

RENDERED: AUGUST 19, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000012-MR

BILLY JOE MEENACH

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 98-CI-00188

ROBERT DENLINGER AND
MARY DENLINGER, HIS WIFE,
AND ROGER HALL

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * * **

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Billy Joe Meenach appeals from the judgment of the Greenup Circuit Court, holding him liable for damages to timber cut by Roger Hall on the property of adjoining landowner Robert Denlinger. Meenach argues that Hall was not his agent for purposes of vicarious liability. Holding that Hall was an

independent contractor, we reverse and remand for entry of judgment consistent with this opinion.

The dispute between the parties arose when Hall, who was logging on Meenach's land with Meenach's permission, crossed a boundary fence and logged trees from Denlinger's property. Hall had approached Meenach and asked if he could cut timber on his property, agreeing to pay him a portion of the proceeds. Meenach showed Hall the general area he could log, but did not specifically show him the barbed wire that served as the fence between his property and Denlinger's. Hall used his own equipment and labor and Meenach did not supervise the work. Denlinger discovered Hall on his property when he heard the sound of the chainsaws, and confronted Hall to let him know that he was logging on the wrong property. Denlinger documented the unauthorized logging with videotape and photographs. The value of the timber cut from Denlinger's property was determined to be \$4,136.30.

After the trial, the court determined Hall to be an agent of Meenach's. The judgment appears to hold Meenach liable under respondeat superior as well as under KRS 364.130 as a person who causes timber to be cut down with intent to convert it to his own use. The judgment also, curiously, apportions liability between Meenach and Hall, with Meenach being liable for one-third of trebled damages. In a motion to reconsider,

Meenach argued that Hall was not his agent and thus that he could not be held liable under a theory of respondeat superior. The court denied that motion, and this appeal followed.

In its judgment, the court below stated that it was undisputed that Hall was Meenach's agent. We cannot agree. Respondeat superior, or vicarious liability, applies when an employee or agent of a person commits a tort in the course of his duties. Whether the relationship exists is a question of law to be determined by the court, and it is reviewed de novo on appeal. We hold that the court erred in its finding that Hall was Meenach's agent.

Hall's relationship to Meenach was that of an independent contractor. In City of Winchester v. King, 266 S.W.2d 343 (Ky. 1954), the Court of Appeals defined an independent contractor as

"a person who, in the pursuit of an independent business, undertakes to do a specific piece of work for other persons, using his own means and methods, without submitting himself to their control in respect to all its details." In other words a contractor renders service which represents the will of the employer only as to the result of his work and not as to the means by which it is accomplished.

Id. at 345, quoting Shearman and Redfield on Negligence, p. 164.

The evidence showed that the parties intended that Hall, who held himself out as a person in the business of cutting timber, would conduct the work at his own discretion, with his own tools

and employees, and that Meenach would have a minimal role in the matter, only granting permission to cut timber and receiving forty percent of the proceeds. Hall fits the definition of an independent contractor in Winchester v. King perfectly. There is little question that had Hall been an agent or employee of Meenach's, the negligent cutting of timber on the adjoining landowner's property would have been in the course of his employment, but without the crucial link of an agent-principal relationship, vicarious liability does not apply.

Likewise, there is no evidence that Meenach caused "to be cut down with intent to convert to his own use timber growing upon the land of another" as required by the statute. The court did not address the question of intent required under the statute, instead finding that Meenach had a duty to do more to ensure that Hall knew where the boundary with Denlinger's property was, and that Meenach "knew Mr. Hall was reckless", apparently referring to Hall's reputation in the community. We hold that the court did not properly apply the statute, and that from the evidence before it, the court could not have made the determination that Meenach caused to be cut down timber growing on the land of another with intent to convert it to his own use. Hall negligently cut timber over the boundary, and he did so while under an agreement to log on Meenach's property, but there

is no evidence of intentional conversion on Meenach's part, and so liability under the above statute does not attach to Meenach.

For the foregoing reasons, the judgment of the Greenup Circuit Court is reversed with directions to enter judgment consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT,
BILLY JOE MEENACH:

NO BRIEF FOR APPELLEES

Charles L. Douglas, Jr.
Greenup, Kentucky