IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILLIP K. JACKSON, INDIVIDUALLY,
Appellant,
vs.
FREEMAN DECORATING SERVICES, INC. D/B/A FREEMAN, A TEXAS CORPORATION; AND EVELYN MAYVILLE, AN INDIVIDUAL,
Respondents.

No. 61010

FILED

MAR 1 8 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court summary judgment in a tort action. Eighth Judicial District Court, Clark County; Kathy A. Hardcastle, Judge.

Purple Zen hired appellant Phillip K. Jackson to set up its products at a trade show in Las Vegas. Respondent Freeman Decorating Services, Inc., was contracted to organize and set up the trade show. Jackson was injured when respondent Evelyn Mayville, a Freeman Decorating employee, knocked over a large water fountain onto Jackson as he set up Purple Zen's display, causing injuries. Jackson received workers' compensation benefits, and then subsequently filed the underlying personal injury complaint against respondents. Respondents filed a motion for summary judgment, which the district court granted, concluding that Purple Zen was the statutory employer of Freeman Decorating and its employees, and therefore, the exclusive remedy provision applied to preclude Jackson's personal injury suit. Jackson filed

a motion for reconsideration, which the district court denied. This appeal followed.

On appeal, Jackson argues that the district court erred by applying the incorrect test to determine whether the exclusive-remedy rule applied here. He asserts that the district court should have performed the factual analysis set forth in *Meers v. Haughton Elevator*, 101 Nev. 283, 286, 701 P.2d 1006, 1007-08 (1985), to determine whether Purple Zen and Freeman Decorating were in the same trade or business. Respondents assert that summary judgment was proper because they presented facts to establish co-employee status and statutory immunity, and Jackson did not counter with specific facts.

Having reviewed the parties' briefs and the record on appeal, we conclude that the district court erred in granting summary judgment. *See Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that this court reviews an order granting summary judgment de novo). To determine whether a company is a person's statutory employer under the Nevada Industrial Insurance Act, the court first looks to whether the company is a principal contractor carrying an NRS Chapter 624 license. *Richards v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213, 1219, 148 P.3d 684, 687 (2006). If the principal contractor is licensed under NRS Chapter 624, it is always deemed a statutory employer of its subcontractors and independent contractors' employees. *See id.* at 1219, 148 P.3d at 688. If the principal contractor is not licensed, however, it is a statutory employer unless it (1) contracted with an independent enterprise; and (2) that independent enterprise is of a different trade, business, profession, or occupation than the principal

contractor. NRS 616B.603; *Richards*, 122 Nev. at 1219, 148 P.3d at 688. Here, there is no dispute that Purple Zen did not carry an NRS Chapter 624 license or that the companies were independent enterprises. Thus, this matter turns on whether Purple Zen and Freeman Decorating were of different trades, businesses, professions, or occupations.

The appropriate definition of "same trade" in NRS 616B.603 is "'whether that indispensable activity is, in that business, *normally* carried on through employees rather than independent contractors.'" *Oliver v. Barrick Goldstrike Mines*, 111 Nev. 1338, 1347-48, 905 P.2d 168, 174-75 (1995) (quoting *Meers*, 101 Nev. at 286, 701 P.2d at 1007). It is not the definition of "trade" set forth in NRS 616A.350. *See Oliver*, 111 Nev. at 1345-48, 905 P.2d at 173-75 (evaluating the prior versions of the statutes containing the same language). Mere participation in trade shows is alone insufficient to demonstrate engagement in the same trade. *See GES, Inc. v. Corbitt*, 117 Nev. 265, 268-69, 21 P.3d 11, 13-14 (2001) (distinguishing between companies with different roles in a trade show).

The record on appeal indicates that at the trade show, Freeman Decorating was to provide Purple Zen with booth space, receive and deliver freight, and provide electricity to the booth. There is nothing in the record demonstrating that Freeman Decorating was involved in setting up Purple Zen's products on display or selling the products, or that Purple Zen normally engaged in the services that Freeman Decorating provided. Therefore, viewing the evidence in a light most favorable to the nonmoving party, we conclude that genuine issues of material fact still exist as to whether Purple Zen and Freeman Decorating were in the same trade or business, so as to statutorily preclude Jackson's personal injury

claim. *See Wood*, 121 Nev. at 729, 121 P.3d at 1029. Accordingly, because the district court erred in granting summary judgment, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

_____, J.
Hardesty

_____, J.
Douglas

_____, J.
Cherry

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court Dept. 4
Persi J. Mishel, Settlement Judge
Murphy & Murphy Law Offices
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