MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tracy Allen,
Appellant-Plaintiff,

v.

Smithfield Packaged Meats Corp.,
Appellee-Defendant

August 30, 2021

Court of Appeals Case No. 21A-CT-416

Appeal from the Miami Superior Court

The Honorable J. David Grund, Judge

Trial Court Cause No. 52D01-2003-CT-245

Vaidik, Judge.

Case Summary

[1] Following an injury that occurred at work, Tracy Allen sued her employer for negligence. The trial court dismissed Allen's complaint for lack of subject-matter jurisdiction under Indiana Trial Rule 12(B)(1), and she now appeals. Because the Indiana Worker's Compensation Act ("the Act") provides the exclusive remedy for Allen's injury, we affirm the trial court's dismissal of her complaint.

Facts and Procedural History

[2] In 2019, Allen worked at Smithfield Packaged Meats Corp. in Peru. On August 19, Allen was injured when her left arm got caught in a conveyor belt. Allen filed a claim for worker's compensation benefits, alleging she was injured "within the course and scope of her employment." Appellant's App. Vol. II p. 40. Smithfield denied Allen's claim, alleging the following affirmative defenses under the Act:

> 1) At the time of the alleged accident, [Allen] knowingly failed to use a safety appliance which led to/caused her injury.
>
> 2) At the time of the alleged accident, [Allen] failed to obey a reasonable written or printed safety rule relating to conveyor belt safety and sanitation standard operating procedures.

Id. at 42 (citing Ind. Code § 22-3-2-8).

[3] On March 23, 2020, while her worker's compensation claim was pending, Allen filed a negligence complaint against Smithfield in Miami Superior Court. The complaint alleged Smithfield breached its duty to provide her with safe equipment, causing injuries to her left arm.[1] Allen claimed Smithfield "waived the exclusivity of the Indiana Worker's Compensation Act by invoking fault as a defense in denying [Allen] benefits under [the] Indiana Worker's Compensation Act." *Id.* at 12. Smithfield moved to dismiss Allen's complaint for lack of subject-matter jurisdiction under Trial Rule 12(B)(1). The trial court granted Smithfield's motion to dismiss, finding Allen "has a pending claim before the Indiana Worker[']s Compensation Board under Cause No. C-247811" and that the Act provides "the exclusive remedy" for Allen's injury. *Id.* at 10.

[4] Allen now appeals.

Discussion and Decision

[5] Allen appeals the trial court's dismissal of her complaint for lack of subject-matter jurisdiction under Trial Rule 12(B)(1). Because the facts are undisputed, our review is de novo. *GKN Co. v. Magness*, 744 N.E.2d 397, 401 (Ind. 2001).

[1] In December 2019, the Indiana Department of Labor issued a Safety Order and Notification of Penalty against Smithfield, noting "[o]ne or more methods of machine guarding was not provided to protect the operator and other employees in the machine area from hazards." Appellant's App. Vol. II p. 37.

[6] The Act was enacted to compensate workers suffering work-related injuries without requiring them to satisfy the elements of a tort. *Vandenberg v. Snedegar Constr., Inc.*, 911 N.E.2d 681, 687 (Ind. Ct. App. 2009), *trans. denied*. The Act provides the exclusive remedy "for personal injury or death by accident arising out of and in the course of employment." I.C. §§ 22-3-2-2, -6; *GKN*, 744 N.E.2d at 401-02; *see also Price v. R & A Sales*, 773 N.E.2d 873, 875 (Ind. Ct. App. 2002) ("[T]he Act's rights and remedies are exclusive and exclude all other rights and remedies of an injured employee."), *trans. denied*. But the Act does not guarantee recovery for an employee. Indiana Code section 22-3-2-8 lists numerous affirmative defenses available to an employer that bar compensation based on certain employee conduct:

> No compensation is allowed for an injury or death due to the employee's knowingly self-inflicted injury, his intoxication, his commission of an offense, **his knowing failure to use a safety appliance, his knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work**, or his knowing failure to perform any statutory duty. The burden of proof is on the defendant.

(Emphasis added).

[7] Allen argues that Smithfield, by raising the affirmative defenses under Section 22-3-2-8, has waived the exclusivity provision of the Act, allowing her "to seek common law remedies" against Smithfield. Appellant's Br. p. 6. But as Smithfield points out, Allen cites no authority supporting the argument that when an employer raises an affirmative defense under Section 22-3-2-8, the

exclusivity provision of the Act no longer applies.[2] Indeed, cases from this Court demonstrate that whether an affirmative defense applies is litigated in the worker's compensation proceeding. *See, e.g.*, *Vandenberg*, 911 N.E.2d 681; *Jones ex. rel Jones v. Pillow Express Delivery, Inc.*, 908 N.E.2d 1211 (Ind. Ct. App. 2009); *Ind. State Police v. Wiessing*, 836 N.E.2d 1038 (Ind. Ct. App. 2005), *trans. denied*; *Wimmer Temps., Inc. v. Massoff*, 740 N.E.2d 886 (Ind. Ct. App. 2000), *reh'g denied*, *trans. denied*.

[8] Here, Allen's claim is pending before a single hearing member of the Worker's Compensation Board.[3] Although Smithfield has raised as affirmative defenses that Allen "knowingly failed to use a safety appliance" and "failed to obey a reasonable written or printed safety rule," it is entirely possible Allen will prevail. *See Massoff*, 740 N.E.2d at 892 (holding "an employer cannot shield itself from liability behind a safety rule that it fails to enforce, and instead displays its acquiescence"). If Allen doesn't prevail, she may appeal to the full Worker's Compensation Board. *See* I.C. § 22-3-4-7. And if she still doesn't

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[2] Allen cites two cases, both of which are easily distinguishable. In the first case, *Hood's Garden v. Young*, this Court held that the exclusivity provision of the Act did not deprive a trial court of subject-matter jurisdiction to decide a "simple contract construction issue" presented in a declaratory-judgment action. 976 N.E.2d 80, 84 (Ind. Ct. App. 2012). Unlike this case, *Young* did not involve an employee seeking to take the case outside of the Act.

In the second case, *Perry v. Stitzer Buick GMC, Inc.*, an employee sued his employer for "assault, slander, and assault and battery" relating to "embarrassment, humiliation, stress and paranoia" he experienced as a result of "various affronts and slanderous racial slurs." 637 N.E.2d 1282, 1285, 1288 (Ind. 1994). The employer argued the employee's claims were barred by the exclusivity provision of the Act. The Indiana Supreme Court held the employee's claims were not barred because "the injuries at the heart of [the employee's] complaint were not physical" and thus were not covered by the Act. *Id.* at 1289. Here, however, Allen's injuries are physical.

[3] Smithfield says this in its brief, and Allen does not dispute it.

prevail, she may appeal to this Court and then the Indiana Supreme Court. *See* I.C. § 22-3-4-8. Under the Act, this is Allen's exclusive remedy.[4] We therefore affirm the trial court's dismissal of Allen's complaint against Smithfield.

[9] Affirmed.

Kirsch, J., and May, J., concur.

[4] Allen argues it is "against public policy" not to allow her to sue Smithfield. Appellant's Br. p. 7. However, the public policy is reflected in the Act. Moreover, the legislature, not this Court, makes public policy.