

**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CA11-924

DEE ANN MILLER and CLAYTON  
BRATT  
APPELLANTS

V.

DENNIS ENDERS  
APPELLEE

Opinion Delivered June 13, 2012

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[Nos. G005903, G005904]

AFFIRMED

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**LARRY D. VAUGHT, Chief Judge**

Appellants Dee Ann Miller and Clayton Bratt were injured in a medical-helicopter crash in Benton County, Arkansas, on February 21, 2005. The helicopter was being flown by appellee, Dennis Enders. All three were employees of Air Evac EMS, the owner of the helicopter.

Miller and Bratt filed suit against Enders in Benton County Circuit Court, alleging that they sustained serious personal injuries and other damages as a result of the crash that was proximately caused by Enders's negligent operation of the aircraft. Enders answered the complaint, contending that he was entitled to the same tort immunity granted an employer under Arkansas law<sup>1</sup> and, because of such immunity, the circuit court did not have subject-matter jurisdiction.

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<sup>1</sup>Ark. Code Ann. § 11-9-105 (Repl. 2002).



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In response, Miller and Bratt asserted that the Arkansas cases extending an employer's tort immunity to an actively negligent co-employee are erroneous and should be overruled because they extend Arkansas's exclusive-remedy provision beyond the terms of the statutory language, and these cases are in conflict with the permissible scope of immunity found in article 5, section 32 of the Arkansas Constitution.

The circuit court granted Enders's motion to dismiss on the basis of the tort immunity created by Arkansas's Workers' Compensation Act, and Miller and Bratt appealed the dismissal to the Arkansas Supreme Court, which dismissed the appeal with leave to pursue the question of the applicability of the exclusive-remedy provision before the Arkansas Workers' Compensation Commission.<sup>2</sup>

Following issuance of the mandate, the circuit court entered an order transferring this case to the Commission, where Miller and Bratt presented the same argument they had offered to the circuit court in response to Enders's motion to dismiss. After a hearing on the matter, the Administrative Law Judge entered a decision, finding that under Arkansas's controlling case law, the exclusive-remedy provision did bar the tort claims of Miller and Bratt against Enders. Likewise, following an appeal of the ALJ's decision, the Commission concluded that the tort claims were barred, and it is from that decision that Miller and Bratt now appeal.

The standard of review that we follow when considering appeals from the Commission is well established—we view the evidence and all reasonable inferences therefrom in the light

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<sup>2</sup>*Miller v. Enders*, 2010 Ark. 92.



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most favorable to the Commission's decision and affirm if the decision is supported by substantial evidence. *Honeysuckle v. Curtis H. Stout, Inc.*, 2010 Ark. 328, 368 S.W.3d 64. There are two clear authorities regarding the applicability of the exclusive-remedy provision to the present case—*Brown v. Finney*, 326 Ark. 691, 932 S.W.2d 769 (1996), and *Barnes v. Wilkiewicz*, 301 Ark. 175, 783 S.W.2d 36 (1990)—and these cases support the Commission's decision extending the scope of employer tort immunity to a co-employee.

Miller and Bratt concede that these are controlling precedents of our supreme court and that either provides ample support for the Commission's decision. On appeal, they ask that these decisions be overruled because they conflict with *King v. Cardin*, 229 Ark. 929, 319 S.W.2d 214 (1959), and the provisions of article 5 § 32. However, we are powerless to overturn decisions of our supreme court. *Osborne v. Bekaert Corp.*, 97 Ark. App. 147, 152, 245 S.W.3d 185, 190 (2006). Because we are clearly obliged to follow the controlling decisions of the Arkansas Supreme Court, on the strength of *Brown* and *Barnes*, we affirm the Commission.

Affirmed.

MARTIN and BROWN, JJ., agree.

*Nichols Law Firm*, by: *Johnny L. Nichols*, and *Blair & Stroud*, by: *H. David Blair*, for appellants.

*Friday, Eldredge & Clark, LLP*, by: *Donald H. Bacon* and *Kimberly D. Young*, for appellee.