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Anne Bodnar

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Board of County Comm'rs v. Vache

The Court of Appeals of Maryland held that the proximity or special hazards exception to the "coming and going" rule did not apply when an employee was injured due to inclement weather encountered on the way to work. *Board of County Comm'rs v. Vache*, 349 Md. 526, 709 A.2d 155 (1998). The court of appeals ruled that the employee was not entitled to workers' compensation benefits, reasoning that an employer is not responsible for the conditions of a public walkway.

Bridget Vache ("Vache") was injured when she slipped on an icy sidewalk adjacent to her place of employment. On the day of the incident, Vache was unable to park on the street, where she usually parked, due to the heavy accumulation of snow. She was compelled to use alternative parking in a privately owned lot located directly behind her place of employment. As Vache walked on the sidewalk between the lot and her place of employment, she slipped on a patch of ice and was injured.

Vache submitted a workers' compensation claim which her employer, the Frederick County Board of Commissioners ("the Employer"), contested. Subsequently, the Workers' Compensation Commission ("Commission") issued an order finding that Vache's injury occurred within the scope of her employment, and therefore was

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By Anne Bodnar

compensable. The Employer appealed the Commission's decision to the Circuit Court for Frederick County, which affirmed the order. The appellants then filed a timely appeal to the Court of Special Appeals of Maryland, which resulted in the instant joint petition for writ of certiorari to the Court of Appeals of Maryland to address the application of the exceptions to the coming and going rule.

The Maryland Workers' Compensation Act entitles workers who sustain an injury "aris[ing] out of and in the course of employment" to receive compensation benefits. *Board of County Comm'rs*, 349 Md. at 531, 709 A.2d at 157-58 (1998). Employees who are injured while going to or coming from work are not generally entitled to compensation from their employer because this is considered the province of the individual

employee. *Id.* However, certain exceptions have been carved out. *Id.* (citing *Morris v. Board of Educ.*, 339 Md. 374, 380, 663 A.2d 578, 580 (1995)). Specifically, the two exceptions at issue in the instant case were the "premises" exception and the "proximity," or "special hazards" exception. *Id.* at 532, 716 A.2d at 158.

The court first considered whether the circumstances surrounding Vache's accident fell within the premises exception. *Id.* at 533, 709 A.2d at 158. This exception allows injured workers to be compensated for injuries occurring in areas that may not be owned by the employer, but that are closely associated with the employer's property. *Id.* (citing *Saylor v. Black & Decker Mfg. Co.*, 258 Md. 605, 609, 267 A.2d 81, 83 (1970)). With respect to injuries occurring in parking lots, the court held that the employer is only responsible for such injuries occurring in a parking lot or between the parking lot and the work-site when the parking lot is one actually "maintained by the employer" for the employees use. *Id.* at 533, 709 A.2d at 159. The court reasoned that because Vache's injury occurred on a public sidewalk while traveling from a privately owned and maintained parking lot, her passage to work was not protected by the premises exception. *Id.* at 538, 709 A.2d at 161.

The court next addressed the

proximity, or special hazards exception which had not been considered by the court for twenty years. *Id.* This exception, the court noted, applies to cases where the worker is injured en route to or from work, in an area that is not owned by the employer, but where there is a "close association of the access route with the premises." *Id.* (citing *Wiley Mfg. Co. v. Wilson*, 280 Md. 200, 208-16, 373 A.2d 613, 617-21 (1977)).

The court examined the two elements that must be met to satisfy the proximity exception. *Id.* First, the exception applies to injuries that have occurred at a location outside of the control of the employer, but in an area closely associated with the place of employment. *Id.* The injury must have resulted from a hazard not posed to the general public, but rather a hazard specific to the employees. *Id.* at 539, 709 A.2d at 161. Vache argued that the icy conditions of the sidewalk constituted a special hazard within the meaning of the exceptions to the rule. The court disagreed, holding that the special hazard must be one that poses a "peculiar and abnormal exposure to a common peril beyond that to which the general public was subjected." *Id.* (citing *Wiley Mfg. Co.*, 280 Md. at 215, 373 A.2d at 621). Stressing that the danger must be one not contemplated by the general public, the court reasoned that because the entire area was blanketed with snow, Vache was not subjected to a particularly unique hazardous

condition. *Id.* at 540, 709 A.2d at 162.

Vache also contended that, in terms of location, the sidewalk was closely associated with the employer's property, where she was exposed to a danger not presented to the general public. *Id.* at 539, 709 A.2d at 161. Vache claimed that the danger was specific to her employment because the sidewalk provided the only available access to the employer's building due to the inclement weather. *Id.* The court ruled, however, that the location of the accident, while being the only access way from the lot to the work-site, was nonetheless a walkway open to the general public. *Id.* at 540, 709 A.2d at 162. Thus, the court concluded that the proximity exception did not apply to the instant case.

The Court of Appeals of Maryland in this case held that Vache was not entitled to receive workers' compensation benefits under the exceptions to the coming and going rule because the injuries occurred on a public sidewalk and were caused by dangerous conditions that were not specific to her place of employment. While Vache's injury was unfortunate, this ruling prevents an over-extension of Maryland employer liability for hazards clearly not related to the employment. From a public policy standpoint, this ruling will effectively deter frivolous lawsuits arising from injuries resulting from conditions beyond the employer's control.