NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2008 CA 1692

JAMIE ANN LEONARD

VERSUS

BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE

Judgment Rendered: February 13, 2009

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge, Louisiana
Docket Number C 531,243

Honorable William A. Morvant, Judge Presiding

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Cy J. D'Aquila, Jr. **Plaintiff/Appellant,** **C. Jerome D'Aquila** **New Roads, LA**	**Counsel for** **Jamie Ann Leonard**
John E. Seago **Peter G. Carmichael** **Baton Rouge, LA**	**Counsel for Defendant/Appellee,** **Board of Supervisors of Louisiana State University and Agricultural and Mechanical College**

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BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

WHIPPLE, J.

This is an appeal from a judgment of the Nineteenth Judicial District Court in East Baton Rouge Parish. Plaintiff, Jamie Ann Leonard, filed suit against defendant, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College ("LSU"), for damages allegedly sustained when plaintiff fell on the stairs of Johnston Hall on LSU's Baton Rouge campus.

LSU filed an exception of no right of action, contending that plaintiff had no right to bring an action in tort against it because plaintiff's injury arose out of and occurred in the course of her employment with LSU. Following a hearing on the exception, the trial court concluded that plaintiff's accident did arise out of and in the course of her employment with LSU and, thus, that her exclusive remedy against LSU was workers' compensation. Accordingly, the trial court rendered judgment maintaining LSU's exception and dismissing plaintiff's suit against LSU with prejudice.

From the judgment dismissing her claims, plaintiff appeals, contending that the trial court erred in: (1) finding that a strong showing had been made to establish that plaintiff's accident was within the course and scope of her employment; and (2) finding that plaintiff's exclusive remedy was that of workers' compensation by not considering the "arising out of" requirement.

The function of the peremptory exception raising the objection of no right of action is to determine whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted. See LSA-C.C.P. art. 927(A)(5); Succession of Clark, 2006-2210 (La. App. 1st Cir. 11/2/07), 977 So. 2d 1000, 1002. The exception of no right of action assumes that the petition states a valid cause of action for some person and

questions whether the plaintiff in the particular case is a member of the class that has a legal interest in the subject matter of the litigation. The party raising the exception bears the burden of proof. Bunge North America, Inc. v. Board of Commerce & Industry and Louisiana Department of Economic Development, 2007-1746 (La. App. 1st Cir. 5/2/08), 991 So. 2d 511, 522-523.

If the pleadings fail to disclose a right of action, the claim may be dismissed without evidence, but the plaintiff should be permitted to amend to state a right of action if he or she can do so. If, on the other hand, the pleadings state a right of action as to the plaintiff, the exceptor may introduce evidence to controvert the pleadings on the trial of the exception, and the plaintiff may introduce evidence to controvert any objections. LSA-C.C.P. art. 931; Howard v. Administrators of Tulane Educational Fund, 2007-2224 (La. 7/1/08), 986 So. 2d 47, 59.

Generally, trial court rulings maintaining exceptions of no right of action are reviewed *de novo* on appeal because they involve questions of law. Succession of Clark, 977 So. 2d at 1002. However, when the trial court's ruling on a peremptory exception is based on factual conclusions made after receiving evidence, the appellate standard of review is that of manifest error. Exposition Partner, L.L.P. v. King, LeBlanc & Bland, L.L.P., 2003-0580 (La. App. 4th Cir. 3/10/04), 869 So. 2d 934, 941; also see generally London Towne Condominium Homeowner's Association v. London Towne Company, 2006-401 (La. 10/17/06), 939 So. 2d 1227, 1231 (Where evidence is introduced at the hearing on a peremptory exception of prescription, manifest error standard of review applies to findings of fact).

In the instant case, although plaintiff's deposition was introduced into evidence at the hearing on the exception, the pertinent facts were either

stipulated to by the parties or were undisputed. Accordingly, the trial court was not called upon to exercise its fact-finding function, and the manifest error standard of review does not apply. Kevin Associates, L.L.C. v. Crawford, 2003-0211 (La. 1/30/04), 865 So. 2d 34, 43.

In this case, the issue raised by the exception was whether plaintiff belongs to the class of persons to whom the law grants a cause of action in tort against this defendant, her employer, LSU. An employer is responsible for, and the employee's exclusive remedy against his or her employer is, workers' compensation benefits where the employee is injured by an accident that occurs in the course of and arises out of the employment. LSA-R.S. 23:1031; LSA-R.S. 23:1032; Mundy v. Department of Health and Human Resources, 593 So. 2d 346, 349 (La. 1992). When the employer seeks to avail itself of tort immunity under section 1032, the employer has the burden of proving entitlement to immunity. Mundy, 593 So. 2d at 349. The crucial question in the distinction between injuries actionable in tort and injuries confined to workers' compensation is whether the accident that caused the injury occurred during the course of the plaintiff's employment or arises out of the circumstances of the plaintiff's employment. Harris v. State Department of Public Safety & Corrections, 2005-2647 (La. App. 1st Cir. 11/3/06), 950 So. 2d 795, 799, writ denied, 2006-2817 (La. 3/9/07), 949 So. 2d 440.

An accident occurs in the course of employment when the employee sustains an injury while actively engaged in the performance of his duties during working hours, either on the employer's premises or at other places where employment activities take the employee. The principal criteria for determining course of employment are time, place, and employment activity. Mundy, 593 So. 2d at 349.

The determination of whether an accident arises out of employment focuses on the character or source of the risk which gives rise to the injury and on the relationship of the risk to the nature of the work. An accident arises out of employment if the risk from which the injury resulted was greater for the employee than for a person not engaged in the employment or if the condition or obligations of the employment caused the employee *who was in the course of employment* to be at the place of the accident at the time the accident occurred. Mundy, 593 So. 2d at 349.

Turning to the issue of whether LSU demonstrated that plaintiff's accident occurred in the course of employment, we note that, generally, injuries sustained by an employee while in transit to or from work are not considered to occur in the course of employment. Hudson v. Progressive Security Insurance Company, 2005-2648 (La. App. 1st Cir. 11/3/06), 950 So. 2d 817, 821; Lachney v. Riddle, 577 So. 2d 173, 174 (La. App. 1st Cir.), writ denied, 578 So. 2d 914 (La. 1991). However, an exception to this rule has been jurisprudentially established. Even if an employee has finished his or her work day and is preparing to leave or is in the act of leaving, the employee is regarded as being within the course of the employment for a reasonable period of time while still on the employee's premises. Carter v. Lanzetta, 249 La. 1098, 1103-1104, 193 So. 2d 259, 261 (1966); Bates v. Gulf States Utilities Company, 249 La. 1087, 1094-1095, 193 So. 2d 255, 258 (1966); Lachney, 577 So. 2d at 175.

In the instant case, the parties stipulated: that plaintiff worked for the LSU Office of Mass Communications; that her employment as a student worker was limited to two or three days a week for one and one-half to two hours per day; that the Office of Mass Communications was located on the second floor of Johnston Hall; that while plaintiff's job duties occasionally

required her to run errands around campus, she spent 90 to 95 percent of her time in the office on the second floor of Johnston Hall; that the second floor of Johnston Hall could be accessed by two separate sets of stairs, both of which plaintiff used equally; and that other students also used the stairs to attend classes held in classrooms on the second floor of Johnston Hall.

According to plaintiff's deposition testimony, on the date of the accident in question, April 16, 2004, plaintiff had just "clocked out" of work to attend class, had walked the short distance from the Office of Mass Communications to the stairwell (about "two doors over"), and was descending the stairs when she slipped on a "chipped piece" of the stair. Thus, plaintiff was clearly in the act of leaving the work premises when the accident occurred, and we are unable to find error in the trial court's determination that the accident occurred in the course of her employment. See Lachney, 577 So. 2d at 175.

We likewise find no error in the trial court's conclusion that the accident arose out of plaintiff's employment, given that the obligations of her employment caused her to be at the place of the accident at the time the accident occurred and that plaintiff's heightened exposure to the risk of being injured by this defect was solely attributable to her employment.[1] Mundy, 593 So. 2d at 349; see also Mitchell v. Brookshire Grocery Company, 26,755 (La. App. 2nd Cir. 4/5/95), 653 So. 2d 202, 204-205, writ denied, 95-1115 (La. 6/16/95), 655 So. 2d 339. Thus, we conclude that the

[1]We note that the facts of the present case are readily distinguishable from those of Mundy and Harris, in which the employees were physically attacked by third parties on the employers' premises, a risk unrelated to the employment. Mundy, 593 So. 2d at 350; Harris, 950 So. 2d at 802-803. A physical defect in the premises of the employer, on the other hand, is very different from an independent, random act of violence by an unknown third party. While a random act of violence could occur anywhere, a particular defect in the premises at the place of employment is peculiar and distinctive to that location. Mitchell v. Brookshire Grocery Company, 26,755 (La. App. 2nd Cir. 4/5/95), 653 So. 2d 202, 205, writ denied, 95-1115 (La. 6/16/95), 655 So. 2d 339.

trial court was correct in finding that plaintiff's exclusive remedy was in workers'compensation and that she had no right of action in tort against LSU.

Considering the foregoing, and in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B), the June 17, 2008 judgment, maintaining LSU's exception of no right of action and dismissing plaintiff's suit, with prejudice, is affirmed. Costs of this appeal are assessed against plaintiff, Jamie Ann Leonard.

AFFIRMED.