High Court Gives Woodson Claim Green Light

Changing course after oral arguments in the case, the Supreme Court has let stand a Woodson ruling in favor of a window-washer who fell after a foreman refused to let him use safety lines.

In an April 4 per curiam opinion, the court said it had improvidently granted discretionary review in Arroyo v. Scottie's Professional Window Cleaning, 120 N.C. App. 154, 461 S.E.2d 13 (1995). The case reached the court after being dismissed on a Rule 12(b)(6) motion.

In Arroyo, the plaintiff sued his employer, alleging the company encouraged a foreman to violate safety standards to hold down expenses, a practice which resulted in several fines under OSHA laws. Through its foreman, the company knew that making the plaintiff work without safety lines was substantially certain to result in serious injury, the window-washer's complaint stated.

Last September, a unanimous appeals panel said the complaint stated a claim under Woodson v. Rowland, 329 N.C. 330, 407 S.E.2d 222 (1991). The test under that case is whether the employer intentionally engaged in conduct that it knew was substantially certain to cause serious injury or death.

Three months later, the Supreme Court granted the employer's request for discretionary review. The employer said it had to have direct, not imputed, knowledge of the work conditions on the day of the accident to be liable under previous Woodson rulings.

But after oral arguments last month, the court let the decision stand. The case will now move into the discovery phase.

"I think this shows that Woodson claims are still alive," said an attorney for the plaintiff, John McCabe of Raleigh. "The defense was arguing that the sole remedy was against the supervisor because you couldn't impute his knowledge to the company. But we argued that would mean only mom-and-pop companies could be liable, in effect overruling the doctrine of respondeat superior in Woodson cases. With big construction companies, the president of the company only shows up twice on the job site _ once to stick the shovel in the ground and once to cut the ribbon."

The defendant's attorney, David Batten of Raleigh, downplayed the significance of the high court's action.

"My reading is that since this was only a Rule 12 motion to dismiss, not a summary judgment, the court simply decided it wasn't going to rule on the main issues in the case yet, which is consistent with what they've done in other cases," he said.

McCabe said the lengthy complaint in Arroyo also alleged the employer had direct knowledge that employees were working without safety gear.

"The company president knew that this had been done in the past and encouraged it," he said. "The reason is that with fixed price jobs, labor time is the key to profits. By not using the necessary equipment, the job is finished quicker, meaning more money for the company."

Most Important Opinions

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   : The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and

Woodson claims turn on the egregiousness of the facts, according to McCabe.

"A lot of claims have said they measure up to the Woodson standard," he said. "Our argument was that this is Woodson, and then some."

Batten said the facts in Arroyo were not as egregious as those in Mickles v. Duke Power Company (North Carolina Lawyers Weekly No. 5-06-1600), which the Supreme Court dismissed last November. In that case, a lineman was killed when his safety harness unbuckled as he worked on a transmission tower. The company's failure to check its inventory after the harness was recalled didn't meet the Woodson test, the court held.

The court will eventually have to decide whether the foreman's knowledge of the safety violations in Arroyo should be imputed to the company, according to Batten.

"The bottom line for now is that the court is saying we need to flesh out all the issues," he said.

Good Claim

The window-washer was injured while cleaning windows on a high-rise building in November 1993. Here in a nutshell are the allegations which the Appeals Court said stated a good Woodson claim:

* The plaintiff was required to stand on a three-foot ledge and lean outward to wash the "wing" windows protruding from the side of the building.

* When the foreman learned the plaintiff and a co-worker were linking arms to reach these windows, he ordered them to work separately so the job could be finished more quickly.

* The plaintiff believed he would be fired if he didn't comply with the foreman's instructions.

* While leaning out to clean a window, the plaintiff fell, suffering serious injuries.

* The employer provided no safety training for employees and didn't enforce safety regulations.

* The employer had previously been fined for requiring work without safety lines.

* The employer knew of the supervisor's past record of ignoring safety requirements and had previously allowed this same cleaning job to be performed in the same inherently dangerous manner.

Taken together, those allegations not only stated a claim under Woodson, they also were sufficient to state a claim for punitive damages, the Appeals Court held.

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defendant "invited error" by refusing to allow a jury instruction on a lesser-included offense.

2. **Administrative – Black Lung – Evidence – Disability — Rebuttal**
Mingo Logan Coal Co. v. Owens An administrative law judge did not improperly limit a coal mining company's ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. **Administrative – 'Market Rate' Debate in Black Lung Fee Award**
Eastern Associated Coal Corp. v. Director, OWCP In this black lung benefits case, claimant's lawyers had sufficient market-based evidence to support their hourly rates of $175 to $300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over $32,000.

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