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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2295**

Kathleen C. Welch, as trustee for the heirs and
next of kin of Terry Gene Welch, decedent,
Appellant,

vs.

Ameriprise Financial, Inc., et al.,
Respondents.

**Filed August 24, 2010
Affirmed; motion dismissed
Minge, Judge**

Hennepin County District Court
File Nos. 27-CV-09-17206, 27-CV-08-609

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Considered and decided by Klaphake, Presiding Judge; Minge, Judge; and Willis,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

MINGE, Judge

Appellant challenges summary judgment, dismissing her wrongful-death claims as barred by the Minnesota Workers' Compensation Act (WCA). Minn. Stat. ch. 176 (2008). Appellant asserts that the district court erred by (1) determining that the decedent's death arose out of his employment; (2) determining that the WCA provided the exclusive remedy when respondents' workers' compensation carrier had denied appellant's claim; and (3) granting summary judgment before the completion of discovery. We affirm.

FACTS

This appeal arises from a wrongful-death action involving the death of Terry Welch. Welch collapsed due to a heart attack that occurred about 9:00 a.m., February 8, 2006, while on the premises of his employer, respondent Ameriprise Financial, Inc.¹ Just before Welch's collapse, an employee in a neighboring cubical overheard Welch in a contentious telephone discussion with his health insurer about coverage for his prescription medications. After his collapse, first-aid efforts were unsuccessful and emergency medical responders took Welch to a nearby hospital, where he died later that morning.

¹ Respondents Ameriprise Financial, Inc. and Ameriprise Financial Services, Inc. are referred to as Ameriprise in this opinion.

The day after Welch died, Ameriprise notified its workers' compensation insurance carrier of the event. A day later, the insurer denied that workers' compensation benefits were payable because it concluded that Welch's death was not work related.

Approximately two and a half years after Welch's death, appellant Kathleen Welch, as trustee for Welch's heirs and next of kin, sued Ameriprise for wrongful death, alleging that the negligence of Ameriprise's employees caused Welch's death, thereby making Ameriprise vicariously liable. She based this claim on the delayed arrival of emergency responders due to erroneous directions provided by Ameriprise security personnel and due to the lack of defibrillators on the floor where Welch worked. Ameriprise answered, both denying that Welch's death was the result of any negligence of Ameriprise or its agents and employees and alleging that appellant's tort claim was barred by the exclusive-remedy provisions of the WCA.

Approximately three and a half years after Welch's death, Ameriprise moved for summary judgment, asserting that the WCA was appellant's exclusive remedy because the heart attack (a) occurred at work and (b) was allegedly aggravated by the action of fellow employees and workplace conditions. Appellant responded that the wrongful-death claim was independent of the WCA and that Ameriprise was estopped from asserting the exclusivity of the WCA remedy because Ameriprise had denied WCA coverage and the three-year statute of limitations had run on asserting a WCA claim.

The district court granted summary judgment to Ameriprise, concluding that the WCA provided appellant's sole remedy and estoppel did not apply. This appeal follows.

DECISION

The district court shall grant summary judgment if the pleadings, discovery, and affidavits show that there are no genuine issues of material fact and that a party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On appeal from summary judgment, this court asks whether there are any genuine issues of material fact and whether the district court erred in applying the law. *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007). We consider the evidence in the light most favorable to the party against whom summary judgment was granted. *Gradjelick v. Hance*, 646 N.W.2d 225, 231 (Minn. 2002). “When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo.” *Weston v. McWilliams & Assocs.*, 716 N.W.2d 634, 638 (Minn. 2006). “[E]vidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions” does not constitute a genuine issue of material fact. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). “The party opposing summary judgment may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at trial” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004).

I.

The first issue is whether the district court erred by concluding that appellant’s claims regarding Terry’s death arose out of and in the course of his employment and thus

were subject to the WCA. Appellant argues that there were factual issues about whether Terry's death arose out of his employment and consequently that summary judgment dismissal of her tort cause of action was improper.

The analysis of this issue involves two levels of causation: the first level is the initial heart attack; the second is the subsequent alleged aggravating circumstances. For purposes of summary judgment and this appeal, the parties do not appear to disagree that the heart attack was unrelated to work. It was idiopathic and simply occurred while Terry was at work during a contentious personal telephone conversation that he was having with his health insurer.

The second level of causation is the relationship between Terry's death and the delayed arrival of the emergency responders due to the erroneous directions given by Ameriprise security personnel and the alleged improper placement of defibrillators at the workplace. For purposes of its motion for summary judgment and this appeal, both Ameriprise and appellant agree that these circumstances prevented timely, appropriate medical intervention and caused Welch's death. This causation assumption is the basis of appellant's wrongful-death claim against Ameriprise. The question is the relevance of this second level of causation to the arising-out-of-employment factor in establishing workers' compensation coverage. Appellant argues that, for purposes of this appeal, the aggravating circumstances support a tort action that is not subject to the exclusivity provisions of the WCA.

An injury occurs in the course of employment if the injury arises "within the [t]ime and space boundaries of the employment." *Nelson v. City of St. Paul*, 249 Minn.

53, 56, 81 N.W.2d 272, 276 (1957). An injury arises out of employment if there is a causal connection between the employment and the employee's injury. *Id.* at 55, 81 N.W.2d at 275. The causal connection does not need to rise to the level of direct and proximate causation necessary for a tort. *Id.* The injury merely has to originate with a hazard or risk connected with employment as part of the working environment. *Id.* at 275-76.

Our supreme court's analysis of the arises-out-of-employment element in *O'Rourke v. North Star Chemicals, Inc.* is helpful. 281 N.W.2d 192 (Minn. 1979). O'Rourke worked in a chemical plant where one of his job duties involved removing bauxite from a boxcar. *Id.* at 193. The factfinder determined that O'Rourke suffered an idiopathic hemorrhage in his brain that caused him to fall into a boxcar, where he died from asphyxiation caused by inhalation of bauxite. *Id.* at 194. O'Rourke was not discovered for several minutes, and attempts to revive him did not begin until he was pulled from the boxcar, which took additional minutes. *Id.* at 193.

On appeal, the issue in *O'Rourke* was whether the employee's death resulted from an injury that arose out of employment. *Id.* at 192. Although the hemorrhage was not related to his employment, the supreme court reasoned that, if employment places an employee "in a position which aggravates the effects of the fall, resultant injury and death are causally related to and arise out of his employment. Thus, if employee's death was caused by [bauxite] suffocation and the inability to obtain prompt resuscitative measures, because of his employment conditions, it arose out of his employment." *Id.* at 194 (citation omitted). The supreme court ruled that O'Rourke's injuries arose out of his

employment and workers' compensation benefits were proper because the factfinder reasonably concluded that O'Rourke died from asphyxiation.² *Id.*

Here, Welch's medical emergency occurred at 9:00 a.m. while he was at work. There is no dispute that his medical emergency occurred within the time and at the place of his employment. Just as O'Rourke's employment did not cause the hemorrhage that led to the fall, there is no dispute of material fact that Welch's work did not cause his medical emergency. Rather, like the bauxite-filled boxcars in *O'Rourke*, improper placement of defibrillators and negligence of Ameriprise's security employees in summoning emergency responders to the wrong address is alleged to have precluded timely treatment of Welch's heart attack, resulting in his death. Under the reasoning of *O'Rourke*, the alleged aggravation is sufficient to satisfy the arises-out-of-employment element. *See id.* This tort causation is sufficient causal connection to establish the arises-out-of-employment element for workers' compensation purposes. *Nelson*, 249 Minn. at 55, 81 N.W.2d at 275.

Appellant argues against this conclusion. First, appellant argues that *O'Rourke* held that whether a causal relation exists between a decedent's death and his employment is a factual question. But this is a dispute common to both a WCA and a tort claim. It does not move the plaintiff's claim from the WCA to the tort system. If O'Rourke had simply died from the hemorrhage, which all parties acknowledged was not related to his

² In the case before us, appellant implies that the fact that the bauxite-filled boxcar existed before O'Rourke fell is legally significant. But this interpretation focuses on the wrong detail. What is significant in *O'Rourke* is that the workplace environment contained bauxite-filled boxcars, and it was these boxcars that aggravated O'Rourke's fall by placing him in the position where he could—and did—suffocate from bauxite.

employment, then his employment did not aggravate the injury and the resulting death would not arise out of employment. There would be neither workers' compensation nor tort recovery. But because O'Rourke died due to suffocation, his employment did aggravate his injury and the resulting death did arise out of employment. *O'Rourke*, 281 N.W.2d at 194.

In our case, there is no factual dispute for purposes of this appeal. Appellant alleges that negligently summoning the ambulance not only aggravated Welch's medical emergency, but directly and proximately caused his death. Ameriprise accepts this allegation as true for purposes of summary judgment and this appeal. Because there is no dispute that actions of Welch's fellow employees aggravated his non-work-related medical condition, the legal conclusion is clear: Welch's death arose out of employment. Appellant's factual-dispute argument is unavailing.

Second, appellant argues that Welch's heart attack related death was caused by an argument during his personal telephone call with his health-insurance carrier about payment of his medication. Appellant asserts that because this personal call had nothing to do with work, there is a factual dispute over whether his injury arose out of his employment. But this ignores a necessary part of appellant's claim. Her complaint alleges that summoning the ambulance to the wrong address precluded timely emergency assistance. Appellant's brief continues the aggravation argument: "The wrong address, lack of defibrillators being present and those locked up on separate floors only *became important* after Terry Welch's heart attack." The wrong address and lack of defibrillators became important in appellant's eyes because they caused Welch's heart attack to be

fatal. Under *O'Rourke*, this means that Welch's death arose out of employment. Thus, the "dispute" about whether the telephone call to the insurance company caused the heart attack does not affect this analysis. Appellant's second argument is also unavailing.

We conclude that the district court did not err in determining that, based on the facts as alleged by appellant and assumed for purposes of summary judgment, there is no genuine issue of material fact and that Welch's injury arose out of and in the course of employment and thus was covered by the WCA.³

II.

The second issue is whether the district court erred by determining that the initial denial by respondent's workers' compensation insurer estopped respondent from asserting that a claim under the WCA was appellant's exclusive source of relief. It is well established that if an employee suffers a personal injury or death arising out of and in the course of employment, the WCA provides the employee's exclusive remedy. Minn. Stat. § 176.031 (2008); *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995). Appellant argues, that because Ameriprise's workers' compensation carrier denied appellant's workers' compensation claim, the doctrine of estoppel prevents Ameriprise from benefitting from that denial by claiming that the WCA shields it from a negligence action.

³ We recognize that in a workers' compensation proceeding the workers' compensation insurer might well claim that Welch's initial heart attack was so severe that neither the availability of defibrillators nor the error by the Ameriprise security staff in directing the emergency-rescue personnel to the wrong building made any difference to Welch's death. Of course, then there would not be workers' compensation coverage available. In addition, such a lack of nexus to death would also preclude tort recovery because it would negate causation.

Ameriprise argues that this court addressed this estoppel issue in *Hodel v. Gundle Lining Constr. Corp.*, 572 N.W.2d 764 (Minn. App. 1997). Hodel suffered an injury that arose out of and in the course of his employment. *Id.* at 765. The employer's workers' compensation carrier denied Hodel's claim because it concluded that Hodel's injury was not work related. *Id.* Hodel never filed a petition with the Workers' Compensation Division of the Department of Labor and Industry. *Id.* Hodel then brought a negligence action against the employer, and the employer moved for summary judgment, arguing that the WCA provided Hodel's sole remedy. *Id.* Although the district court concluded that the injury arose out of and in the course of employment, it ruled that the employer was equitably estopped from asserting the exclusivity provision of the WCA because the employer's workers' compensation carrier denied Hodel's claim and Hodel relied on that decision to his detriment. *Id.* On appeal, this court reversed. *Id.* at 765-66. We noted that Hodel could still file a workers' compensation claim because the time limitations in the WCA had not expired. *Id.* at 766. The opinion also stated that estoppel was not appropriate because the employee should have challenged the insurance denial within the workers' compensation system. *Id.* at 765-66.

For a party to invoke estoppel, that party must show detrimental reliance on the other party's language or conduct. *Ridgewood Dev. Co. v. State*, 294 N.W.2d 288, 292 (Minn. 1980). In other words, the party seeking estoppel "must demonstrate that he suffered some loss through his reasonable reliance on that conduct." *Id.* Because Hodel could still file a timely workers' compensation claim after this court issued its decision, Hodel suffered no loss by relying on the insurance carrier's denial of Hodel's claim and

bringing a negligence lawsuit instead. *See* 572 N.W.2d at 766. Hodel could not demonstrate the detrimental reliance necessary for estoppel. Although the court in *Hodel* opined that an insurance carrier's denial of a workers' compensation claim should not estop the employer from asserting the exclusivity provision of the WCA as a defense, these statements "go beyond the facts before the court" and thus are dicta, that is, merely "the individual views of the author of the opinion and not binding in subsequent cases." *State ex rel. Foster v. Naftalin*, 246 Minn. 181, 208, 74 N.W.2d 249, 266 (1956).

In this case, appellant can no longer file a workers' compensation claim because the time to file expired on February 13, 2009, at the latest.⁴ The record before us indicates the WCA claim was barred before respondent filed its motion for summary judgment. Accordingly, we analyze whether the record would support estoppel.

A party may assert estoppel to prevent another litigant from denying the truth of factual representations that the litigant previously made under the following conditions:

- (1) There must be a misrepresentation of a material fact;
- (2) The party to be estopped must be shown to have known that the representation was false;
- (3) The party to be estopped must have intended that the representation be acted upon;
- (4) The party asserting the estoppel must not have had knowledge of the true facts; and
- (5) The party asserting the estoppel must have relied upon the misrepresentation to his detriment.

Transamerica Ins. Group v. Paul, 267 N.W.2d 180, 183 (Minn. 1978).

⁴ Minn. Stat. § 176.151(b) (2008) provides that the decedent's dependents must bring their workers' compensation claim within three years of the Department of Labor and Industry being notified of the decedent's death. The Department was notified of Welch's death on or before February 13, 2006.

Appellant argues that the representation forming the basis of estoppel is the insurance carrier's denial of appellant's workers' compensation coverage and its explanation for the denial—namely, that Welch's injury was not work related. Assuming without deciding that this representation was a misrepresentation of fact, the most apparent problem with appellant establishing estoppel is element four. At the time the wrongful-death lawsuit was initiated, appellant knew that the ambulance was summoned to the wrong building by Ameriprise employees. Because appellant had knowledge from the very outset of her tort claim of work-related circumstances that are alleged to have caused Welch's death, we conclude that appellant cannot establish that Ameriprise is estopped from asserting the exclusivity provision of the WCA as a defense.⁵

Because appellant's tort claim is based on the allegation that Welch's death arose out of and in the course of employment, we conclude the district court properly determined the WCA provides appellant's exclusive remedy.

III.

Appellant also raises the issue of whether the district court abused its discretion in granting summary judgment without allowing additional discovery.

The rules of civil procedure permit a party to move for summary judgment “at any time after the expiration of 20 days from the service of the summons.” Minn. R. Civ. P. 56.01. Rule 56.06 allows a party to move for a continuance from summary judgment “to

⁵ Also, there is no claim or showing either that Ameriprise or its workers' compensation insurer knew the representation regarding lack of WCA coverage to be false. In fact, the denial of WCA coverage was two days after Welch's heart attack and death. Given the lack of evidence or allegation of falsity, appellant cannot establish the second element of estoppel.

permit affidavits to be obtained or depositions to be taken or discovery to be had.” “A district court’s decision to deny a motion for a continuance to conduct discovery is reviewed under an abuse-of-discretion standard.” *Lewis v. St. Cloud State Univ.*, 693 N.W.2d 466, 473 (Minn. App. 2005), *review denied* (Minn. June 14, 2005).

In deciding a motion for a continuance to allow more discovery, a district court requires the moving party to show (1) diligence in seeking discovery before the summary-judgment motion was made; and (2) a good-faith belief that the discovery sought will uncover material facts. *Rice v. Perl*, 320 N.W.2d 407, 412 (Minn. 1982). If the discovery would not assist the district court or change the result of the summary-judgment motion, the district court does not abuse its discretion by granting summary judgment without granting a continuance. *McCormick v. Custom Pools, Inc.*, 376 N.W.2d 471, 477 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985).

Here, the record includes appellant’s affidavit, setting forth the additional discovery sought. That additional discovery focused on issues relating to the defibrillators and why and how Ameriprise’s employees summoned the ambulance to the wrong address. This discovery relates to the potential negligence of Ameriprise and its employees. Such facts would support appellant’s claim that Ameriprise placed Terry in a position that aggravated his medical emergency. Under the logic of *O’Rourke*, these facts are not relevant to the issues on appeal because they are undisputed for purposes of summary judgment, because they reinforce the conclusion that Terry’s injury arose out of employment and are therefore workers’ compensation matters, and because they do not

support the estoppel claim. Accordingly, the district court did not abuse its discretion by not granting a continuance before dismissing on summary judgment.

IV.

Finally, we note that Ameriprise filed a motion to strike certain documents in the appendix of appellant's brief on the grounds that the documents are not part of the record on appeal. These documents deal with the lack of easily accessible defibrillators at the workplace and provide further detail on Ameriprise's security employees summoning the ambulance to the wrong address. Because this information does not alter our analysis or result, we do not further consider Ameriprise's motion to strike.

Affirmed; motion dismissed.

Dated: