RENDERED: MARCH 13, 2015; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000744-WC

WENDY HANAWALT — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-13-00296

J. THOMAS BROWN AND
KAREN BROWN, D/B/A
WILD ROSE EQUESTRIAN CENTER;
UNINSURED EMPLOYERS' FUND;
OTTO DANIEL WOLFF,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: Wendy Hanawalt (Hanawalt) petitions for review of an opinion by the Workers' Compensation Board (Board) which affirmed an order by the

Administrative Law Judge (ALJ) dismissing her workers' compensation claim against J. Thomas Brown and Karen Brown, d/b/a/ Wild Rose Equestrian Center (Wild Rose). Hanawalt argues that the ALJ and the Board erred in finding that Wild Rose is subject to the "agricultural exemption" from coverage under the Workers' Compensation Act. We find that the ALJ and the Board correctly applied the exemption to Wild Rose's operations. Consequently, the ALJ properly dismissed the claim. Hence, we affirm.

The underlying facts of this matter are not in dispute. Wild Rose operates on a 200-acre farm in Elizabethtown, Kentucky. It provides horseback riding lessons, horse training, boarding and riding facilities, among other equestrian-related activities. Hanawalt was employed as a "barn manager" for Wild Rose from June 2002 through June 2005 and again from June 2006 through June 2012. She stated that her position encompassed most of the general maintenance and other work tasks needed in the daily operation of a horse farm. However, she stated that her primary work involved training of horses brought in by outside owners.

On July 18, 2011, Hanawalt was injured when she fell off a thoroughbred horse she was training for racing. As a result of her injuries, she filed this workers' compensation claim. Wild Rose did not carry workers' compensation coverage, claiming that it was subject to the agricultural exemption

of KRS[1] 342.650(5). For this reason, Hanawalt also named the Uninsured Employers' Fund as a defendant.

The ALJ bifurcated the claim to determine the applicability of the agricultural exemption. The parties submitted the depositions of Hanawalt and Karen Brown, a co-owner of Wild Rose. Based upon that testimony, the ALJ determined Hanawalt was employed in agriculture at the time of her work injury, and thus, under KRS 342.650(5), Wild Rose was exempt from coverage under the Act. Consequently, the ALJ dismissed the claim. The ALJ subsequently denied Hanawalt's motion for reconsideration.

On appeal, the Board affirmed. After reviewing the testimony presented to the ALJ and the applicable statutory and case law, the Board found that the ALJ did not err in determining that Wild Rose was engaged in agriculture, and Hanawalt was, at the time of her work injury, an agricultural employee. This petition for review followed.

The sole question on appeal concerns the applicability of the agricultural exemption under the facts presented in this case. Because no factual matters are in dispute, our review is limited to reviewing the applicable statutes and authority based on the agreed facts. Under such circumstances, our standard of review is *de novo*, and without deference to the conclusions of the ALJ or the Board. *See Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800, 801-02 (Ky. App. 1995).

[1] Kentucky Revised Statutes.

KRS 342.630(1) states "any person, other than one engaged solely in agriculture" that has one or more employees are employers mandatorily subject to and required to comply with the Workers' Compensation Act. KRS 342.650 further provides classes of employees who are exempt from coverage under the Act and includes "[a]ny person employed in agriculture." KRS 342.650(5). KRS 342.0011(18) defines agriculture as follows:

> "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets.

In *Fitzpatrick v. Crestfield Farm, Inc.*, 582 S.W.2d 44 (Ky. App. 1978), this Court addressed whether the operator of a farm who boarded thoroughbred race horses was excluded from the operation of the Act based upon the definition of agriculture. In that case, the farm raised tobacco, hay and thoroughbred yearlings. However, the majority of the farm's revenue came from boarding thoroughbred brood mares owned by others. After considering the applicable statutes, this Court held that the agricultural exemption applied to the farm's activities.

> While some people may make reference to the race horse "industry", the definition of agriculture set out in the statute specifically includes the raising of livestock for racing purposes. The "raising" of race horses obviously includes feeding, housing, and caring for brood mares. It

> would be an illogical and impermissibly narrow distinction to say that raising race horses is agriculture, but that once they are "raised", (presumably from foal to racing age) their feeding, housing, and care rendered on farm premises becomes a commercial operation.
>
> Neither can this Court find any logical basis for making a distinction based on the ownership of the horses involved. The activity of feeding, housing, and caring for the horses is exactly the same whether the horse is owned by the operator of the farm premises or someone else. The normal routine of farm operation is not changed simply because the farm operator cares for brood mares owned by others in addition to caring for his own brood mares.

Fitzpatrick, 582 S.W.2d at 47.

Similarly, in *Michael v. Cobos*, 744 S.W.2d 419 (Ky. 1987), the Kentucky Supreme Court held the agriculture exemption includes the conditioning and exercising of racehorses which have been released to the track, but have returned to the farm for rehabilitation from an injury. The Court specifically rejected the contention that the "raising" of livestock and horses excludes those horses which have been held that sold or were sent to the track. *Id.* at 420. Rather, the Court concluded that "the conditioning and exercising of racehorses which have been released to the track, but have returned to the farm for rehabilitation following an injury 'is an activity ordinarily and customarily conducted on farm premises and an activity generally recognized as an agricultural pursuit.'" *Id.*

Hanawalt contends that these cases are distinguishable because she was injured while riding a horse that she was training at Wild Rose for a client. However, we find no meaningful distinction between the facts in this case and

those in *Fitzpatrick* and *Cobos*. In the current case, Hanawalt was injured while training a thoroughbred horse owned by another. While the horse was being trained for racing purposes, it had not been released for any racing activities.

Although the statutory definition specifically mentions the raising of livestock for racing purposes, it does not exclude the raising of livestock for other purposes, such as the operation of an equestrian center. As in *Fitzpatrick* and *Cobos*, we conclude that the feeding, housing, caring for, and training of race horses in a farm setting is agricultural in nature. Therefore, we agree with the Board that the activity engaged in by Hanawalt at the time of the injury clearly falls within the definition of agriculture in KRS 342.0011(18), and consequently, Wild Rose was exempt from coverage under KRS 342.650(5).

Accordingly, we affirm the April 4, 2014 Opinion by the Workers' Compensation Board which affirmed the November 18, 2013 Opinion and Order by the ALJ dismissing Hanawalt's claim.

CLAYTON, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS AND WILL NOT FILE SEPARATE OPINION.

BRIEF FOR APPELLANT
WENDY HANAWALT:

Larry D. Ashlock
Lexington, Kentucky

BRIEF FOR APPELLEE
WILD ROSE EQUESTRIAN
CENTER:

Thomas E. Cooper
Elizabethtown, Kentucky

BRIEF FOR APPELLEE
UNINSURED EMPLOYERS' FUND:

C.D. Batson
Assistant Attorney General
Uninsured Employers' Fund
Frankfort, Kentucky