Walker v. Coen Auto Transporters, Inc.

United States District Court for the Middle District of Florida, Orlando Division

October 22, 2015, Decided; November 10, 2015, Filed

Case No: 6:14-cv-1907-Orl-31KRS

Reporter
2015 U.S. Dist. LEXIS 182411 *

PHILLIP WALKER, Plaintiff, v. COEN AUTO TRANSPORTERS, INC. and MARTIN M. COEN, JR., Defendants.

Core Terms

Transportation, exemption, motor carriers, interstate, summary judgment, interstate commerce, employees, overtime, vehicles, driver, drive, carrier, genuine, Lines

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For Coen Auto Transporters, Inc., a Florida Corporation, Martin M. Coen, Jr., individually, Defendants: David H. Spalter, LEAD ATTORNEY, Jill Steinberg Schwartz, Jill S. Schwartz & Associates, PA, Winter Park, FL.

Judges: GREGORY A. PRESNELL, UNITED STATES DISTRICT JUDGE.

Opinion by: GREGORY A. PRESNELL

Opinion

ORDER

This matter is before the Court without a hearing on the Motion for Summary Judgment (Doc. 27) filed by Defendants, Coen Auto Transporters, Inc. ("CAT") and Martin M. Cohen, Jr. (hereafter "Coen"), the Response in Opposition (Doc. 30) filed by Plaintiff Phillip Walker ("Walker"), and the Reply (Doc. 33) filed by Coen.

I. Background

Defendant is a trucking company engaged in the business of transporting vehicles within the state of Florida, as well as to and from other states. From August 2006 — August 2014, Walker was employed by Defendant as a driver. Walker contends that Defendant failed to pay him and other similarly situated current and former employees overtime compensation as required by the Fair Labor Standards Act ("FLSA"). Defendant seeks summary judgment on the grounds that Walker was subject [*2] to the motor carrier exemption set forth at *29 U.S.C. 213(b)(1)* and therefore not entitled to receive overtime compensation pursuant to the FLSA.

Walker also asserts a Florida common law claim for breach of contract. He alleges that, at the time of his hire, he entered in a verbal agreement with Defendant CAT that he would be compensated for work he did outside of driving.

II. Legal Standard

A. Summary Judgment

A party is entitled to summary judgment when the party can show that there is no genuine issue as to any material fact and that movant is entitled to judgment as a matter of law. *Fed.R.Civ.P. 56*. Which facts are material depends on the substantive law applicable to the case. *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)*. The moving party bears the burden of showing that no genuine issue of material fact exists. *Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991)*.

When a party moving for summary judgment points out an absence of evidence on a dispositive issue for which the nonmoving party bears the burden of proof at trial, the nonmoving party must "go beyond the pleadings and by [his] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett, 477 U.S. 317, 324-25, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)* (internal quotations and citation omitted). Thereafter,

summary [*3] judgment is mandated against the nonmoving party who fails to make a showing sufficient to establish a genuine issue of fact for trial. *Id. at 322, 324-25*. The party opposing a motion for summary judgment must rely on more than conclusory statements or allegations unsupported by facts. *Evers v. Gen. Motors Corp., 770 F.2d 984, 986 (11th Cir. 1985)* ("conclusory allegations without specific supporting facts have no probative value").

B. Motor Carrier Exemption

The FLSA requires that an employer compensate employees for hours worked in excess of forty per week "at a rate not less than one and one-half times the regular rate at which he is employed." *29 U.S.C. § 207(a)(1)*. Defendants contend that Plaintiff is not entitled to overtime compensation because the FLSA exempts them from those provisions under the Motor Carrier Exemption. *See 29 U.S.C. § 213(b)(1)*. The question of how Plaintiff spent his time is a question of fact, while whether those particular activities exclude him from the overtime benefits of the FLSA is a question of law. *Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709, 714, 106 S.Ct. 1527, 89 L.Ed.2d 739 (1986)*.

Section 213(b)(1) of the FLSA provides that the provisions of *§ 207* shall not apply to "any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of [*49 U.S.C. § 31502*]." *29 U.S.C. § 213(b)(1)*. Accordingly, the Motor Carrier Act grants authority [*4] to the Secretary of Transportation to regulate the maximum hours of service of employees who are: (1) employed by a carrier whose transportation of property or passengers is subject to the Secretary's jurisdiction under the Motor Carrier Act; and (2) engaged in activities that directly affect the safety of operation of motor vehicles in interstate or foreign commerce. *29 C.F.R. § 782.2(a)*; *see Baez v. Wells Fargo Armored Serv. Corp., 938 F.2d 180, 181-82 (11th Cir.1991)*.

An employer relying on an exemption to the minimum wage and overtime provisions of the FLSA has the burden of proving the applicability of that exemption. *Klinedinst v. Swift Invs., Inc., 260 F.3d 1251, 1254 (11th Cir.2001)*. Given the remedial purpose of the FLSA, the exemptions from the FLSA's coverage must be narrowly construed against the employers seeking to assert them. *Arnold v. Ben Kanowsky, Inc., 361 U.S. 388, 392, 80 S.Ct. 453, 4 L.Ed.2d 393 (1960)*; *see also Klinedinst, 260 F.3d at 1254*. An employer claiming an FLSA exemption has the burden of proving that the employee falls "plainly and unmistakably within the terms and spirit" of the exemption. *Nicholson v. World Bus. Network, Inc., 105 F.3d 1361, 1364 (11th Cir.1997)* (quoting *A.H. Phillips, Inc. v. Walling, 324 U.S. 490, 493, 65 S.Ct. 807, 89 L.Ed. 1095 (1945)*).

III. **Analysis**

1. FLSA claim

It is undisputed that CAT is a covered carrier under the Motor Carrier Act. Plaintiff also concedes that he was engaged in activities that directly affect the safety of operation of motor vehicles. Thus, the central dispute in this case is whether Walker transports property in interstate commerce. The [*5] Secretary of Transportation's authority under the MCA is not limited solely to transportation that actually crosses state lines; therefore drivers need not physically travel outside of a single state to meet the "interstate commerce" requirement of the MCA. *Walters v. Am. Coach Lines of Miami, Inc., 575 F.3d 1221, 1229 (11th Cir. 2009)*. For this to be the case, there must be a "practical continuity of movement" between the intrastate segment and the overall interstate flow. *Walling v. Jacksonville Paper Co., 317 U.S. 564, 568, 63 S.Ct. 332, 335, 87 L.Ed. 460 (1943)*.

Defendants contend that Walker participated in the interstate transport of vehicles under the continuous stream theory. They rely on a single example where CAT transported a Scion vehicle from Atlanta, Georgia to Melbourne, Florida. Jennifer Cohen Aff. ¶ 15. In August 2014, one of Defendant's drivers first transported the vehicle from Atlanta to the Florida Automobile Auction of Orlando ("FAAO) in Ocoee, Florida. *Id.* The next day Walker completed the delivery by transporting the vehicle to Melbourne. *Id.* This one possible instance of a continuous stream of travel by Plaintiff in the three years prior to the filing of this lawsuit, which he was not even aware of, is insufficient to subject him to the motor carrier exemption under this theory. *See Walters, 569 F. Supp. 2d at 1285* ("[T]he [d]efendant's involvement in interstate commerce must [*6] be real and actual, not merely hypothetical or conjectural. If the employer or employee's involvement in [sic] interstate commerce could be characterized as de minimus, they may not be subject to the Secretary of Transportation's jurisdiction at all, and thus are not covered by the Motor Carrier Act.") (quoting *Lieberman v. Corporate Connection Lines, Inc., No. 03—CIV—22814, 2005 U.S. Dist. LEXIS 45222, 2005 WL*

5501491, at *1-2 (S.D. Fla. Apr. 21, 2005)*.

In addition, Defendants contend that Plaintiff was among a class of employees who could reasonably be expected to drive in interstate commerce. Plaintiff may be subject to the motor carrier's exemption if he could have reasonably been expected as a regular part of his duties to drive one of Defendant's interstate routes. A reasonable expectation means that there is more than a remote possibility. *Walters v. Am. Coach Lines of Miami, Inc., 569 F. Supp. 2d 1270, 1292 (S.D. Fla. 2009)* (citing *Garcia v. Pace Suburban Bus Serv., 955 F. Supp. 75, 77 (N.D.Ill.1996))*. Factors to consider in determining whether the Motor Carrier exemption applies to an entire class of employees when only a few are involved "in interstate commerce," are: (1) the proportion of interstate to intrastate employee activity; (2) the method by which a carrier assigns the interstate activity to its employees; and (3) the overall nature of the carrier's business. *Sturm v. CB Transp. Inc., 943 F.Supp.2d 1102, 1113 (D. Idaho 2013)* (citing *Kosin v. Fredjo's Enterprises, Ltd., No. 88 C 5924, 1989 U.S. Dist. LEXIS 1491, 1989 WL 13175 (N.D. Ill. Feb. 14, 1989))*.

It is undisputed that Defendant [*7] is an interstate motor carrier, however, only 10% of its business involves the movement of vehicles over state lines. And, the fact that during 8 years of employment Plaintiff never drove out-of-state suggests that Defendant does not assign its interstate trips indiscriminately. Finally, although Defendant insures that all of its drivers maintain eligibility to drive interstate, the fact that any driver is capable of driving interstate is not the test. *See Sturm, 943 F.Supp.2d at 1116*. Rather, the question is whether it can be reasonably expected that Plaintiff will transport one of Defendant's vehicles in interstate commerce.

In his deposition, Plaintiff testified that upon hire, he was told he would be a local driver and would not be leaving the state. Walker Dep. 16:11-16:19. He further testifies that he drove the same truck during his entire employment and was told it did not have the proper license, motor carrier number, or authority to leave the state. *Id.* at 14:23-15:16. This testimony, viewed in the context of Defendant's business operations, creates genuine issues of material fact which preclude summary judgment with respect to the interstate motor carrier exemption to the FLSA.

2. Breach of Contract Claim [*8]

Under Florida law, to prevail on a breach of contract claim, plaintiff must establish "(1) the existence of a contract; (2) a material breach of that contract; and (3) damages resulting from the breach." *Merle Wood & Assocs., Inc. v. Trinity Yachts, LLC, 857 F.Supp.2d 1294, 1301 (S.D. Fla. 2012)* (quoting *Vega v. T-Mobile USA, Inc., 564 F.3d 1256, 1272 (11th Cir. 2009))*. A contract is not enforceable unless "'there has actually been a meeting of the minds of the parties upon definite terms and conditions which include the essential elements of a valid contract.'" *Leopold v. Kimball Hill Homes Fla., Inc., 842 So.2d 133, 136 (Fla. 2d DCA 2003)* (quoting *Mehler v. Huston, 57 So.2d 836, 837 (Fla.1952))*. "Furthermore, to prove a breach of an oral contract, a plaintiff must establish that the parties mutually assented to a certain and definite proposition and left no **essential terms** open." *Merle Wood & Assocs., Inc., 857 F.Supp.2d at 1301* (internal quotation marks and citations omitted).

A compensation term may be left open if the parties agree upon a practicable method of computing compensation in the future or specify that a "reasonable" amount will be paid. *See May v. Sessums & Mason, P.A., 700 So.2d 22, 26-27 (Fla.2d Dist.Ct.App.1997)* (quoting *Corbin on Contracts*, 1 *Corbin on Contracts* § 4.3 at 567 (Joseph M. Perillo, Rev. ed. 1993)).

Plaintiff fails to show that his verbal agreement with the Defendant specified any method for compensation or even that a reasonable amount would be paid for work outside of driving. Furthermore, Plaintiff fails to identify the number of hours and the [*9] dates upon which he performed these tasks. Plaintiff provides no evidence from which a reasonable factfinder could verify or quantify Plaintiff's claim. Consequently, Plaintiff has not established an actionable claim for breach of contract for unpaid wages and Defendants are entitled to summary judgment on this claim.

Therefore, it is:

ORDERED that Defendants' Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**. With respect to Count II, judgment will be entered for Defendants. The Motion is **DENIED** as to Count I (FLSA Overtime).

Defendant's DONE and **ORDERED** in Chambers, Orlando, Florida on October 22, 2015.

/s/ Gregory A. Presnell

GREGORY A. PRESNELL

UNITED STATES DISTRICT JUDGE.

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