

**SUPREME COURT OF LOUISIANA**

**NO. 00-C-1335**

**LARRY J. CARRIER AND PATSY C. CARRIER**

**Versus**

**GREY WOLF DRILLING COMPANY, ET AL.**

Johnson, J., Dissenting

In the instant case, the majority relies on an earlier decision by this court in *Reeves v. Structural Preservation Systems*, 98-1795 (La. 3/12/99) 731 So.2d 208, in which the majority held that the employer's conduct did not rise to the level of "substantial certainty" necessary for an intentional act under La. R.S. 23:1032(B), the intentional act exclusion of the Workers' Compensation Act. I dissented from the majority in *Reeves, supra*, and for the following reasons, dissent in the instant case.

On the date of the accident, Damon Carrier, (Mr. Carrirer) had been employed with Grey Wolf Drilling Co., for only three months and had no prior oilfield experience. Mr. Carrier was instructed by Byron Beard (Mr. Beard) to remove a 1,000-lb standpipe from the derrick of the Rig on which he was assigned. Mr. Beard testified that he informed Mr. Carrier that the other employees would get a forklift to support the 1,000-lb. standpipe. Mr. Carrier positioned himself directly beneath the derrick of the Rig and began unbolting the clamps which held the standpipe to the derrick. Upon removing the last bolt and without the support of the forklift, the standpipe fell and killed Mr. Carrier. Several experienced Grey Wolf employees, including Mr. Beard, stood watching only a few feet from Mr. Carrier and witnessed the accident. These Grey Wolf employees testified that they knew Mr. Carrier was removing the bolts but stated that they did not know when Mr. Carrier removed the last bolt.

Grey Wolf knew of Mr. Carrier's lack of experience and despite this knowledge, provided him with absolutely no training. Dale Mayer, one of the supervisors on this project, testified that he told Mr. Carrier to stop and wait for the forklift. However, Mr. Beard testified that Mr. Mayer was only four feet behind him and that he did not hear Mr. Mayer warning Mr. Carrier. Following the accident, OSHA cited Grey Wolf for failing to provide adequate means of support for the standpipe. Two previous incidents were noted in the OSHA report where the standpipe had fallen, but no one was under the standpipe when it fell on those occasions.

Mr. Carrirer's parents (plaintiffs) filed the instant tort suit against Grey Wolf and Mr. Beard (defendants) pursuant to La. R.S. 23:1032(B), the intentional act exclusion of the Workers' Compensation Act, alleging that defendants knew with a substantial certainty that injury to Mr. Carrier would follow when they instructed him to remove the 1,000-lb. standpipe without the forklift support.

Workers' compensation is an employee's exclusive remedy for work-related injuries unless the injuries resulted from an intentional act. This court has stated in *Bazley v. Tortorich*, 397 So.2d 475 (La. 1981), that the meaning of intent in this context is that the defendant either desired to bring about the physical results of his act or believed they were substantially certain to follow. Intent is not, however, limited to consequences which are desired. If the actor knows that the consequences are certain or substantially certain to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result. *Bazley, supra*.

The majority finds that the defendant's conduct does not meet the "substantial certainty" test. Specifically, the majority states that "the defendants did not intend to cause harm to Mr. Carrier, nor did they believe their actions were

substantially certain to cause him harm.” I find it elementary that supervisors should know that when they instruct a worker to unbolt clamps, while positioned directly beneath an unsupported derrick, the machinery would fall on him, causing him death or injury. The Grey Wolf employees stood by in safety and watched Mr. Carrier, an inexperienced worker, work in an unsafe area and did nothing to remove him from the obviously dangerous situation. These five employees were careful to keep themselves out of harm’s way, which leads me to conclude that they knew to a “substantial certainty” that they would be injured also if they placed themselves where they instructed Carrier to work.

Considering that (1) this standpipe had fallen on two prior occasions cited by OSHA, (2) several experienced Grey Wolf employees stood only a few feet away and watched Mr. Carrier as he unbolted the clamps, and (3) the employees knew that Mr. Carrier had no experience, training or instructions in this area, I find that a trier of fact could very well find that defendants were substantially certain of the consequences and summary judgment was inappropriate in this case.

I agree with the court of appeal’s decision that summary judgment is not proper in this case and the matter should be remanded to the trial court for a trial on the merits.