IN THE SUPREME COURT OF TEXAS

444444444444
No. 00-0142
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GARY LAWRENCE, ET UX., MARTEE LAWRENCE, PETITIONERS

v.

CDB SERVICES, INC., RESPONDENT

- consolidated with -

444444444444
No. 00-0201
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DANNY LEE LAMBERT AND TERESA LAMBERT, INDIVIDUALLY, AND AS NEXT FRIENDS OF R. L., AND R. L., PETITIONERS

v.

AFFILIATED FOODS, INC., RESPONDENT

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ON PETITIONS FOR REVIEW FROM THE
COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS
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Argued on October 2, 2000

JUSTICE BAKER, joined by CHIEF JUSTICE PHILLIPS, dissenting.

For eighty-eight years workers' compensation legislation has provided a closely-monitored

compensation scheme to encourage employers' participation in the workers' compensation system and to ensure all injured employees adequate redress. Today, by declining to invalidate the waivers at issue on public policy grounds, the Court ignores the Texas Workers' Compensation Act's statutory scheme and its established underlying public policies. Instead, the Court elects to defer to the Legislature to resolve what the Court improperly calls "competing public policy concerns." __ S.W.3d at __. Because the Court's choice is contrary to the public-policy decision the Legislature has already made and embodied in the Act, I dissent.

I.
APPLICABLE LAW

A. THE WORKERS' COMPENSATION ACT

In 1913, the Texas Legislature enacted workers' compensation legislation "to meet the needs of an increasingly industrialized society." *Texas Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 510 (Tex. 1995). At the time, despite the rising number of workplace injuries, most employees were denied any recovery because it was difficult to establish workplace negligence and employers invoked complete common-law defenses, such as contributory negligence, assumption of the risk, and fellow servant, to bar negligence claims. *See Garcia*, 893 S.W.2d at 521. Consequently, the Legislature passed the first workers' compensation legislation with the "general purpose . . . [of working] an important change in the law in regard to the liability of employers for personal injuries to their employees, or for death resulting from such injuries, and the compensation afforded therefor to employees or their beneficiaries." *Middleton v. Texas Power & Light Co.*, 185 S.W. 556, 558 (Tex. 1916).

In 1989, the Legislature passed the Texas Workers' Compensation Act to resolve problems with existing legislation. *Garcia*, 893 S.W.2d at 511-14. However, the provisions governing compensation for injured employees have remained largely unchanged since the early 1900s. *See Kroger Co. v. Keng*, 23 S.W.3d 347, 349-50 (Tex. 2000) (describing workers' compensation legislation in 1913); *Garcia*, 893 S.W.2d at 521 (noting that the Act carries "forward the general scheme of the former act"). Under the Act, an injured employee whose employer subscribes to workers' compensation insurance may recover statutorily-prescribed benefits without regard to the employer's fault or the employee's negligence. *See* TEX. LAB. CODE §§ 406.031, 406.033; *Kroger Co.*, 23 S.W.3d at 349. In exchange, the employee may not bring common-law claims against the subscribing employer. *See James v. Vernon Calhoun Packing Co.*, 498 S.W.2d 160, 162 (Tex. 1973) (stating that the Act "provides an exclusive remedy for those who accept its provisions"). Alternatively, an injured employee may retain the right to assert common-law claims against a subscribing employer if the employee timely elected in writing to waive workers' compensation insurance coverage. *See* TEX. LAB. CODE § 406.034(b). In those instances, the employer may raise all common-law defenses. *See* TEX. LAB. CODE § 406.034(d).

The Act also gives employers the option not to subscribe to workers' compensation insurance. *See* TEX. LAB. CODE § 406.002. Nonsubscribing employers' employees retain the right to bring personal-injury claims against their employers. *See* TEX. LAB. CODE § 406.033. In defending against such claims, however, a nonsubscribing employer loses all traditional common-law defenses. TEX. LAB. CODE § 406.033(a); *Kroger Co.*, 23 S.W.3d at 349; *Garcia*, 893 S.W.2d at 521. Thus, the Act encourages employers to subscribe and penalizes those who do not. *Kroger Co.*, 23 S.W.3d at 349-350.

B. CONTRACTS AND PUBLIC POLICY

On several occasions, we have held otherwise freely-entered contracts void because they were contrary to public policy. *See, e.g., Juliette Fowler Homes, Inc. v. Welch Assocs., Inc.*, 793 S.W.2d 660, 663 (Tex. 1990) (unreasonable covenant not to compete); *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 680 (Tex. 1990) (same); *Puckett v. U.S. Fire Ins. Co.*, 678 S.W.2d 936, 938 (Tex. 1984) (policy allowing insurer to avoid plane crash liability due to insured's technical breach); *Crowell v. Housing Auth. of Dallas*, 495 S.W.2d 887, 889 (Tex. 1973) (lease provision waiving landlord's tort liability to tenant). In doing so, we recognized that the State expresses its public policy in its statutes. *See National County Mut. Fire Ins. Co. v. Johnson*, 879 S.W.2d 1, 5 (Tex. 1993) (holding insurance policy with family-member exclusion void because it conflicts with public policy underlying Texas Motor Vehicle Safety-Responsibility Act); *Sabine Pilot Serv., Inc. v. Hauck*, 687 S.W.2d 733, 735 (Tex. 1985) (holding employment termination for refusal to perform illegal act contrary to public policy expressed in state and federal criminal laws). Thus, to determine whether a contract violates public policy, we consider the policies underlying any applicable statutes.

Whether a contract violates public policy is a question of law, which we review de novo. *Barber v. Colorado I.S.D.*, 901 S.W.2d 447, 450 (Tex. 1995); *Insurance Co. of N. Am. v. Easton*, 11 S.W. 180, 181 (Tex. 1889). Generally, if a contract violates public policy, it is void, not merely voidable. *See, e.g., Tom L. Scott, Inc. v. McIlhany*, 798 S.W.2d 556, 560 (Tex. 1990) (holding agreement to redesignate opponent's expert witnesses ineffective); *Continental Fire & Cas. Ins. Corp. v. American Mfg. Co.*, 221 S.W.2d 1006, 1009 (Tex. Civ. App.—Fort Worth 1949, writ ref'd) (explaining that it is

"the law that contracts prohibited by statute, either expressly or impliedly, are void"). Estoppel and ratification doctrines will not make a contract that violates public policy enforceable. *See, e.g.*, *Continental Fire & Cas. Ins. Corp.*, 221 S.W.2d at 1009 ("An illegal contract cannot be ratified by either party."); *Richmond Printing v. Port of Houston Auth.*, 996 S.W.2d 220, 224 (Tex. App.—Houston [14th Dist.] 1999, no pet.) ("As a general rule, void contracts cannot be ratified."); *Ex parte Payne*, 598 S.W.2d 312, 317 (Tex. Civ. App.—Texarkana 1980, no writ) ("Since the contract was void, neither party was bound thereby, and thus estoppel by contract could not arise in this case.").

II.
ANALYSIS

The Act provides a comprehensive compensation system with two methods by which employers can handle workplace injuries: (1) an employer may elect to provide workers' compensation insurance coverage, thereby barring an injured employee's common-law claims unless the employee timely elected to waive coverage; or (2) an employer may choose not to carry workers' compensation insurance, remain subject to an injured employees' common-law claims, and waive traditional common-law defenses. *See* TEX. LAB. CODE §§ 406.031-.034, 406.002. The Legislature created the compensation system to encourage subscription and "delineate explicitly the structure of an employee's personal injury action against his or her nonsubscribing employer." *Kroger Co.*, 23 S.W.3d at 350-51.

In *Garcia*, this Court considered the Act's compensation scheme critical in resolving constitutional challenges to the statute. 893 S.W.2d at 523-24 (holding that the Act does not violate Texas' open courts guarantee because it assures that injured employees may either assert common-law claims or receive the

Act's adequate substitute remedies). And, we have recognized that the Act does not arbitrarily abolish an employee's common-law claims because it substitutes a different but certain and adequate legal remedy for the one that existed at common-law. *Lebohm v. City of Galveston*, 275 S.W.2d 951, 954 (Tex. 1955); *see also Holmans v. Transource Polymers, Inc.*, 914 S.W.2d 189, 193 (Tex. App.—Fort Worth 1995, writ denied) ("[T]he Workers' Compensation Act is an example of the legislature's reasonable substitute for common-law rights.").

Thus, a key concept in upholding the Act has been its providing injured employees of nonsubscribing *and* subscribing employers definite means by which they may seek adequate redress. Today, however, the Court allows employers an end-run around the Act's carefully-crafted system and improperly creates a third compensation method. This method allows employers to privately negotiate injured employees' compensation without considering whether the employer's benefits plan affords fewer benefits than under the Act or whether the employee relinquishes more remedies than the Act allows.

In concluding that the waivers in these cases do not violate public policy, the Court engages in an improper analysis. Rather than looking to the Act to ascertain Texas' public policy, *National County Mut. Fire Ins. Co.*, 879 S.W.2d at 5, the Court weighs what it labels as the parties' and amici's "competing public policy concerns." __ S.W.3d at __. But in reality, the Court is merely reciting the waivers' pros and cons and data compiled from a statewide employer survey—not the public policies the Act expresses.

This Court has previously identified the public policies underlying the Act. We have recognized, for example, that the Act manifests a strong legislative policy encouraging employers to subscribe to workers' compensation insurance. *Kroger Co.*, 23 S.W.3d at 350; *Garcia*, 893 S.W.2d at 511. And

we have stated that the Legislature passed the Act to benefit and protect employees. *See Fidelity & Cas. Co. v. McLaughlin*, 135 S.W.2d 955, 956 (Tex. 1940) (recognizing that the "primary purpose of our Compensation Law is to protect our own workmen"); *Woolsey v. Panhandle Ref. Co.*, 116 S.W.2d 675, 678 (Tex. 1938) (stating that the Act "was enacted principally to protect the employee"). Consequently, we "liberally construe the Workers' Compensation Act in favor of the injured worker." *Kroger Co.*, 23 S.W.3d at 349.

The Act's underlying public policies are also evident in cases where contracts have been held void as against public policy because they reduced injured employees' common-law and statutory rights. For example, this Court has held that a contract in which an employee expressly assumes the risk of workplace injury is "so abhorrent that it is held to be in violation of public policy and void." *Barnhart v. Kansas City, Mex. & Orient Ry. Co.*, 184 S.W. 176, 179 (Tex. 1916). And a court of appeals has held that a contract limiting a nonsubscribing employer's liability to the amounts in the Act is void, because the employer did not waive its common-law defenses. *Hazelwood v. Mandrell Indus. Co.*, 596 S.W.2d 204, 206 (Tex. Civ. App.—Houston [1st Dist.] 1980, writ ref'd n.r.e.); *see also Crowell*, 495 S.W.2d at 889 (recognizing, in a case in which we held that a lease provision exculpating a landlord from tort liability to tenants violates public policy, that "a contract exempting an employer from all liability for negligent injury of his employees in the course of their employment is void as against public policy"); *Clevenger v. Burgess*, 31 S.W.2d 675, 678 (Tex. Civ. App.—Beaumont 1930, writ ref'd) (rejecting nonsubscribing employer's argument that the Act unconstitutionally impairs freedom of contract if it invalidates an employee's agreement to assume the risk of injury).

It is already established, therefore, that the Act's underlying policies are to encourage workers' compensation insurance subscription while assuring nonsubscribing employers' injured employees a means to seek suitable compensation. Yet, the Court today refuses to hold these waivers unenforceable despite the Act's comprehensive compensation scheme and established public policies. Instead, the Court gives too much consideration to the parties' and amici's "factually-intensive" concerns, says the Legislature can better resolve these issues, and declines to hold the waivers invalid. __ S.W.3d at __. Surprisingly, the Court acknowledges that enforcing the waivers will discourage employer subscription to workers' compensation insurance—a fundamental policy expressed in the Act. *See Kroger Co.*, 23 S.W.3d at 350. But, rather than upholding the Act's underlying policies, the Court declines to take the appropriate action and defers to the Legislature in an area about which the Legislature and this Court have already clearly spoken.

The Court adds as an additional concern the possibility that invalidating the waivers may cause some employees to lose benefits while also losing their common-law claims because limitations has run. In doing so, the Court ignores the rule that "[i]n considering whether a contract is contrary to public policy, the test is whether the tendency of the agreement is injurious to the public good, not whether its application in a particular case results in actual injury." *Hazelwood*, 596 S.W.2d at 206 (citing 17 C.J.S. *Contracts* § 211; *Uvalde Const. Co. v. Shannon*, 165 S.W.2d 512, 513 (Tex. Civ. App.—Eastland 1942, no writ); *Amarillo Oil Co. v. Ranch Creek Oil & Gas Co.*, 271 S.W. 145, 151 (Tex. Civ. App.—Amarillo 1925, writ dism'd by agr.)).

In *Woolsey v. Panhandle Refining Co.*, for example, we held as unenforceable a contract in which

a subscribing employer promised an injured employee lifetime employment in exchange for his agreement not to file a workers' compensation claim. 116 S.W.2d at 678. We recognized that refusing to enforce the agreement may injure the plaintiff employee, but this result would be "far less disastrous to the great army of employees operating under this statute than to hold that under the law an employee and an employer can contract away the rights of the employee." *Woolsey*, 116 S.W.2d at 678; *see also James*, 498 S.W.2d at 162 (recognizing that invalidating a waiver may work a hardship on individual employee, but concluding it is in the working majority's best interest). Because the Act dictates that "the great army of employees" is best served by encouraging subscription while also assuring nonsubscribing employers' employees a means to seek adequate compensation, the Court should have no choice but to hold the waivers void and unenforceable.

The Court also finds it pertinent that employer and employee participation in the workers' compensation system is voluntary and says that allowing nonsubscribing employers' employees additional choices does not violate the legislative scheme. __ S.W.3d at __. This simply ignores that even when employers and employees elect not to have workers' compensation insurance coverage, the Act "delineate[s] explicitly the structure" of an injured employee's personal-injury action. *Kroger Co.*, 23 S.W.3d at 351. Enforcing these waivers is thus contrary to the Act's intent to protect both nonsubscribing and subscribing employers' employees and to monitor all injured employees' remedies.

Finally, because I would hold that the waivers violate public policy, I also consider the employers' argument that by accepting benefits under the plans, Lawrence and Lambert are estopped from claiming the waivers are unenforceable. While accepting benefits is a form of quasi-estoppel, *Lopez v. Munoz*,

Hockema & Reed, 22 S.W.3d 857, 864 (Tex. 2000), it does not apply where the agreement violates public policy and is thus void. *Ex parte Payne*, 598 S.W.2d at 317. And, generally, a party cannot ratify a void contract. *Richmond Printing*, 996 S.W.2d at 224. Accordingly, accepting benefits does not make the otherwise void waivers enforceable.

III.
CONCLUSION

An employee's agreement to waive all claims against a nonsubscribing employer violates the Act's long-recognized public policies. Today, the Court ignores its obligation to uphold those public policies and punts a well-settled issue to the Legislature. I respectfully dissent.

James A. Baker, Justice

Opinion Delivered: March 29, 2001