

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-41

Filed 7 October 2026

Rowan County, No. 24CVS000645-790

ROBERT L. JEFFERSON, Plaintiff,

v.

JOHNSON CONCRETE COMPANY, Defendant.

Appeal by Plaintiff from order entered 1 August 2025 by Judge Adam M. Elkins in Rowan County Superior Court. Heard in the Court of Appeals 11 August 2026.

Martin & Jones, PLLC, by Steven D. Corriveau and H. Forest Horne; and Wilson Law, PA, by Kimberly Wilson White, for Plaintiff-Appellant.

Sue, Anderson & Bordman, LLP, by Gary K. Sue and Andrew T. Smith, for Defendant-Appellee.

COLLINS, Judge.

Plaintiff Robert Jefferson appeals from the trial court's order granting Defendant Johnson Concrete Company partial summary judgment. For the reasons stated herein, we reverse.

I. Background

Defendant is a North Carolina-based manufacturer of concrete blocks and pipes. Labor Finders is an employment-staffing company that assigned Plaintiff to perform work on Defendant's premises.

The contract between Defendant and Labor Finders stated:

[Labor Finders] is a temporary employment service which hires its own employees and assigns them to clients to support or supplement the clients' work force. In order to establish liability, both yours and ours, [Labor Finders] would like you to understand that to the extent we maintain workers' compensation, unemployment and liability insurance, each coverage applies with respect to employees of [Labor Finders] only, and that in no way does [Labor Finders] imply or promise that its insurance will cover your company or any of your company agents, contractors or employees.

All temporary employees furnished by [Labor Finders] to [Defendant] are considered employees of [Labor Finders], and we are responsible for hiring, disciplinary action, termination, and/or reassignment of all such employees. [Defendant] is responsible for training and supervision of [Labor Finders] employees while on assignment to [Defendant].

....

Except as otherwise provided in the applicable work order or approved by [Labor Finders] in writing in advance, [Defendant] will not directly or indirectly through any relationship (other than through [Labor Finders]), use the services of: (a) a person who has been [a Labor Finders] temporary employee assigned to [Defendant] at any time during the 365 days prior to such use; or (b) any person who was presented to [Defendant] by [Labor Finders] as a candidate for any permanent or temporary position during the 365 days immediately prior to such use. . . .

....

. . . **Assignment; Compliance; Restrictions:** All temporary employees assigned to [Defendant] by [Labor Finders ("Labor Finders Personnel")] are employees of [Labor Finders]. [Labor Finders] is responsible for hiring, assigning, disciplining, terminating and/or reassigning [Labor Finders] Personnel; and, is solely responsible for establishing, providing, and paying wages and benefits to [Labor Finders] Personnel. [Labor Finders] shall withhold, transmit payroll taxes, make unemployment contributions,

and carry Workers' Compensation and unemployment insurance as required by law with respect to all [Labor Finders] Personnel. With respect to [Labor Finders] Personnel compensation, [Labor Finders] has agreed to pay such [Labor Finders] Personnel. [Defendant] shall be responsible for the training and supervision of assigned [Labor Finders] Personnel. [Defendant] is solely responsible to control and safeguard its premises, processes and systems as well as for its business operations, products, services and intellectual property. . . . [Defendant] is solely responsible: (i) to properly train and supervise [Labor Finders] Personnel while on assignment; (ii) for the methods used and results obtained by the [Labor Finders] Personnel while on the assignment to it; and (iii) for all explicit and implied orders and instructions given by or on behalf of [Defendant] to [Labor Finders] Personnel.

Labor Finders assigned Plaintiff to work for Defendant beginning in March 2022. On 4 May 2022, Defendant's employee instructed Plaintiff to clean and dislodge dried cement from the mixing blades of a cement mixer. While performing this task, Plaintiff's right arm became trapped beneath a mixing blade, causing extensive injuries to his arm, wrist, and hand.

Plaintiff filed suit in superior court against Defendant on 2 April 2024, asserting claims for negligence; negligence per se; gross, willful, and wanton negligence; and punitive damages.¹ Defendant answered, denying the substantive allegations, and moved to dismiss, asserting that the trial court lacked subject-matter jurisdiction based on the exclusivity provision of the North Carolina Workers'

¹ Plaintiff filed a separate workers' compensation claim against Labor Finders in the Industrial Commission.

Compensation Act (“Act”), and that Plaintiff failed to adequately plead punitive damages.

Both parties moved for partial summary judgment on whether the trial court lacked subject-matter jurisdiction based on the exclusivity provision of the Act. After a hearing, the trial court entered an order on 10 February 2025 denying both motions.

Plaintiff deposed Defendant’s corporate representative on 4 June 2025. The following day, Plaintiff filed a Rule 60(b) motion to reconsider the order denying his motion for partial summary judgment, arguing that the deposition testimony constituted new evidence that he was not Defendant’s employee. Defendant filed its own motion for reconsideration on 12 June 2025, asserting that the corporate representative’s testimony established that Defendant “alone determined which specific jobs the plaintiff would perform at [Defendant], dictated how he was to perform them, and provided all necessary training, safety equipment, and supervision of his work while he was at [Defendant] such that [Defendant] has clearly been established as the special employer of the plaintiff.”

Following a hearing on 16 June 2025, the trial court entered an order granting both motions for reconsideration and directing the parties to submit supplemental briefing. The trial court subsequently entered an order granting Defendant partial summary judgment on whether the trial court lacked subject-matter jurisdiction based on the exclusivity provision of the Act. Plaintiff timely appealed.

II. Discussion

Plaintiff argues that the trial court had subject-matter jurisdiction over his claims against Defendant because he was not Defendant's employee such that the Act did not divest the trial court of jurisdiction to adjudicate his claims.

A. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. Gen. Stat. § 1A-1, Rule 56(c) (2025). "In ruling on a motion for summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party." *Keller v. Deerfield Episcopal Ret. Cmty., Inc.*, 271 N.C. App. 618, 622 (2020) (quotation marks and citation omitted).

"The party moving for summary judgment bears the burden of establishing that there is no triable issue of material fact." *Badin Shores Resort Owners Ass'n v. Handy Sanitary Dist.*, 257 N.C. App. 542, 549 (2018). "This burden can be met by proving: (1) that an essential element of the non-moving party's claim is nonexistent; (2) that discovery indicates the non-moving party cannot produce evidence to support an essential element of his claim; or (3) that an affirmative defense would bar the claim." *CIM Ins. Corp. v. Cascade Auto Glass, Inc.*, 190 N.C. App. 808, 811 (2008) (citation omitted).

We review a trial court’s order granting summary judgment de novo. *Forbis v. Neal*, 361 N.C. 519, 524 (2007). Under de novo review, this Court considers the matter anew and freely substitutes its own judgment for that of the lower court. *McAdoo v. Univ. of N.C. at Chapel Hill*, 225 N.C. App. 50, 51 (2013).

B. Workers’ Compensation Act

“[T]he superior court is a court of general jurisdiction and has jurisdiction in all actions for personal injuries caused by negligence, except where its jurisdiction is divested by statute.” *Solis-Santos v. Lester*, 301 N.C. App. 439, 443 (2025) (cleaned up). “By statute[,] the [s]uperior [c]ourt is divested of original jurisdiction of all actions which come within the provisions of the Work[ers]’ Compensation Act.” *Morse v. Curtis*, 276 N.C. 371, 375 (1970) (citations omitted). The exclusivity provision of the Act provides:

If the employee and the employer are subject to and have complied with the provisions of this Article, then the rights and remedies herein granted to the employee . . . shall exclude all other rights and remedies of the employee . . . as against the employer at common law or otherwise on account of such injury or death.

N.C. Gen. Stat. § 97-10.1 (2025). In other words, the Act “provide[s] certain limited benefits to an injured employee regardless of negligence on the part of the employer, and simultaneously [] deprive[s] the employee of certain rights he had at the common law.” *Brown v. Motor Inns of Carolina, Inc.*, 47 N.C. App. 115, 118 (1980) (citations omitted).

“In exchange for these limited but assured benefits, the employee is generally barred from suing the employer for potentially larger damages in civil negligence actions and is instead limited exclusively to those remedies set forth in the Act.” *Whitaker v. Town of Scotland Neck*, 357 N.C. 552, 556 (2003) (quotation marks and citations omitted). “However, this general rule of exclusivity only bars the employee from bringing additional claims against *his employer*, not separate entities.” *Nelson v. Smith*, 299 N.C. App. 51, 56 (2025).

C. Dual Employment Doctrines

An employee is defined by the Act as “every person engaged in an employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written[.]” N.C. Gen. Stat. § 97-2(2) (2025). A plaintiff may be an employee of two different employers at the same time under the joint employment doctrine and the lent employee doctrine. *Lassiter v. Robeson Cty. Sheriff’s Dep’t*, 388 N.C. 594, 598 (2025).

Under the joint employment doctrine, “a single employee, under contract with two employers, and under the simultaneous control of both, simultaneously performs services for both employers, and . . . the service for each employer is the same as, or is closely related to, that for the other.” *Anderson v. Tex. Gulf, Inc.*, 83 N.C. App. 634, 636 (1986) (citation and emphasis omitted). Under the lent employee doctrine, where a general employer lends an employee to a special employer, the special employer becomes liable for workers’ compensation if: (a) “the employee has made a contract of

hire, express or implied, with the special employer”; (b) “the work being done is essentially that of the special employer”; and (c) “the special employer has the right to control the details of the work.” *Id.* at 635-36 (quotation marks and citations omitted). “Under both doctrines, the first question is the same: Did the alleged employee make a contract of hire with the employer?” *Lassiter*, 388 N.C. at 599 (citation omitted). We analyze the remaining elements of each doctrine only if the first question is answered in the affirmative. *Id.*

“Employment contracts may be express or implied.” *Archer v. Rockingham Cty.*, 144 N.C. App. 550, 557 (2001). An express contract is an “explicit agreement” between the parties “regarding the right of control[.]” *Harris v. Miller*, 335 N.C. 379, 387 (1994) (citation omitted). “An implied contract refers to an actual contract inferred from the circumstances, conduct, acts or relations of the parties, showing a tacit understanding.” *Whicker v. Compass Group USA, Inc.*, 246 N.C. App. 791, 798 (2016) (quotation marks and citation omitted).

Defendant concedes that it did not have an express contract of hire with Plaintiff. Defendant argues, however, that it had an implied contract of hire with Plaintiff such that the first prong of the joint employment and lent employee doctrines have been met.

Our Court addressed whether an implied contract of hire barred a plaintiff’s negligence claim in superior court in *Solis-Santos v. Lester*. There, a staffing agency entered into an agreement with a demolition company under which the agency would

provide “skilled temporary employees upon request.” 301 N.C. App. at 441. The agreement provided, in relevant part:

[The staffing agency] would assign employees to [the demolition company]; pay the assigned employees’ wages and provide benefits; and “handle unemployment and workers’ compensation claims involving [a]ssigned [e]mployees.” [The demolition company] would “[p]roperly supervise [a]ssigned [e]mployees performing its work” and “[p]roperly supervise, control, and safeguard its premises, processes, or systems.”

Id. This Court affirmed the dismissal of plaintiff’s negligence claim for lack of subject matter jurisdiction because “there [was] no contractual provision declaring that [p]laintiff was *solely* the employee of [the staffing agency]” and “the record contain[ed] ample other evidence that [p]laintiff and [the demolition company] had an implied employment contract[,]” including an affidavit and deposition testimony from the company’s owner acknowledging an implied contract with plaintiff. *Id.* at 446.

Here, the contract between Defendant and Labor Finders provides:

. . . **Assignment; Compliance; Restrictions:** All temporary employees assigned to [Defendant] by [Labor Finders (“Labor Finders Personnel”)] are employees of [Labor Finders]. [Labor Finders] is responsible for hiring, assigning, disciplining, terminating and/or reassigning [Labor Finders] Personnel; and, is solely responsible for establishing, providing, and paying wages and benefits to [Labor Finders] Personnel. [Labor Finders] shall withhold, transmit payroll taxes, make unemployment contributions, and carry Workers’ Compensation and unemployment insurance as required by law with respect to all [Labor Finders] Personnel. With respect to [Labor Finders] Personnel compensation, [Labor Finders] has agreed to pay such [Labor Finders] Personnel. [Defendant] shall be

responsible for the training and supervision of assigned [Labor Finders] Personnel. [Defendant] is solely responsible to control and safeguard its premises, processes and systems as well as for its business operations, products, services and intellectual property. . . . [Defendant] is solely responsible: (i) to properly train and supervise [Labor Finders] Personnel while on assignment; (ii) for the methods used and results obtained by the [Labor Finders] Personnel while on the assignment to it; and (iii) for all explicit and implied orders and instructions given by or on behalf of [Defendant] to [Labor Finders] Personnel.

This contract states that all temporary employees assigned to Defendant by Labor Finders “are employees of Labor Finders.” (brackets omitted). Plaintiff was hired, assigned to Defendant, and paid by Labor Finders. Similar to the contract in *Solis-Santos*, there is no contractual provision here declaring that Plaintiff was *solely* the employee of Labor Finders. Contrary to the record evidence in *Solis-Santos*, however, the record evidence here shows that Plaintiff and Defendant did *not* have an implied contract of hire. Defendant’s corporate representative testified that: Plaintiff was not Defendant’s employee; Defendant did not pay wages or benefits to Plaintiff; Plaintiff was not eligible for benefits through Defendant because he was not Defendant’s employee; Defendant did not pay unemployment contributions on Plaintiff’s behalf because Defendant did not carry Plaintiff on its rolls as an employee; he assumed Plaintiff was not on Defendant’s workers’ compensation policy; and Defendant’s workers’ compensation premiums were not modified as a result of Plaintiff’s accident. Defendant’s corporate representative testified specifically as

follows:

Q. Okay. I'm going to read some of that. "All temporary employees assigned to Customer by Labor" -- "by LF ('LF Personnel') are employees of LF."

Did I read that correctly?

A. Yes.

Q. And so what that meant was that [Plaintiff] was an employee of Labor Finders, not an employee of Johnson Concrete. Is that right?

A. Yes.

....

Q. So Labor Finders was paying all wages and all benefits to [Plaintiff], correct?

A. Yes.

Q. Johnson Concrete didn't pay wages to [Plaintiff]?

A. No.

Q. Didn't pay benefits to [Plaintiff]?

A. No.

Q. In fact, he wasn't eligible for any of the benefits that Johnson Concrete provided to its regular employees because he wasn't an employee of Johnson Concrete.

A. No.

Q. Is that correct?

A. Yes.

Q. The next sentence reads, "[Labor Finders] shall withhold, transmit payroll taxes, make unemployment contributions, and carry Workers' Compensation and unemployment insurance as required by law with respect to all [Labor Finders] Personnel."

Did I read that correctly?

A. Yes.

....

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Q. And then -- so with respect to any withholdings of taxes or Medicare or Social Security, Labor Finders was solely responsible for that?

A. Yes.

Q. Johnson Concrete had no involvement in that whatsoever. Is that right?

A. That's correct.

Q. And Johnson Concrete didn't carry [Plaintiff] on its rolls as an employee, so it wasn't paying any unemployment contributions if -- in the event that [Plaintiff] became unemployed for some reason. Is that right?

A. That is correct.

Q. Labor Finders made all unemployment contributions relative to [Plaintiff]?

A. Yes.

Q. And then Johnson Concrete didn't carry [Plaintiff] on its workers' compensation rolls, correct?

A. I do not know. I mean, I would assume not.

Q. Okay. I mean -- well, you know how -- you know that employees of Johnson Concrete go on -- their names go on the Johnson Concrete workers' compensation ---

A. Yeah.

Q. --- insurance policy, right?

A. Yeah.

Q. And you understand that [Plaintiff] was never on Johnson Concrete's workers' compensation policy?

A. I would hope not.

Q. Okay. I mean, you understand what an experience modification is, correct?

A. Yeah.

Q. What is an experienced [sic] modification?

A. On the . . .

Q. On the workers' compensation policy.

A. That's what we pay based on our accident rates and stuff.

Q. Yeah. So if an employee of Johnson Concrete gets injured on the job, then that can lead to an increase in the ---

A. That's right.

Q. --- Johnson Concrete workers' compensation premiums, correct?

A. Yes.

Q. And [Plaintiff] wasn't an employee of Johnson Concrete.

A. No.

Q. And so there was no experience modification to Johnson Concrete as a result of [Plaintiff] being injured on May 22nd of 2023.

A. No.

Defendant essentially wants the benefit of the exclusivity provision of the Worker's Compensation Act without the burdens associated with being Plaintiff's employer—Defendant cannot have it both ways.

Because there was no record evidence of an implied contract of hire between Plaintiff and Defendant, neither the joint employment doctrine nor the lent employee doctrine applies. Accordingly, the exclusivity provision of the Act does not apply, and the trial court erred by granting Defendant partial summary judgment on this issue.

III. Conclusion

Because the exclusivity provision of the North Carolina Workers' Compensation Act did not divest the trial court of subject-matter jurisdiction over

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Plaintiff's claims, the trial court erred by granting Defendant partial summary judgment. Accordingly, we reverse and remand to the trial court for further proceedings.

REVERSED.

Judge STROUD concurs.

Judge GRIFFIN dissents by separate opinion.

GRIFFIN, Judge, dissenting.

I dissent from the majority’s decision concluding there was not an implied contract of hire. I would hold an implied employment contract exists and the relationship falls under the Workers’ Compensation Act.

Whether an employer-employee relationship exists at occurrence of the injury is a jurisdictional fact, and we review this de novo. *Lassiter v. Robeson Cnty. Sheriff’s Dep’t*, 388 N.C. 594, 598, 923 S.E.2d 783, 788 (2025) (citations omitted). “To determine whether an implied employment contract existed between the parties, consideration must be given as to who ‘hired, paid, trained, and supervised’ the employee.” *Lassiter v. Robeson Cnty. Sheriff’s Dep’t*, 291 N.C. App. 579, 587, 896 S.E.2d 280, 287 (2023) (citation omitted), *rev’d in part on other grounds*, 388 N.C. 594, 923 S.E.2d 783.

The express contract states in relevant part: “[Labor Finders] is responsible for *hiring*, assigning, disciplining, terminating and/or reassigning [Labor Finders] Personnel.” (Emphasis added). I acknowledge Labor Finders hired Plaintiff. However, this hiring provision does not claim to have *exclusive* hiring responsibilities. Other contractual phrases emphasize such singularity.

Furthermore, the contract states, “[Defendant] shall be responsible for the *training* and *supervision* of assigned [Labor Finders] Personnel.” (Emphases added). Consequently, Defendant had the express responsibility to train and supervise Plaintiff.

The contract continues, “[Defendant] is solely responsible: (i) to properly train and supervise [Labor Finders] Personnel while on assignment.” As Plaintiff falls within the designation of “Labor Finders Personnel,” Defendant has the responsibility of training and supervising Plaintiff while on assignment.

I do acknowledge the contract expressly states Labor Finders is “solely responsible for establishing, providing, and paying wages and benefits to [Labor Finders] Personnel.” This language weighs against an implied employment contract between Plaintiff and Defendant. Nevertheless, weighing all the applicable considerations—who hired, paid, trained, and supervised the employee—the factors tilt in favor of an employee-employer relationship between Plaintiff and Defendant. While Labor Finders had the exclusive responsibility to pay Plaintiff, Defendant had the sole responsibility in training and supervising. The hiring role was not exclusively Labor Finders’.

An implied contract exists, and Plaintiff and Defendant had an employee-employer relationship. I would affirm the trial court’s order.