

Fifth Circuit Court of Appeal
State of Louisiana

No. 26-CA-18

EDWARD WATSON

versus

WATSON SERVICES, INCORPORATED, ET AL

ON APPEAL THE FORTIETH JUDICIAL DISTRICT COURT
PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA
NO. 81,594, DIVISION "C"
HONORABLE J. STERLING SNOWDY, JUDGE PRESIDING

September 23, 2026

SUSAN M. CHEHARDY
CHIEF JUDGE

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and John J. Molaison, Jr.

REVERSED; EXCEPTIONS OVERRULED

SMC
SJW
JJM



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COLONY INSURANCE COMPANY

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CHEHARDY, C.J.

Plaintiff-appellant, Edward Watson, seeks review of the trial court's judgment granting defendant Colony Insurance Company's exceptions of no cause of action and no right of action. For the reasons that follow, we reverse the trial court's judgment and overrule Colony's exceptions of no cause of action and no right of action.

Facts and Procedural History

On April 4, 2023, plaintiff Edward Watson was assisting his brother, defendant Edwin Watson, who is the owner and sole proprietor of defendant Watson Services, Inc., while removing tires from an 18-wheel tractor-trailer at the Northside Recycling facility in Reserve, Louisiana. While Edward was underneath the trailer, the jack used to hoist it became dislodged and the trailer fell on his leg, causing severe injuries. Edward's leg was subsequently amputated.

Defendant Colony Insurance Company provided general liability insurance coverage to Watson Services. Colony's policy contains an "Employee Indemnification and Employer's Liability Exclusion" that bars coverage for bodily injury to an employee of the insured arising out of employment, or performing duties related to the insured's business, and extends that exclusion to the spouse, child, parent, brother, or sister of that employee. The policy's declarations page describes Watson Services as a business engaged in "service and repair" of trucks. The Colony policy does not define "employee" for purposes of interpreting the exclusion.

On March 14, 2024, Edward filed his original Petition for Damages naming Watson Services, Inc., Edwin Watson, Colony Insurance Company, and Northside Recycling as defendants. The original petition described Edward as an independent contractor.

On May 24, 2024, Colony filed Exceptions of No Cause of Action and No Right of Action. On August 29, 2024, the trial court granted Colony's exceptions but gave Edward 21 days to amend his petition. On September 30, 2024, Edward filed a First Supplemental and Amending Petition, again describing himself as an independent contractor for Watson Services, Inc.

On December 18, 2024, Edward filed a Motion for Leave of Court to file a Second Supplemental and Amending Petition, changing his status from "independent contractor" to "volunteer" on the basis that he never received compensation from Watson Services; he was simply assisting his brother. On December 19, 2024, the trial court granted leave to plaintiff to file the second supplemental and amending petition. Colony re-filed its Exceptions of No Cause of Action and No Right of Action, arguing that plaintiff's second supplemental petition should not be allowed to recategorize plaintiff as a volunteer when he stated in the first two petitions that he was an independent contractor.

Colony argues that the Workers' Compensation Act, La. R.S. 23:1031, *et seq.*, provides the exclusive remedy for Edward under these circumstances. Further, Colony argued Edward has no right of action because Colony's policy excludes coverage for an employee of Watson Services, Inc. or his relatives, including a brother. Because Edward is Edwin's brother, Colony claims Edward has no right to proceed.

Following a June 12, 2025 contradictory hearing, the trial court granted Colony's exceptions of no cause of action and no right of action and dismissed Colony from the matter with prejudice. Plaintiff Edward now appeals that ruling.

Discussion

The issues for consideration on appeal are twofold: first, whether a "volunteer," as pled in his second supplemental and amending petition, is excluded as a matter of law from coverage under the Colony policy; and second, whether

defendant Edwin Watson, the owner of Watson Services, is an “employee” such that the Colony policy exclusion stating that relatives of an employee—such as a brother—applies.

Edward argues that where his second supplemental and amending petition states that he was a volunteer, Colony would have to prove that the Workers’ Compensation Act provides the exclusive remedy at law for a volunteer in order for Colony to succeed on its exception of no cause of action. Edward contends that Colony has not met this burden of proof.

Exception of No Cause of Action

The peremptory exception of no cause of action tests the legal sufficiency of the petition by determining whether the law affords plaintiff a remedy on the facts alleged in the pleading. *Crooks v. Dep’t of Natural Res.*, 19-160 (La. 1/29/20), 340 So.3d 574, 585. A cause of action, for purposes of the peremptory exception, is defined as the operative facts that give rise to the plaintiff’s right to judicially assert an action against the defendant. *Grubbs v. Haven Custom Furnishings, LLC*, 18-710 (La. App. 5 Cir. 5/29/19), 274 So.3d 844, 847. The exception is triable on the face of the pleadings, and for purposes of determining the issues raised by the exception, the well-pleaded facts in the petition must be accepted as true. *Id.* All reasonable inferences are made in favor of the nonmoving party when determining whether the law affords any remedy to the plaintiff. La. C.C.P. arts. 927, 931; *Crooks*, 340 So.3d at 585. The exceptor bears the burden of showing that the plaintiff has failed to state a cause of action. *Id.*

The exception is triable on the face of the petition and any attached documents and, for purposes of resolving issues raised by the exception, the well pleaded facts in the petition must be accepted as true. *Gordon*, 384 So.3d at 1141. No evidence may be introduced to support or controvert the exception raising the objection of no cause of action. La. C.C.P. art. 931. Because Louisiana utilizes a

system of fact pleading, it is not necessary for a plaintiff to plead a theory of the case in the petition; however, mere conclusions of the plaintiff unsupported by the facts do not set forth a cause of action. *Palowsky v. Campbell*, 21-358 (La. App. 5 Cir. 5/30/22), 337 So.3d 567, 572. The pertinent inquiry is whether, in the light most favorable to the plaintiff, and with every doubt resolved in the plaintiff's favor, the petition states any valid cause of action for relief. *I E C I,, LLC v. South Central Planning & Dev. Comm'n, Inc.*, 21-382 (La. App. 5 Cir. 2/23/22), 336 So.3d 601, 611. Whether the plaintiff can prove the allegations set forth in the petition is not determinative of the exception of no cause of action, and the court may not go beyond the petition to the merits of the case. *Scanlan v. MBF of Metairie, LLC*, 21-323 (La. App. 5 Cir. 3/23/22), 337 So.3d 562, 565.

When an exception of no cause of action is granted, we review the trial court's judgment *de novo*, because the exception raises a question of law, and the lower court's decision is necessarily based solely on the sufficiency of the petition. *Gordon v. State, Division of Administration, Office of Community Development – Disaster Recovery*, 23-366 (La. App. 5 Cir. 3/27/24), 384 So.3d 1138, 1140.

Although Colony contends the trial court should not have considered the second supplemental and amending petition, and instead should have focused only on what is pled in the original and first supplemental and amending petitions, Colony never objected to the filing of the second supplemental and amending petition until the June 12, 2025 hearing on the exceptions, when counsel for Colony took the position that the second petition was "filed but not circulated." Yet in Colony's March 18, 2025 Memorandum in Support of its Exceptions, Colony stated: "On December 18, 2024, Plaintiff sought leave and was ultimately granted leave to file a Second Supplemental and Amended Petition." And on March 27, 2025, Colony answered both the First and Second Supplemental and Amended Petitions without objecting to the filing of the Second Supplemental Petition. Other

than counsel's argument at the June 12, 2025 exceptions hearing (and now in its brief as appellee), nothing in the record suggests that Colony objected to the filing of the Second Supplemental and Amending Petition, moved to strike it, or otherwise argued that it was improperly filed.

Pursuant to the Workers' Compensation Act, "[a] person rendering service for another in any trades, businesses, or occupations covered by this Chapter is presumed to be an employee under the Chapter." La. R.S. 23:1044. However, this presumption is rebuttable with proof that there is no contract of employment, express or implied, between the alleged employee and alleged employer. *Williams v. Rowe-Treaulo*, 11-46 (La. App. 5 Cir. 9/27/11), 75 So.3d 502, 506. The employee bears the burden of proof in overcoming the statutory presumption and showing that a claimant was not an employee for workers' compensation purposes. *Id.*

When considering an exception of no cause of action, our analysis is limited to what is pled in the petitions. Stated differently, the plaintiff has no burden at this juncture to rebut the presumption of employment, because we review only the pleadings. Where Edward's second supplemental and amending petition pleads that he is a volunteer and that he received no compensation, we cannot say that the Workers' Compensation Act provides an exclusive remedy, and thus precludes the present cause of action, without engaging in a fact-finding expedition.¹ Facts developed later in these proceedings may (or may not) point to Edward's status as an employee, but that status is not resolved on the face of the pleadings.

¹ In *Rushing v. St. Paul Fire & Marine Ins. Co.*, 38,611 (La. App. 2 Cir. 6/23/04), 877 So.2d 275, 279, the plaintiff argued that he should be considered a volunteer, not an employee, for purposes of the Workers' Compensation Act, because he took a vow of poverty and was not paid a salary by the defendant. However, in his deposition, the plaintiff explained that the defendant paid a \$1,000/month stipend to the Franciscans for the plaintiff's services. The appellate court ultimately determined, with additional facts, that the plaintiff was an employee.

Thus, upon *de novo* review, we find the trial court erred in granting Colony's exception of no cause of action. Where the exception must be evaluated solely on the facts stated in the pleadings, and Colony has offered no argument to show that Edward, as a "volunteer," has a remedy only under the Workers' Compensation Act, not in tort, the exception should have been overruled. Accepting all well-pled facts as true, and finding no definitive legal support for Colony's argument, we reverse the trial court's judgment on the exception of no cause of action.

Exception of No Right of Action

Colony also asserted an exception of no right of action. An exception of no right of action determines whether the plaintiff belongs to the class of persons to whom the law grants the cause of action asserted in the petition. La. C.C.P. art. 927; *Paul Piazza & Son, Inc. v. Piazza*, 11-548 (La. App. 5 Cir. 12/28/11), 83 So.3d 1066, 1069, *writ denied*, 12-261 (La. 3/30/12), 85 So.3d 123. A party has an actionable right, and consequently has standing, if it can be said that the party has a legally protectable and tangible stake in the litigation. *JES, Inc. v. Certain Underwriters at Lloyds of London*, 25-186 (La. App. 5 Cir. 10/29/25), 426 So.3d 173, 178. The exception tests whether the plaintiff has a "real and actual interest" in the action but does raise questions of the plaintiff's ability to prevail on the merits or whether the defendant may have a valid defense. *Id.* (citing *Roubion Shoring Co., LLC v. Crescent Shoring, L.L.C.*, 16-540 (La. App. 5 Cir. 5/17/17), 222 So.3d 921, 926).

We review an exception of no right of action *de novo*. La. C.C.P. art. 927; *JES, Inc.*, 426 So.3d at 178. Unlike an exception of no cause of action, evidence is admissible in support of an exception of no right of action. *O'Dwyer v. Metairie Towers Condo. Assoc. Bd. President*, 24-277 (La. App. 5 Cir. 1/29/25), 404 So.3d 1059, 1065, *writ denied*, 25-282 (La. 5/20/25), 409 So.3d 216. The party raising the exception has the burden of proof. *JES, Inc.*, 426 So.3d at 178.

Colony attached a copy of its insurance policy to its exceptions. The policy contains the following exclusion:

B. Exclusions

This insurance does not apply to any of the following:

4. Employee Indemnification and Employer's Liability
"Bodily Injury" to:

a. An "employee" of the "insured" arising out of and in the
course of:

- (1) Employment by the "insured"; or
- (2) Performing the duties related to the conduct of the
"insured's" business;

b. The spouse, child, parent, **brother** or sister of that
"employee" as a consequence of Paragraph a. above[.]

(Emphasis added). Colony contends the Exclusion applies here because plaintiff Edward is the brother of an "employee". On the other hand, Edward argues that Colony has not proven that defendant Edwin, as owner of Watson Services, is an "employee" under the applicable policy language.

Indeed, Colony admits in its appellee's brief that "the insured is undisputably [sic] the Appellee, Watson." Under the language of B(4)(a) of the Exclusion, an "employee" and an "insured" arguably are two different beings, where the exclusion applies to "[a]n 'employee' of the 'insured' arising out of and in the course of: (1) Employment by the 'insured'; or (2) Performing the duties related to the conduct of the 'insured's' business." Under Colony's interpretation, Edwin Watson is both an "insured" and an "employee," but Colony provides no additional support for its contention that Edwin can be both an "insured" and the "employee" under the language of the exclusion. Here, where Colony has not proven that Edwin is an "employee," and thus has not shown that the exclusion precludes recovery, the benefit of the doubt inures to the plaintiff. Accordingly, the trial court's ruling on the exception of no right of action is reversed.

CONCLUSION

We reverse the trial court's judgment and overrule Colony Insurance Company's exception of no cause of action, accepting the facts as pled in plaintiff's second supplemental and amending petition as true, and considering that the exceptor has offered no legal support to show that a "volunteer" is an "employee" and thus is prohibited under the Workers' Compensation Act from pursuing a tort claim against Colony. Further, we reverse the trial court's judgment on the exception of no right of action, where Colony has failed to meet its burden to show that the insured, Edwin, is also an "employee" of Watson Services for purposes of applying the Employee Indemnification and Employer's Liability Exclusion. We remand the matter to the trial court for further proceedings.

REVERSED; EXCEPTIONS OVERRULED

SUSAN M. CHEHARDY
CHIEF JUDGE

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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
SEPTEMBER 23, 2026 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

26-CA-18

E-NOTIFIED

40TH DISTRICT COURT (CLERK)
HONORABLE J. STERLING SNOWDY (DISTRICT JUDGE)
GERALD J. HAMPTON, JR. (APPELLANT) R. CHRISTOPHER HARRISON
RICHARD E. KING (APPELLEE) (APPELLANT)
WILLIAM W.L. SAMPSON (APPELLEE) E. MADISON BARTON (APPELLEE)

MORGAN J. WELLS, JR. (APPELLEE)
EVAN J. GODOFSKY (APPELLEE)

MAILED

NO ATTORNEYS WERE MAILED