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SID J. WHITE
DEC 23 1991
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SUPREME COURT OF FLORIDA

HOWARD WEBER,

Petitioner,

v.

HERBERT DOBBINS, ET UX.,

Respondents.

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CASE NO. 78,762

DISTRICT COURT OF APPEAL
4TH DISTRICT NO. 90-0263

PETITIONER'S REPLY BRIEF ON THE MERITS

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REPLY ARGUMENT

The ights and burdens stemming from a corporate officer's decision to reject worker's Compensation benefits concern only the corporation and that particular officer. Other employees such as Dobbins are unaffected by such election and should not be able to use it as a stepping stone to a double recovery.

Dobbins ignores the dual capacity doctrine in arguing that because Weber opted out of coverage for himself that Weber cannot be an employee for purposes of the worker's Compensation act. Larson, Workmen's Commensation Law, Vol. 1C, 554.21. The law recognizes employee status for corporate officers who are performing labor under certain 'circumstances. The case of Perkins v. Scott, 554 So.2d 1220 (Fla. 2nd DCA 1990) acknowledges that a particular individual may simultaneously maintain both employee and non-employee capacities.

The cases of Vallina v. Victor Fuego Construction Co., 443 So.2d 320 (Fla. 1st DCA 1983) and Casey Key Investment Corp. v. Arbuckle, 378 So.2d 841 (Fla. 1st DCA 1979) are not instructive. Both decisions involve situations where the corporate officer **was** seeking worker's compensation benefits after he had elected an exemption from coverage. In contrast, the instant **case** concerns a claim against a corporate office by an employee who has already recovered worker's compensation benefits from the employer.

Weber does not dispute those **cases** cited by Dobbins which set forth the long-standing law that immunity under the worker's compensation law is commensurate with the liability to provide worker's compensation benefits. Conklin v. Cohen, 287 So.2d 56 (Fla. 1973); Jones v. Florida Power Corp., 72 So.2d 285 (Fla. 1954) While this is a well settled rule of law, it does not address the factual scenario raised here. It is wholly inequitable, and not within the intention or plain wording of the worker's compensation statutes, to saddle an employer such as Weber with both worker's compensation and tort liability.

CONCLUSION


The provisions of the worker's compensation law should not be interpreted in such a way that an employee who has voluntarily sought and received worker's compensation benefits can then pursue a tort claim against a corporate officer of a small company merely because that **officer** has made a personal, financial choice not to **elect** personal entitlement to worker's compensation benefits from his own corporation. Dobbins' position, as adopted by the Fourth District, results in an inconsistent and inequitable rule of law.

It **is** respectfully requested that this Honorable Court answer the certified question in the affirmative and reverse and remand this **case** with instructions to affirm the summary judgment entered by the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 20th day of December, 1991, to: PHILIP M. BURLINGTON, ESQ., Edna L. Caruso, P.A., suite 4-B, Barristers Building, 1615 Forum Place, West Palm Beach, FL 33401 and to ROBERT GEISLER, ESQ., Peterson & Bernard, P. O. Drawer 15700, West Palm Beach, FL 33416.

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