Circuit Court for Prince George's County
Case No. CAL 17-00216

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1514

September Term, 2017

PRINCE GEORGE'S COUNTY, MARYLAND

v.

PHILLIP ZONN

Wright,
Arthur,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: December 21, 2018

This appeal arises out of a claim for Workers' Compensation benefits filed by Corporal Phillip Zonn, appellee, against Prince George's County, appellant. On July 11, 2016, appellee suffered personal injuries in an automobile accident that occurred while he was traveling from his home in Anne Arundel County to his police cruiser parked in Prince George's County. Appellee subsequently filed a claim for benefits with the Workers' Compensation Commission ("the Commission"), wherein the Commission found that his injuries were not compensable.

Appellee then brought an action for judicial review of the Commission's decision in the Circuit Court for Prince George's County. At the conclusion of discovery, both parties moved for summary judgment. The circuit court granted appellee's motion, reversed the Commission, and found that "[appellee] sustained an accidental injury arising out of and in the course of employment . . . ." Appellant appeals the circuit court's order granting appellee's motion for summary judgment and presents the following question for our review, which we have reworded for clarity:[1]

> Whether the circuit court erred in finding that appellee's injuries arose out of and in the course of employment and were therefore compensable?

[1] The appellant presented its question to the circuit court as follows:

> 1) Did the circuit court err when it found that the injuries sustained by a police officer while commuting from home in Anne Arundel County to work in Prince George's County arose out of and in the course of employment and were compensable under the free transportation exception to the going and coming rule?

For the reasons to follow, we answer this question in the negative and affirm the circuit court's order.

BACKGROUND

Appellee is employed as a corporal with the Prince George's County Police Department ("the Department"). As part of his employment, appellee was enrolled in the Department's Personal Car Program ("the PCP").[2] Under the PCP, Prince George's County police officers are provided with the use of a patrol vehicle.[3] Officers that live in Prince George's County are permitted to take their patrol vehicles home and to use their vehicles for travel between their residence and their duty location. Officers that do not live in Prince George's County are also able to participate in the PCP but "shall not drive their issued vehicles outside of [Prince George's] County unless authorized to do so by their Deputy Chief, with approval of the Chief of Police." Rather, "the vehicle must be secured at an appropriate location within the County when the officer is not on-duty."

Appellee resided in Anne Arundel County. Therefore, "[appellee], like many other officers who reside outside of [Prince George's] County, would . . . drive his patrol

[2] Appellee has been a member of the Personal Car Program ("the PCP") since at least 2010. All Prince George's County police officers are eligible to participate in the PCP. The PCP and other relevant requirements are set out in the Prince George's County Police Department General Order Manual, Volume I, Chapter 10, "Departmental Vehicles."

[3] Officers that are assigned vehicles under the PCP have a number of requirements and responsibilities related to their vehicles. For example, officers "are required to ensure that they operate [their vehicles] lawfully; that their vehicle[s] receive preventative maintenance; and they keep the interior and exterior of [their vehicles] clean." Additionally, "[w]hile operating departmental vehicles while off-duty, an officer shall also monitor the police radio channel serving the area in which they are traveling."

car to a site at or near the [Prince George's] County line and park it there between shifts." Specifically, appellee, along with "'about eight' other Prince George's County police officers," parked his police cruiser in Prince George's County at a church located in Bowie, Maryland. This location was previously authorized by the Police Department, and appellee had been parking his cruiser there for "at least fix or six years."

On July 11, 2016, appellee was assigned to begin his shift at 11:30 p.m. at the District 4 Station located in Oxon Hill, Maryland.[4] At 10:30 p.m., appellee left his residence in Anne Arundel County to retrieve his cruiser from its regular location at the church in Bowie, Maryland. During his trip, appellee was partially in uniform[5] and was traveling on his personal motorcycle. Though not in Prince George's County, appellee was "authorized pursuant to [the] Department and authority as a police officer in the State of Maryland, to take 'any police action besides traffic-related duties' including arresting for felonies and handling emergency situations."

While on his trip to retrieve his cruiser, appellee was involved in a motor vehicle accident in which he was "sideswiped" by another driver. The accident occurred while appellee was still in Anne Arundel County. As a result of the accident, appellee sustained severe personal injuries and was flown to Shock Trauma for treatment.

[4] Oxon Hill, Maryland, is located in Prince George's County.

[5] Appellee wore his police uniform pants, boots, and undershirt while traveling from his residence to retrieve his cruiser. Additionally, he was carrying his service weapon, radio, and police identification.

On July 30, 2016, appellee filed a claim with the Commission, which appellant challenged. The Commission denied appellee's claim and found that he "did not sustain an accidental injury arising out of and in the course of employment." Appellee then petitioned the Circuit Court for Prince George's County for judicial review of the Commission's decision, wherein both parties filed motions for summary judgment. The circuit court granted appellee's motion, reversed the Commission, and found that appellee "sustained an accidental injury arising out of and in the course of employment[.]" The circuit court relied on the free transportation exception to the going and coming rule in order to arrive at its conclusion. The going and coming rule, explained in further detail below, states that "injuries sustained by an employee while going to and coming from work are generally not considered to arise out of and in the course of employment and are, therefore, not compensable under the Act." *Morris v. Bd. of Educ. of Prince George's Cty.*, 339 Md. 374, 379 (1995).

There are several exceptions to the going and coming rule, including the free transportation exception. *See Bd. of County Commissioners for Frederick County v. Vache*, 349 Md. 526, 532 (1998). The free transportation exception establishes that "when an employer has obligated itself to provide an employee free transportation to and from work the employee's work day starts when his commute to work starts (and ends when his commute home ends). Consequently, an accidental personal injury suffered by the employee during his commute arises out of and in the course of his employment, and the going and coming rule does not apply." *State v. Okafor*, 225 Md. App. 279, 299 (2015).

In its analysis, the circuit court stated that "[i]t is completely well settled that [under] the going and coming rule . . . injuries sustained commuting to and from work are not considered to arise out of and in the course of employment." However, the circuit court found it critical to analyze the "entire sphere . . . of why [appellee was] in [the] position [he was in when the injury occurred]." In doing so, the court found that appellee was traveling to retrieve his cruiser, which was a form of free transportation provided by the Department. Therefore, the court concluded that "the accident . . . arose out of and in the course of [appellee's employment[,]" and "[t]hat the going and coming rule is not applicable in this case because of the free transportation exception."

Appellant subsequently brought this appeal challenging the circuit court's order that granted appellee's motion.

STANDARD OF REVIEW

This Court recently explained the standard of review for a circuit court's grant of summary judgment as follows:

> A circuit court may grant a motion for summary judgment if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. We review a circuit court's decision to grant summary judgment *de novo* and without deference, by independently examining the record to determine whether the parties generated a genuine dispute of material fact, and, if not, whether the moving party was entitled to judgment as a matter of law. We consider the record in the light most favorable to the non-moving party, drawing any reasonable inferences against the moving party. Moreover, when reviewing the issue of whether the circuit court erred in granting summary judgment, we consider only the grounds for granting summary judgment relied upon by the circuit court.

Landaverde v. Navarro, 238 Md. App. 224, 241 (2018) (citations and quotations omitted).

DISCUSSION

In *Roberts v. Montgomery County*, 436 Md. 591, 603 (2014), the Court of Appeals explained the Workers' Compensation Act ("the Act") as follows:

> The Workers' Compensation Act, located at Sections 9-101 through 9-1201 of the Labor and Employment Article [("L&E"), Md. Code (1991, 2016 Repl. Vol.)], was intended to protect workers and their families from hardships inflicted by work-related injuries by providing workers with compensation for loss of earning capacity resulting from accidental injury arising out of and in the course of employment. The Act is remedial in nature and must be interpreted as such, in order to effectuate its benevolent purposes.

(Internal quotations and citations omitted).

The Act requires that an employer compensate a "covered employee"[6] who suffers an "accidental personal injury." L&E § 9-501(a)(1). An "accidental personal injury" is one which "arises out of *and* in the course of employment." L&E § 9-101(b)(1) (emphasis added). As the Court of Appeals previously explained in *Roberts*, 436 Md. at 604, "'[a]rises out of' relates to the causal connection between the employment and the injury. 'In the course of' refers to the time, place, and circumstances of the accident in relation to the employment." (Internal citations and internal quotations omitted).

[6] L&E § 9-202(a) *Presumption.* – An individual, including a minor, is presumed to be a covered employee while in the service of an employer under an express or implied contract of apprenticeship or hire.

"Maryland has adopted the positional-risk test to determine whether an injury arose out of employment." *Livering v. Richardson's Restaurant*, 374 Md. 566, 575 (2003). "[U]nder the positional-risk test, an injury arises out of employment if it would not have occurred if the employee's job had not required [the employee] to be in the place where [the employee] was injured." *Id*. at 575-76 (citations and internal quotations omitted); *see also Mulready v. University Research Corp.*, 360 Md. 51, 57 (2000) (explaining that "the term 'arises out of' requires, not that the performance of an employment-related task be the direct or physical cause of the injury, but, more broadly, that the injury be incidental to the employment, such that it was by reason of the employment that the employee was exposed to the risk of the resulting injury."). It is "essentially a 'but for' test," and is "adduced generally in the situation where an employee is injured while engaging in activities incidental to employment." *Livering*, 374 Md. at 575; *Roberts*, 436 Md. at 605. The Court of Appeals has previously explained that:

> In *Mulready* . . . [the Court] concluded that an allegation of injury to a traveling employee caused by a slip and fall in a hotel bathroom while attending a seminar in Canada, at the behest of her employer, arose out of her employment, because "but for" the travel required by her employer she would not have been injured. In *Livering*, the positional-risk test covered the situation in which an employee, enjoying a day off, visited the restaurant at which she was employed and was injured after checking her work schedule, because she "would not have been injured but for the fact that she visited the restaurant to confirm her schedule." *Livering*, 374 Md. at 580.

Roberts, 436 Md. at 605.

Applying the positional-risk test to the facts of this case leads us to conclude that appellee's injuries are compensable under the Act. As appellee asserts in his brief, "but for" the Department's "requirement to park his marked cruiser at a Department-approved location on the county line, [appellee] would not have been traveling to the county line in Bowie, Maryland, at the time he was injured." As appellee testified at trial, there were other, more direct routes between his residence in Anne Arundel County and the police station in Oxon Hill, Maryland; in fact, appellee explained that he took these other routes on days when he was not required to retrieve his cruiser before reporting for his shift. However, due to the Department's requirement that appellee leave his cruiser at the church in Bowie, Maryland, and retrieve it from that location before his shift, appellee could not take those more direct routes to the station. Instead, the Department's requirement compelled appellee to be in the location where his injuries occurred. And not only did the Department have knowledge of this requirement, but it also benefited from appellee's compliance with it, as the presence of police cruisers within Prince George's County deterred crime within the area. Accordingly, we conclude that appellee's act of retrieving his cruiser was an activity "incidental" to his employment as a police officer, and that his injuries are compensable under the Act.

Appellant's contention that the going and coming rule prevents appellee from recovering in this case does not alter our conclusion. The going and coming rule states that "injuries sustained by an employee while going to and coming from work are generally not considered to arise out of and in the course of employment and are, therefore, not compensable under the Act." *Morris*, 339 Md. at 379. "Each case

involving the going and coming rule . . . turns on its own particular facts." *Id*. at 381. Here, appellant argues that "since [appellee] was off-duty and was on his way from his home in Anne Arundel County to work in Prince George's County when he was injured in a motorcycle crash," the going and coming rule precludes appellee's claim.

As to this point, *Roberts*, 436 Md. 591, is instructive. In *Roberts*, the injury at issue occurred while Roberts, a firefighter, was traveling from "employer-encouraged physical exercise" to the fire department headquarters in order to retrieve his mail. *Id*. at 605. The Court ultimately held:

> Mr. Roberts . . . was en route from a work-related activity to a site where he was to engage in a work-related act, to which the employer acquiesced. His travel, therefore, was incidental to his employment. *Travel incidental to employment cannot be excluded from coverage by application of the going and coming rule*. As a result, the injury he sustained is covered by [the Act], because "but for" his travel between work-related sites he would not have been injured.

Roberts, 436 Md. at 607 (emphasis added).

Appellant contends that the *Roberts* holding does not apply here because in that case, Roberts was traveling between two work-related locations, whereas here, appellee was traveling from his residence to retrieve his police cruiser. Although the two work-related locations was a pertinent fact, that alone is not dispositive.

In *Roberts*, the Court of Appeals relied on the circumstances that Roberts was traveling between two work-related activities *only* for the determination that his travel was "incidental to his employment." *Roberts*, 436 Md. at 607. Once the Court classified Roberts's travel as such, it follows that the injuries that occurred during that travel

"[could not] be excluded from coverage by application of the going and coming rule." *Id*.

This Court is aware of no case law that conditions a finding of travel "incidental to employment" on a requirement that an employee be traveling between two work-related locations. *See Mulready*, 360 Md. at 53-54, 66 (explaining that the employee's injuries, which occurred while she slipped in the bathtub at a hotel where she was attending a conference on behalf of her employer, was compensable because it occurred during "an activity reasonably incidental to the travel that the employer required."); *see also Livering*, 374 Md. at 580 (determining that the injury, which occurred while employee checked her work schedule on her own time during her day off, was compensable because "[c]hecking her schedule was . . . incident to her employment, and her injury resulted because of her employment.")

Here, as we have explained above, appellee's travel to retrieve his police cruiser was *required* by the Department as a condition of his employment, and therefore was "incidental" to his employment. Based on that classification, we conclude that the Court's analysis in *Roberts* applies directly to this case, and that appellee's injuries "cannot be excluded from coverage by application of the going and coming rule." *Roberts*, 436 Md. at 607.

Analyzing the purpose of the going and coming rule provides additional support for our conclusion that the rule does not apply in the instant case. Specifically, as appellant points out in its brief, the going and coming rule exists to prevent recovery for injuries sustained during an employee's commute because "getting to work is considered

to be an employee's own responsibility and ordinarily does not involve advancing the employer's interests." *Morris*, 339 Md. at 380 (citation omitted); *see also Tavel v. Bechtel*, 242 Md. 299, 303 (1966) (explaining that "workmen, like other members of the general public, are not insured against the common perils of life."). Here, it cannot be said that appellee was simply "getting to work." If this were the case, appellee would have taken one of the other, more direct routes to the police station in Oxon Hill, Maryland. Rather, appellee was complying with the Department's requirement. Further, it cannot be argued that appellee's trip to retrieve his police cruiser did "not involve advancing [the Department's] interests." On the contrary, the Department benefited from the deterrent effect of having its cruisers spread out within the confines of Prince George's County rather than at one set location, *ie*., the Oxon Hill Police Station.

In arguing that the going and coming rule should apply here, appellant attempts to analogize this case to other cases in which the rule prevented recovery for injuries sustained during an employee's commute. For example, appellant cites to *Pariser Bakery v. Koontz*, 239 Md. 586, 589 (1965), where the Court of Appeals held that an employee's injury was not compensable when the employee was struck by a hit and run driver while walking to his car, across an "ordinary sidewalk," after his shift concluded. Appellant also relies on *Tavel*, 242 Md. at 299. In that case, the Court of Appeals held that the employee's injury, which occurred on a public roadway while the employee was driving

his own car to work, was not compensable because it was "sustained as a result of a common peril, to which all persons are exposed." *Id*. at 307.[7]

In the going and coming cases that appellant cites, the injuries at issue occurred while the employees were freely commuting to or from work. The employees were under no direction from their employers and their travels bore no specific relationship to their employment. In this case, however, appellee was *specifically required*, as a condition of his employment, to travel to Bowie, Maryland, to retrieve his police cruiser before starting his shift. Further, appellee provided testimony that *but for* the Department's requirement that he retrieve his cruiser, he would have taken a different route between his residence and the police station. Therefore, the only reason that appellee was in the location where the accident occurred was his compliance with the Department's requirement that he leave his cruiser in Bowie, Maryland and retrieve it before his shift. Consequently, the cases that appellant cites regarding the application of the going and coming rule do not persuade this Court that the rule applies in the instant case.

Finally, appellant expresses concern that "[i]f the positional risk test were applied to cases involving commutes to and from work, it would render the [going and coming] rule null and void." This Court does not share those concerns. As explained above,

[7] The Court of Appeals' holding was not altered by the fact that Bechtel Corp. provided Tavel with an additional $1.20 in compensation for each day that he arrived at work. *Tavel*, 242 Md. at 304-05. Though Tavel argued that the payment was a "travel expense" and that the injury should be compensable under the free transportation exception to the going and coming rule, the Court found that "the payment was [merely] made as an inducement to get men to work in the Maryland plant, as a fringe benefit." *Id*. at 305.

appellee was not merely left on his own to commute to work in whichever manner he pleased. Rather, he was expressly required by the Department's guidelines to retrieve his car and was in the location where the accident occurred *only* because of these requirements. As such, we can conclude that this case will not alter the future application of the going and coming rule to cases in which employees are merely getting to and from work under their own authority.

For the reasons stated above, we hold that appellee's injuries arose out of and in the course of his employment with the Department, and therefore, that the circuit court properly determined that his injuries were compensable under the Act.[8]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[8] Although the circuit court in its ruling relied primarily on the free transportation exception to the going and coming rule, it did consider "the entire sphere . . . of why [appellee was] in [the] position he was in when the injury occurred." Thus, our opinion is consistent with the court's ruling.