Affirmed in Part, Reversed and Remanded in Part, and Opinion filed March 23, 2000.

In The

Fourteenth Court of Appeals

NO. 14-98-00297-CV

LEOLA LAW, CHRISTI LAW, and GLADYS LAW, AS NEXT FRIEND OF CHARLINE LAW AND SHARLINE LAW, Appellants

V.

GULF COAST GUNITE, INC., Appellee

On Appeal from the 334th District Court
Harris County, Texas
Trial Court Cause No. 96-56339

O P I N I O N

In this wrongful death case, Leola Law, Christi Law, and Gladys Law, as Next Friend of Charline Law and Sharline Law (collectively, the "Laws") appeal a summary judgment granted in favor of Gulf Coast Gunite, Inc. ("Gulf Coast") on the grounds that the action was not barred by *res judicata* or the statute of limitations. We affirm in part and reverse and remand in part.

Background

In 1983, Charles Ray Law ("Charles"), a Gulf Coast employee, had traveled to Louisiana to work on a project for Gulf Coast. While driving back to Texas, he fell asleep, collided with a tractor-trailer, and died from his injuries. In 1985, his widow, Gladys Law, filed a claim individually and on behalf of her four minor children against Gulf Coast's workers' compensation insurance carrier to recover death benefits (the "workers' compensation action"). At trial, the jury found that Charles's death did not occur while he was in the course of his employment. In accordance with the jury verdict, the trial court entered a take-nothing judgment.

The Laws filed this lawsuit in November of 1996, alleging that Gulf Coast was negligent and grossly negligent in overworking Charles and then directing him to return to Texas while physically exhausted. Gulf Coast filed a motion for summary judgment, arguing that the Laws' claims were barred by *res judicata*, based on the take-nothing judgment in the workers' compensation action, and by the statute of limitations. The trial court granted summary judgment without stating the ground(s) on which it was based.

Standard of Review

A summary judgment may be granted if the summary judgment evidence shows that, except as to the amount of damages, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or response. *See* TEX. R. CIV. P. 166a(c). Summary judgment may be granted if a defendant disproves at least one element of each of the plaintiff's claims or establishes all elements of an affirmative defense to each claim. *See American Tobacco Co., Inc. v Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997). In reviewing a summary judgment, we take as true all evidence favorable to the nonmovant and indulge every reasonable inference and resolve any doubts in the nonmovant's favor. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). When a summary judgment does not specify the grounds relied upon, the reviewing court must affirm it if any grounds asserted in the motion for summary judgment are meritorious. *See Bradley v. State ex rel. White*, 990 S.W.2d 245, 247 (Tex. 1999).

Statute of Limitations

The Laws' first two points of error contend that the trial court erred in granting Gulf Coast's motion for summary judgment on limitations because: (1) the statute of limitations had been suspended due to the

legal disability of the Laws; and (2) the Laws' claims were not barred by the filing of an action by their mother during their period of legal disability.[1] The parties agree that for any of the Laws who were below the age of majority at the time of Charles's death, the applicable statutes of limitations would expire two years after they reached the age of majority. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.001(a)(1), (b) (Vernon Supp. 2000). Thus, limitations would bar the claims of any of the Laws who had reached the age of twenty by the time this lawsuit was filed on November 1, 1996.

At that time, Christi, born June 19, 1976, was approximately five months beyond her twentieth birthday; Leola, born April 23, 1978, was eighteen; and Charline and Sharline, born March 8, 1984, were each twelve. Therefore, only the claims of Christi were barred by limitations, and the Laws' first point of error is sustained as to Leola, Charline, and Sharline.

Res Judicata

The Laws' third point of error argues that the trial court erred in granting summary judgment because their actions were not barred by res judicata.[2] In particular, the Laws contend that Gulf Coast failed to prove the requisite identity of parties and claims.

In this case, Gulf Coast's motion for summary judgment sought res judicata based on the judgment in the workers' compensation action:

> 4.3 In this cause, the elements of res judicata have all been established, namely (1) the prior final judgment, attached hereto as Exhibit "A"; (2) all of the Plaintiffs in this 1996 lawsuit were also plaintiffs in the 1985 Lawsuit; (3) the Defendant in the 1985 Lawsuit was GULF COAST's workers' compensation carrier; [and] (4) the claims in this 1996 lawsuit were raised or could have been raised in the 1985 lawsuit.

Res judicata prevents parties and their privies from relitigating a cause of action that has been finally adjudicated by a competent tribunal and claims and defenses that, through diligence, should have been litigated but were not. *See Ingersoll-Rand Co. v. Valero Energy Corp.*, 997 S.W.2d 203,

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[1] Because we do not find a contention in Gulf Coast's motion for summary judgment that any legal disability was affected by the filing of an action by Gladys Law, this is not a ground on which summary judgment could be granted or affirmed. Accordingly, we do not address it.

[2] Although the parties have also briefed the issue of collateral estoppel, it is not a ground upon which summary judgment could have been granted or can properly be affirmed because Gulf Coast's motion for summary judgment did not assert it. *See Perry v. S.N.*, 973 S.W.2d 301, 303 (Tex. 1998).

206-07 (Tex. 1999). The doctrine is intended to prevent causes of action from being split, thus curbing vexatious litigation and promoting judicial economy. *See id.* at 207. It requires proof of the following elements: (1) a prior final judgment on the merits by a court of competent jurisdiction;[3] (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *See Amstadt v. United States Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996).

Parties can be in privity in at least three ways: (1) they can control an action even if they are not parties to it; (2) their interests can be represented by a party to the action; or (3) they can be successors in interest, deriving their claims through a party to the prior action. *See id.* at 653. Privity is not established by persons merely being interested in the same question or in proving the same set of facts but instead connotes those who have such an identity of interest that the party to the judgment represented the same legal right. *See Benson v. Wanda Petroleum Co.*, 468 S.W.2d 361, 362 (Tex. 1971).

The Workers' Compensation Act in effect at the time of Charles's death (the "Act") provided, in part:

> The employees of a subscriber . . . shall have no right of action against their employer or against any agent, servant or employee of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employees shall have no right of action against such subscribing employer or his agent, servant or employee for damages for injuries resulting in death, but such employees and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for.

See Act of 1917, 35th Leg., R.S., ch. 103, § 3, 1917 Tex. Gen. Laws 269, *amended by* Acts of 1983, 68th Leg., R.S., ch. 131, § 3, 1983 Tex. Gen. Laws 613, *repealed by* Acts of 1989, 71st Leg., 2nd C.S., ch. 1, § 16.01(7) to (9), eff. Jan. 1, 1991 (current version at TEX. LAB. CODE ANN. § 408.001 (Vernon 1996)) (the "exclusive remedy provision"). The Act thus generally exempted subscribing employers from common law and statutory liability to their employees for non-intentional injuries or death sustained in the course of employment. *See Puga v. Donna Fruit Co., Inc.*, 634 S.W.2d 677, 680 (Tex. 1982); *Reed Tool Co. v. Copelin*, 610 S.W.2d 736, 739 (Tex. 1980). However, the Act did not exempt employers

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[3] Because it is not disputed in this case that the judgment in the workers' compensation action was a prior final judgment on the merits by a court of competent jurisdiction, we do not address this element further.

from liability for exemplary damages for the death of an employee resulting from gross negligence. *See* TEX. CONST. art. XVI, § 26; Act of 1917, 35th Leg., R.S., ch. 103, § 5, 1917 Tex. Gen. Laws 269, *repealed by* Acts of 1989, 71st Leg., 2nd C.S., ch. 1, § 16.01(7) to (9), eff. Jan. 1, 1991 (current version at TEX. LAB. CODE ANN. § 408.001 (Vernon 1996)).

In this case, the Laws' petition asserted claims for negligence and wrongful death, alleging that Gulf Coast caused Charles's collision and resulting death by making him work excessive hours and then requiring him to drive the long distance back to Texas while he was still in an exhausted condition. The Laws' petition also included a claim for exemplary damages.

To the extent that the Laws' workers' compensation action was their exclusive remedy against Gulf Coast for Charles's death, (1) Gulf Coast's interests were represented in that case by its workers' compensation carrier; and (2) the current lawsuit is based on the same claims as were raised in the workers' compensation action. Because all of the Laws' allegations against Gulf Coast in this case are in its capacity as Charles's employer, the Laws' present claims against it, other than for exemplary damages, are the same as those raised in the workers' compensation action and are thus barred by *res judicata*. The Laws' third point of error is thus sustained as to their claim for exemplary damages and overruled as to their remaining claims.[4]

Accordingly, we reverse the trial court's judgment as to the claims of Leola, Charline, and Sharline for exemplary damages for the death of Charles Law, remand that portion of the case to the trial court for further proceedings, and affirm the remainder of the trial court's judgment.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed March 23, 2000.

Panel consists of Justices Amidei, Edelman, and Wittig.

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[4] The Laws' fourth point of error asserts merely that the trial court erred in granting summary judgment on all grounds asserted by Gulf Coast. Because that point of error sets forth no additional arguments to those addressed in the first three points of error, we need not separately respond to it.

Do Not Publish — TEX. R. APP. P. 47.3(b).