[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-11784

D.C. Docket No. 1:16-cv-21341-MGC

MID-CONTINENT CASUALTY COMPANY,
a foreign corporation,

Plaintiff-Appellee,

versus

ARPIN AND SONS, LLC,
a Florida Limited Liability Company,

Defendant-Appellant,

LEE ELLIS BLUE,
an individual,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(August 4, 2020)

Before JORDAN and JILL PRYOR, Circuit Judges, and COOGLER*, District Judge.

PER CURIAM:

This appeal arises out of an insurance dispute. Lee Ellis Blue suffered catastrophic injuries while working on a construction project and sued Arpin and Sons, LLC, the general contractor of record on the project, for negligence. Mid-Continent Casualty Company ("MCC"), Arpin and Sons's general liability insurer, then filed this declaratory action against Arpin and Sons, the company's owner Donald Arpin (we refer to them together as "Arpin"), and Blue, asking the district court to determine the scope of MCC's obligations, if any, to defend or indemnify Arpin. The district court granted summary judgment in MCC's favor, concluding that it had no duty to defend or indemnify Arpin, and Arpin and Blue appealed. After careful review, and with the benefit of oral argument, we affirm.

I. BACKGROUND

Faith Deliverance Church ("FDC"), a nonprofit entity qualifying as a charitable organization under the Internal Revenue Service Code, 26 U.S.C. § 501(c)(3), located in Miami, Florida, sought to build a senior citizens' housing unit. Needing someone to obtain permits for the construction project, FDC's owner and pastor, Dr. James Rorie, entered into a verbal agreement with Donald

* Honorable L. Scott Coogler, United States District Judge for the Northern District of Alabama, sitting by designation.

Arpin, a general contractor licensed in Florida and owner of Arpin and Sons, to do so. Arpin agreed not to charge FDC for his services, later characterizing his work as "pro bono." Doc. 58-2 at 27.[1]

As general contractor of record, Arpin was legally responsible for worksite safety and compliance during the project's construction. Arpin had a workers' compensation insurance policy from Builders Insurance Group/Vinings Insurance Company ("Vinings") and a general liability insurance policy with MCC; he submitted proof of both policies to the municipality to obtain permits. After several months navigating the permitting process, Arpin secured the necessary building permits and construction began.

Rorie, and not Arpin, hired most of the subcontractors to do the construction work. During construction, Arpin signed applications for plan revisions and conducted "limited supervision." Doc. 58-2 at 103. As Rorie testified, Arpin "could come in, . . . could check [FDC's and the subcontractors'] work, make sure we're doing it right, so and so." Doc. 58-5 at 29. Arpin visited the site "two to three times," including once or twice at Rorie's request "to help the [project's] architect with a problem." Doc. 58-2 at 25–26. The architect had problems with "how [wooden] trusses were attached to the building," the engineering of structural steel and concrete to create a catwalk for construction, and the development of a

[1] Citations in the form "Doc. #" refer to entries on the district court's docket.

retaining wall for the site's septic system. *Id.* at 26. Arpin designed solutions for each problem and, at least with respect to the catwalk issue, inspected the work completed.

Blue, an FDC employee, worked on site during the construction project. Blue was preparing an area for concrete to be poured when he came into contact with an electrified bucket of concrete and sustained severe, permanent injuries. After the accident, Arpin filed a petition on Blue's behalf for workers' compensation benefits from Arpin's workers' compensation insurer, Vinings. The petition was expressly based on Arpin's representation that Arpin was Blue's employer under Florida's Workers' Compensation Law, Fla. Stat. § 440.10(1)(b).[2] Vinings's investigation revealed that FDC did not carry workers' compensation insurance and Arpin was the project's general contractor; thus, Vinings began making medical and indemnity payments to Blue and Blue's medical providers under its policy with Arpin.[3]

About three months after Blue's injury, Arpin prepared and submitted an invoice to FDC for $12,337.00, hoping to "get a tax deduction for doing" unpaid

[2] By his own admission, Arpin also falsely represented to Vinings that Blue "was working for Arpin and on Arpin's payroll" when the accident occurred. Doc. 58 at 4. Arpin "issued checks to [Blue] to corroborate the alleged employment relationship." *Id.*

[3] Blue voluntarily dismissed the petition for workers' compensation benefits some six months after the accident. Vinings, however, continued to pay Blue at least until MCC filed its summary judgment motion, nearly six years after benefits began.

work for "a nonprofit institution," the church. Doc. 58-2 at 32. In a section entitled "Description," the invoice stated: "Construction services, including permitting, insurances, licenses, direct/indirect overhead, including on site services for Don Arpin from 2008 to this date[.] This is a statement for a non-profit contribution for Arpin & Sons from [FDC]." Doc. 45-1 at 49. Rorie responded with a letter in which he "acknowledge[d]" Arpin's work and "g[ave] a non-profit contribution [on behalf of the church] for these services, insurances, licenses, and direct/indirect overhead, and on site supervision . . . in the amount of 12,337.00 to date." Doc. 60-5 at 2. The parties call this the "tax credit letter"; so do we. It is undisputed, though, that Arpin never applied for or received any tax benefit relating to its work for FDC.

Blue sued Arpin in state court claiming that Arpin was negligent in its operation of the construction site. Blue alleged that Arpin was the licensed general contractor for the project and had reached an agreement with Rorie and FDC to build the senior citizens' housing unit under which Arpin "would procure all building permits" and "perform all associated duties as a General Contractor on the worksite." Doc. 7-4 at 4.[4]

[4] The Second Amended Complaint was the operative complaint in the state-court litigation.

Arpin's general liability insurance policy with MCC (the "Policy") was in effect at the time of Blue's accident. As relevant here, the Policy provided Arpin with commercial liability coverage for claims involving "bodily injury" caused by an "occurrence." Doc. 7-1 at7 ¶ B.1. Coverage was limited by certain exclusions, two of which are relevant to this appeal. First, the Policy excluded from coverage "[a]ny obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law" (the "workers' compensation exclusion"). *Id.* at 16 ¶ 2.d. Second, the Policy excluded from coverage "'[b]odily injury' to . . . [a]n 'employee' of the insured arising out of and in the course of . . . [e]mployment by the insured; or [p]erforming duties related to the conduct of the insured's business." (the "employer's liability exclusion"). *Id.* at 16 ¶ 2.e. This exclusion "applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury," but "does not apply to liability assumed by the insured under an 'insured contract.'" *Id.*

MCC hired counsel to defend Arpin in the state-court action, subject to a reservation of rights. MCC then filed in federal district court this declaratory action against Arpin and Blue, seeking a determination as to the scope of its obligations, if any, to defend or indemnify Arpin in the state-court action.

At the close of discovery in this case, MCC moved for summary judgment. MCC argued that Blue's injury was excepted from coverage under the Policy's workers' compensation and employer's liability exclusions and that MCC therefore had no duty to defend or indemnify Arpin in the underlying state-court action. It was undisputed that Blue was never Arpin's employee in the traditional sense. MCC's argument for exclusion hinged on MCC's assertion that Arpin was Blue's statutory employer under Florida's Workers' Compensation Law, which provides:

> In case a contractor sublets any part or parts of his or her contract work to a subcontractor or subcontractors, all of the employees of such contractor and subcontractor or subcontractors engaged on such contract work shall be deemed to be employed in one and the same business or establishment, and the contractor shall be liable for, and shall secure, the payment of compensation to all such employees, except to employees of a subcontractor who has secured such payment.

Fla. Stat. § 440.10(1)(b). Under Florida law, employees of a statutory employer are "treated identically to actual employees in relation to standard employee exclusion clauses" in commercial insurance policies. *Stephens v. Mid-Continent Cas. Co.*, 749 F.3d 1318, 1322–23 (11th Cir. 2014) (citing *Fla. Ins. Guar. Ass'n v. Revoredo*, 698 So. 2d 890, 892 (Fla. Dist. Ct. App. 1997)). Thus, if Arpin was Blue's statutory employer, then Arpin would be "obligat[ed] . . . under [] workers' compensation," and Blue would be "[a]n employee" of Arpin's, injured during the course of Arpin's business, triggering both exclusions from coverage under the Policy. Doc. 7-1 at 16 ¶¶ 2.d, 2.e; *see* Doc. 101 at 5.

The district court concluded that as a matter of law MCC owed Arpin no duty to defend or indemnify because both exclusions applied. As to the duty to defend, the district court analyzed Blue's state-court complaint and determined that it "unequivocally allege[d] Arpin was the [p]roject's general contractor on the day of the incident" and that Arpin was therefore Blue's statutory employer. Doc. 101 at 9. "Blue's allegations against Arpin," the district court concluded, were "cast solely and entirely" within the Policy's workers' compensation and employer's liability exclusions; thus, MCC had no duty under the Policy to defend Arpin. *Id.*

As to the duty to indemnify, the district court looked beyond the facts of Blue's state-court complaint and concluded that the undisputed evidence showed that Arpin was the project's general contractor, "and was, by extension, Blue's statutory employer on the date of the incident." *Id.* at 12. Specifically, the court explained that Arpin contracted to perform work for FDC by orally agreeing to secure building permits and to engage in other construction efforts on the project, including "assum[ing] at least partial responsibility for safety on the [p]roject" and provid[ing] workers' compensation coverage to workers on the [p]roject, including Blue." *Id.* The court acknowledged that "Arpin argues that its verbal agreement with FDC created no contractual obligations because Arpin did not receive consideration for doing FDC the 'favor' of securing building permits for the [p]roject" but determined that "Arpin did, in fact, receive something for its

efforts," the tax credit letter. *Id.* at 10. The district court concluded that "[s]uch a benefit constitutes valuable consideration." *Id.* Because Arpin had a contract with FDC to work on the project, it was a "contractor" under Florida law and therefore Blue's statutory employer. Therefore, the court determined, the Policy dictated that MCC had no duty to indemnify Arpin for any judgment Blue might obtain in state court.

Arpin and Blue appealed.

II. STANDARD OF REVIEW

We review *de novo* a district court order granting a motion for summary judgment, viewing the facts and all reasonable inferences drawn therefrom in favor of the nonmoving party. *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1291–92 (11th Cir. 2012). Summary judgment is appropriate when a movant shows that there is "no genuine dispute as to any material fact," such that "the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Once the movant adequately supports its motion, the burden shifts to the nonmoving party to show that specific facts exist that raise a genuine issue for trial." *Dietz v. Smithkline Beecham Corp.*, 598 F.3d 812, 815 (11th Cir. 2010). If the nonmovant's evidence is "not significantly probative," summary judgment is appropriate. *Stephens*, 749 F.3d at 1321 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249–50 (1986)). A genuine dispute of a material fact exists only when "the evidence is

such that a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248. "The mere existence of a scintilla of evidence in support of the [nonmovant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmovant]." *Id.* at 252. In deciding a motion for summary judgment, all facts and reasonable inferences must be made in favor of the nonmoving party. *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015).

"We may affirm the district court's judgment on any ground that appears in the record, whether or not that ground was relied upon or even considered by the court below." *Thomas v. Cooper Lighting, Inc.*, 506 F.3d 1361, 1364 (11th Cir. 2007).

III. DISCUSSION

Arpin and Blue challenge the district court's entry of summary judgment in MCC's favor, arguing that Arpin was not Blue's statutory employer because Arpin was not a "contractor" under Florida Statutes § 440.10(1)(b).[5] Viewing the facts in the light most favorable to them, Blue and Arpin argue, MCC failed to show that Arpin undertook to provide any construction services for FDC or that Arpin received any valuable consideration. Thus, they argue, MCC failed to demonstrate the existence of a contract between Arpin and FDC. We agree that the district

[5] The parties agree that Florida law applies in this case.

court rightly granted MCC summary judgment, although our reasoning differs somewhat from the district court's. *See Thomas*, 506 F.3d at 1364.

We generally look only to the four corners of a complaint to determine an insurer's duty to defend, *see James River Ins. Co. v. Ground Down Eng'g, Inc.*, 540 F.3d 1270, 1275 (11th Cir. 2008), whereas we examine "the underlying facts . . . developed through discovery during the litigation" to determine an insurer's "narrower" duty to indemnify, *U.S. Fire Ins. Co. v. Hayden Bonded Storage Co.*, 930 So. 2d 686, 691 (Fla. Dist. Ct. App. 2006).[6] Here, however, Arpin and Blue argue that their challenges to the district court's ruling on MCC's duty to indemnify are "directly applicable" to the district court's ruling on MCC's duty to defend. Blue Reply Br. at 10. We therefore address the two in tandem.

Florida's Workers' Compensation Law does not define "contractor," *see generally* Fla. Stat. § 440.02 ("Definitions"), so we look to Florida case law to determine the law's reach. Florida courts have emphasized that "the workers compensation act should be broadly construed so as to provide coverage to claimants." *Barrow v. Shel Prod., Inc.*, 466 So. 2d 281, 282 (Fla. Dist. Ct. App. 1985). In the specific context we encounter here—where a licensed general

[6] We reject MCC's contention that, in the summary judgment context, a conclusion that MCC had no duty to defend necessitates a finding that it lacked a duty to indemnify. Facts adduced during discovery or trial may show a duty to indemnify even if the allegations in a complaint failed to demonstrate a duty to defend.

contractor obtains permits for a construction project and undertakes the legal obligations attendant to those permits—construing the act broadly means that a licensed general contractor who obtains permits for a construction project is a statutory employer under the statute. *See Orama v. Dunmire*, 552 So. 2d 924 (Fla. Dist. Ct. App. 1989). In *Orama*, a property owner seeking to build a duplex "made an agreement with Dunmire, a general contractor, whereby Dunmire would use his license as a general contractor in order to obtain the permits to build the building." *Id.* Dunmire also permitted the use of his line of credit to obtain lumber for the project, gave the property owner an estimate as to the reasonable cost to build the duplex, visited the site "at least three times," and agreed that because his general contractor license was used for permitting, he was "responsible to the State" and property owner vis-à-vis inspections of the duplex. *Id.* Dunmire priced out the carpentry work to a carpenter who had worked as a subcontractor to Dunmire during the past several years, and the property owner paid the carpenter for doing the job. *Id.* One of the carpenter's employees, Orama, was injured on the job. *Id.* at 924–25. The First District Court of Appeal held that a statutory employment relationship under § 440.10(1)(b) existed between Dunmire and Orama. *Id.* at 925. "The unrefuted evidence established . . . that an agreement was made with the owner whereby Dunmire would use his license as a general contractor in order to obtain the construction permits. Dunmire thus assumed the legal position of

general contractor for the job." *Id.* (footnote omitted). This was sufficient, the court held, to make Dunmire a "contractor" under the statute. *Id.* This was so even though Dunmire testified that "[i]t was just that I would pull the permits and make sure that the construction was correct." *Id.* at 925 n.3. The court did not address the validity of any underlying contract; rather, Dunmire's status as general contractor of record for the project was sufficient to make him a statutory employer.

Dunmire argued that the statute did not apply to him because "he didn't sublet anything." *Id.* at 925. The court disagreed. "The implication of the term 'sublet' as used statutorily is to delegate to another an obligation under a contract which that person must then either perform himself or cause to be done by others." *Id.* The carpentry subcontractor had "assumed the responsibility for the carpentry work on the duplex" although "[a]s general contractor Dunmire retained the ultimate and overriding responsibility for the job." *Id.* at 925–26. "The very purpose of section 440.10 is to assure that a general contractor will retain financial responsibility for injuries to those employees working a contract job, even though an independent contractor performs part or all of the undertaking." *Id.* at 926.

Under *Orama*, the district court correctly concluded that Arpin was a "contractor" within the meaning of § 440.10(1)(b).[7] It is undisputed that Arpin agreed with FDC to serve as general contractor of record on the construction project by acquiring necessary building permits. Here, as in *Orama*, Blue's state court complaint alleged, and "[t]he unrefuted evidence established . . . that an agreement was made with [FDC] whereby [Arpin] would use his license as a general contractor in order to obtain the construction permits. [Arpin] thus assumed the legal position of general contractor for the job." *Orama*, 552 So. 2d at 925. "As general contractor [Arpin] retained the ultimate and overriding responsibility for the job." *Id.* at 926. This made him a "contractor" and a statutory employer under § 440.10(1)(b).[8]

Arpin and Blue argue that *Orama* does not control here for two reasons, but neither persuades us. First, they argue that *Orama* is an outlier among Florida statutory employer cases, urging us to consider cases that have analyzed whether the parties had a formal contract supported by valid consideration. They say that consideration, and therefore a formal contract, was lacking here. Not so. Under the facts presented in *Orama*—when a general contractor has obtained permits for

[7] Although the district court did not rely entirely on *Orama* to grant MCC summary judgment, it cited the case and noted its similarities to this one. **]**

[8] Indeed, counsel for Blue acknowledged at oral argument that under *Orama* a general contractor of record is, as a matter of law, a statutory employer under § 440.10(1)(b). **]**

a construction project—*Orama* is not an outlier. Nearly 15 years after *Orama* issued, Florida's First District Court of Appeal applied and reaffirmed *Orama*'s holding under materially similar circumstances. In *Construction by Scott, Inc. v. Schwab*, 847 So. 2d 1086 (Fla. Dist. Ct. App. 2003), a general contractor obtained permits for a demolition project because the company doing the demolition lacked a required license. *See Schwab v. Construction by Scott, Inc.*, OJCC No. 97-011457SMS, Compensation Order at 5–6 (Fla. OJCC Feb. 25, 2002), https://www.jcc.state.fl.us/jccdocs19/MIA/Dade/1997/011457/910830.pdf. Applying *Orama*, a judge of compensation claims found that the general contractor was a statutory employer. *Id.* at 10-12. The general contractor appealed, and the First District affirmed in a summary opinion citing only to *Orama*. 847 So. 2d at 1086. *Schwab* demonstrates that *Orama* is not an outlier when, as is the case here, a licensed general contractor serves as general contractor of record to obtain necessary permits for a construction project. We therefore reject Arpin's and Blue's argument and decline their invitation to search the record for evidence of bargained-for consideration. *See also Barrow*, 466 So. 2d at 282 (explaining that even an "ad hoc agreement" between parties can support a statutory employer relationship).

Second, Arpin and Blue argue that *Orama* is distinguishable on its facts from this case. They argue that Arpin served only nominally as general contractor;

there "was no agreement, express or implied, that Arpin would perform the duties of a General Contractor as to supervision, safety, [or] compliance" on the project. Appellant Blue's Br. at 24. By contrast, in *Orama* the contractor had provided the property owner with cost estimates, lent his line of credit for construction expenses, and visited the site a handful of times. *See Orama*, 552 So. 2d at 924. But the *Orama* court did not rely on these extra ways in which the contractor was involved to conclude that he was a statutory employer. *See id.* at 924–25 (equating Dunmire's agreement to take the "legal position of general contractor" with his assuming the role of contractor under § 440.10(b)(1)). The operative fact in *Orama*, as here, was that the contractor pulled permits and held itself out as the general contractor of record.

Even if something more were required, undisputed evidence in this case shows that Arpin was involved in the FDC project to a similar degree as the contractor in *Orama*. As general contractor, Arpin was "responsible to" the municipality and property owner with respect to inspections of the property. *Id.* at 924. Arpin assumed some liability for the safety of workers on the project via the workers' compensation insurance policy. He also signed applications for plan revisions, and conducted "limited supervision," Doc. 58-2 at 103, visiting the site

on a handful of occasions like Dunmire had.[9] Thus, even assuming Arpin's status as general contractor of record was insufficient to render him a contractor under *Orama*, his additional involvement in the project made his contacts sufficient.[10]

Applying *Orama*, we conclude that Blue and Arpin have failed to raise a genuine issue of material fact sufficient to avoid summary judgment in MCC's favor. The district court correctly determined that Arpin was Blue's statutory employer under Florida Statutes § 440.10(1)(b) and that Blue's injuries therefore were excepted from coverage under the Policy.

IV. CONCLUSION

For the foregoing reasons, we affirm the judgment of the district court in favor of MCC.[11]

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[9] Arpin disputes that he was on site in his capacity as general contractor for these visits. He testified that he also owned an engineering company, Associated General Kinetics, LLC, through which he conducted engineering work on the project, and that he was appearing in his capacity as an engineer when helping the architect. But it is undisputed that Arpin billed these visits as services rendered by "Arpin & Sons," his general contractor company. Doc. 60-5 at 2. To the extent Arpin billed subcontracted engineering services under his general contractor company, this fact supports rather than refutes the existence of his general contractor relationship to the project.

[10] Arpin and Blue argue in passing that "Arpin did not 'sublet' any portion of its strictly limited undertaking to Mr. Blue or anyone else." Appellant Blue's Br. at 21, 24. By their own characterization of Arpin's role as a hands-off general contractor, however, Arpin and Blue have acknowledged that Arpin sublet responsibilities of the job site to FDC and the subcontractors it hired, including, apparently, Arpin's own engineering company. *See supra* note 9; *Orama*, 552 So. 2d at 925 ("The implication of the term 'sublet' as used statutorily is to delegate to another an obligation under a contract which that person must then either perform himself or cause to be done by others.").

[11] Because we conclude that Blue's injury is excepted from coverage under the Policy, we need not address MCC's alternative argument that summary judgment is appropriate because

Blue elected and received the workers' compensation benefits, precluding Blue from claiming he was not injured in the course and scope of his employment and Arpin from incurring any liability for negligence in the state-court action.