

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

DONNA L. GRAVES,)	
)	
Plaintiff,)	Civil Action No. 7:01cv00533
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
ELIZABETH JACOBY COOK,)	
)	
Defendant.)	By: Samuel G. Wilson
)	Chief United States District Judge
)	

Plaintiff Donna L. Graves (“Graves”) brought this personal injury action in the Circuit Court of the County of Montgomery, Virginia, against Defendant Elizabeth Jacoby Cook, (“Cook”), claiming that Cook negligently caused Cook’s motor vehicle to strike Graves in a parking lot on the campus of Virginia Polytechnic Institute and State University (“Virginia Tech”), causing Graves injury. Cook removed the case to this court pursuant to 28 U.S.C. §§ 1441, 1446. The court has jurisdiction because the parties are diverse and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). The matter before the court is Cook’s motion to dismiss¹ because the Virginia Worker’s Compensation Act (“the Act”), Code §§ 65.1-1

¹Although Cook moves to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), the court will treat her motion as a 12(b)(6) motion for failure to state a claim on which relief can be granted. Federal jurisdiction over the subject matter of this claim is proper on the basis of section 1332(a). Cook removed this case on the basis of diversity jurisdiction, and she does not contest it now. Instead, she argues that the Virginia Workers’ Compensation Act bars Graves’ claim. That argument goes to the merits of Graves claim, not to federal subject matter jurisdiction. If the court were to consider the Virginia Workers’ Compensation Bar as a jurisdictional question, then the Virginia General Assembly would effectively determine the limits of federal jurisdiction. Federal jurisdiction is limited by the United States Constitution and by Congress, not by state legislatures.

The court notes that in Evans v. B. F. Perkins Co., 166 F.3d 642 (1999), the Fourth Circuit affirmed a district court’s dismissal of a common law negligence action under Rule 12(b)(1) because the Virginia Worker’s Compensation Act (“the Act”) barred the claim. However, the issue of whether a Rule 12(b)(1) motion is the appropriate vehicle to decide the applicability of the workmans’ compensation bar was not specifically before the court in Evans, because Evans appealed on the grounds that the Act did not apply. Id. at 646. Thus, the court’s treatment of Cook’s motion today does not contradict Evans, and the court has not discovered any other published

to -163, provides Graves' exclusive remedy.² Since Cook has presented materials outside the pleading for the court's consideration, and the court has afforded Graves a reasonable opportunity to present her own materials in response, the court treats Cook's motion as one for summary judgment. Fed. R. Civ. P. 12(b). For the reasons that follow, the court will grant summary judgment for Cook.

I.

Graves alleges that on June 24, 1998, she was walking through a parking lot on the

Fourth Circuit opinion that conflicts with the court's decision.

The court further notes that construing Cook's motion under 12(b)(6) is not unfair to Graves. Cook has moved to dismiss on the grounds that the Act bars Graves' claim. Whether the motion is styled under 12(b)(1) or 12(b)(6), the issue that the court must resolve is whether the workmans' compensation bar applies. The parties agreed to as much at oral argument, and the court advised Graves that it would dismiss her claim as precluded by the workmans' compensation bar unless she could distinguish Barnes v. Stokes, 23 Va. 249, 255 S.E.2d 330 (1987). Graves is also on notice that in her motion to dismiss Cook presented materials in addition to the pleading and that the court is considering those materials.

The situation confronting the court today is similar to the problem presented by federal question cases in which the basis of jurisdiction is also an element in the plaintiff's federal cause of action. See e.g., United States v. North Carolina, 180 F.3d 574 (4th Cir. 1999) (Rule 12(b)(1) motion is not proper vehicle to resolve jurisdictional issue in Title VII case where the merits and jurisdictional questions are closely related). As the Fifth Circuit has explained:

Where the defendant's challenge to the court's jurisdiction is also a challenge to the existence of a federal cause of action, the proper course of action for the district court . . . is to find that jurisdiction exists and deal with the objection as a direct attack on the merits of the plaintiff's case. The Supreme Court has made it clear that in that situation no purpose is served by indirectly arguing the merits in the context of federal jurisdiction. Judicial economy is best promoted when the existence of a federal right is directly reached and, where no claim is found to exist, the case is dismissed on the merits Therefore, as a general rule, a claim cannot be dismissed to [(sic.)] lack of subject matter jurisdiction because of the absence of a federal cause of action.

Williamson v. Tucker, 645 F.2d 404, 415-16 (5th Cir. 1981) (footnote omitted), cert. denied, 454 U.S. 897 (1981).

As in the federal question context, judicial economy is best served here by treating Cook's argument under the proper rule, as opposed to dismissing her claim and waiting for her to re-file the same arguments under a different heading. Finally, by construing Graves' claim under 12(b)(6), the court avoids the res judicata problems that might arise by dismissing the claim for lack of jurisdiction.

²At oral argument on March 12, 2002, the court extended Graves time to distinguish Barnes from this case. Graves has not yet responded, and the court believes that enough time has passed for the court fairly to decide Cook's motion.

campus of Virginia Tech, when Cook, who was operating a motor vehicle in the parking lot, negligently caused the vehicle to collide with her. Graves claims she suffered various injuries and damages as a result of the collision. At all times relevant to this action, Virginia Tech employed both of the parties, and the accident occurred in a parking lot that Virginia Tech maintained for the convenience and benefit of its employees. The accident occurred at approximately 1:30 p.m., while Cook was returning to work from a lunch break. (Memorandum in Supp. of Mot. to Dis., Exhibit 3, Cook Affidavit, ¶¶ 6,9)

As a result of the accident, Graves filed a claim for workers' compensation benefits against Virginia Tech with the Virginia Worker's Compensation Commission. The Commission awarded Graves temporary total disability benefits and temporary partial disability benefits for various time periods as well as lifetime medical benefits.

II.

The Virginia Worker's Compensation Act bars personal injury actions for negligence if the plaintiff's injury was one "arising out of and in the course of the employment." Va. Code § 65.2-300(A);³ Va. Code § 2-307(A);⁴ Ramey v. Bobbitt, 250 Va. 474, 478, 463 S.E.2d 437, 440 (1995); Barnes v. Stokes, 23 Va. 249, 251, 255 S.E.2d 330, 331 (1987). In Barnes, the plaintiff

³Section 65.2-300(A) provides:

Every employer and employee, except as herein stated, shall be conclusively presumed to have accepted the provisions of this title respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment and shall be bound thereby.

⁴Section 65.2-307(A) provides:

The rights and remedies herein granted to an employee when his employer and he have accepted the provisions of this title respectively to pay and accept compensation on account of injury or death by accident shall exclude all other rights and remedies of such employee, his personal representative, parents, dependents or next of kin, at common law or otherwise, on account of such injury, loss of service or death.

asserted that she sustained injury when the car driven by the defendant, a fellow employee, struck the plaintiff in a parking lot adjacent to their place of employment, while both were departing from work. 233 Va. at 250, 355 S.E.2d at 330. The Supreme Court of Virginia affirmed the trial court's ruling that the workers' compensation bar precluded the plaintiff from recovering in a negligence action. Id. at 249-53, 255 S.E.2d at 251-53. The Court reasoned as follows:

[A] parking area adjacent to a work site is a valuable fringe benefit for employees. Because that convenience reduces tardiness and enhances the desirability of a particular workplace, such a facility also benefits the employer Thus, consistent with the philosophy of workers' compensation, industry properly should be charged with the expense of injury which, as here, occurs at a place furnished as an incident to the employment and happens at a time when employees reasonably can be expected to use the designated area, even though the specific location is not owned or maintained by the employer.

Id. at 253, 355 S.E.2d at 332.

Here, the court finds that Virginia Tech furnished the parking lot in which the accident occurred "as an incident to the [parties'] employment." Id. Both Graves and Cook were employees of Virginia Tech, and Virginia Tech owned and maintained the parking lot in which the accident occurred. The court also finds that the accident occurred "at a time when employees reasonably can be expected to use the designated area." Id. Cook states in her affidavit that the accident occurred about 1.30 p.m. while she was returning to work after lunch, and Graves has not contended otherwise. Accordingly, the court concludes that Graves injury is one "arising out of and in the course of the employment," Va. Code § 65.2-300, and, therefore, that the Worker's Compensation Act bars her claim. Id. at § 65.2-307.

IV.

For the foregoing reasons, the court will grant summary judgment for Cook.

ENTER this _____ day of April, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

