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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ROSA PALE, Plaintiff and Appellant, v. SABRINA COBLE, Defendant and Respondent.	D048283 (Super. Ct. No. GIS19679)

APPEAL from a judgment of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

Plaintiff Rosa Pale appeals a judgment entered after an order granting a summary judgment motion filed by defendant Sabrina Coble based on the exclusive remedy provision of Labor Code section 3600 et seq. (Workers' Compensation Act, hereafter the Act). The trial court found that under the Act, workers' compensation was the exclusive remedy available to Pale and barred her personal injury action against Coble under Civil

Code section 3342,[1] a strict liability statute for personal injury caused by dog bites. On appeal, Pale contends she has a remedy under the "special" statutory cause of action under section 3342 notwithstanding the Act's exclusive remedy provisions. Pale argues section 3342, a specific statute, overrides the Act, a general statute. We conclude the trial court did not err by finding workers' compensation was the exclusive remedy available to Pale against her employer Coble and granting summary judgment for Coble.

FACTUAL AND PROCEDURAL BACKGROUND

On June 10, 2004, Pale was injured when she was attacked by Coble's dog in the course of her employment as a housekeeper for Coble. Coble provided workers' compensation insurance covering Pale, and Pale filed a workers' compensation claim for the injuries she received from this incident. On March 3, 2005, Pale filed a complaint against Coble setting forth a personal injury cause of action under section 3342, which provides an owner or keeper of a dog is strictly responsible for injuries of a dog attack. Coble timely answered and filed a motion for summary judgment.

The trial court granted summary judgment for Coble. The trial court found section 3342, a strict liability statute for personal injuries caused by dog bites, addressed the same type of damages the Act was designed to cover. It concluded that to interpret the statutes as Pale requested would undermine the objective of workers' compensation as a comprehensive scheme for employees' industrial injuries or deaths. The trial court noted

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1 All further statutory references are to the Civil Code unless otherwise specified.

that if the Legislature meant to exempt victims of dog bites from the workers' compensation scheme, it would presumably have included an exemption in the Act.

DISCUSSION

On appeal of a summary judgment, we apply a de novo standard of review. (*Gold v. Weissman* (2004) 114 Cal.App.4th 1195, 1198.) The Act states "[l]iability for the compensation provided by this division, *in lieu of any other liability whatsoever to any person except as otherwise specifically provided in Sections 3602, 3706, and 4558,* shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment . . . ." (Lab. Code, § 3600, italics added). For the Act to apply, the injury must arise out of, and in the course of, employment and must be proximately caused by the employment. (*Ibid.*) Labor Code section 3602 provides, "Where the conditions of compensation set forth in Section 3600 concur, the right to recover such compensation is, except as specifically provided in this section and Sections 3706 and 4558, the sole and exclusive remedy of the employee or his or her dependents against the employer . . . ." (Lab. Code, § 3602, subd. (a); see also *De Cruz v. Reid* (1968) 69 Cal.2d 217, 221.)

Explicit exceptions to the exclusive remedy provision are set forth in Labor Code sections 3602, 3706, and 4558. For example, if the employee's injury or death is proximately caused by a willful physical assault by the employer, the employee is not limited to the workers' compensation scheme for liability. (See Lab. Code, §§ 3602, subd. (b)(1), 3706, 4558.)

If the conditions of compensation in Labor Code Section 3600 exist, the employee may not bring an action against the employer for damages even if the employee believes he or she has a better claim against the employer in a civil action. (*Freire v. Matson Navigation Co*. (1941) 19 Cal.2d 8, 10.) Courts have routinely found the Act is intended to be liberally construed in favor of its applicability (Lab. Code, § 3202; see also *Mitchell v. Scott Wetzel Services, Inc.* (1991) 227 Cal.App.3d 1474, 1480 ["In adjudicating whether a claim falls within the workers' compensation system, all doubt should be resolved in favor of finding jurisdiction within the workers' compensation system."])

The legal theory supporting the exclusive remedy against the employer is a presumed "compensation bargain," by which the employer assumes liability for work-related injuries or death without regard to fault in exchange for limitations on the amount of damages, which otherwise might be available against the employer. From the "compensation bargain," the employee receives swift and certain payment of benefits to cure or relieve the effects of work-related injury without having to prove fault, but he gives up the wider range of damages potentially available in tort against the employer. (*Fermino v. Fedco, Inc.* (1994) 7 Cal.4th 701, 708.)

Here, Pale's injury is within the scope of the Act and is not an exception under Labor Code sections 3602, 3706, or 4558. The workers' compensation scheme is intended to be comprehensive and to apply in lieu of other civil causes of action when the injury occurs under the required statutory conditions. Pale was injured in the course of her employment and the injury was proximately caused by her employment. No explicit exception under Labor Code sections 3600, 3602, 3706, or 4558 applies.

Coble provided workers' compensation benefits to Pale, and Pale collected those benefits. After collecting workers' compensation benefits under the presumed bargain, Pale cannot also claim she is entitled to additional relief against Coble under section 3342.

Pale argues section 3342 overrides the Act's exclusive remedy provisions because section 3342 is a specific statute and the Act is a general statute. However, the Act explicitly states that where an injury occurs under the conditions in the statute, it applies *in lieu of* any other liability of the employer. Workers' compensation has routinely been found to be the exclusive remedy against an employer even where other causes of action were available. For example, in *Up-Right, Inc. v. Van Erickson* (1992) 5 Cal.App.4th 579, 583, the court stated an employer's violation of the child labor laws does not remove the case from the workers' compensation scheme.

Pale relies heavily on *Shoemaker v. Myers* (1990) 52 Cal.3d 1, 21-23 for the proposition that a specific statute overrides the more general workers' compensation statute. Pale's reliance on *Shoemaker* is unpersuasive. In *Shoemaker*, the court's holding that a specific statute overrides the more general workers' compensation scheme involved a claim brought under Government Code section 19683, a whistleblower protection law. There, the court found the section 19683 claim was not barred by the workers' compensation exclusivity provisions because the whistleblower statute was more specific than the workers' compensation law.

In arriving at that conclusion, *Shoemaker* analyzed the two statutes. First, it examined whether the two statutes dealt with the same subject matter. Second, to the

extent that both statutes applied, it looked to the purposes served by the competing statutes to determine which controlled. (*Shoemaker v. Myers, supra,* 52 Cal.3d at pp. 21-22.) The purpose of the workers' compensation law is "to provide a comprehensive scheme of compensation for all employees for industrial personal injury or death." (*Id.* at p. 21.) The whistleblower protection statute has the purpose of "provid[ing] redress to a certain limited class of employees (state employees), for damages suffered as a consequence of the specific use of official power to deter a particular protected activity--the proper reporting of on-the-job or job-related unlawful government actions." (*Id.* at pp. 21-22.) The court concluded the whistleblower protection statue was more narrowly circumscribed and more specific than the Act. Finally, the court explained that if the Legislature had considered the workers' compensation benefits and remedies to be adequate, the whistleblower statute would not have been necessary. The Legislature "clearly intended to afford an *additional* remedy to those already granted under other provisions of the law; otherwise Section 19683 would be rendered meaningless." (*Id.* at p. 22.)

Applying this analysis to the facts here, we reach a different result. The two statutes here arguably deal with the same subject matter, because both statutes could apply to a person attacked by a dog in the course of his or her employment. However, looking to the purposes of the statutes, this case is different from *Shoemaker*. The purpose of the Act is "to provide a comprehensive scheme of compensation for all *employees* for industrial personal injury or death." (*Shoemaker v. Myers, supra,* 52 Cal.3d at p. 21, italics added.) The purpose of the dog bite statute is to provide a remedy

to *any person* injured by a dog. However, the dog bite statute, unlike the whistleblower protection statute, was not designed with *employees*' actions against their employers specifically in mind. In that respect, the dog bite statute is not more "narrowly circumscribed" and specific than the workers' compensation statute. The dog bite statute is broader than the workers' compensation provisions because it applies beyond the employment context. Therefore, the "specific controls the general" rule supports the exclusive remedy of workers' compensation in this case.

Unlike the whistleblower protection statute, a finding that workers' compensation is the exclusive remedy against the employer for the injury in this case does not render the dog bite statute superfluous. The dog bite statute still applies to liability of nonemployers or where the conditions required for workers' compensation are not satisfied.[2] We do not conclude, as in the whistleblower case, the Legislature intended the dog bite statute to apply as an *additional* remedy for employees against their employers.

We conclude the trial court did not err in granting summary judgment. Workers' compensation is the exclusive remedy available to the plaintiff attacked by the plaintiff's

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2 There may, of course, be defenses available to a nonemployer defendant dog owner sued under section 3342 by a person bit by the owner's dog. In *Priebe v. Nelson* (2006) 39 Cal.4th 1112, the defendant dog owner boarded the dog with a veterinarian. While boarded, the dog attacked and injured the veterinarian's assistant, who sued the defendant dog owner for personal injuries caused by the attack. On appeal the court held the "doctrine of primary assumption of risk, as embodied in the veterinarian's rule, bars the strict liability claim of a kennel worker under [section 3342,] the dog bite statute." (*Id.* at p. 1119.) The court recognized that the plaintiff may nevertheless have a viable claim at common law if the nonemployer defendant knew or should have known of the dog's vicious propensities and did not adequately warn the veterinarian's office of those propensities.

employer's dog during the course of employment, and the plaintiff may not pursue an additional action against the employer under section 3342.

DISPOSITION

The judgment is affirmed. Defendant is entitled to costs on appeal.

McDONALD, J.

WE CONCUR:

NARES, Acting P. J.

HALLER, J.