February 2016
MPT-1 Library:
In re Anderson

Excerpts from the Franklin Workers' Compensation Act

Franklin Labor Code § 200 *et seq*.

Article 2. Employers and Employees

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§ 251. "Employee" means every person in the service of an employer under any appointment or contract of hire, whether express or implied, oral or written . . . .

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§ 253. "Independent contractor" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.

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§ 257. Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.

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§ 280. The provisions of this statute shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment.

Article 7. Workers' Compensation Proceedings

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§ 705. The following are affirmative defenses, and the burden of proof rests upon the employer to establish them: (a) That an injured person claiming to be an employee was an independent contractor or otherwise excluded from the protection of this division where there is proof that the injured person was at the time of his injury actually performing service for the alleged employer.

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Robbins v. Workers' Compensation Appeals Board

Franklin Court of Appeal (2007)

This is an appeal from a decision of the Franklin District Court affirming an order of the Workers' Compensation Appeals Board. The Board held that appellant Matthew Robbins was an "independent contractor" and not an "employee" for purposes of the Franklin Workers' Compensation Act (Franklin Labor Code § 200 *et seq*.) and thus was not eligible for workers' compensation benefits. We affirm.

Background

Robbins injured his head and lower back when he fell from a roof while trimming bushes at the Maple Leaf Diner in the Town of Jefferson. Robbins filed a workers' compensation claim against the diner's owner, Alana Parker.

Parker called no witnesses at the workers' compensation hearing. Robbins testified that he has been gardening, painting, fixing pipes, and doing graffiti removal for 25 years. His clients are people who either know him or are referred to him by word of mouth. He charges by the hour, but sometimes he contracts for an entire job. He usually does the same type of work but for different people each day. Robbins does not have a roofer's license or a general contractor's license. He has no office and no employees, and he does not advertise.

Parker arranged for Robbins to trim the bushes along the roofline of the diner on two occasions. The first time was in August 2004, and the second, July 15, 2005, was the day he fell.

In 2004, Parker paid Robbins by the hour, although they did not discuss the number of hours he would work. Nor did they discuss the hourly rate until he was finished. On the 2004 visit, Parker paid Robbins $150. She did not deduct taxes from his pay. He pays his own taxes. Parker and Robbins did not discuss at that time when he would provide services in the future, agreeing only that Parker would contact him when his services were needed. On the second visit, in July 2005, Parker and Robbins did not discuss either the number of hours to be worked or the rate. As it turned out, Robbins was not paid for that visit because, after his fall, he did not complete the work and never sent a bill. Robbins had no plans to do additional work at the diner in the future, other than to trim bushes whenever Parker asked.

On the day he fell, Robbins brought all the equipment he needed to do the job, including a trimmer, a rake, a broom, a leaf blower, and a ladder. He arrived in his own truck. Parker did

not tell him to bring an assistant that day, how to do the job, or how long it would take. She did not tell him to arrive at any given time, only that he should arrive before the diner opened.

Discussion

The question before us is whether Robbins was an employee or an independent contractor when he was injured. The Board's decision that Robbins was an independent contractor (and therefore not entitled to workers' compensation benefits) will be upheld if it is supported by substantial evidence in the record.

Workers' compensation laws protect individuals who are injured on the job by awarding prompt compensation, regardless of fault, for work injuries. *Raleigh v. Juneau Enterprises, Inc*. (Fr. Ct. App. 1992). The principal test of an employment relationship is whether the person to whom service is rendered has the "right to control" the manner and means of accomplishing the result desired. Franklin Labor Code § 253. The existence of such right of control, not the extent of its exercise, gives rise to the employer-employee relationship. However, this test is not exclusive. Several secondary factors, the "*Doyle* factors," *infra*, also are relevant to one's status as an employee or an independent contractor.

Franklin courts have liberally construed the Workers' Compensation Act to extend benefits to persons injured in their employment. *Id*. § 280. Because workers' compensation statutes are remedial, public policy considerations also influence the determination of whether an individual is entitled to workers' compensation protections.

Right-of-Control Test

We begin with the right-of-control test set forth in *Doyle v. Workers' Compensation Appeals Board* (Fr. Sup. Ct. 1991). *Doyle* involved unskilled harvesters who worked for the defendant grower. *Doyle* held that, because all meaningful aspects of the relationship (e.g., price, crop cultivation, fertilization and insect prevention, payment, and the right to deal with buyers) were controlled by the defendant grower, the grower exercised "pervasive control over the operation as a whole," and the unskilled harvesters were its employees. The harvesters' only decisions were which plants were ready to pick and which needed weeding. The harvesters' work was an integral component of the grower's operations, over which the grower exercised pervasive control, and the purported "independence" of the harvesters from the grower's

supervision was not a result of superior skills but was rather a function of the unskilled nature of the labor, which required little supervision.

Here, Robbins was engaged to produce *the result* of trimming the bushes. Neither party presented evidence that Parker had the power to control the manner or means of accomplishing the trimming. Indeed, it is Parker's inability to control the means and manner by which Robbins provided the trimming service that puts the facts here in stark contrast to those in *Doyle*. Robbins testified that in general, no one tells him how to do his work on the jobs he accepts and that Parker did not tell him how to do the trimming at the diner. Once he accepted a job, he testified, he completed it without direction from the person for whom he was rendering the service. Thus, the lack of supervision here was not a function of the unskilled nature of the job, as in *Doyle*. Nor does the fact that Parker asked Robbins to arrive early suggest that Parker controlled any aspect of the trimming. It was Robbins who chose both the date and time to perform the service. In short, under the principal test of the employment relationship, Parker did not have the right to control Robbins's work.

Doyle Factors

In addition to the right-of-control test set forth in *Doyle*, we also must analyze the secondary factors identified in that case to determine whether Robbins was an independent contractor or an employee. These "*Doyle* factors" are derived largely from the Restatement (Second) of Agency and from other jurisdictions.

They are (1) whether the worker is engaged in a distinct occupation or an independently established business; (2) whether the worker or the principal supplies the tools or instrumentalities used in the work, other than those customarily supplied by employees; (3) the method of payment, whether by time or by the job; (4) whether the work is part of the regular business of the principal; (5) whether the worker has a substantial investment in the worker's business other than personal services; (6) whether the worker hires employees to assist him; (7) whether the parties believe they are creating an employer-employee relationship; and (8) the degree of permanence of the working relationship. The *Doyle* factors are not to be applied mechanically as separate tests but are intertwined, and their weight often depends on particular combinations of the factors. The process of distinguishing employees from independent contractors is fact-specific and qualitative rather than quantitative.

In applying the *Doyle* factors to the facts at hand, we note that, first, Robbins performed his work for Parker as part of his gardening services, which he has been doing independently for approximately 25 years. Although Robbins does not advertise, he has several different clients who telephone or email him to perform specific jobs. Not only does he have many other clients, but Parker did not ask him to perform any service other than trimming the bushes.

Second, Robbins supplied the equipment he used for the job; and they were not tools a restaurant would commonly have.

Third, he was not hired by the day or hour, or even on a regular basis. Payment was only discussed after the work was complete. Sometimes Robbins charged by the hour and sometimes by the job, and he was paid on a job-by-job basis, with no obligation on the part of either party for work in the future. Taxes were not deducted from his payment. Robbins estimates and pays his own taxes.

Fourth, in concluding that the harvesters in *Doyle* were employees, the court found that their work constituted "a regular and integrated portion of [the grower's] business operation, in that [its] entire business was the production and sale of agricultural crops." Although seasonal, the work in *Doyle* was a permanent part of the agricultural process, and many harvesters returned to work for Doyle each year—all of which led the court to conclude that the "permanent integration of the workers into the heart of Doyle's business is a strong indicator that Doyle functions as an employer." By contrast, Robbins is a gardener whose work is wholly unrelated to the restaurant business; it constitutes only occasional, discrete maintenance. Robbins, for example, was asked to work when the diner was closed so that his work would not interfere with the diner's *regular business*.

We note that Robbins has 25 years' experience in his gardening business and a substantial investment in equipment and other aspects of the business, satisfying the fifth factor.

Although Robbins did not hire employees to assist him (the sixth *Doyle* factor), this alone does not negate the overwhelming evidence satisfying the other *Doyle* factors.

Neither Robbins nor anyone else testified that the parties believed they were creating an employer-employee relationship (the seventh *Doyle* factor). This factor is neutral.

With regard to the eighth and final *Doyle* factor, the degree of permanence in the working relationship, no date for Robbins's return was specified after the first time he trimmed bushes at the diner. Robbins understood that he would be contacted only when his services were needed,

with the result that he worked for a circumscribed period of time with no permanence whatsoever in his working relationship with Parker. Indeed, Robbins had done trimming work for Parker only twice in the space of nearly a year, and there were no plans for him to return to the diner. Thus, Robbins's profit or loss depended on his scheduling, the time taken to perform the services, and his investment in tools and equipment.

Altogether, six of the *Doyle* factors support the Board's conclusion that Robbins was an independent contractor because he "render[ed] service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result [was] accomplished." Franklin Labor Code § 253.

Policy Consideration

Finally, in deciding whether a worker is an employee or an independent contractor, the court must consider the remedial purpose of workers' compensation laws, the class of persons intended to be protected, and the relative bargaining positions of the parties. The policy underlying Franklin's workers' compensation law indicates that the exclusion of independent contractors from the law's benefits should apply to those situations where the worker had control over how the work was done and, in particular, had primary power over work safety and could distribute the risk and cost of injury as an expense of his own business.

Thus the *Doyle* court, in its analysis of the harvesters' employment status, considered that if the grower were not the employer, the harvesters themselves and the public at large would have to assume the entire financial burden when injuries occur. Accordingly, the harvesters were in the class of workers for which the protections of workers' compensation law were intended.

Robbins, by contrast, was in a distinctly different position from the harvesters in *Doyle*—he was free to take or reject the jobs that Parker offered. He negotiated payment with Parker and was not in a weak bargaining position. These facts support the conclusion that Robbins does not fall under the protections of the workers' compensation act but is an independent contractor.

Conclusion

Here, no amount of liberal construction can change the balance of evidence. Robbins was an independent contractor. This conclusion does not defeat the policy behind the workers' compensation system. The decision of the Board is affirmed.

Harris v. Workers' Compensation Appeals Board

Franklin Court of Appeal (2003)

This is an appeal from the Workers' Compensation Appeals Board. The Board held, and the trial court affirmed, that a golf caddie was an independent contractor rather than an employee and was not entitled to workers' compensation for injuries sustained on the job. We reverse.

Appellant Jordan Harris claimed that he sustained various orthopedic injuries in October 2001, while employed by Lamar Country Club as a golf caddie. The Club argued that Harris was an independent contractor. At the hearing before the Board, Harris testified that he had had continuous employment with the Club since May 2000, working from 7:00 a.m. to 3:00 p.m. daily. He said he was required to wear special clothing: he was issued a cap and had to buy a Club shirt. The Club maintains a caddie assignment and locker room, and has adopted rules of conduct for caddies—including one requiring them to get permission to go to other areas of the Club. According to Harris, his duties were greeting Club members, giving advice about the course, retrieving balls, carrying and cleaning golf clubs, getting carts, and changing shoe spikes. Harris received his assignments from the Club, but members would instruct him while he accompanied them on the course, which is where he was injured. There were no written contracts or tax forms, and Harris had no other caddie business.

Kim Day, the Club's office manager, testified that Harris was not on the Club's payroll, and was paid in cash through various members' accounts. She added that the Club provides caddies for its members, but that there is no set schedule and they are free to work elsewhere.

Andrew Schaefer, the Club's caddie master, testified that he considers the caddies' abilities and personalities when assigning them to members. Members can request certain caddies, but assignments can be refused and caddies may work elsewhere without repercussion. According to Schaefer, once on the course, the members supervise the caddies, although the caddies sometimes advise and serve as guides on the course. Among other things, caddies search for and clean balls and remove flags on the greens. Schaefer also testified that caddies have no set days or hours: they normally sign in and inform him when they are leaving. It is Schaefer's job to pay the caddies cash and charge the members' accounts.

On appeal, Harris notes that employment is presumed under the law when services are provided, and he argues that the Club failed to meet its burden of proving independent contractor

status under the Franklin Labor Code § 705(a). Harris also contends that when the matter is analyzed under *Doyle v. Workers' Compensation Appeals Board* (Fr. Sup. Ct. 1991), the conclusion is inescapable that he was an employee.

Both sides agree that the Club and the caddie master have absolute authority over the premises, while the members direct the caddies on the golf course. But this does not mean that the Club's control does not extend to caddying. It is undisputed that the Club supervised Harris's dress, his behavior, and the types of services he rendered, and it administered the payment process.

A person who engages an independent contractor to perform a job for him or her may retain broad general power of supervision and control as to the results of the work so as to ensure satisfactory performance of the contract—including the right to inspect, to stop the work, to make suggestions or recommendations as to the details of the work, or to prescribe alterations or deviations in the work—without changing the nature of the independent contractor relationship or the duties arising from that relationship.

Under Franklin Labor Code § 253, employer/employee status exists when the employer controls the manner and means of the work and not just the results. We believe that is the case here. The Club primarily determines assignments based on caddies' abilities and personalities, and keeps track of attendance if not hours. The ability to reject assignments seems of small import considering the effect on income and the Club's clearly superior bargaining position.

The *Doyle* factors also support the conclusion that Harris was an employee. Since Day testified that the Club provides caddies for its members, it is apparent that caddying is an integral part of the Club's business. Thus, Harris provided services which also benefited the Club, and employment is presumed in such situations. Franklin Labor Code § 257. In addition, Harris did not have his own business, and the fact that the Club allows caddies to work elsewhere does not negate a finding of employment. Although some items of equipment such as golf clubs are supplied by the members, the Club provides a caddie room and lockers.

Considering the totality of circumstances, and § 280 of the Labor Code, which provides that the statute be liberally construed with the purpose of extending benefits to those injured in the course of employment, we conclude that Harris was an employee. The decision of the Workers' Compensation Appeals Board denying workers' compensation benefits is vacated, and the case is remanded for further proceedings consistent with this opinion.