Stinnett v. Buchele

Court of Appeals of Kentucky (1980)

This is a tort action filed by an employee against his employer for injuries sustained during the course and scope of his employment. The lower court granted summary judgment to the employer on the ground that there was no showing that the injury was caused by the negligence of the employer. We affirm.

Buchele is a practicing physician and Stinnett as a farm laborer. Mr. Stinnett undertook to repair the roof on a barn located at one of Dr. Buchele's farms known as the Cloverport Farm. The repairs were to consist of nailing down the edges of the roof that had been loosened by the wind and painting the roof with a coating. Stinnett was severely injured when he fell from the roof while applying the coating with a paint roller.

Stinnett urges in his brief to this court that Dr. Buchele was negligent for failing to comply with occupational and health regulations and also for his failure to provide a safe place to work.

We do not find any evidence to be submitted to the jury that Dr. Buchele was negligent in failing to provide Stinnett with a safe place to work. We agree with Stinnett when he states that Dr. Buchele had the obligation to furnish him:
. . . a place reasonably safe having regard for the character of work and reasonably safe tools and appliances for doing the work. The measure of duty is to exercise ordinary or reasonable care to do so. The standard is the care exercised by prudent employers in similar circumstances. Although we may consider that painting a barn roof is dangerous work, we cannot say that Dr. Buchele can be held liable for failing to provide a safe place to work solely because he asked Stinnett to work on the roof. We hold, therefore, that there was no showing of any negligence on the part of Dr. Buchele arising solely out of the fact that he had asked Stinnett to paint the barn roof.

Stinnett next argues that a reasonable and prudent employer would have provided safety devices of some kind even though not required to by statute or regulation. Stinnett had been in the painting business with his brother-in-law for two years before he began working for Dr. Buchele. Although the record is not clear whether Stinnett, his brother-in-law or both did the painting, they did paint a church steeple and an undetermined number of barn roofs. On occasion safety belts and safety nets had been used while painting the barn roofs. Stinnett was injured on a Sunday. Dr. Buchele was not present and he did not know that Stinnett was going to work on the barn roof on that particular day. Dr. Buchele had, however, purchased the material that Stinnett was applying to the roof when he fell. Stinnett did not ask Dr. Buchele to procure a safety net nor did he check to see if one was available. He admitted he could have used a safety rope around his waist but he did not think any were available.

Where no negligence of the employer is shown, the evidence of negligence of an employee does not fall in the category of contributory negligence, but rather it shows primary negligence on his part, since there was an absence of negligence on the part of the employer. In short, we find no evidence of negligence on the part of Dr. Buchele to submit to a jury.