

JUDITH FAVALORA

NO. 23-CA-368

VERSUS

FIFTH CIRCUIT

THE CITY OF KENNER AND ABC  
INSURANCE COMPANY

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT  
PARISH OF JEFFERSON, STATE OF LOUISIANA  
NO. 830-255, DIVISION "F"  
HONORABLE MICHAEL P. MENTZ, JUDGE PRESIDING

May 15, 2024

**MARC E. JOHNSON**  
**JUDGE**

Panel composed of Judges Susan M. Chehardy,  
Jude G. Gravois, and Marc E. Johnson

**AFFIRMED**

**MEJ**

**SMC**

**JGG**

FIFTH CIRCUIT COURT OF APPEAL  
A TRUE COPY OF DOCUMENTS AS  
SAME APPEARS IN OUR RECORDS



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Deputy, Clerk of Court

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JUDITH FAVALORA

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**JOHNSON, J.**

Plaintiff/Appellant, Judith Favalora, appeals the trial court's March 7, 2023 judgment that sustained a declinatory exception of lack of subject matter jurisdiction in favor of Defendant/Appellant, the City of Kenner, and dismissed her trip and fall action filed in the 24<sup>th</sup> Judicial District Court, Division "F". For the following reasons, we affirm the trial court's judgment and dismissal of Mrs. Favalora's action.

**FACTS AND PROCEDURAL HISTORY**

On July 11, 2022, Mrs. Favalora filed a petition for damages against the City of Kenner, alleging that, on or about July 28, 2021, she suffered severe bodily injuries when she stepped in a hole as she was walking toward her car in the parking lot.<sup>1</sup> She alleged that the City of Kenner had custody of the pathway where the hole was located; the hole was not discernable to a reasonably prudent and careful pedestrian; and, the hole's location was adjacent to and abutted against a hard surface suitable for parking vehicles. She alleged the City of Kenner was liable for negligence and/or fault under La. C.C. art. 2317.1.

In response to Mrs. Favalora's petition, the City of Kenner filed a declinatory exception of lack of subject matter jurisdiction. In its exception, the City of Kenner asserted Mrs. Favalora failed to disclose that this matter involved a workplace injury, whereby Mrs. Favalora, an employee, fell as she was walking to her car at the end of her workday. It alleged that Mrs. Favalora subsequently filed a claim for workers' compensation for the injuries she sustained in the July 28, 2021 fall. It further alleged that Mrs. Favalora's claim was approved, and she had been receiving workers' compensation payments for her injury. The City of Kenner contended that, pursuant to La. Const. Art. 5, § 16 and La. R.S. 23:1310.3,

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<sup>1</sup> Mrs. Favalora also filed suit against ABC Insurance Company. However, the City of Kenner is the only party defendant in the instant appeal.

original and exclusive jurisdiction over Mrs. Favalora's claims lies in the workers' compensation court, and the trial court had no subject matter jurisdiction over the action.

In opposition to the exception of lack of subject matter jurisdiction, Mrs. Favalora argued that her acceptance of the workers' compensation benefits did not forfeit her right to seek a tort remedy against the City of Kenner. She contended that her employment status at the time of her injury is a determination of fact; and, a jury must first determine whether her injury resulted from an accident that arose out of her employment, and whether the incident occurred during the course of her employment. Mrs. Favalora further argued that the City of Kenner mischaracterized its declinatory exception of lack of subject matter jurisdiction because it opposed her right to assert a tort action under the Louisiana Governmental Claims Act, and the exception should have been labeled as a peremptory exception of no right of action.

A hearing on the City of Kenner's exception was held on March 7, 2023. At the conclusion of the hearing, the trial court orally sustained the exception of lack of subject matter jurisdiction. A written judgment sustaining the City of Kenner's exception and dismissing Mrs. Favalora's claims with prejudice was rendered the same day. In its written reasons for judgment, the trial court found that, pursuant to La. R.S. 23:1032, Mrs. Favalora's exclusive remedy was a workers' compensation claim. The court stated that Mrs. Favalora received workers' compensation benefits as a result of a claim filed under the Louisiana Workers' Compensation Act; and therefore, Mrs. Favalora was barred from pursuing a subsequent tort claim under the Act's exclusivity provision. The instant appeal followed.

### **ASSIGNMENTS OF ERROR**

On appeal, Mrs. Favalora raises several assignments of error, collectively

alleging: 1) the trial court erroneously sustained the City of Kenner's declinatory exception of lack of subject matter jurisdiction, and 2) the City of Kenner's exception of lack of subject matter jurisdiction was a mischaracterized peremptory exception of no right of action; and as a result, the trial court erroneously failed to focus on the statutory provision that triggers the application of La. R.S. 23:1031, rather than her right to assert her tort action against the City of Kenner.

## **LAW AND ANALYSIS**

### Declinatory exception of lack of subject matter jurisdiction

Mrs. Favalora alleges the trial court erroneously sustained the City of Kenner's exception of lack of subject matter jurisdiction. She argues that her acceptance of the workers' compensation benefits from the City of Kenner does not divest a trial court of jurisdiction to consider her tort action, and it does not bar her demand for damages from her employer. She contends that her accident did not arise out of her employment because her fall in the parking lot was not associated with the nature of her clerical work, and the fall did not occur during the course of her employment because her work day was over at the time she was walking to her vehicle.

The City of Kenner avers that the trial court properly sustained its exception of lack of subject matter jurisdiction because Mrs. Favalora's claims fall under the exclusivity provision of the Louisiana Workers' Compensation Act. It contends that Mrs. Favalora's injuries arose out of/and during the course of her employment, and Mrs. Favalora applied for and received workers' compensation benefits for her injuries. It argues that an office worker's duties include navigating the employer's premises to arrive at or depart from work, and Mrs. Favalora was still within the reasonable period of time for an employee under the Act to wind up her affairs at the end of her work day.

The exception of lack of subject matter jurisdiction is a question of law and

is reviewed *de novo*. *Wilkinson v. Parker*, 18-431 (La. App. 5 Cir. 12/27/18), 263 So.3d 987, 990-91, citing *Ryan Gootee General Contractors, LLC v. Plaquemines Parish School Board & One Construction, Inc.*, 15-325 (La. App. 5 Cir. 11/19/15), 180 So.3d 588, 595. Subject matter jurisdiction refers to the courts' legal power and authority to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. *Id.* at 91, citing La. C.C.P. art. 2. A judgment rendered by a court that has no jurisdiction over the subject matter of the action or proceeding is void. *Id.*, citing La. C.C.P. art. 3. The issue may be considered at any time, even by an appellate court on its own motion, at any stage of an action. *Alonso v. Admin. Patient's Comp. Fund*, 20-211 (La. App. 5 Cir. 12/30/20), 310 So.3d 297, 301, *writ denied*, 21-125 (La. 2/9/21), 310 So.3d 177, citing *Boudreaux v. State, Dept. of Transp. & Development*, 01-1329 (La. 2/26/02), 815 So.2d 7, 13. Subject matter jurisdiction is a threshold issue, which the court has a duty to examine, even when the issue is not raised by the litigants. *Id.*

In this matter, we are called to consider whether Mrs. Favalora's slip and fall claim falls exclusively within the jurisdiction of the office of worker's compensation.

La. R.S. 23:1032(A) states, in pertinent part:

(1)(a) Except for intentional acts provided for in Subsection B, the rights and remedies herein granted to an employee or his dependent on account of an injury, or compensable sickness or disease for which he is entitled to compensation under this Chapter, shall be exclusive of all other rights, remedies, and claims for damages, including but not limited to punitive or exemplary damages, unless such rights, remedies, and damages are created by a statute, whether now existing or created in the future, expressly establishing same as available to such employee, his personal representatives, dependents, or relations, as against his employer, or any principal or any officer, director, stockholder, partner, or employee of such employer or principal, for said injury, or compensable sickness or disease.

(b) This exclusive remedy is exclusive of all claims, including any claims that might arise against his employer, or any principal or

any officer, director, stockholder, partner, or employee of such employer or principal under any dual capacity theory or doctrine.

The dual-capacity doctrine is the principle that makes an employer—who is normally shielded from tort liability by workers’ compensation laws—liable in tort to an employee if the employer and employee stand in a secondary relationship that confers independent obligations on the employer. *Kitziger v. Mire*, 19-87 (La. App. 5 Cir. 9/24/19), 280 So.3d 302, 307, *writ denied*, 19-1858 (La. 1/28/20), 291 So.3d 1055, citing *Claudio v. Silla Cooling Sys.*, 10-52 (La. App. 5 Cir. 12/14/10), 55 So.3d 902, 906.

Louisiana’s dual capacity theory or doctrine pertains to employers with multiple relationships, connections or involvement to the employee’s injury and/or the cause of the injury, which ordinarily would result in liability being imposed upon the employer by operation of law in addition to the provisions of the Worker’s Compensation Act. The dual capacity doctrine limits the injured employee’s recovery to worker’s compensation benefits, precluding the pursuit of their tort claims against their employers.

*Claudio*, 55 So.3d at 906, quoting *Stelly v. Overhead Door Co. of Baton Rouge*, 94-569 (La. 12/8/94), 646 So.2d 905, 910. In such a case, “an employer’s second capacity is inextricably intertwined with his capacity as employer.” *Id.*, quoting *Wright v. State*, 93-3095 (La. 7/5/94), 639 So.2d 258, 260.

In this matter, Mrs. Favalora’s claims of negligence and fault against the City of Kenner were alleged under the theory of premises liability, which would have conferred independent obligations and liabilities upon the City of Kenner as the entity responsible for the parking lot where Mrs. Favalora sustained her injuries. At the time of Mrs. Favalora’s fall, she was walking to her vehicle at the end of her work day with the City of Kenner; thus, she was still within the course of her employment. “Even if an employee has finished his day’s work and is in the act of leaving, he is entitled to a reasonable period while still on the employer’s premises which is regarded as within the course of employment; the working day embraces these intervals just as it embraces reasonable periods of reset, relaxation,

and attendance to personal needs.” *Elmuflihi v. Central Oil & Supply Corp.*, 51,673 (La. App. 2 Cir. 11/1/17), 245 So.3d 155, 165, *writ denied*, 17-2009 (La. 2/23/18), 237 So.3d 1189, citing *Mitchell v. Brookshire Grocery Co.*, 26,755 (La. App. 2 Cir. 4/5/95), 653 So.2d 202. Because Mrs. Favalora’s injuries were sustained during the course of her employment, we find that her claim falls exclusively within the jurisdiction of the Office of Workers’ Compensation. Additionally, because of the City of Kenner’s dual capacity as the custodian of the property and Mrs. Favalora’s employer in this matter, Mrs. Favalora is limited to recovery of workers’ compensation benefits and is precluded from pursuing her tort action against her employer. (*See, Claudio*, 55 So.3d at 909, where this Court stated, “The courts of this state have long held that whenever the Workers’ Compensation Act is applicable, the employee cannot pursue any remedy for damages against his employer in custodial liability...”).

Accordingly, we find that the trial court lacks the subject matter jurisdiction to adjudicate Mrs. Favalora’s tort action because the Office of Workers’ Compensation has exclusive, original jurisdiction over this dispute. Because we find that the Office of Workers’ Compensation has exclusive jurisdiction, we preterm discussion of Mrs. Favalora’s remaining assignments of error.

### **DECREE**

For the foregoing reasons, we affirm the trial court’s judgment that sustained the City of Kenner’s declinatory exception of lack of subject matter jurisdiction and dismissed Mrs. Favalora’s action.

**AFFIRMED**



SUSAN M. CHEHARDY  
CHIEF JUDGE

FREDERICKA H. WICKER  
JUDE G. GRAVOIS  
MARC E. JOHNSON  
STEPHEN J. WINDHORST  
JOHN J. MOLAISSON, JR.  
SCOTT U. SCHLEGEL  
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JUDGES



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**NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY**

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **MAY 15, 2024** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

**CURTIS B. PURSELL**  
CLERK OF COURT

**23-CA-368**

**E-NOTIFIED**

24TH JUDICIAL DISTRICT COURT (CLERK)

HONORABLE MICHAEL P. MENTZ (DISTRICT JUDGE)

BERNARD J. BAGERT, JR. (APPELLANT)

DEBORAH A. VILLIO (APPELLEE)

JAMES C. RAFF (APPELLEE)

MICHAEL L. FANTACI (APPELLEE)

**MAILED**