STATE OF RHODE ISLAND

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL RAINVILLE	)	
	)	
VS.	)	W.C.C. 2022-02152
	)	
J. T. THORPE & SON, INC.	)	

FINAL DECREE OF THE APPELLATE DIVISION

This matter came before the Appellate Division upon the claim of appeal of the petitioner/employee and upon consideration thereof, the employee's appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

That the findings of fact and the orders contained in a decree of this Court entered on April 18, 2024 be, and they hereby are, affirmed.

Entered as the final decree of this Court this **27th day of August 2025**.

PER ORDER:

/s/ Nicholas DiFilippo
Administrator

ENTER:

/s/ Olsson, J.

/s/ Reall, J.

/s/ Lazieh, J.

STATE OF RHODE ISLAND

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

MICHAEL RAINVILLE	)	
	)	
VS.	)	W.C.C. 2023-02601
	)	
J. T. THORPE & SON, INC.	)	

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PROVIDENCE, SC. WORKERS' COMPENSATION COURT
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MICHAEL RAINVILLE	)	
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MICHAEL RAINVILLE	)	
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VS.	)	W.C.C. 2022-02152
J. T. THORPE & SON, INC.	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeals from the decision and decrees of the trial judge denying the two (2) petitions filed by the employee. W.C.C. No. 2022-02152 is a petition for compensation benefits in which the employee alleges that he sustained a work-related injury to his right ankle on January 28, 2022, when he tripped in a large pothole while walking from a designated parking lot to the entrance to the job site. At the pretrial conference on May 17, 2022, the trial judge entered a pretrial order granting the petition and awarding weekly benefits for partial incapacity from January 29, 2022 and continuing. The employer filed a timely claim for trial.

W.C.C. No. 2023-02601 is the employee's petition to review requesting the award of disfigurement benefits for scarring to his right ankle. On July 12, 2023, the trial judge entered a pretrial order awarding 325 weeks of compensation at a rate of Ninety and 00/100 ($90.00) Dollars a week for a total of Twenty-nine thousand three hundred fifty and 00/100 ($29, 350.00) Dollars for scarring to the employee's right ankle caused by the injury. The employer filed a timely claim for trial, and the two (2) matters were consolidated for trial.

The issue before the trial judge was whether the employee's injury, occurring while on his way to work, was not compensable by virtue of the exclusionary going-and-coming rule or whether the particular circumstances of this case fall within one of the rule's narrow exceptions so that the employee's injury would be deemed compensable. After thoroughly examining the record in this case, the arguments presented by both parties, and the relevant statutes and case law, we deny the employee's appeals and affirm the trial judge's decision and decrees, which denied the employee's petitions.

The parties submitted an Amended Joint Stipulation of Facts into evidence at trial, forgoing any live testimony. Rather than directly quote the entire Stipulation, which is quite lengthy, we will summarize the facts necessary for an understanding of our analysis and decision.

On May 12, 2015, National Grid LNG LCC (hereinafter "National Grid") hired Kiewit Power Constructors Co. (hereinafter "Kiewit") to work on the Fields Point Liquefaction Project (hereinafter "the Project"). On February 23, 2021, Kiewit subcontracted some work for the Project to J. T. Thorpe & Son, Inc. (hereinafter "J. T. Thorpe" or "employer"). On September 28, 2021, J. T. Thorpe hired Michael Rainville (hereinafter "the employee") out of the local

union hall to perform work on the Project. The parties stipulated that there was an employer-employee relationship between the employee and J. T. Thorpe.

Pursuant to an agreement with National Grid, Kiewit constructed an employee parking lot (hereinafter "the Lot") on land owned by Narragansett Electric Company and leased to National Grid. The Lot was located at 642 Allens Avenue in Providence and had a vehicle gate at its entrance. The gate was left open during shift changes and lunch. Outside of those hours, it was necessary to call a posted phone number to have the gate opened remotely. The Lot was separated from the actual jobsite by a security gate, where employees were required to present an ID card to National Grid security personnel to enter the jobsite. Kiewit was solely responsible for the maintenance of the Lot.

Kiewit required all Project workers to attend an orientation conducted by Kiewit personnel as a condition to gaining access to the job site. In turn, J.T. Thorpe informed its employees that participation in Kiewit's orientation was required in order to work on the site, and therefore, the employee attended the orientation. During the orientation, Kiewit informed all personnel that they were required to park in the Lot, although there were no assigned parking spots.

On January 28, 2022, the employee arrived at work at approximately 5:45 AM for the start of his 6:00 AM shift and parked in the designated Lot. He proceeded to walk towards the security gate where he would clock in. Before reaching the security gate, he tripped in a four-and-one-half-foot diameter pothole, injuring his right ankle.

The parties stipulated that the employee has been partially disabled, due to a right ankle sprain since January 29, 2022 and continuing. In addition, the parties agreed that if the employee's injury on January 28, 2022 is found to be work-related, J.T. Thorpe does not contest

the amount of disfigurement benefits initially awarded in the pretrial order entered on July 12, 2023, in W.C.C. No. 2023-02601. Therefore, the only issue in dispute is whether the employee's ankle injury is a compensable injury under the Workers' Compensation Act.

After reviewing the stipulated facts, the trial judge concluded that the employee's injury was not compensable as it was barred by the going-and-coming rule, which prevents recovery by employees who are injured while traveling to or from work. The trial judge also rejected the employee's contention that there was a special employer-general employer relationship between Kiewit and J.T. Thorpe as defined in Rhode Island General Laws § 28-29-2(6)(i).

In making this determination, the trial judge acknowledged that the employee needed to prove that the circumstances of his injury fell within an exception to the going-and-coming rule to be compensable. Specifically, the employee needed to establish that a nexus or causal relationship existed between his injury and his employment. The trial judge cited the three (3) criteria set forth in *Di Libero v. Middlesex Construction Co.*, to establish a nexus: (1) the injury must occur within the period of employment, (2) the injury must occur at a place the employee would reasonably be expected to be, and (3) the employee must be fulfilling the duties of his employment or doing something incidental thereto. 63 R.I. 509, 516, 9 A.2d 848, 851 (1939).

The trial judge found that the employee satisfied the first two (2) prongs of the *Di Libero* analysis as the employee was injured at about 5:45 AM, which was just prior to the start of his shift at 6:00 AM, and the employer could reasonably expect the employee to be in the parking lot as required by Kiewit. However, the employee failed to satisfy the third prong of the *Di Libero* test because there were no facts presented to suggest that he was performing any of his job duties at the time of the injury or doing something incidental to the conditions of his employment, as he was simply walking to the job site from his vehicle.

The trial judge also addressed the criteria set forth by the Rhode Island Supreme Court in cases involving injuries sustained in parking lots or while traveling from designated parking areas to the workplace. *See Phillips v. Enterprise Rent-a-Car Co. of R.I., LLC,* 273 A.3d 609 (R.I. 2022); *Branco v. Leviton Mfg.*, 518 A.2d 621 (R.I. 1986); *Brown v. KNC Management Enterprises, Inc.*, W.C.C. No. 2013-00798 (App. Div. 11/25/2019). The trial judge pointed out that it was Kiewit that was solely responsible for the maintenance of the Lot, not the employer, and that the employer did not own the Lot. In addition, it was Kiewit that mandated that all personnel must park in the Lot, not the employer. Therefore, the trial judge concluded that the employee could not satisfy all the criteria needed to find his injury to be compensable.

Regarding the employee's allegation that a general and special employer relationship existed between J.T. Thorpe and Kiewit, the trial judge noted that there was no evidence presented to the court to infer that as a regular course of its business, J. T. Thorpe supplied employees to other persons or entities, nor was there anything in the stipulation of facts to indicate a general employer-special employer relationship existed between J.T. Thorpe and Kiewit. Therefore, the trial judge denied the employee's original petition and the petition for disfigurement, and the employee promptly filed a claim of appeal in each case.

The Appellate Division's review of the trial judge's decision is significantly limited by the provision of the Workers' Compensation Act which provides that the findings of fact made by a trial judge shall be final unless the appellate panel determines that they are clearly erroneous. R.I. Gen. Laws § 28-35-28(b). Consequently, our panel cannot conduct a *de novo* review unless it first establishes that the trial judge was clearly mistaken or overlooked or misconstrued material evidence. *Diocese of Providence v. Vaz*, 679 A.2d 879, 881 (R.I. 1996). After a comprehensive review of the record based on this standard, we find that the trial judge's

findings are not clearly erroneous. As a result, we uphold the trial judge's decision in this matter.

The employee has filed six (6) reasons of appeal, which can be reduced to two (2) primary arguments. First, the employee contends that the trial judge erred in concluding that the employee's injury did not occur within the scope of his employment. He asserts that the circumstances of his injury satisfy the third prong of the *Di Libero* criteria because he was required to park in the parking lot where he was injured as a condition of his employment. Alternatively, the employee argues that the going-and-coming rule does not bar his claim because as soon as he arrived in the Lot, he was no longer traveling to work, he was *at* work. After reviewing the stipulated facts and the relevant case law, we find no error on the part of the trial judge in finding that the employee's injury was not compensable.

The key factor in determining compensability in this case is that the employer, J. T. Thorpe, did not own or maintain the Lot. The parties stipulated that Narragansett Electric Company owned the land at 642 Allens Avenue, which it leased to National Grid, which then contracted with Kiewit to construct the Lot, which was adjacent to the job site. *See* Joint Ex. 1, p. 1, #7 & #8. The parties further stipulated that Kiewit was solely responsible for maintenance of the Lot, including snow removal, repairs to the pavement, and trash removal, and that any requests for repairs or work to be done in the Lot were to be reported to Kiewit construction managers. *See id.*, #11 & #13. In addition, the employee was not directed to park in a specific parking space and the Lot was shared by all personnel of Kiewit and any other subcontractors working on the job site. Contrary to the employee's assertion, these facts lead to the conclusion that the employee's injury is not compensable under the Workers' Compensation Act as it does not meet any exception to the going-and-coming rule.

In *Phillips v. Enterprise Rent-a-Car Co. of R.I., LLC,* 273 A.3d 609 (R.I. 2022), the Rhode Island Supreme Court discussed the distinction between an injury that occurs in a parking lot and an injury that occurs while traveling from a non-adjacent parking lot to the worksite. The Court specifically referred to the appellate decision in *Brown v. KNC Management Enterprises, Inc.*, W.C.C. 2013-00798 (App. Div. Nov. 25, 2019), which involved a slip and fall on ice and snow in a parking lot adjacent to the employer's facility, an IHOP restaurant. The parking lot surrounded the IHOP, as well as a Burger King located on the same parcel of land. A separate company owned the parking lot and the two buildings, and IHOP leased its building from that company. IHOP did not own the parking lot and was not responsible for its maintenance. In distinguishing *Brown* from the circumstances of the *Phillips* case, the Court stated:

> The *Brown* case involved a slip and fall on ice and snow in a parking lot—a risk that depends greatly, if not exclusively, on the actions of the owner or maintainer of the parking lot. *See id.* at 2. Therefore, in such situations, it makes sense to condition workers' compensation recovery on a finding that the employer owned or maintained the parking lot.

Phillips, supra, 273 A.3d at 617.

The present case falls squarely within the scenario discussed by the Court in which the risk that results in injury is due to the actions (or inaction) of the owner or maintainer of the parking lot. The employer, J. T. Thorpe, did not own or maintain the parking lot in which the injury occurred. Therefore, the employer cannot be held responsible for the employee's injury.

We also find no merit in the employee's arguments that he was at work as soon as he arrived in the Lot and that his employer required him to park in the Lot, thereby exercising the element of control over his actions. Both are refuted by the fact that the employer did not own the Lot and had no control over the Lot. Kiewit was the owner of the Lot and dictated that all

personnel working on the job site park in the Lot. We do not find that the facts of this case meet the requirements for an exception to the going-and-coming rule.

In his fourth and fifth reasons of appeal, the employee contends that the trial judge erred in requiring evidence of an insurance coverage certification to establish Kiewit as a special employer and J. T. Thorpe as a general employer, and also erred in failing to find an agency relationship between the two (2) businesses. We find no merit in these arguments.

Section 28-29-2(6)(i) of the Rhode Island General Laws defines a general employer as including, but not limited to, "temporary help companies and employee leasing companies and means a person who for consideration and as the regular course of its business supplies an employee with or without vehicle to another person." There is nothing in the stipulated facts to support a conclusion that J. T. Thorpe is a general employer in the business of supplying workers to other persons or entities. On the contrary, the parties stipulated that J. T. Thorpe employees were instructed to go to the J. T. Thorpe trailer on the job site to obtain work assignments, that the employee's supervisor was the union president who reported to field managers for J. T. Thorpe, and that J. T. Thorpe instructed the supervisors as to the daily work assignments. *See* Joint Ex. 1, p. 2, #18-20. As stipulated by the parties, the employee was employed by J. T. Thorpe, and J. T. Thorpe was a subcontractor hired by Kiewit to perform specific work on the overall project. The employees of J. T. Thorpe were not performing their specific job duties under the direction of Kiewit. Rather, they were working at the direction and under the supervision of J. T. Thorpe employees. These facts establish that the two (2) entities do not meet the definition of a general employer/special employer relationship.

The trial judge initially made this determination that J. T. Thorpe did not meet the definition of a general employer and then referenced the insurance certification requirement

simply as an additional element, but not the sole basis of his decision. Section 28-29-2(6)(iv) of the Rhode Island General Laws provides that when a general employer supplies an employee to a special employer, the special employer must require an "insurer generated insurance coverage certification" showing that the general employer has workers' compensation and employer's liability coverage and failure to do so will result in the special employer being deemed the employer for purposes of the Workers' Compensation Act. R.I. Gen. Laws § 28-29-2(6)(iv). This reference by the trial judge is immaterial as the determination had already been made that J. T. Thorpe was not a general employer as defined in the Act.

The employee further argues that the trial judge erred by failing to recognize that J. T. Thorpe had designated Kiewit as its legal agent with regard to the employee's activities when J. T. Thorpe required its employees to comply with the job site rules mandated by Kiewit. As stated above, the stipulated facts demonstrate that J. T. Thorpe directed and controlled its own employees in performing the work required by its contract with Kiewit. There is nothing in the stipulated facts to establish an agency relationship between the two (2) entities.

In summary, we find no error on the part of the trial judge in finding that the employee's injury is not compensable under the Workers' Compensation Act. Therefore, the employee's appeals are denied and dismissed, and the decision and decrees of the trial judge are affirmed. In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a proposed version of which is enclosed, shall be entered on **August 27, 2025.**

Reall, J. and Lazieh, J., concur.

ENTER:

/s/ Olsson, J.

/s/ Reall, J.

/s/ Lazieh, J.