

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001525-MR

JAMES BAKER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 13-CI-000822

TRAVELERS PROPERTY CASUALTY
INSURANCE COMPANY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: James Baker brings this appeal from a July 30, 2014, Opinion and Order of the Jefferson Circuit Court granting summary judgment in favor of Travelers Property and Casualty Company and dismissing Baker's claim for Basic Reparation Benefits. We affirm.

Baker was a driver of a “yard truck” at Kroger Distribution Center (distribution center) in Jefferson County, Kentucky. He was employed by Transervice Logistics, Inc., who owned the yard trucks at the distribution center.¹ Yard trucks were utilized to move trailers between various docks at the distribution center, so the trailers could be loaded with consumer products. After loading, the yard trucks would move the trailers to a site at the distribution center for pick up by tractor-trailers and delivery to Kroger stores.

On February 7, 2011, Baker was climbing out of a yard truck and slipped on ice or snow causing him to fall. As a result of the fall, Baker sustained an injury to his shoulder.

Consequently, on February 7, 2013, Baker filed a complaint against, *inter alios*, Travelers Casualty seeking to recover Basic Reparation Benefits (BRB) per the Motor Vehicle Reparations Act (MRVA) (Kentucky Revised Statutes (KRS) Chapter 304.39).² Travelers Casualty filed an answer conceding that it provided Transervice with motor vehicle insurance, including BRB, on covered vehicles. Thereafter, Travelers Casualty filed a motion for summary judgment arguing that a yard truck was not a motor vehicle under KRS 304.39-020(7); thus, Baker was not entitled to BRB under KRS 304.39-030(1). In his response, Baker

¹ Transervice Logistics, Inc., was contracted to provide logistics at the Kroger Distribution Center.

² James Baker also named Transervice as a defendant. By Agreed Order entered April 23, 2013, Transervice was dismissed as a party.

maintained that the yard truck was a motor vehicle pursuant to KRS 304.39-020(7) and that he was entitled to BRB.

By Opinion and Order entered July 30, 2014, the circuit court granted Travelers Casualty's motion for summary judgment. The circuit court concluded that a yard truck was not a motor vehicle within the meaning of KRS 304.39-020(7); consequently, Baker was not entitled to BRB under KRS 304.39-030(1). This appeal follows.

Baker contends that the circuit court erred by granting summary judgment and dismissing his claim for BRB. Baker asserts that yard trucks are motor vehicles pursuant to KRS 304.39-020(7). As a driver of a yard truck, Baker points out that his "job included using his vehicle [yard truck] to tow trailers to the docks where the food products are loaded onto them to be delivered to Kroger stores and back to the Yard after making deliveries and to take trailers to a shop where they are repaired, fueled and washed and where other tasks are performed." Baker's Brief at 1. Baker also asserts that "vehicles which travel through . . . [the distribution center] do the things which are normally done when vehicles are driven on the roadway, including yielding the right of way, giving signals when turning, staying in the proper lanes and parking in rows between the lanes." Baker's Brief at 2. Baker claims that the yard trucks "are in fact driven on public highways and roadways" and cites to his affidavit as support therefor.³ Baker's

³ In his affidavit, James Baker averred that he was unaware of Transervice's policy of not permitting yard trucks to leave Kroger Distribution Center and travel upon public highways. He also stated that he was unaware of a driver of a yard truck being disciplined for driving the yard truck outside the distribution center. However, conspicuously absent is an averment that a yard

Brief at 2. Baker further believes that the distribution center contains public highways within the meaning of KRS 304.39-020(7).

Conversely, Travelers Casualty maintains that yard trucks are only driven inside the distribution center and are not licensed or registered. In fact, Travelers Casualty asserts that yard trucks are not driven upon public highways and that Transervice forbids employees from driving the yard trucks upon public highways. Travelers Casualty points out that a yard truck's maximum speed is only thirty miles per hour and that the yard truck's sole purpose is to move trailers at the distribution center. Travelers also maintains that the distribution center is located on private property and is a limited access facility with the entrance controlled by a security check point.

Summary judgment is proper where there exists no material issues of fact and movant is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure 56; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991). When ruling upon the motion, all facts and inferences therefrom are to be viewed in a light most favorable to the nonmoving party. *Id.* The sole question before us is whether a yard truck qualifies as a motor vehicle under KRS 304.39.020(7). The answer to this question is a legal conclusion, and our review is *de novo*. See *Manies v. Croan*, 977 S.W.2d 22 (Ky. App. 1998).

Under the MVRA, the term “motor vehicle” is defined in KRS 304.39-020(7) as:

truck had, in fact, left the distribution center and traveled upon a public highway.

(7) “Motor vehicle” means any vehicle which transports persons or property upon the public highways of the Commonwealth, propelled by other than muscular power except road rollers, road graders, farm tractors, vehicles on which power shovels are mounted, such other construction equipment customarily used only on the site of construction and which is not practical for the transportation of persons or property upon the highways, such vehicles as travel exclusively upon rails, and such vehicles as are propelled by electrical power obtained from overhead wires while being operated within any municipality or where said vehicles do not travel more than five (5) miles beyond the said limits of any municipality. Motor vehicle shall not mean moped as defined in this section.

Our Court has held that the above definition of motor vehicle “contemplates vehicles which transport persons or property on the public highway.” *O’Keefe v. N. Am. Refractories*, 78 S.W.3d 760, 762 (Ky. 2002). Consistent therewith, a golf cart operated on a golf course does not qualify as a motor vehicle per KRS 304.39-020(7) because the golf course, including its fairways, was not a public highway:

A motor vehicle under MVRA (KRS 304.39–020(7)) is defined as any vehicle “which transports persons or property upon the public highways of the Commonwealth.” While a golf cart is capable of transporting persons or property upon a public highway and conceivably could be construed as a motor vehicle for purposes of applying MVR, the particular golf cart herein was not being operated upon a public highway at the time and, therefore, was not covered within the Act.

Kenton Cnty. Public Parks Corp. v. Modlin, 901 S.W.2d 876, 878 (Ky. 1995). In fact, our Courts have consistently held that a vehicle which neither transports persons nor property on a public highway does not come within the definition of motor vehicle under KRS 304.39-020(7). *Maines v. Croan*, 977 S.W.2d 22 (Ky.

App. 1998); *O'Keefe*, 78 S.W.3d 760; *Kenton Cnty. Public Parks Corp.*, 901 S.W.2d 876.

Viewing the facts most favorable to Baker, the distribution center is a limited access facility with its entrance controlled by a security check point. The public may not freely enter the distribution center and travel upon its roadways. Therefore, the roadways and travel areas within the distribution center simply do not constitute public highways within the meaning of KRS 304.39-020(7).

Additionally, the yard trucks are not licensed or registered and are utilized for the sole purpose of moving trailers within the distribution center for loading and unloading of consumer products. There was no specific allegation pointing to a single instance of a yard truck leaving the distribution center and traveling upon a public highway. And, yard trucks can only travel at a maximum speed of 30 miles per hour. This speed limitation alone renders yard trucks impractical for transporting persons or property upon a public highway.

Accordingly, we conclude that yard trucks are not motor vehicles under KRS 304.39-020(7) and that the circuit court properly rendered summary judgment for Travelers Casualty on Baker's claim for BRB.

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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