

Possible Revival of Parret Claims?

Constitutionality of Statutory Definition of Intentional Tort in Workers Compensation Context at Issue in *Crystal Wells v. Oklahoma Roofing & Sheet Metal, L.L.C., et al.*

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For the last several years, Oklahoma employees injured as a result of their employer's allegedly intentional conduct who seek to recover damages from their employer under a tort theory in district court have been required to show their employer acted with a specific intent to cause them injury -- a very difficult standard to meet. However, in a recent unreported case, the Oklahoma Court of Civil Appeals (COCA) held that the specific intent standard -- originally adopted by the Oklahoma Legislature in 2010 and currently codified at Okla. Stat. tit. 85A, § 5(B)(2) -- violates Article V, § 46 of the Oklahoma Constitution because it is a special law, which targets less than an entire class of similarly situated persons for different treatment.¹ The case is *Crystal Wells v. Oklahoma Roofing & Sheet Metal, L.L.C.*, (Oklahoma County Case No. CJ-2013-3588, Appeal No. 112,884, decided April 28, 2016).

By way of background, the Oklahoma Administrative Workers Compensation Act, Okla. Stat. tit. 85A, §§ 1 - 125 ("AWCA"), like its predecessor statutory schemes, generally provides the exclusive remedy for employees who are injured in the scope of their employment. *See* Okla. Stat. tit. 85A, § 5(A). Under the AWCA, employees are generally barred from suing their employers in district court for workplace injuries, and must instead seek redress for their workplace injuries through the workers' compensation system. *Id.* However, the AWCA, like its predecessor statutory schemes, applies only to accidental injuries. *See* Okla. Stat. tit. 85A, §3(B). As the Oklahoma Supreme Court has long recognized, "an employee who has been willfully injured by his employer [may] ha[ve] a common law action for damages." *Roberts v. Barclay*, 369 P.2d 808, 809 (Okla.1962). *See also* Okla. Stat. tit. 85A, §5(B)(2) (providing that AWCA's exclusive remedy provision does not apply if an employee's injury was "caused by an intentional tort committed by the employer.").

In *Parret v. UNICCO Serv. Co.*, 127 P.3d 572, 2005 OK 54, the Oklahoma Supreme Court held that an employer's conduct amounts to an intentional tort, thus placing an employee's workplace injury claim outside the scope of the statutory scheme, if the employer acted with (1) a desire to bring about the workers' injury, or (2) the knowledge that such injury was *substantially certain* to result from the employer's conduct. *Parret*, at ¶ 24, 127 P.3d at 579 (emphasis added). Under the second prong of this substantial certainty standard, the *Parret* court stated, "the employer must have intended the act that caused the injury with knowledge that injury was substantially certain to follow." *Id.* Under *Parret*, the relevant inquiry was not just whether injury was substantially certain to occur, but whether the employer knew -- that is, subjectively appreciated -- that injury was substantially certain to occur. *Id.*

In response to *Parret*, in 2010, the Oklahoma Legislature amended Section 12 of the Workers' Compensation Act ("WCA") to make *specific intent* -- a standard expressly rejected by the *Parret* court -- the operative test in determining whether an employer's conduct was intentional. *See* Okla. Stat. tit. 85, 12 (Supp. 2010) (eff. August 27, 2010). This same standard was carried forward when the Oklahoma Legislature repealed section 12 and incorporated it into section 302 of the WCA. *See* Okla. Stat. tit. 85, 302(B)(Supp. 2011). The AWCA also presently contains the same specific intent standard: Specifically, the AWCA defines an intentional tort as follows:

An intentional tort shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that the injury was substantially certain to result from the employer's conduct shall not constitute an intentional tort. . . .

Okla. Stat. tit. 85A, § 5(B)(2).

Thus, for employees injured after August 26, 2010, the substantial certainty standard articulated in *Parret* has essentially been rendered meaningless.

Or has it? In *Wells*, COCA recently held that definition of "intentional tort" contained in section 12 of the WCA, and

¹ Section 46 states in relevant part:

The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing

Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts . . .

For limitation of civil or criminal actions.

Okla. Const. art. 5, § 46.

in section 5(B)(2) of the AWCA, is unconstitutional. In *Wells*, the plaintiff sued individually and in her capacity as Administrator of the Estate of Robert Young, a roofer who fell to his death from a rooftop in the course and scope of his employment with defendants. The plaintiff in *Wells* alleged that the decedent's death was the result of the defendants' intentional tort. Specifically, the plaintiff alleged that the defendants knew that the single-line lanyard-fall protection system provided for decedent by defendants would lead to the decedent's death; that the defendants desired to bring about the decedent's death; and that the defendants' actions were willful, wanton and intentional. In response to a motion to dismiss filed by the defendants, the trial court found that the Plaintiff's allegations met *Parret's* substantial certainty standard, but failed to meet the specific intent standard for an intentional tort set forth in section 12 of the WCA, Okla. Stat. tit. 85, § 12 (2010), which the trial court found *was* constitutional. The plaintiff's claim was therefore dismissed by the trial court.

On appeal, COCA reversed the trial court, holding that the statutory definition of intentional tort set forth in section 12 of the WCA -- the same definition found in presently-effective section 5(B)(2) of the AWCA -- was unconstitutional. *Wells*, at p. 15. Again, section 12 of the WCA-- like section 5(B)(2) of the AWCA -- provided that "[a]llegations or proof that the employer had knowledge that such injury *was substantially certain* to result from its conduct *shall not constitute an intentional tort.*" *Wells*, at p. 10 (citing Okla. Stat. tit. 85, § 12(Supp.2010)) (emphasis added). COCA agreed with the plaintiff that this statutory definition of intentional tort "targets for different treatment less than an entire class of similarly situated persons or things," in violation of Article V, Section 46 of the Oklahoma Constitution. *Wells*, at p. 10 (citing *Montgomery v. Potter*, 2014 OK 118, ¶ 6, 341 P.3d 660, 661). COCA concluded that the problem was not that section 12 created a different standard of intent for persons who are injured in the course and scope of their employment as compared to those injured elsewhere, i.e., outside of the employment context. *Wells*, at p. 12. That, COCA concluded, would be perfectly permissible. *Id.* Rather, according to COCA, the problem with section 12 of the WCA (and, by extension, also with section 5(B)(2) of the AWCA) is that the statute

divides victims of intentional torts into two classes: "those still subject to the provisions of the [WCA or AWCA], and those who never were." *Id.*, at p. 13. Simply because they are employees, COCA concluded, intentionally-injured employees are still subject to the provisions of the workers compensation statutory scheme, including the statutory definition of intentional tort, even when their claims can only be brought in district court because their injuries were not accidentally caused. *Id.* Therefore, according to COCA, in a district court tort action to recover for intentionally-caused workplace injuries, an employee-plaintiff is required to prove specific intent, rather than *either* specific intent *or* substantial certainty (as a non-employee plaintiff would be permitted to do under *Parret*) -- even though the employee plaintiff is no longer entitled to recover for their injuries through the workers' compensation system, and is thus deprived of the original "grand bargain" that underlies the workers' compensation system. *Id.* This, COCA said, impermissibly cripples the ability of an employee-plaintiff to prove the elements of his intentional tort claim as compared to a non-employee plaintiff subjected to the exact same intentional conduct; the statute thereby creates two disparate classes of plaintiffs in the district court, and thus constitutes an impermissible "special law" in violation of Section 46 of Article 5 or the Oklahoma Constitution. *Id.* COCA further held that this result is "incompatible with the concepts of equal protection and due process." *Id.*, at p. 14. COCA therefore reversed the trial court's order granting the defendants' motion to dismiss and remanded the case for further proceedings.

The defendants in *Wells* have filed a Petition for Certiorari with the Oklahoma Supreme Court. If the Supreme Court grants certiorari and ultimately affirms COCA's ruling, *Parret's* substantial certainty standard potentially stands to be revived -- which would make it far more likely that employees injured at work could successfully sue their employers for damages in tort outside of the workers' compensation system. *Wells* is therefore most certainly a case to watch, and one in which all Oklahoma employers and employees, and all attorneys who represent them, ought to be interested.

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