

The social security number and dates of birth
have been redacted from this opinion.

**STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
WORKERS' COMPENSATION BOARD OF MAGISTRATES**

SHARITA WILLIAMS, Deceased
SSN: XXX-XX-XXXX,
Plaintiff,

vs.

PARK FAMILY HEALTH CARE PC, ACCIDENT FUND NATIONAL INSURANCE COMPANY
Defendant.

OPINION

APPEARANCES

Plaintiff - Allan Studenberg (P28636)
Defendant – Michael T. Reinholm (P40060)

TRIAL DATE(S)

The matter was submitted on stipulated facts and briefs on June 23, 2016. The parties also submitted a statement of facts solely for the purpose of resolving the workers' compensation claim.

CLAIM

The plaintiff by Application for Mediation or Hearing–Form A filed on May 8, 2014, alleged date of death as April 9, 2013 as follows:

Sharita Williams, a medical assistant at Park Medical Clinic was shot to death by building maintenance worker Myron Williams on April 9, 2013 while she was in the course of employment at Park Family Health a/k/a Park Medical Clinic.

STIPULATIONS/ISSUES

The standard stipulations were not taken, as the parties agreed that this matter is to be confined to the single issue of whether the incident on April 9, 2013 which resulted in plaintiff's death was work-related.

FACTS

1. Sharita Williams began working at Park Clinic in about January 2012.
2. Myron Williams worked for Park Health Care for about 30 years.
3. As a maintenance man Myron Williams had keys to all Park Clinics, including the Park Clinic employee entrance door at the clinic Sharita worked at.
4. Sharita and Myron Williams began dating after meeting at work. When Sharita learned that Myron was married, Myron said he was getting a divorce. When it was apparent to Sharita that Myron was not going to get divorced, Sharita broke up with Myron, and started dating James Rucker. At that point, everything went sour, Myron started harassing and threatening Sharita and her new boyfriend.
5. The affidavit of James Rucker alleges that on about March 23, 2013: Sharita was at his house: Myron called Sharita on her cell phone and began to threaten Sharita, her children, and Rucker; Rucker called the police; the police officer spoke to Myron on Sharita's cell phone and told him that if he came near the house again he was going to be arrested. The affidavit further indicates that Myron subsequently went to Rucker's home and threw nude pictures of Sharita on the yard.
6. Rucker was a patient and had a scheduled appointment at the Park Clinic. He had an appointment on April 2, 2013.
7. On April 2, 2013, the police were called to the Park Clinic. They were told Myron had a confrontation with Rucker and Michael Chatman, Rucker's brother, at a drugstore in the same building as the Park Clinic. Myron threatened both and brandished a gun. Rucker's affidavit alleges that as he waited in the Park Clinic, Sharita texted him that Myron was inside the clinic, and was harassing and threatening Sharita. According to Rucker's affidavit Myron told Sharita: "you are going to die". "you bitch, you whore."
8. On April 3, 2013, Sharita sought and received an ex parte PPO directed against Myron. She feared for her life and her children's lives.

9. Immediately after the incident several people went to the barbershop across the street. The barber knew Myron. He said he had seen Myron there the night before going into the building. 9. On April 9, 2013, at about 6:30 AM Myron was seen standing near the Park Clinic employee entrance.
10. The Park Clinic employee entrance door is locked. It can only be opened with a key.
11. As she was going to her booth that morning the parking lot security guard saw Myron approaching the building from across a bridge that went over I-96. Normally Myron drove his truck and parked right in front of the building. The security guard did not note that Myron was carrying anything.
12. Myron walked up to the Park Clinic employee entrance door, unlocked the door with his key, and went inside.
13. On April 9, 2013, just before about 9 AM Sharita Williams was at work talking to some co-workers as the workday was beginning.
14. Sharita Williams was in an area of the office that patients could only access by being buzzed through a locked door between the examining rooms and the waiting room.
15. Sharita Williams was shot and killed at work that morning. The Detroit Police believed that Myron Williams shot her, set the building on fire, and then killed himself.
16. The Detroit Police determined a fire was started in the basement. In the basement the Detroit Police found a five-gallon gasoline can, partially filled with a liquid believed to be gasoline. The Detroit Police spoke to the building owner, who indicated they did not store any gasoline or equipment that used gasoline on the property.
17. Myron's body was found in a basement bathroom. A shotgun was at his feet. A box of shotgun shells was in the room. Myron died of a self inflicted shotgun wound to the head.
18. Through their and Myron Williams work, the security guard, a doctor who worked in the same building as the Park Clinic, and several Park employees knew Williams for anywhere from 7 to 30 years. In light of this relationship with Myron Williams they: were not afraid of him, were surprised by what happened, took no steps to stop the April 9 assault, and took no steps to separate Myron and Sharita after the April 2 event.

DECISION ANALYSIS AND CONCLUSION

An order to be compensable as a worker's injury/death must arise out of and in the course of employment. That claim must then be proved by a preponderance of the evidence, MCL 418.851. In all successful workers' compensation cases, the claimant must establish by a preponderance of the evidence both a personal injury and a relationship between the injury and the workplace. *Miklik v Michigan Special Machine Company*, 415 Mich 364, 367 (1982). An assault at the workplace involving a purely personal dispute is not compensable. *Devault v General Motors Corporation*, 149 Mich App 765 (1986). The Court ruled the plaintiff was not injured via a neutral risk, but rather an intentional and private act of violence unrelated to the job. The occurrence of an injury on an employer's premises in the course of employment does not, by itself, establish a prima facie showing that the injury arose out of the employment. *Devault*, supra, *McClain v Chrysler Corporation*, 138 Mich App 723, 727-728 (1984). Where it is clear that the origin of an assault upon a workers' compensation claimant by a co-worker is purely private and personal and that the employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault should be held non-compensable. *Devault*, supra.

In *Devault*, supra the plaintiff first argued the assailant's employment with defendant afforded him special knowledge that it was company policy not to deny admittance to an employee who claimed he was late for work. Thus, plaintiff claimed the injury was employment-related because an assailant gained knowledge on the job which allowed him to gain access to plaintiff. This argument was rejected by the Court because the assailant lied to gain entry to the plant which was a "common technique", not related to any "special knowledge" of plant regulations.

In the case at bar, Myron Williams, as a maintenance man for the employer for 30 years, had keys to all of the doors at Park Clinic including the employee entrance door at the clinic where Sharita Williams worked. He used the key to gain access to the building prior to the assault and to the area where Sharita Williams was working to commit the assault. There was no "special knowledge" related to the keys.

The second argument in *Devault*, supra was the assailant had special knowledge of the defendant's plant complex and was therefore able to quickly and easily track down plaintiff prior to the assault. That argument was rejected on the grounds that the dispute involved was purely personal and that the assailant's knowledge, by itself, did not provide the required causal connections. The Court said from the facts, it was evident that the assailant was determined to have his vengeance on plaintiff wherever he might find him. The Court concluded that the assailant's special knowledge of the defendant's plant complex did not facilitate an assault which would not otherwise have been made.

In the case at bar, Myron Williams had been an employee for the clinic for 30 years, had keys to the building, and was equally determined to harm Sharita Williams. The fact that Sharita Williams had obtained a Personal Protection Order (PPO) on April

3, 2013, Myron Williams had been ordered by the police to have no contact with Sharita Williams, and she had moved to the suburban area was no deterrent.

The third argument in *Devault*, supra was the “positional risk” theory. Plaintiff’s argument was that the assault occurred while he was working and was unable to retreat or take evasive action. That argument was found unpersuasive as the assailant testified if plaintiff had attempted to run, he would have prevented him from leaving. The “positional risk” applies only to neutral risk, or those which arise neither from an employment situation nor from the acts of an employee. The Court held plaintiff was not injured by neutral risk, but by an intentional act of a co-worker, motivated by private reasons. Again, in the case at bar, Myron Williams was determined to harm Sharita Williams and her death was an intentional act by Myron Williams. He committed the assault at the work site as he obviously knew she would be there.

The defendant in the case at bar, argues, *Thomas v Ferguson Enterprises, Inc.*, 2008 ACO #12 supports the finding that plaintiff’s death was in her course of employment. In *Thomas*, supra, the plaintiff, Kennedy Thomas, testified that before he left for work the morning of October 6, 2004, Mr. Ferguson called him at home and asked him to bring a video camera he had used at a jobsite to the office. When he arrived at work, Mr. Ferguson invited him into his office. Apparently an argument ensued and Mr. Ferguson questioned the plaintiff as to why he had called his wife at 1:00 a.m. At some point Mr. Ferguson pulled out a gun and began hitting the plaintiff in the head with the gun. The plaintiff suffered serious injuries and suffered a permanent disability. The magistrate held that the plaintiff’s injuries arose out of and in the course of employment. The Appellate Commission agreed that while “the nature of the dispute was personal, there was still ample evidence that the work environment engendered, contributed to and facilitated the assault.” The Commission advised that the working relationship between the plaintiff and Mr. Ferguson afforded Mr. Ferguson the opportunity to lure the plaintiff into his private office and ultimately assault him. Mr. Ferguson was acting in a supervisory capacity when he lured the plaintiff into a trap. It is not a “neutral risk” case when a supervisor because of his status, can increase the risk of harm during an assault by placing his victim where he wants him, away from the eyes and help of co-workers.

Thomas, supra is not analogous to the instant case. The plaintiff, Sharita Williams, and her assailant Myron Williams were engaged in a personal relationship which ended. After Sharita ended the relationship, Myron Williams entered the workplace and committed the assault which resulted in Sharita’s death. Myron Williams was not Sharita Williams’ supervisor and they did not have a work relationship. Unlike *Thomas*, supra the only connection to the employment is that the shooting took place inside the clinic where both Sharita Williams and Myron Williams worked. Their relationship was purely personal. The employment did not engender, exacerbate, or facilitate the relationship. Myron Williams was determined to harm Sharita Williams and the assault could have taken place anywhere.

ORDER

I find the shooting of Sharita Williams by Myron Williams on the employer's premises did not "arise out of" the employment.

WORKERS' COMPENSATION BOARD OF MAGISTRATES

BEATRICE B. LOGAN, MAGISTRATE (231G)

Signed this 11th day of July, 2016, at Detroit, Michigan