RENDERED: October 24, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001094-WC

CENTERTOWN GARAGE AND
MICHAEL JOSEPH ROE, INDIVIDUALLY — APPELLANTS

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-01708

MICHAEL RIGER; UNINSURED EMPLOYER'S FUND;
MIDWESTERN INSURANCE ALLIANCE; CLARENDON
NATIONAL INSURANCE COMPANY; HON. RONALD E.
JOHNSON, ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: McANULTY AND SCHRODER, JUDGES; AND HUDDLESTON, SENIOR JUDGE.[1]

SCHRODER, JUDGE. Centertown Garage and its owner, Michael Joseph Roe, individually, petition for review of a decision of the Workers' Compensation Board (Board) which affirmed a

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

decision of the Administrative Law Judge (ALJ) that interpreted KRS 342.375 (which requires the entire liability of an employer be covered by an insurer) as imposing workers' compensation insurance on businesses with common ownership only where there is a common link in the nature of the business. We interpret "employer" to refer to the "business" and not to the "owner" under the statute and, therefore, affirm.

Centertown Garage is owned by Michael Joseph Roe. On December 28, 1999, Michael Riger was injured while working at the garage. The ALJ determined Riger was not an employee but an independent contractor, and this opinion was affirmed by the Board. The second issue addressed by the ALJ and the Board was whether Roe's insurance company owed him a defense in the workers' compensation case. The ALJ decided it did not and the Board affirmed. The insurance defense issue is the only matter appealed to this Court.

Michael Roe obtained a workers' compensation policy on May 27, 1999, insuring Mike Roe Trucking. Mike Roe Trucking is a sole proprietorship owned and operated by Michael Roe. He also operated Centertown Garage as a sole proprietorship. The policy in question provided for benefits and "the right and duty to defend at [their] expense any claim, proceeding or suit against you for benefits payable by this insurance. . . ."

Also, KRS 342.375 requires policies issued in this state cover "the entire liability of the employer . . ." Both Centertown Garage and Mike Roe Trucking have their own tax identification numbers and a Schedule C form was prepared for each company for federal tax purposes. At one time, Roe had a workers' compensation policy covering the Centertown Garage as the named insured. However, he voluntarily cancelled it or let it lapse when he no longer had mechanics hired as employees. Roe did have another truck driver, besides himself, to drive the two trucks of Mike Roe Trucking.

On appeal to this Court, Roe argues that the current version of KRS 342.375 requires that every policy of workers' compensation insurance in Kentucky "shall cover the entire liability of an employer for compensation to each employee subject to this chapter." Roe argues that both businesses were his and he is the sole proprietor, therefore, there is no legal distinction between Centertown Garage and Mike Roe Trucking, hence the insurance company owed him a defense for claims on either, both, or any of his businesses.

We disagree with Roe. We opine that the lack of a legal distinction between a proprietor and his business is not the determining factor in deciding whether the coverage for Mike Roe Trucking also covers Centertown Garage. In order to impose

coverage on businesses with common ownership, there must be a common link in the nature of the businesses. The 1968 amendments to KRS 342.375 were intended to preclude insurance carriers from denying liability for workers' compensation benefits for workers for whom the insured might reasonably anticipate coverage to be extended. We do not believe they were intended to expose carriers to unknown risks of unrelated business ventures. We reach this result by studying pre-amendment cases. In Globe Indemnity Co. v. Doyle, Ky., 426 S.W.2d 425 (1968), an employee was hired as a tractor-trailer driver but died while piloting an aircraft for the employer's business. The workers' compensation policy did not list a classification of aircraft operation or member of a flying crew. The insurance company denied liability contending it was only liable for injuries to an employee performing the duties of a tractor-trailer driver, and not of an aircraft pilot, even though the proof presented was that the mission was for the original employer. The Court held that the employee, Doyle, "was covered while flying the airplane in connection with his employer's beverage distribution business, because the work was incidental to the business operation the insurance was intended to cover." Id. at 428 (emphasis added). The Court went on to say that if Doyle had been killed while flying a plane for some other business purpose of Arnold, (the owner of both companies),

such as the airport operation, the insurance policy would not have covered Doyle. The Court reviewed the previous version of KRS 342.375 (before the 1968 amendment) which read "Every policy . . . shall cover the entire liability of the employer for compensation under this chapter to every one of his employes covered by such policy. . . ." Id. at 429 (emphasis added). The Court noted that "Larson (2 Larson's Workmen's Compensation Law, § 93.20, p. 461) has chided our construction of this language as requiring something less than full coverage." Id. The Court concluded that the legislative intent was to permit a coverage that would extend not just to certain workers and not others (even though they are employed in the same business), but would extend coverage to all employees engaged in the business operation for which the policy was procured and issued, regardless of his job with that business. Id.

The Court concluded that it was the responsibility of the employer and the insurer to make sure that all job classifications for the business were covered, and not the employee's responsibility. Id.; see also Bituminous Casualty Corp. v. Robinson, Ky., 476 S.W.2d 839 (1972), which discusses relaxation of the statute. The (1968) amendment eliminated the need to list job classifications in favor of coverage for the entire liability of the employer. However, no case since the

amendment has said the amendment was intended to extend coverage beyond that employer. We interpret the word employer as referring to the business and not to the ownership. Roe recognized that Mike Roe Trucking and Centertown Garage were distinct businesses. He went to great effort to make sure there were no material links between the two businesses other than his common ownership. He had separate books and even separate workers' compensation policies until he dropped all employees at the garage and did away with the need for workers' compensation coverage. The policy he retained was for Mike Roe Trucking. Clearly, the insured could only reasonably anticipate coverage was for the trucking business.

The appellants would have us interpret the word "employer" as referring not to the business employing the worker, but to the owner of the business. Such an interpretation would not carry out the policy of KRS 342.375, which is to cover all employees in a particular business. The appellants' interpretation would encourage owners to secure limited coverage of a small company while hiding other ventures, knowing the insurer would ultimately be liable for injuries. Even where there is full disclosure of other ventures, an insurer would be reluctant to insure only one business, which would create an all or nothing atmosphere which is not good for

business or for the employees. This would result in an absurd result and "courts should reject a construction that is unreasonable and absurd, in preference for one that is reasonable, rational, sensible and intelligent. . . ." Commonwealth v. O'Bryan, Ky. App., 97 S.W.3d 454, 456 (2003) (internal quotation marks and citations omitted).

For the foregoing reasons, we affirm the decision of the Workers' Compensation Board.

McANULTY, JUDGE, CONCURS.

HUDDLESTON, SENIOR JUDGE, CONCURS IN RESULT ONLY.

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