.I.P. Limousine Service, Ltd. (“V.I.P.”), a company owned by respondent Glen Lee. Petitioners also allege error in the jury instructions given by the trial court, including an instructional error on indemnity and workers’ compensation immunity in relation to respondent CHS Traffic Control Services, Inc. (“CHS”). Although the jury returned a verdict favorable to petitioners on claims against certain defendants, they assert that they were deprived of a fair trial, which led to an unjust result warranting a new trial. Respondents have each filed a response.

This Court has considered the parties’ briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties’ written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On July 29, 2004, Michael Snyder, a twenty-eight-year-old college graduate, was employed by respondent CHS, a Maryland-based traffic control contractor. Mr. Snyder was

directing traffic as a flagman for road work being performed in relation to a residential subdivision being developed by Huntfield<sup>1</sup> near Charles Town, West Virginia. Huntfield had entered into a contract for CHS to perform traffic control associated with the project. The road work at the entrance to the subdivision occasionally required the closure of the southbound lane of travel of Augustine Avenue. Mr. Snyder was killed when he was struck by a vehicle being operated by defendant Lee Crawford. Petitioners, the personal representatives of the Estate of their son, Michael Snyder, instituted this action alleging various causes of action.

Petitioners state that on the day of the accident, Huntfield's work site did not comply with the applicable regulations or the highway entrance permit previously issued by the West Virginia Division of Highways ("DOH") in that the flashing lights on CHS's signs were inoperable and the sign indicating "One Lane Road 1,000 ft." was not in place. Huntfield states that on the date in question, the decedent was responsible for setting out signs on behalf of his employer, CHS. Huntfield adds that defendant Crawford saw the decedent standing in the roadway 300 feet in advance and that expert testimony at trial revealed that he could have stopped within that sight distance. As Crawford approached the construction site, unaware of the lane closure ahead, he looked down to find a "spit cup" for his smokeless tobacco and, when he looked up, he saw the decedent standing in the roadway, but it was too late to avoid hitting him.<sup>2</sup>

At trial, in addition to the signage issue, another major issue was whether Crawford's driving on the date in question was on behalf of V.I.P., a company that transports Medicaid and Medicare recipients to medical and other appointments. Petitioners state that at the time of the accident, Crawford was transporting two frequent V.I.P. customers utilizing a vehicle owned by defendant Sharon Wilson, the mother of defendant Heather Strachan, a dispatcher for V.I.P. Petitioners state that the mother of one of those customers testified at trial that although Crawford and Strachan were not in a V.I.P. van, she still thought they were picking up her son as V.I.P. employees. Conversely, V.I.P. states that both Crawford and Strachan indicated in their answers to the complaint, in written discovery, and during their respective

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<sup>1</sup> Huntfield filed a document with this Court entitled "Response to Lee Crawford's Petition for Appeal by Defendant/Respondent Huntfield, LC," which is a companion to the case *sub judice*. However, the arguments set forth therein are actually more responsive to the issues raised by petitioners herein. Accordingly, Huntfield's arguments are addressed in this Memorandum Decision.

<sup>2</sup> Petitioner pled no contest to negligent homicide.

depositions that they were not employed by V.I.P. at the time of the accident.<sup>3</sup> There was other conflicting evidence at trial on this issue.

Petitioners' motion for partial summary judgment against Huntfield on the issue of prima facie negligence was denied by the trial court. Their motion for partial summary judgment against V.I.P. seeking a ruling that V.I.P. could not, as a matter of law, deny that Crawford and Strachan were its agents, was also denied.

The trial began on December 1, 2009. The jury returned a verdict finding defendant Crawford solely responsible for the death of the decedent. The jury also found that Crawford was engaged in a joint venture with Strachan<sup>4</sup> and that neither was an agent of V.I.P. on the date the decedent was killed. The jury also found that Huntfield and defendant Ryan, Inc., Huntfield's contractor, were without fault; and that CHS had not expressly agreed to indemnify Huntfield under Maryland law.<sup>5</sup> The jury awarded petitioners \$2,509,308 in compensatory damages and \$300,000 in punitive damages.<sup>6</sup> All motions for a new trial were denied.

### **I. Denial of partial summary judgment as to Huntfield**

Petitioners assert that Huntfield violated the DOH permit and the DOH manual, "Traffic Control for Streets and Highways Construction and Maintenance Operations" ("DOH Manual"), and failed to comply with all applicable state and federal laws in the performance of the work under the DOH permit. Petitioners assert that the requirements of

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<sup>3</sup> While V.I.P. states that Crawford and Strachan voluntarily ceased their employment with V.I.P., Crawford testified at trial that he thought he had been fired based upon a letter he received from V.I.P., which petitioners state was dated the day after the fatal collision and purports to confirm, retroactively, Crawford's termination as of July 16, 2004.

<sup>4</sup> Ms. Strachan died during the pendency of this lawsuit.

<sup>5</sup> This last finding by the jury meant that CHS had not waived its workers' compensation immunity based upon certain pre-trial rulings made by the trial court.

<sup>6</sup> The jury also found that Crawford and Strachan were engaged in a joint enterprise; therefore, the trial court's judgment order found that Crawford and the Estate of Heather Strachan were jointly and severally responsible for the compensatory damages portion of the jury's verdict.

a state permit are equivalent to the requirements of a state statute, and that the failure to comply with a public safety statute constitutes *prima facie* negligence. Accordingly, petitioners assert that the trial court erred in not granting their motion for partial summary seeking a finding that Huntfield's violation of the DOH permit created a *prima facie* case of negligence.

Huntfield responds that the jury found that it was not guilty of any negligence that proximately caused the fatal collision. Huntfield asserts that this finding was consistent with the jury's verdict of no contributory fault on the part of the decedent, who was responsible for setting up the job site the day of the accident. Huntfield asserts that petitioners simply had a failure of proof on this issue. Huntfield adds that petitioners did not request a transcript of the pretrial hearing during which the trial court denied their motion for partial summary judgment, which is their principal point of error as to Huntfield. Given the lack of a transcript from the pretrial hearing, Huntfield asserts that the ruling has not been properly presented by petitioners for appellate review and, therefore, the petition for appeal should be refused on that basis, as well.

The record reflects that the trial court was persuaded that it should not grant summary judgment on this issue and that the ruling sought by petitioners would not aid the presentation of the case. This Court notes Huntfield's argument below that petitioners had a factual problem in proving that any act of Huntfield was the proximate cause of the accident and that the lack of a particular sign or a flashing light was of no moment given Crawford's acknowledgment that he knew he had driven into a construction zone, knew a man (the decedent) stood in the road more than 300 feet in front of him, and knew he could stop if he had maintained his attention on the roadway instead of looking for his spit cup. The record reflects that whether Huntfield violated the DOH permit and whether Huntfield's actions were a cause of the decedent's death, both of which Huntfield denied, were disputed issues precluding partial summary judgment. Rule 56, W.Va.R.Civ.P. In *Reed v. Phillips*, 192 W.Va. 392, 452 S.E.2d 708 (1994), we stated that "[a]lthough the violation of a statute creates a *prima facie* case of negligence, the determination as to whether there was in fact a violation and whether the violation was the proximate cause of the injury is within the province of the jury." (Citations omitted). Accordingly, this Court finds that the trial court did not err in denying petitioners' motion for partial summary judgment as to Huntfield.

## **II. Jury Instructions as to Huntfield**

Petitioners assert that the trial court compounded its error of denying their motion for partial summary judgment by incorrectly instructing the jury that Huntfield was entitled to assert an independent contractor defense. Petitioners argue that Huntfield's duties under the DOH permit were non-delegable, yet the trial court allowed Huntfield to argue that it hired an independent contractor, CHS, to handle traffic control and that it was not vicariously

responsible for CHS's failure to comply with the DOH permit. Petitioners assert that while a party is not generally vicariously responsible for the torts of an independent contractor, there is a public safety exception, which is applicable here. Petitioners add that while Huntfield could assert CHS's errors in a cross-claim for indemnity or contribution, it does not shield Huntfield from petitioners' claims.

Petitioners further assert that the trial court erred by instructing the jury that it had to find that the work was inherently dangerous in order to find Huntfield responsible. Petitioners argue that the instruction was legally wrong on a vital point that severely prejudiced their case against Huntfield. Petitioners assert that under syllabus point 5 of *Aikens v. Debow*, 208 W.Va. 486, 541 S.E.2d 576 (2000), the trial court should have decided, as a matter of law, whether Huntfield had a duty.

"A trial court's instructions to the jury must be a correct statement of the law and supported by the evidence. Jury instructions are reviewed by determining whether the charge, reviewed as a whole, sufficiently instructed the jury so they understood the issues involved and were not misled by the law . . . A trial court . . . has broad discretion in formulating its charge to the jury, so long as the charge accurately reflects the law." Syl. Pt. 4, in part, *State v. Guthrie*, 194 W.Va. 657, 461 S.E.2d 163 (1995)." We have also found that "the question of whether a jury was properly instructed is a question of law, and the review is *de novo*." Syl. Pt. 1, in part, *State v. Hinkle*, 200 W.Va. 280, 489 S.E.2d 257 (1996). In the trial court's order denying petitioners' post trial motions, it stated that there were no instructional errors or, in the alternative, no error that prejudiced petitioners in the presentation of their case. This Court has considered petitioners' alleged instructional error and finds no error under the facts and circumstances of the case *sub judice*.

### **III. Denial of partial summary judgment as to V.I.P.**

Petitioners assert that the trial court erred when it refused to grant partial summary judgment against V.I.P. on the issue of agency. Petitioners argue that a principal must answer for the torts of its agent and that substantial evidence proved that V.I.P., Crawford, and Strachan were so intertwined on the date in question that V.I.P. should not be heard to deny agency. Petitioners argue that even assuming all facts in V.I.P.'s favor, V.I.P. should be estopped, as a matter of law, from denying Crawford's agency. Petitioners contend that Crawford's uncertainty as to whether he was a V.I.P. employee on the date in question was due to the fact that his termination letter post-dated the fatal collision. As to Strachan, petitioners assert that on the date in question, she remained in possession of V.I.P.'s premises, business records, and routes. Petitioners add that the agency to do a particular act may be inferred from the adoption and ratification by the principal of acts of like kind performed for the principal by the agent.

V.I.P. responds that the trial court properly denied petitioners' motion for partial summary judgment as there were multiple material facts in dispute, which were ultimately resolved by the jury in V.I.P.'s favor. V.I.P. asserts that it produced more than sufficient evidence to create a genuine issue as to Crawford's and/or Strachan's employment status with V.I.P. on the date of the accident, which precluded summary judgment. V.I.P. also points to admissions from both Strachan and Crawford in discovery responses that they were not employed by V.I.P. on the date in question, as well as Crawford's deposition testimony in which he repeatedly indicated that he was neither employed by nor acting on V.I.P.'s behalf on the date of the accident. V.I.P. asserts that there was other witness testimony that Strachan and Crawford were no longer working for V.I.P. at the time of the accident, and that it was up to the jury to determine the credibility of that testimony. Finally, V.I.P. adds that there was no evidence that it accepted the benefits of the unauthorized acts of Crawford and Strachan on the date in question.

Having considered the arguments on appeal and record below, this Court finds that the trial court did not err in denying petitioners' motion for partial summary judgment as to V.I.P. as there were material issues of fact precluding summary judgment under Rule 56 of the West Virginia Rules of Civil Procedure.

#### **IV. Jury Instructions as to V.I.P.**

Petitioners assert that the trial court also erred by refusing to instruct the jury concerning apparent agency. Petitioners state that one of the passengers in the Crawford vehicle on the date in question and the mother of the other passenger<sup>7</sup> both testified that they believed Strachan and Crawford were driving for V.I.P. on the date in question. Petitioners also state that a V.I.P. driver testified that Strachan dispatched him on the date in question,<sup>8</sup> and that there are no documents severing V.I.P.'s relationship with Strachan and Crawford prior to the decedent's death.

V.I.P. responds that the trial court properly refused to instruct the jury on the law of apparent agency as it was irrelevant and unwarranted by the facts established at trial. V.I.P. asserts that this Court's prior case law reflects that the injured party must have previously

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<sup>7</sup> Petitioners state that the other passenger was a teenaged child whom V.I.P. regularly transported to a school in Virginia from his home in Charles Town, West Virginia.

<sup>8</sup> V.I.P. states that this V.I.P. driver admitted on cross-examination that he had "guessed" about the date and could not remember the specific dates on which he was actually dispatched by Strachan.

dealt with the principal through the agent in order to avail him or herself of the protection afforded by the law of apparent agency. V.I.P. states that the decedent had no prior relationship with either it or any of its former agents.

Under the standards set forth above concerning a trial court's instructions to the jury, and again noting the trial court's finding in its order denying petitioners' post trial motions that there were no instructional errors found or, in the alternative, no error that prejudiced petitioners in the presentation of their case, this Court finds no error under the facts and circumstances of the case *sub judice*.

## **V. Other Alleged Trial Errors**

Petitioners assert that there were additional, reversible errors at trial that cumulatively prejudiced them. First, they assert that the trial court incorrectly instructed the jury concerning whether CHS agreed to indemnify Huntfield and the interplay between such indemnity and CHS's workers' compensation immunity. Petitioners state that the trial court made a pre-trial ruling that CHS would **not** be entitled to workers' compensation immunity if the jury found that CHS had agreed to indemnify Huntfield. Petitioners assert that while this ruling essentially mooted any jury issues concerning the applicability of the workers' compensation statutes, the trial court still instructed the jury on workers' compensation law, which petitioners assert was unnecessary, prejudicial, and misleading.

Second, petitioners assert, upon information and belief, that Huntfield and CHS reached an undisclosed settlement either shortly before or during trial on Huntfield's cross-claim against CHS seeking indemnification notwithstanding petitioners' request during trial for a disclosure of all settlements. Petitioners point to an agreed order resolving the claims between Huntfield and CHS's insurer in a separate civil action as evidence that there had been a settlement. The jury found that CHS had not agreed to indemnify Huntfield, which meant that the jury did not reach the question of whether CHS was negligent given its workers' compensation immunity. Petitioners state that during deliberations, the jury submitted a question to the trial court concerning whether it should assign fault to CHS if it found no express agreement to indemnify. Petitioners assert that in a joint and several case, the jury should be instructed to assess fault against all culpable parties and that had the jury been allowed to find fault against CHS, this appeal would simply be a matter of determining whether Huntfield, by virtue of its non-delegable duty, should answer for that fault.

CHS responds that the jury instruction regarding indemnity was accurate and created a basic legal framework so that the jury could be informed about the various legal issues and what it was charged to determine. CHS asserts that whether there was an indemnification agreement was a factual issue for the jury to determine. CHS asserts that all available law on this subject, including applicable Maryland law, supported the instructions given.

As to the alleged secret settlement agreement between CHS and Huntfield, CHS states there was none. CHS asserts that petitioners have attempted to confuse this issue by referring to an agreed order from a separate declaratory judgment action between CHS's insurer and Huntfield to determine insurance coverage issues as between them. CHS asserts that in the case-at-bar, the relevant issue was whether CHS promised to expressly indemnify Huntfield and that there was no settlement in that context between CHS and Huntfield. CHS adds that the trial court properly instructed the jury that it could not assign a percentage of fault to CHS unless it first found that there was an express indemnity agreement between CHS and Huntfield.<sup>9</sup>

Under the standards set forth above concerning a trial court's instructions to the jury, and again noting the trial court's finding that there were no instructional errors, or, in the alternative, no error that prejudiced petitioners in the presentation of their case, this Court finds no error in the jury instructions under the facts and circumstances of the case *sub judice*. The Court also notes petitioners' argument that Huntfield's closing argument included passages concerning advertisements of personal injury lawyers, but they admit that their counsel did not object. This Court finds no plain error in this regard. The Court also finds no merit in petitioners' argument concerning the alleged secret settlement between CHS and Huntfield.

## VI. Conclusion

For all of the foregoing reasons, we are of the opinion that the trial court did not commit reversible error and affirm the decision below.

Affirmed.

**ISSUED:** June 24, 2011

**CONCURRED IN BY:**

Chief Justice Margaret L. Workman  
Justice Robin Jean Davis  
Justice Brent D. Benjamin  
Justice Menis E. Ketchum  
Justice Thomas E. McHugh

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<sup>9</sup> CHS notes that the trial court made a pre-trial ruling based on Maryland law that CHS would lose its workers' compensation immunity if it expressly agreed to indemnify Huntfield. Because the jury determined that there was no express indemnity agreement, CHS asserts that there was no basis upon which to assign fault to CHS, as a matter of law.