

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-62

LINDA GRAY, ADMINISTRATRIX OF
THE ESTATE OF ROBERT EARL
GRAY, DECEASED

APPELLANT

V.

JOHNSON EMPLOYMENT SERVICES,
LLC; TRAVELERS INSURANCE
COMPANY; M & A WRECKER
SERVICE, INC.

APPELLEES

Opinion Delivered DECEMBER 8, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F410514]

AFFIRMED

JOSEPHINE LINKER HART, Judge

The Arkansas Workers' Compensation Commission found that Robert Earl Gray, who is deceased, was at the time of his death jointly employed by both appellee Johnson Employment Services, LLC (Johnson), and M & A Wrecker Service, Inc. (M & A). This finding led the Commission to conclude that the dual-employment doctrine applied and that M & A was therefore insulated from tort liability by the exclusive-remedy provisions of the Arkansas Workers' Compensation Act. Appellant, Linda Gray, the administratrix of the deceased's estate, appeals from this decision. Specifically, appellant argues that Johnson's and M & A's failure to comply with the provisions of the Arkansas Professional Employer Organization Recognition and Licensing Act, Ark. Code Ann. §§ 23-92-401 to -419 (Repl. 2004), results in M & A not being insulated from tort liability and further, that these statutes

permit suits sounding in tort. Appellant, however, failed to obtain rulings on these statutory-based arguments and thus failed to preserve these issues for appeal. Accordingly, we affirm.

According to the decision of the Commission, which adopted the administrative law judge's opinion, the deceased was employed by Johnson, a temporary employment service. It was through this service that the deceased came to work for M & A as a leased employee. In the course of his employment, the deceased was killed while trying to upright a log truck that had turned over on its side.

Appellant filed suit against M & A in circuit court. M & A asserted that because the deceased was a leased employee, M & A was not subject to tort litigation. The issue was referred to the Commission. Citing *National Union Fire Ins. v. Tri-State Iron & Metal*, 323 Ark. 258, 914 S.W.2d 301 (1996), the Commission found that the exclusive-remedy provisions of the Arkansas Workers' Compensation Act applied to M & A, as the "dual-employment doctrine" qualified M & A to be a "special employer." The Commission concluded that M & A was therefore insulated from tort liability under the exclusive-remedy provisions of the Arkansas Workers' Compensation Act.

On appeal, appellant argues that Johnson's and M & A's failure to comply with the provisions of the Arkansas Professional Employer Organization Recognition and Licensing Act results in M & A not being insulated from tort liability and further, that these statutes permitted suits sounding in tort. These issues, however, were not addressed by the Commission. Rather, the Commission based its decision on the dual-employment doctrine

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and did not mention the statutes relied upon by appellant. Because appellant failed to obtain rulings from the Commission on the issues raised in her appellate brief, her arguments were not preserved for appeal and our review is precluded. *Maulding v. Price's Util. Contractors, Inc.*, 2010 Ark. App. 51.

Affirmed.

BAKER and BROWN, JJ., agree.