

NO. A10-557

State of Minnesota
In Court of Appeals

Michael Tierney, trustee for the surviving dependent spouse,
heirs, and next-of-kin of Harlan Ficken, decedent,

Appellant,

vs.

Arrowhead Concrete Works,

Defendant,

J.L. Carlson and Associates, Inc.,

Respondent,

and

Alan Seline,

Defendant.

RESPONDENT J.L. CARLSON AND ASSOCIATES, INC.'S
BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

I. Do Either 49 U.S.C. § 14704 or § 14707 Create a Private Cause of Action for Personal Injury?

The district court held that neither 49 U.S.C. § 14704 nor § 14707 create a private cause of action for personal injury.

Apposite Authority:

49 U.S.C. § 14704

49 U.S.C. § 14707

Craft v. Grebel-Oklahoma Movers, Inc., 178 P.3d 170 (Okla. 2007)

Stewart v. Mitchell Transport, 241 F. Supp. 2d 1216 (D. Kan. 2002)

Owner-Operator Independent Drivers Assoc. v. New Prime, Inc., 192 F.3d 778 (8th Cir. 1999)

II. Do Either 49 U.S.C. § 14704 or § 14707 Preempt the Exclusivity Provision of the Minnesota Workers' Compensation Act, Minn. Stat. § 176.031?

The district court held that neither 49 U.S.C. § 14704 nor § 14707 preempt the exclusivity provision of the Minnesota Workers' Compensation Act, Minn. Stat. § 176.031.

Apposite Authority:

Minn. Stat. § 176.031

Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992)

McGowan v. Our Savior's Lutheran Church, 527 N.W.2d 830 (Minn. 1995)

STATEMENT OF THE CASE

This is an appeal from the district court's Order granting Respondent's Motion to Dismiss for lack of subject matter jurisdiction pursuant to Minn. R. Civ. P. 12.02(a) and for Appellant's failure to state a claim upon which relief can be granted pursuant to Minn. R. Civ. P. 12.02(e).

Appellant Michael Tierney, as trustee for the surviving spouse, heirs, and next-of-kin of Harlan Ficken, filed the underlying lawsuit against Respondent J.L. Carlson and Associates, Inc., Defendant Arrowhead Concrete Works, Inc., and Defendant Alan Seline in St. Louis County District Court. (A. 2).¹ The Honorable Shaun R. Floerke granted Respondent's Motion to Dismiss in an Order filed on December 3, 2009. (A. 163-164). On February 5, 2010, Judge Floerke issued an Interim Order granting final judgment in favor of Respondent, thereby permitting Appellant's appeal to proceed. (A. 171-173).

This appeal presents an issue of first impression in Minnesota. To Respondent's knowledge, no Minnesota Court has ruled on the issue of whether the provisions of the Federal Motor Carrier Safety Improvement Act create a private cause of action for personal injury, or whether the Federal Motor Carrier Safety Improvement Act provisions preempt the exclusivity of the Minnesota Workers' Compensation Act, Minn. Stat. § 176.031.

¹ Referring to Appellant's Appendix.

STATEMENT OF FACTS

I. Appellant's Complaint

According to the Complaint, Appellant was appointed Trustee for Decedent Ficken's surviving spouse, heirs, and next-of-kin on December 10, 2008. (A. 2). On December 29, 2008, Appellant initiated this action against Respondent J.L. Carlson and Associates, Inc., Defendant Arrowhead Concrete Works, Inc., and Defendant Alan Seline, alleging negligence in the inspection, maintenance, and record keeping associated with the tractor and trailer operated by Decedent Ficken on the day of his death. (A. 4). Appellant states that Decedent Ficken was employed by Respondent as a commercial tractor trailer driver. (A. 3). Appellant further states that Decedent Ficken was crushed in a rollover accident on January 13, 2006, while on duty and driving a tractor and trailer for Respondent. (A. 3). Appellant admits that Decedent Ficken's survivors received workers' compensation benefits as a result of his death, and that his survivors are entitled to further workers' compensation benefits in the future. (App. Br. at 18)

According to Appellant, an inspection after the incident revealed that the brakes and suspension system on the tractor and trailer were defective, and were improperly maintained and constructed. (A. 5).² Appellant asserts that these acts and omissions violated federal law, specifically 49 U.S.C. § 101 et. seq., including 49 U.S.C. § 14704 and 49 U.S.C. § 14707. (A. 5). Appellant brought his action on behalf of Decedent

² Respondent notes that Appellant's Statement of Facts contains numerous references to items which are highly disputed, without citation to the record as required by Minn. R. Civ. App. P. 128.03.

Ficken's surviving spouse, heirs, and next-of-kin pursuant to Minn. Stat. § 573.02, the wrongful death statute. (A. 5).

II. Respondent's Answer and Cross-Claims

In Respondent's Answer and Cross-Claims, served on January 20, 2009, Respondent admits that Decedent Ficken was employed by Respondent as a tractor-trailer operator. (R. 2).³ Further, Respondent admits that on January 13, 2006, as part of that employment, Decedent Ficken was travelling from Duluth, Minnesota to Alma Center, Wisconsin. (R. 3). Respondent admits that Decedent Ficken was fatally injured while en route to this destination. (R. 3). However, Respondent denies all allegations pertaining to negligence in the maintenance, operation, or inspection of the tractor and trailer operated by Decedent Ficken on the date of his death. (R. 4). Furthermore, Respondent affirmatively asserts that Appellant's claims against Respondent are barred by the Minnesota Workers' Compensation Act, and that Appellant fails to state a claim upon which the court can grant relief. (R. 4).

³ Referring to Respondent's Appendix. Respondent's workers' compensation insurer, State Fund Mutual, initially served an Answer on behalf of Respondent on January 9, 2009. (A. 8-10). Thereafter, Respondent's counsel was substituted and Respondent issued a subsequent Answer on January 20, 2009.

ARGUMENT

I. STANDARD OF REVIEW

Respondent's original motion was brought as a Motion to Dismiss pursuant to Minn. R. Civ. P. 12.02(a) and 12.02(e). In response to Respondent's motion, Appellant submitted extraneous information in the form of affidavits. Although there is no indication in Judge Floerke's Order that he considered this extraneous information in deciding Respondent's Motion, there is likewise no clear evidence which demonstrates that the extraneous information was not considered. As a result, the appellate court must review the district court's decision under the summary judgment standard, Minn. R. Civ. P. 56. *Carlson v. Lilyerd*, 449 N.W.2d 185, 187 (Minn. Ct. App. 1989).

On appeal from summary judgment, "the role of the reviewing court is to review the record for the purpose of answering two questions: (1) whether there are any genuine issues of material fact to be determined, and (2) whether the trial court erred in its application of the law." *Offerdahl v. Univ. of Minn. Hosps. and Clinics*, 426 N.W.2d 425, 427 (Minn. 1988). The facts must be reviewed in the light most favorable to the nonmoving party without deferring to the district court's application of the law. *Id.*

Once a showing has been made under Rule 56, the burden shifts to the non-moving party to "present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05; *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

"Speculation, general assertions and promises to produce evidence at trial" are insufficient to meet this burden. *Nicollet Restoration v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). "Genuine issues of material fact must be shown by substantial

evidence.” *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 609 N.W.2d 868, 874 (Minn. 2000). When assessing whether there are genuine issues of material facts, “the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

II. THE DISTRICT COURT PROPERLY DETERMINED THAT NEITHER 49 U.S.C. § 14704 NOR § 14707 CREATE A PRIVATE CAUSE OF ACTION FOR PERSONAL INJURY.

A. Introduction

Appellant filed suit against Respondent alleging violations of 49 U.S.C. § 101, et. al. These provisions are more commonly known as the Federal Motor Carrier Safety Improvement Act.

Appellant cites two specific sections of the Federal Motor Carrier Safety Improvement Act in his cause of action: 49 U.S.C. § 14704, which states that a carrier “is liable for damages sustained by a person;” and 49 U.S.C. § 14707, which provides that “[i]f a person provides transportation by motor vehicle or service in clear violation of section 13901-13904 or 13906, a person injured by the transportation service may bring a civil action to enforce any such section.” Appellant asserts that Decedent Ficken’s death is sufficient to satisfy the definition of “injury” as used in the federal statutes; however, jurisdictions outside of Minnesota have held that these broadly-worded provisions are at odds with the other language in the statute. *See Stewart v. Mitchell Transport*, 241 F. Supp. 2d 1216, 1219 (D. Kan. 2002).

According to Minnesota statute, the object of statutory interpretation “is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2008). “When the language of a statute is plain and unambiguous, it is assumed to manifest legislative intent and must be given effect.” *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). But when the statutory language is ambiguous, the court may look to other sources to ascertain legislative intent. Minn. Stat. § 645.16. “An ambiguity exists only where a statute's language is subject to more than one reasonable interpretation.” *State v. Mauer*, 741 N.W.2d 107, 111 (Minn. 2007).

The language in both 49 U.S.C. § 14704 and § 14707 is subject to more than one reasonable interpretation. While § 14704 states that a carrier “is liable for damages sustained to a person . . . ,” the language does not specifically state that a private right of action for personal injury is created. Likewise, while § 14707 provides that a party is allowed to bring a civil action to enforce §§ 13901-13904 or 13906 if injured, it does not define what type of injury is necessary. Because of these ambiguities, further inquiry into the legislative history behind the statutes is required.

B. 49 U.S.C. § 14704 does not provide for a personal injury cause of action.

As this court is aware, violation of a statute may constitute evidence of negligence and even negligence per se. CIVJIG 25.45; *Butler v. Engel*, 68 N.W.2d 226, 230 (Minn. 1954); *Alderman's Inc. v. Shanks*, 536 N.W.2d 4, 8 (Minn. 1995); *Gradjelick v. Hance*, 646 N.W.2d 255 (Minn. 2002). However, violation of a statute does not create a private cause of action “where the legislature has not either by the statute’s express terms or by

implication provided for civil tort liability.” *Bruegger v. Faribault County Sherriff’s Dep’t.*, 497 N.W.2d 260, 262 (Minn. 1993).

In *Stewart v. Mitchell Transport*, the Kansas District Court provided a thorough analysis of the legislative history behind the passage of the statute in the greater context of the abolition of the Interstate Commerce Commission. In *Stewart*, the court noted that the purpose behind § 14704 was to ensure the transfer of commercial disputes from the ICC to the courts. *Stewart*, 241 F.Supp. at 1221. The ICC did not have jurisdiction over personal injury suits, and the legislative history gives no indication that Congress intended to expand the scope of the Federal Motor Carrier Safety Improvement Act to cover personal injury claims. *Stewart*, 241 F.Supp. at 1221.

In *Owner-Operator Independent Drivers Assoc. v. New Prime, Inc.*, 192 F.3d 778, 784 (8th Cir. 1999),⁴ relied on by Appellant, the court determined that 49 U.S.C. § 14704(a) authorized a private cause of action for damages and injunctive relief to remedy at least some violations of the Federal Motor Carrier Safety Improvement Act. *Owner-Operator*, 192 F.3d at 784. However, the alleged violations discussed in *Owner-Operator* were commercial, not personal injury, and were related to lease agreements

⁴ In his arguments regarding *Owner-Operator* and *Hall v. Aloha*, 2002 WL 1835469 (D. Minn. Aug. 6, 2002), Appellant claims that these cases are governing authority in the present case. Appellant is incorrect. State courts are not bound by federal court decisions even as to the construction of federal statutes. *Northpointe Plaza v. City of Rochester*, 457 N.W.2d 398, 403 (Minn. Ct. App. 1990). “Although statutory construction of federal law by federal courts is entitled to due respect, this court is bound only by statutory interpretations of the Minnesota Supreme Court and United States Supreme Court.” *Jendro v. Honeywell, Inc.*, 392 N.W.2d 688, 691, n. 1 (Minn. Ct. App. 1986). The decisions of the United States District Court for the District of Minnesota may be persuasive, but they are in no way governing authority.

which allegedly violated Truth-in Leasing regulations governed by 49 U.S.C. § 14704(a). *Id.* at 785. *Owner-Operator* was just one of the 39 decisions analyzed by the Supreme Court of Oklahoma in *Craft v. Graebel-Oklahoma Movers, Inc.*, in which that court noted that 36 of the 39 decisions addressing claims brought under 49 U.S.C. § 14704 were claims for commercial damages, while only three considered whether or not the statute authorized a claim for personal injury. *Craft v. Grabel-Oklahoma Movers*, 178 P.3d 170, 176-77 (Okla. 2007).

With facts very similar to this case, in *Craft v. Graebel-Oklahoma Movers, Inc.*, 178 P.3d 170 (Okla. 2007), the plaintiff was injured as a result of a motor vehicle accident which occurred in the course of her employment with Graebel's subcontractor, Propack, Inc. The plaintiff alleged that the van she rode in was in poor working order, and that her employer was aware that the van was a safety risk, but required she ride in it anyway. *Id.* at 172. In addition to arguing that the exclusive remedy provision of Oklahoma's worker's compensation statute was preempted by federal law, the plaintiff also asserted a federal cause of action for personal injury under 49 U.S.C. § 14704. *Id.* at 176.

As previously noted, the court in *Craft* observed that 36 of the 39 decisions which addressed claims brought under 49 U.S.C. § 14704 dealt only with the issue of commercial damages. *Id.* at 177. Of the three cases which considered whether or not the statute created a cause of action for personal injury, only the federal district court of Vermont concluded in *Marrier v. New Penn Motor Express, Inc.*, 140 F. Supp. 2d 326

(D. Vt. 2001), that the statute authorized a private right of action for personal injury.⁵

The other courts to address the issue, the federal district court of Kansas in *Stewart* and the federal district court of Maryland in *Schramm v. Foster*, 341 F. Supp 2d 536 (D. Md. 2004), both rejected the reasoning in *Marrier* and held that § 14704 does not create a private right of action for personal injury. *Id.* at 177. After analyzing *Marrier*, *Stewart*, and *Schramm* and reviewing the legislative history of the Act, the court in *Craft* determined that *Stewart* and *Schramm* were rightly decided and held that § 14704 did not authorize a private cause of action for personal injury. *Id.*

Beyond *Marrier*, Appellant has not provided any authority to support his claim that 49 U.S.C. § 14704 creates a private cause of action for personal injury. Appellant has not provided any authority beyond this single case to counter the case law presented by Respondent, which demonstrates that the language of 49 U.S.C. § 14704 provides only a cause of action for commercial damages, and that the precursor to the Federal Motor Carrier Safety Improvement Act did not grant the court jurisdiction over personal injury claims. Appellant discusses the cases cited in the *Craft* decision at some length, ultimately noting that “[i]t appears that the cases cited by *Craft* come to a consensus that there is a private cause of action for violation of regulations, as well as private causes of action to enforce order [sic].” (App. Br. at 40) Respondent does not dispute that 49 U.S.C. § 14704 creates a private cause of action for regulatory violations which result in commercial damages. However, Respondent rejects Appellant’s suggestion that the cases

⁵ The *Marrier* decision is exceptionally brief and contains very little explanation as to how the court reached the conclusion that the statute authorizes a private cause of action for personal injury.

cited by *Craft* also stand for the proposition that 49 U.S.C. § 14704 creates a private cause of action for personal injury.

Because the precursor to the Federal Motor Carrier Safety Improvement Act did not grant the court jurisdiction over personal injury claims, and because the language of 49 U.S.C. § 14704 provides only a cause of action for commercial damages – not personal injury, Appellant’s claim under 49 U.S.C. § 14704 was properly dismissed.

C. 49 U.S.C. § 14707 does not provide for a personal injury cause of action.

Appellant also alleges that Respondent violated 49 U.S.C. § 14707, and that violation of that provision creates a private cause of action for personal injury. The full language of the section reads as follows: “If a person provides transportation by motor vehicle or service in clear violation of §§ 13901-13904 or 13906, a person injured by the transportation or service may bring a civil action to enforce any such section.” 49 U.S.C. § 14707(a). The mentioned sections included in the statute, §§13901 – 13904, deal with motor carrier, freight forwarder, and broker registration with the Secretary of Transportation. Additionally, § 13906 requires motor carriers, freight forwarders, and brokers to provide certain forms of security: liability insurance, freight forwarding insurance, bonds, or other forms of security approved by the Secretary of Transportation.

While 49 U.S.C. § 14707(a) provides that “a person injured” “may bring a civil action to enforce any such section,” it does not state that “a person” can bring a civil action for personal injury. It only provides for suit to “enforce any such section,” i.e. demanding registration and security.

In the present case, Appellant has made no allegation in his Complaint or otherwise that Respondent either failed to register or provide the appropriate forms of security. Nor are Appellant's claims limited to demanding that Respondent register or obtain the proper form of security. Appellant's reliance on 49 U.S.C. § 14707 as the basis upon which he claims entitlement to personal injury money damages is misplaced; his reliance on the case of *Hall v. Aloha* interpreting § 14707, likewise.

In that case, Hall hired Aloha International Moving Services to move her belongings from Hawaii to Minnesota. *Hall v. Aloha*, 2002 WL 1835469 at 1 (D. Minn. Aug. 6, 2002) (RA. 8-20). Unfortunately, Hall's belongings arrived after the scheduled delivery date and a number of her items were damaged in transit. *Id.* at 1-2. In Hall's attempt to recover attorney fees under § 14707, the court appears to have broadly interpreted "the injury" that a plaintiff must allege in order to bring an action under § 14707. *Id.* at 12. However, *Hall* is easily distinguishable from the present scenario.

In *Hall*, the court addressed the fact that Aloha was improperly shipping household goods in interstate commerce without first registering with the Secretary of Transportation. The claim did, therefore, fall within the purview of § 14707. *Id.* at 12-13. It was only after determining that Aloha was not properly registered, that the court addressed the injury argument. *Id.* And the court addressed the injury argument in the context of a commercial dispute, not a personal injury claim. Therefore, *Hall* does not support Appellant's argument that § 14707 creates a private cause of action for personal injury.

Appellant also cites *Johnson v. S.O.S. Transport, Inc.*, 926 F.2d 516, 518 (6th Cir. 1991) for the proposition that a private cause of action exists under the federal statutes.⁶ In *Johnson*, a wrongful death action was brought against a truck lessee for the death of a truck driver for alleged negligence in the maintenance and inspection of a tractor. *Johnson v. S.O.S.*, 926 F.2d at 518. However, *Johnson* is also distinguishable from the case at bar as *Johnson* does not deal with either 49 U.S.C. § 14704 or § 14707. Instead, the court evaluated whether or not 49 U.S.C. § 11107(a)(4) could render a lessee carrier vicariously liable for injuries sustained by a third party as a result of the negligence of the driver of a leased vehicle. *Id.* at 521.⁷ Moreover, the issue in *Johnson* was whether the violation of a federal statute could be evidence of negligence, not whether such violation could create a cause of action for personal injury. Respondent does not dispute that the violation of a federal statute can constitute evidence of negligence; only that the subject statute does not create a private cause of action for personal injury. This issue the court in *Johnson* did not address. Although a statutory violation could constitute evidence of negligence or even negligence per se, a statutory violation cannot create a private cause

⁶ As noted by the court in *Craft*, the *Johnson* decision was issued in 1991, four years before Congress radically altered the statutory landscape by abolishing the Interstate Commerce Commission and creating a private right of action in its place to allow individuals or companies to enforce the regulations of the Department of Transportation. *Craft*, 178 P.3d at 176. The *Craft* court also noted that the viability of *Johnson* as persuasive authority was questionable, as the case has never been mentioned “[i]n all of the ensuing litigation discussing the nature of [49 U.S.C. § 14704].” *Id.*

⁷ The decedent truck driver was not the employee of the truck lessee, and therefore there was no issue of a workers’ compensation bar. The truck lessee is similar to Defendants Arrowhead Concrete Works, Inc. and Alan Seline in this case. Appellant can, and did, sue them as third-party tortfeasors. But he cannot sue Decedent Ficken’s employer, Respondent J.L. Carlson.

of action “where the legislature has not either by the statute’s express terms or by implication provided for civil tort liability.” *Bruegger*, 497 N.W.2d at 260.

Appellant claims that 49 U.S.C. § 14707 allows for private enforcement of violations of registration provisions, including 49 U.S.C. § 13902(a)(1), which requires the Secretary of Transportation to register a person to provide transportation if the person is willing and able to comply with, among other things, safety regulations. 49 U.S.C. § 13902(a)(1). According to 49 U.S.C. § 13902(a)(5), cited by Appellant, Appellant’s remedy for an alleged violation under the statute is to seek redress from the Secretary of Transportation on the grounds that Respondent has allegedly failed to comply with its registration requirements. 49 U.S.C. § 13902(a)(5). Even if Appellant were able to bring a private action to enforce the cited regulations, Appellant does not provide any authority to support his contention that these statutes authorize a cause of action for personal injury.

Appellant’s claim under 49 U.S.C. § 14707 was properly dismissed by the district court, as Appellant failed to demonstrate that Respondent was improperly registered or that Respondent lacked the appropriate forms of security as required by the Secretary of Transportation. Further, even if Respondent failed to comply with the registration and security requirements contained in §§ 13901-13904 or § 13906, Appellant has provided no authority to support his contention that a personal injury cause of action qualifies as a “civil action to enforce any such section” as defined in 49 U.S.C. § 14707(a). As a result, Appellant’s claim under 49 U.S.C. § 14707 was properly dismissed.

III. THE DISTRICT COURT CORRECTLY DETERMINED THAT NEITHER 49 U.S.C. § 14704 NOR 49 U.S.C. § 14707 PREEMPT THE EXCLUSIVITY PROVISION OF THE MINNESOTA WORKERS' COMPENSATION ACT, MINN. STAT. § 176.031.

A. Introduction

In Minnesota, “[d]istrict courts are courts of general jurisdiction and have the power to hear all types of civil cases, with a few exceptions.” *Irwin v. Goodno*, 686 N.W.2d 878, 880 (Minn. Ct. App. 2004). One well-established exception to the district court's jurisdiction is the exclusive remedy provided by the Minnesota Workers' Compensation Act. *Abraham v. County of Hennepin*, 639 N.W.2d 342, 353 (Minn. 2002) (“The legislature took the [work comp] cause of action out of the district court and placed it in a quasi-judicial forum.”)

Minnesota's workers' compensation laws were designed to provide medical and wage loss benefits for employees injured in job-related activities. Minn. Stat. § 176.001 (2008); *Wicken v. Morris*, 527 N.W.2d 95, 98 (Minn. 1995). The enactment of the workers' compensation laws involved a series of compromises by which both employees and employers gained and gave up benefits as compared to the common law. *Kaluza v. Home Ins. Co.*, 403 N.W.2d 230, 235-36 (Minn. 1987). As a result of the workers' compensation laws, “the employer assumes liability for work-related injuries without fault in exchange for being relieved of liability for certain kinds of actions and the prospect of large damage verdicts.” *Karst v. F.C. Hayer Co.*, 447 N.W.2d 180, 183-84 (Minn. 1989). The Act provides that “[e]very employer . . . is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course

of employment without regard to the question of negligence.” Minn. Stat. § 176.021, subd. 1 (2008); *McGowan v. Our Savior's Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995).

The workers' compensation system is the exclusive remedy for an employee who suffers a personal injury; district courts have no jurisdiction. Minn. Stat. § 176.031 (2008) provides:

Employer's Liability Exclusive.

The liability of an employer prescribed by this chapter is *exclusive and in place of any other liability* to such employee, personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death. (emphasis added)

In 1949, the Minnesota Supreme Court held in *Breimhurst v. Beckman*, 35 N.W.2d 719, 732 (Minn. 1949), that: “[T]he Workman’s Compensation Act, insofar as it provides any compensation to an employee accidentally injured in the course of his employment, is exclusive of *all other remedies*.” (emphasis added) The same is true today. See *McGowan v. Old Savior’s Lutheran Church*, 527 N.W.2d 830, 833 (Minn. 1995) (“If an employee suffers a personal injury or death arising out of and in the course of her employment, the Act provides the employee’s exclusive remedy. * * * Where the Act provides the employee’s exclusive remedy, the district courts have no jurisdiction.” (citations omitted)); *Hodel v. Gundle Lining Constr. Corp.*, 572 N.W.2d 764, 765 (Minn. Ct. App. 1997) (When the Workers’ Compensation Act provides the exclusive remedy, district courts are without subject-matter jurisdiction.); *Sorenson v. Visser*, 558 N.W.2d

773, 775 (Minn. Ct. App. 1997)(“District courts are without subject matter jurisdiction if the employee's exclusive remedy is under the Act.”).

Several exceptions apply to the exclusivity provision, namely the assault exception and the intentional injury exception. *See* Minn. Stat. § 176.011, subd. 16 (2008).

Additional exceptions exist for injuries that do not arise out of the course of employment and for physical injuries attributable to a mental stimulus. *Kaluza v. Home Ins. Co.* at 232-33; *Egeland v. City of Minneapolis*, 344 N.W.2d 597, 604-05 (Minn. 1984). These exceptions have been narrowly construed. *Gunderson v. Harrington*, 632 N.W. 2d 695, 702-04 (Minn. 2001); *McGowan*, 527 N.W.2d at 834. In his Complaint, Appellant did not allege Decedent Ficken’s death was intentional, a result of an assault or mental stimulus, or arose outside of the course of his employment. As such, Appellant did not allege a cause of action which fell into the narrow exceptions to the exclusivity of the Minnesota Workers’ Compensation Act.

Minnesota case law is replete with examples of employees, similar to Decedent Ficken, who were prohibited from bringing suit against their employers for injuries sustained while working. *See McGowan*, 527 N.W.2d at 833 (employee precluded from bringing negligence action for damages against the employer); *Stringer v. Vikings Football Club, LLC.*, 705 N.W.2d 746, 754 (Minn. 2005) (employee precluded from bringing a tort action for damages against the employer); *Minnesota Brewing Co. v. Egan & Sons Co.*, 574 N.W.2d 54, 58 (Minn. 1998) ([I]njured employee is guaranteed compensation from employer for work-related injuries regardless of the employee's fault or the employer's lack of fault, in exchange for forfeiting the right to sue the employer in

tort.); *Parker v. Sharp*, 409 N.W.2d 915, 917-18 (Minn. 1987) (In creating the WCA, the legislature intended to make workers' compensation the exclusive remedy for most job-related injuries.).

In this case, the facts are not disputed. Both Appellant and Respondent agree that Decedent Ficken was an employee of Respondent and that Decedent Ficken was acting within the scope of his employment when he died. A workers' compensation claim for death benefits was made and paid. Appellant has, thereafter, made no allegation that the injury falls within one of the few exceptions to the exclusivity of the Workers' Compensation Act. Thus, Appellant has no further claim against Respondent and the district court had no subject matter jurisdiction. The district court's decision to dismiss Appellant's Complaint against Respondent pursuant to Rule 12.02(a) was proper.

B. The Alleged Violation of Federal Statutes is not an exception to the exclusivity of the Minnesota Workers' Compensation Act.

Appellant asserts that his claims brought against Respondent are not barred by the Minnesota Workers' Compensation Act. (App. Br. at 13-15). Appellant claims that "[w]hether the federal law preempts Minnesota Worker's Compensation law or not is not relevant." (App. Br. at 11). Appellant is incorrect. The alleged violation of a federal statute is not a recognized exception to the exclusivity of the Minnesota Workers' Compensation Act. Nor is there any case law in Minnesota that supports Appellant's theory that these alleged violations are not barred by the Minnesota Workers' Compensation Act.

A proper supremacy clause analysis begins with “the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.” *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (citing *Rice v. Santa Fe Elevator Corp.*, 311 U.S. 218 (1947)). According to *Cipollone*, the “purpose of Congress is the ‘ultimate touchstone’ of the preemption analysis.” *Id.* The Court in *Cipollone* noted that Congress’ intent could be determined in several ways, either explicitly in the statute’s language, or implicitly contained in the statute’s structure and purpose. *Id.* In the absence of an express congressional command, state law is preempted if that law actually conflicts with federal law or if federal law so thoroughly occupies a legislative field “as to make reasonable the inference that Congress left no room for the States to supplement it.” *Id.* Appellant cites to *Board of Public Works, City of Blue Earth, Minn. v. Wisconsin Power and Light Co.* as standing for the proposition that “the state law must give way when it conflicts with or frustrates federal law.” (App. Br. at 12). Respondent submits that this sentence alone is not an accurate statement of current preemption law. However, Appellant’s citation, when combined with the following language from *Wisconsin Power and Light Co.*, provides an accurate description:

The doctrine of preemption arises from the Supremacy Clause of the Constitution, which requires that state law must give way when it conflicts with or frustrates federal law. State law is preempted when Congress expressly prohibits state regulation, when Congress implicitly leaves no room for state involvement by pervasively occupying a field of regulation, and when state law directly conflicts with federal law. Federal regulations also may preempt state law, if the agency intends its regulations to have preemptive effect, and the agency is acting within the scope of its delegated authority.

Board of Public Works, City of Blue Earth, Minn. v. Wisconsin Power and Light Co., 613 F.Supp. 2d 1122, 1127 (D. Minn. 2009) (citing *Chapman v. Lab One*, 390 F.3d 620, 624-25 (8th Cir. 2004)).

Appellant does not specify which of the numerous laws and regulations he alleges Respondent violated provides the basis for his preemption argument. Therefore, Respondent has attempted to discern a possible basis for federal preemption by analyzing the provisions of the Federal Motor Carrier Safety Improvement Act. The only possibly applicable language is located in 49 U.S.C. § 31141(a), which states that “[a] State may not enforce a State law or regulation on commercial motor vehicle safety that the Secretary of Transportation decides under this section may not be enforced.” 49 U.S.C. § 31141(a). The Federal Motor Carrier Safety Improvement Act also directs the Secretary of Transportation to minimize the unnecessary preemption of state laws in prescribing new regulations. 49 U.S.C. § 31336(c)(2)(B). This language neither expressly nor impliedly preempts a state’s workers’ compensation laws.

The cases cited by Appellant for the proposition that state law must give way to federal law when conflicts arise are distinguishable from the case at bar. Each case cited involves a federal statute which expressly creates an independent cause of action, typically for civil rights violations. The plaintiffs in *Smith v. Lake City Nursing Home* and *Hutchings v. Erie City and County Library Bd. of Directors* brought causes of action under Section 504 of the Rehabilitation Act of 1973, which has been interpreted to create a private cause of action on behalf of the handicapped for instances of disability

discrimination. *Smith v. Lake City Nursing Home*, 771 F. Supp. 985, 986 (D. Minn. 1991); *Hutchings v. Erie*, 516 F. Supp. 1265, 1268 (W.D. Pa. 1981). In *Adams Fruit Co., Inc. v. Barrett*, migrant workers brought a cause of action under a federal statute which expressly stated that “[a]ny person aggrieved by a violation of this chapter or any regulation under this chapter by a farm labor contractor, agricultural employer, agricultural association, or other person may file suit in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy and without regard to the citizenship of the parties.” *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638 (1990)(citing §1854(c)(1)). In *Rosa v. Cantrell*, the court in Wyoming determined that the workers’ compensation statute could not prohibit plaintiff’s cause of action for violation of 42 U.S.C. § 1983, a statute which again expressly creates a federal cause of action for civil rights discrimination. *Rosa v. Cantrell*, 705 F.2d 1208, 1221 (C.A. Wyo. 1982). In *Neumann v. AT&T Comm., Inc.*, the plaintiff’s ERISA claims were not prohibited by the Workers’ Compensation Act because Congress had completely preempted claims arising under § 502(a) of ERISA. *Neumann v. AT&T Comm., Inc.*, 376 F.3d 773, 779 (D. Minn. 2004). In *Gonzalez v. City of Minneapolis*, the district court did consider the plaintiff’s disability claims under the ADA and the Workers’ Compensation Act, but the court noted that “[t]he difference between state and federal anti-discrimination law does not affect the Court’s analysis on this claim because Gonzalez is unable to establish the third element of a prima facie case of disability discrimination under either statute.” *Gonzalez v. City of Minneapolis*, 267 F.Supp. 2d 1004, 1014 (D. Minn. 2003). In *D.W. v. Radisson Plaza Hotel Rochester* and *Mandy v. Minnesota Min.*

and Mfg., the court noted that the Workers' Compensation Act was inapplicable due to the assault exception of the Act and because the claims were brought under the Minnesota Human Rights Act. *D.W. v. Radisson Plaza Hotel Rochester*, 958 F.Supp. 1368, 1378 (D. Minn. 1997); *Mandy v. Minnesota Min. and Mfg.*, 940 F.Supp. 1463, 1470 (D. Minn. 1996).

Contrary to Appellant's summary, the court in *Benson v. Northwest Airlines, Inc.* did not hold that the plaintiff's federal claim was not barred by the Minnesota Workers' Compensation Act. (App. Br. at 18). In *Benson*, the plaintiff brought a number of claims against Northwest Airlines, including but not limited to claims related to discriminatory discharge in violation of the Americans with Disabilities Act and retaliatory discharge for filing a workers' compensation claim in violation of Minn. Stat. § 176.82. *Benson v. Northwest Airlines, Inc.*, 561 N.W. 2d 530, 534-535 (Minn. Ct. App. 1997). Northwest Airlines removed the case to federal court, where Northwest Airlines won summary judgment on the ADA claim. *Id.* at 535. The remaining issues were thereafter remanded back to the state court, including the plaintiff's retaliatory discharge claim. *Id.* Similarly, the federal district court in *Braziel* did not address whether or not the plaintiffs' federal claims were precluded by the Workers' Compensation Act. Instead, the court's discussion of the Workers' Compensation Act appears to be limited to the court's decision that the Workers' Compensation Act precluded the plaintiff from recovering under the Minnesota Human Rights Act. *Braziel v. Loram Maintenance of Way, Inc.*, 943 F.Supp. 1083, 1102 (D. Minn. 1996).

Appellant has not asserted that Decedent Ficken was discriminated against on the basis of race, color, creed, national origin, gender, disability or any other basis pursuant to which he could sustain a civil rights, ADA, ERISA, or migrant worker action. Unlike the cases relied upon by the plaintiffs in the cases cited by Appellant, the Federal Motor Carrier Safety Improvement Act does not expressly provide a cause of action which preempts the Minnesota Workers' Compensation Act. Nor does Appellant provide any authority for an argument that the Federal Motor Carrier Safety Improvement Act is in actual conflict with the provisions of the Workers' Compensation Act or that Congress has exercised any sort of field preemption.

The Federal Motor Carrier Safety Improvement Act, 49 U.S.C. § 14704 and § 14707, do not create a private cause of action for personal injury. Nor do those provisions preempt the exclusivity of the Minnesota Workers' Compensation Act. If Congress had intended either, it would have clearly indicated as much.

CONCLUSION

Mr. Ficken's death was tragic. But because he died in the course and scope of his employment with Respondent J.L. Carlson, his family's recovery is limited to worker's compensation death benefits; benefits which were requested and paid. While violations of the Federal Motor Carrier Safety Act may constitute evidence of negligence in the lawsuit against defendants Arrowhead and Seline, the issue of negligence or fault is irrelevant as to Mr. Ficken's employer, Respondent J.L. Carlson. Respondent J.L. Carlson's liability is exclusive to worker's compensation and in place of any other liability and all other remedies the Ficken family might seek.

Appellant's attempt to impose additional liability on Respondent and provide the Ficken family with remedies over and above those provided by workers compensation has been tried by many before. But the courts have steadfastly rejected recognition of private causes of action for personal injury and preemption of state law regulations absent a clear statement by Congress of its intent to the contrary.

Here, the district court was correct to determine that 49 U.S.C. § 14704 and § 14707 do not create a private cause of action for personal injury and, even if they did, those statutes do not preempt the exclusivity of the Minnesota Worker's Compensation Act, Minn. Stat. § 176.031. The district court was correct to grant summary judgment in Respondent's favor, and the district court's decision should be affirmed.

Dated: May 20, 2010

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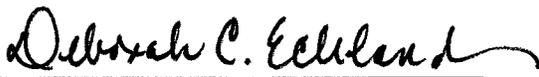
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CERTIFICATION OF BRIEF LENGTH

The undersigned hereby certifies that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 6,397 words. This brief was prepared using Microsoft Office Word 2003.

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