RENDERED: DECEMBER 5, 2014; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001539-MR

CASSIE STEVENSON,
PERSONAL REPRESENTATIVE OF
THE ESTATE OF ANTHONY
STEVENSON, DECEASED — APPELLANT

v.

APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE JAMES C. BRANTLEY, JUDGE
ACTION NO. 12-CI-00613

CLAY MOHON, INDIVIDUALLY;
MOHON MOWING, LLC; CLAY
MOHON MOWING, INC.; MOHON
TRACTOR SALES & SERVICE, LLC;
M&J LANDSCAPE PRODUCTS, LLC
D/B/A MR. MULCH OF HOPKINSVILLE;
AND UNKNOWN MEXICAN
FARM WORKER — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; JONES AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Cassie Stevenson, Personal Representative of the Estate of Anthony Stevenson, deceased, has appealed from the August 7, 2013, summary judgment of the Hopkins Circuit Court, which ruled, in part, that her claims were barred by the exclusive remedy provision of Kentucky's Workers' Compensation Act, Kentucky Revised Statutes (KRS) Chapter 342 ("the Act"), pursuant to KRS 342.690. We affirm the summary judgment on appeal.

In 2009, Clay Mohon Mowing, LLC, was awarded a contract by the Kentucky Department of Transportation to mow the right of way of a portion of Pennyrile Parkway in Daviess, Henderson, Hopkins, and Webster Counties. Anthony Stevenson worked for Clay Mohon Mowing, LLC, and on August 4, 2011, Anthony was killed when he fell off his tractor and was run over by the tractor and bush hog mower he was driving while he was mowing near Mortons Gap in Hopkins County. Just prior to his death, Anthony had been helping another worker, who was from Mexico, when the other worker's tractor caught fire. Anthony had to run back to his tractor to get a fire extinguisher, and then run back to the other tractor. Anthony's estate sought and received workers' compensation benefits from Clay Mohon Mowing, LLC's, carrier.

Anthony's widow, Cassandra Stevenson, was appointed as the independent administrator of his estate, and in the capacity of his personal representative, she filed a wrongful death action in Hopkins Circuit Court on July 9, 2012, pursuant to KRS 411.130. As defendants, she named Clay Mohon, individually and as the manager or owner of Mohon Farms; Clay Mohon Mowing,

LLC; Clay Mohon Mowing, Inc.; Mohon Tractor Sales & Services, LLC; M&J Landscape Products, LLC, d/b/a Mr. Mulch of Hopkinsville; and an unknown Mexican farm worker. Stevenson stated that Clay Mohon was doing business under the business entities named as defendants and that he or one of the entities owned, operated, controlled, and/or maintained the tractors driven by Anthony and the Mexican worker on the date of the accident. In the complaint, Stevenson alleged causes of action for wrongful death; negligence; alter ego; negligent hiring, supervision, and/or training; negligence of the Mexican worker; and vicarious liability. She demanded compensatory damages, punitive damages, damages for loss of consortium, and attorneys' fees and costs.

In its answer, Clay Mohon Mowing, LLC, admitted that it was Anthony's employer and that it owned the tractor on which he had been riding, and it raised the exclusive remedy defense in the Act as a bar to Stevenson's claims. In their answer, Clay Mohon, individually, and Clay Mohon Mowing, Inc., denied that Clay Mohon was doing business under the listed names, and stated that each was a properly formed entity registered with the Kentucky Secretary of State. They also raised the exclusive remedy defense and moved to dismiss the complaint due to the failure to state a claim upon which relief could be granted and due to insufficient process and service of process. In their response, Clay Mohon, individually, and Mohon Tractor Sales also raised the exclusive remedy defense and insufficiency of process and service of process, as did M&J Landscape Products.

On August 13, 2012, Clay Mohon Mowing, LLC, moved to dismiss or for summary judgment. It admitted to being Anthony's employer at the time of his death and that it owned the tractor he had been riding. It had secured workers' compensation insurance through Kentucky Associated General Contractors Self-Insurers' Fund, which was paying benefits to Anthony's estate as a result of the accident. Therefore, Clay Mohon Mowing, LLC, argued that KRS 342.690 barred Stevenson's action and that her complaint must be dismissed because Anthony's death had not been alleged to be caused by the willful and unprovoked physical aggression of an employee, officer, or director. The other defendants filed motions seeking similar relief. Attached to one of the motions was an affidavit of Clay Mohon, which stated as follows:

> My name is Clay Mohon and I am an individual defendant in the above action. In addition, I am the president of Mohon Mowing, Inc. (incorrectly identified in the Complaint as Clay Mohon Mowing, Inc.), the manager of Clay Mohon Mowing, LLC and Mohon Tractor Sales and Service, LLC, and a member of M&J Landscape Products, LLC. All of the above-named legal entitles are registered with the Kentucky Secretary of State and are active and in good standing as evidenced by the attached exhibits for each named entity.
>
> I am not, in an individual capacity, doing business as any of said entities. Each named entity maintains separate books of account and all business records are kept separately and apart from any records relating to my personal assets.
>
> The decedent, Anthony Stevenson, was employed by Clay Mohon Mowing, LLC on August 4, 2011. The plaintiff has alleged that on that date he was employed by Clay Mohon Mowing, LLC. At no time during the event alleged in the Complaint was Anthony Stevenson

> employed by any other defendant named in this action, including Clay Mohon, individually, Clay Mohon Mowing, Inc., Mohon Tractor Sales and Service, LLC or M&J Landscape Products, LLC. In addition, at no time during the events alleged in the Complaint was Anthony Stevenson performing any employment duties for any other defendant named in the action, including Clay Mohon, individually, Clay Mohon Mowing, Inc., Mohon Tractor Sales and Service, LLC or M&J Landscape Products, LLC.
>
> Clay Mohon Mowing, LLC maintained workers' compensation coverage that specifically covered Anthony Stevenson as an employee on August 4, 2011. Anthony Stevenson or his estate or beneficiaries have received or is receiving compensation pursuant to the policy of workers' compensation maintained on Anthony Stevenson by Clay Mohon Mowing, LLC.

In response, Stevenson contended that genuine issues of material fact remained to be decided. She stated that her husband "was seen slumped over the wheel of his tractor within minutes of being forced to run back and forth multiple times between his tractor and the one driven by the non-English speaking Unnamed Defendant, with the heat index in excess of 100 degrees." She argued that in order for the exclusive remedy defense to apply, all of the parties or employees must have been in the scope of their employment. She stated that in order for all of the defendants to be eligible to claim the defense based upon Clay Mohon Mowing, LLC's, DOT contract, each would have had to sign the contract or meet the definition of subcontractor in KRS 342.610. She also argued that no discovery had been conducted. Stevenson filed an affidavit to support her response:

My name is Cassandra Stevenson and I am the Personal Representative of my husband, Anthony Stevenson's Estate. My husband was employed by Clay Mohon, of Clay Mohon Mowing, LLC on August 4, 2011. Clay Mohon along with Kevin McKissick came to our house to tell me about the accident. Both of my daughters were outside with me and heard the entire conversation.

Clay told me that one of the tractors driven by the Unknown Mexican worker caught on fire. He said that Tony had to help him put out the fire, and right after he got back on his tractor, Tony was seen driving erratically, then seen slumped over the wheel of his tractor. After that Tony was thrown from his tractor and he was ran [sic] over by his own bush hog. Clay brought both the Mexican Farmworkers [sic] to the funeral home and introduced them to me. Neither one of them spoke very much English.

That same night, my sister-in-law, Barabara [sic] Dulin came to my house and told me that an eye witness had contacted her about the fire as well. She also said that because the Mexican couldn't speak English, Tony had to run back to his own tractor to get his fire extinguisher because the Mexican didn't understand what he was saying, or know where the fire extinguisher was located. I was also informed that the truck that was supposed to be out there providing water and supplies for the guys while they were mowing, was not there at the time of the accident, only Tony and the two Mexican workers.

I have personal knowledge that Clay Mohon does substitute and interchangeably places the Mexican Farm workers among his various business entities. Clay Mohon also had Tony working different jobs in the course of his employment, but Tony always received his pay check from Clay Mohon Mowing, LLC.

Stevenson also filed the 2011 H-2A Visa application Clay Mohon submitted for ten agricultural workers to cut tobacco at 2310 Madisonville Road in Hopkinsville, Kentucky.

In reply, Clay Mohon Mowing, LLC, argued that Stevenson's affidavits and records did not affect the defendants' right to summary judgment. Clay Mohon also filed a second affidavit, stating that Clay Mohon Mowing, LLC, owned and operated the tractors and bush hogs used by its employees, including Anthony. He also stated that Clay Mohon Mowing, LLC, was the employer of all of the employees working with Anthony on August 4, 2011, and attached a payroll summary for the applicable period. He also named the two Mexican employees working that day for Clay Mohon Mowing, LLC, as Anival Vargas and Pedro C. Vargas.

The court held a hearing on the motions on September 5, 2012. By order entered October 5, 2012, the circuit court denied the defendants' motions to dismiss because Stevenson had not had sufficient time to develop proof and should be given the opportunity to conduct discovery to establish her claim. The court did not rule out a future motion for summary judgment after that time.

Discovery began, and the parties requested and responded to discovery requests. Stevenson was deposed on March 27, 2013.[1] She married Anthony on January 19, 2005, and they did not have any children together. She admitted that she had received a lump sum settlement of about $62,000.00 from Mohon

[1] This is the only deposition that was taken in this case.

Mowing, LLC's, workers' compensation carrier. When asked about Anthony's medical history, Stevenson stated that he had a history of seizures. He had been diagnosed with epilepsy and took daily medication to treat that condition. She admitted that Anthony was a seasonal employee for Mohon Mowing, LLC, as well as for US Tobacco. On the date of the accident, he was employed by Mohon Mowing, LLC. He had never worked for Mohon Tractor Sales & Service, LLC. She was not present at the time the accident took place and did not have any firsthand knowledge of what happened. She had not spoken with any of the four witnesses to the accident listed in the police investigation report at that time. Stevenson learned about the accident when Clay Mohon came to her home and told her what had happened. He told her

> that they were working and that there was a fire and that my husband stopped, helped them take care of this fire, he went to resume working, at which time he was – he started driving erratically crossing over both lanes of traffic, then coming back across. Then when he went – his tractor went off the shoulder, that's when he was thrown from the tractor and ran over by the tractor and the bushhog.

Clay Mohon also told her that Anthony had been working with two Mexican workers. Anthony was mowing in the middle, between the other two workers. When asked if she had any evidence of any intentional wrongdoing on Clay Mohon's part on the date of the accident, she stated that she had "very strong suspicions." She stated that "[e]vidence and proof, all that is going to come out during this." She agreed that her allegation of wrongdoing was just a suspicion.

She also stated that she had "strong suspicions," but no evidence, of her claim that Clay Mohon had a scheme to "squirrel" assets into a liability-free organization.

On May 9, 2013, M&J Landscape Products filed a motion for summary judgment, stating that Stevenson had had an adequate opportunity to develop proof over the seven months since the court had denied the defendants' earlier motions. It argued that based upon Stevenson's deposition testimony, it was not a proper party to the action because it was not Anthony's employer, Anthony was not performing work for it, and there was no evidence it was involved in the incident. It went on to state that Stevenson's allegations were based on her "very strong suspicions," without further detail. Assuming it was a proper party to the suit, M&J Landscape Products argued that Stevenson's claims were barred by the exclusive remedy immunity. Clay Mohon, individually, and Mohon Mowing, Inc., filed a separate motion for summary judgment on May 13, 2013, making similar arguments, as did Mohon Tractor Sales in its motion filed May 29, 2013. Clay Mohon Mowing, LLC, filed its renewed motion on May 29, 2013, continuing to argue that the exclusive remedy immunity afforded in KRS 342.690 barred Stevenson's action.

In response, Stevenson argued that genuine issues of material fact remained to be decided, including whether Anthony was working outside of the scope of his employment in helping the other worker, whether having to run back and forth contributed to the physical ailment that caused him to slump over, and who was the proper legal employer of the Mexican worker. She also argued that the exclusive

remedy immunity defense did not apply in this case. She stated that the Mexican worker was not an employee of Clay Mohon Mowing, LLC, and his employer could be held liable for vicarious liability, negligence, and improper supervision and/or training. She again argued that in order to claim the exclusive remedy immunity defense, the business entities would have to show that each had signed the DOT contract or met the definition of contractor. She also asserted lack of cooperation in discovery and that false, misleading, and contradictory affidavits had been submitted. She believed that she had not been provided with the proper information because the defendant "could possibly be incriminated [for] both state and federal violations[.]" Regarding discovery, Stevenson stated that it took time to gather the information and that all of the witnesses lived out of state and most had changed their addresses. She was waiting to receive immigration documents "that will without a doubt support" her assertions. On June 3, 2012, the same day she filed her response, Stevenson filed a motion to compel discovery responses.

The defendants filed respective replies to Stevenson's response, stating that they had cooperated with discovery and that her response lacked merit. Clay Mohon, individually, and Mohon Mowing, Inc., specifically argued that even if the Mexican worker had worked for a third party, Stevenson had not stated a cause of action for negligence against either the worker or his employer because it was not foreseeable by the Mexican worker or his employer that a fire would start on the tractor, that Anthony would voluntarily come to his aid, or that Anthony would suffer some sort of health issue or event, fall off of the tractor, and be run over by

the tractor. In its reply, Clay Mohon Mowing, LLC, among other arguments, asserted that Anthony was working in the scope of his employment when he went to the aid of the other worker. It pointed out that Stevenson's complaint stated that Anthony was working when he was thrown from the tractor and run over. Furthermore, Stevenson had already accepted workers' compensation benefits.

The circuit court held a hearing on June 3, 2013, on the renewed motions for summary judgment. The court indicated that it would consider Stevenson's motion to compel if necessary. On August 7, 2013, the circuit court entered an order granting the motions for summary judgment. The court concluded:

> Under Kentucky law, unless a worker has expressly opted out of the workers' compensation system, the injured worker's recovery from the employer is limited to workers' compensation benefits. The injured worker is not entitled to tort damages from the employer or its employees for work-related injuries. KRS 342.690(1). After ample time for discovery and under the facts presented, there is no evidence that an exception to exclusive remedy of workers' compensation exists; accordingly, this Court believes summary judgment is appropriate regarding Clay Mohon Mowing, LLC. Furthermore, as for the other Defendants there is no evidence in the record that would support recovery against any of them and therefore summary judgment is proper.

This appeal now follows.

On appeal, Stevenson continues to argue that the circuit court erred in ruling that her claim was barred by KRS 342.690(1) because her tort claims involve third-party entities and because Anthony was not working in the course of his employment when he was injured and died. She also continues to argue about the

identity of the Mexican worker's employer and that the circuit court entered summary judgment before she could complete discovery. The appellees dispute each of Stevenson's arguments in their respective briefs.

Our standard of review in an appeal from a summary judgment is well-settled in the Commonwealth. "The standard of review on appeal when a trial court grants a motion for summary judgment is 'whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.'" *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001), citing *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996); *Palmer v. International Ass'n of Machinists & Aerospace Workers*, 882 S.W.2d 117, 120 (Ky. 1994); CR 56.03. "Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*." *Lewis*, 56 S.W.3d at 436, citing *Scifres*, 916 S.W.2d at 781; *Estate of Wheeler v. Veal Realtors and Auctioneers, Inc.*, 997 S.W.2d 497, 498 (Ky. App. 1999); *Morton v. Bank of the Bluegrass and Trust Co.*, 18 S.W.3d 353, 358 (Ky. App. 1999). With this standard in mind, we shall review the judgment on appeal.

The first issue we shall address is whether Stevenson's claim is barred by exclusive remedy immunity. We shall begin with the identification of the statutes relevant to our analysis of this issue. KRS 342.610(1) provides that "[e]very employer subject to this chapter shall be liable for compensation for injury,

occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death." KRS 342.690(1) details the exclusive remedy protection afforded to employers subject to the Act, and it provides in relevant part as follows:

> If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death. For purposes of this section, the term "employer" shall include a "contractor" covered by subsection (2) of KRS 342.610, whether or not the subcontractor has in fact, secured the payment of compensation.

That subsection carves out an exception "where the injury or death is proximately caused by the willful and unprovoked physical aggression of such employee, officer or director." Finally, KRS 342.700(1) provides for remedies when a third party is legally liable:

> Whenever an injury for which compensation is payable under this chapter has been sustained under circumstances creating in some other person than the employer a legal liability to pay damages, the injured employee may either claim compensation or proceed at law by civil action against the other person to recover damages, or proceed both against the employer for compensation and the other person to recover damages, but he shall not collect from both. If the injured employee elects to proceed at law by civil action against the other person to recover damages, he shall give due and timely notice to the employer and the special fund of the filing of the action. If compensation is awarded under this chapter, the employer, his insurance carrier,

> the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists, not to exceed the indemnity paid and payable to the injured employee, less the employee's legal fees and expense. The notice of civil action shall conform in all respects to the requirements of KRS 411.188(2).

Stevenson contends that her tort claims fall outside of the scope of the KRS 342.690(1), that Anthony was not working in the course and scope of his employment when the accident occurred, and that several issues of material fact remain to be decided. We disagree.

The record is clear that at the time of his fatal accident, Anthony was working in the course and scope of his employment for Clay Mohon Mowing, LLC; that Clay Mohon Mowing, LLC had secured workers' compensation coverage; and that Stevenson had collected workers' compensation benefits from Clay Mohon Mowing, LLC's, carrier for the fatal injuries Anthony sustained on August 4, 2011. Therefore, the exclusive remedy immunity defense in KRS 342.690 applies to Clay Mohon Mowing, LLC, in this case, and Stevenson's claim is barred against this party. *See Shamrock Coal Co. v. Maricle*, 5 S.W.3d 130, 134 (Ky. 1999) ("[A]s the Workers' Compensation Act confers exclusive liability to participating employers for all matters falling within its purview, no trial court has subject matter jurisdiction over such a matter. The proper venue for a matter falling within the purview of the Workers' Compensation Act lies solely with the Workers' Compensation Board."). This exclusion also extends to Clay Mohon,

individually, as the manager of Clay Mohon Mowing, LLC. *See Jessie v. Dermitt*, 2006 WL 3524524 *2 (2005-CA-001961-MR) (Ky. App. Dec. 8, 2006):[2]

> [T]he exemption contained in KRS 342.690(1) should include managers of an LLC. However, our inquiry does not end there. Under KRS 342.690(1), we believe the exemption only extends to employees, officers, and directors of an employer when sued in their respective capacities as employees, officers, or directors. Succinctly stated, an employee, officer, or director only enjoys the exemption from common-law liability for actions committed in his or her capacity as employee, officer, or director of the employer.

Here, Stevenson did not develop any proof against Clay Mohon, except that he was the manager of Clay Mohon Mowing, LLC. And based upon the proof that the Mexican workers were employed by Clay Mohon Mowing, LLC, the exclusion would also apply to them as employees.

We specifically reject Stevenson's argument that Anthony was not acting in the course and scope of his employment at the time of the accident that resulted in his death. KRS 342.0011(1) defines "injury" as "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." Stevenson contends that he was outside of his regular work when he rendered aid to the Mexican worker. Regardless of whether his rendering of aid constituted a

[2] "Opinions that are not to be published shall not be cited or used as binding precedent in any other case in any court of this state; however, unpublished Kentucky appellate decisions, rendered after January 1, 2003, may be cited for consideration by the court if there is no published opinion that would adequately address the issue before the court." CR 76.28(4)(c).

deviation from his regular job of mowing grass, Anthony was not killed when he was rendering aid to the other worker. Rather, he was killed after he was thrown or fell from the tractor while he was mowing grass pursuant to his job duties. Therefore, the circuit court properly found that Anthony was working in the course and scope of his employment for Clay Mohon Mowing, LLC, at the time of his fatal accident and that the exclusive remedy provision of KRS 342.690(1) barred Stevenson's claims against that particular defendant.

We also reject Stevenson's characterization of the circuit court's ruling as holding that KRS 342.690(1) barred her claim against all of the defendants. The circuit court applied that defense only to Anthony's undisputed employer, Clay Mohon Mowing, LLC, and stated that "as for the other Defendants there is no evidence in the record that would support recovery against any of them and therefore summary judgment is proper."

Turning to the summary judgment in favor of the remaining defendants, we agree that Stevenson has failed to state a cause of action against any of them. As a corollary, Stevenson contends that a genuine issue of material fact exists as to the legal employer of the Mexican worker. The proof in the record establishes that the Mexican workers on site that day were employed by Clay Mohon Mowing, LLC, and Stevenson failed to rebut this evidence of record.

In order to establish a claim for negligence, a plaintiff must establish, "(1) a duty on the part of the defendant; (2) a breach of that duty; and (3) consequent injury." *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 247 (Ky. 1992),

citing *Illinois Central R.R. v. Vincent*, 412 S.W.2d 874, 876 (Ky. 1967). "The determination of whether a duty exists is a legal question for the court." *Shelton v. Kentucky Easter Seals Soc., Inc*., 413 S.W.3d 901, 908 (Ky. 2013), as corrected (Nov. 25, 2013). "A fundamental principle of negligence is that there is no liability without fault. Every person owes a duty to every other person to exercise ordinary care in his activities to prevent any foreseeable injury from occurring to such other person." *M & T Chemicals, Inc. v. Westrick*, 525 S.W.2d 740, 741 (Ky. 1974).

Here, Stevenson failed to establish the existence of any duty the remaining defendants owed to Anthony or that the circumstances of his accident and subsequent death were foreseeable. In her deposition, Stevenson stated that her husband had worked for Clay Mohon Mowing, LLC, and that the LLC owned the tractor he was driving on the date of the accident. Furthermore, Clay Mohon's affidavits established that Clay Mohon Mowing, LLC, employed all of the workers on site on the date of the accident, including the Mexican workers. There was no evidence presented that any of the other business entities had any connection to Anthony or owed a duty to him. Because no duty was owed, it follows that no duty was breached. In addition, Stevenson failed to establish causation on the part of any of the other defendants. She only points to "very strong suspicions" to support her claims. In *Henninger v. Brewster*, 357 S.W.3d 920, 929 (Ky. App. 2012) (internal citations omitted), this Court held:

> The Henningers "conclusions and conjectures" concerning what evidence additional discovery might produce are not sufficient to sustain their burden imposed upon them by Brewster's affidavit supporting her motion for summary judgment. To that end, the Henningers' argument fails because "[c]onclusory allegations based on suspicion and conjecture" are not sufficient to create an issue of fact to defeat summary judgment.

Stevenson's suspicions were simply not enough to meet her burden in this case.

Finally, Stevenson contends that the circuit court prematurely granted summary judgment without permitting her to complete discovery and while her motion to compel was pending. Again, we find no merit in this argument.

We review such rulings for abuse of discretion. "The trial court's determination that a sufficient amount of time has passed and that it can properly take up the summary judgment motion for a ruling is reviewed for an abuse of discretion." *Blankenship v. Collier*, 302 S.W.3d 665, 668 (Ky. 2010).

> A party "cannot complain of the lack of a complete factual record when it can be shown that the respondent has had an adequate opportunity to undertake discovery." *Cargill v. Greater Salem Baptist Church*, 215 S.W.3d 63, 69 (Ky. App. 2006). "It is not necessary to show that the respondent has actually completed discovery, but only that respondent has had an opportunity to do so." *Hartford Ins. Group v. Citizens Fidelity Bank & Trust Co.*, 579 S.W.2d 628, 630 (Ky. App. 1979) (six months between filing of complaint and granting motion for summary judgment was sufficient opportunity to complete discovery).

Leeds v. City of Muldraugh, 329 S.W.3d 341, 344 (Ky. App. 2010).

Our review of the record establishes that Stevenson had sufficient time to develop her proof in this case. She filed her action in July 2012, and in response to

the motions to dismiss or for summary judgment filed shortly thereafter, she argued that she had not had sufficient time to conduct discovery. Agreeing with her, the circuit court denied the motions in October 2012 specifically to provide Stevenson with sufficient time to conduct discovery. Thereafter, the defendants responded to her discovery requests, and her deposition was noticed and taken by one of the defendants. The defendants began filing their renewed motions for summary judgment in May 2013, seven months after the court denied the first motions to dismiss or for summary judgment. Furthermore, Stevenson did not file her motion to compel until after the motions for summary judgment had been filed. We agree with the circuit court that Stevenson had "ample time for discovery[,]" and therefore we do not find any abuse of discretion in the circuit court's decision to consider and rule on the motions for summary judgment.

For the foregoing reasons, the summary judgment of the Hopkins Circuit Court is affirmed.

ALL CONCUR.

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