Affirmed and Opinion filed October 14, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-00666-CV

HARRIS COUNTY, TEXAS, Appellant

V.

RICHARD MICHAEL BLACKWELL and LINDA SUE BLACKWELL, LEGAL GUARDIANS of RICHARD BLACKWELL, II and ROBERT BICTOR BLACKWELL, Appellees

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On Appeal from the County Civil Court at Law, No. Three
Harris County, Texas
Trial Court Cause No. 585,074

O P I N I O N

Appellant, Harris County, appeals a jury verdict in favor of appellees (Blackwells). The county appeals on ten points of error. We affirm the trial court judgment.

BACKGROUND FACTS

On September 6, 1989, Harris County Sheriff's Deputy Richard M. Blackwell was injured while riding his motorcycle as he escorted a funeral procession in Houston. Richard M. was taken to Ben Taub Hospital, where he died as a result of his injuries.

Richard M.'s parents, Richard and Linda Sue Blackwell, sued Harris County on behalf of Richard M.'s two sons, Richard Michael Blackwell II and Robert Victor Blackwell. The Blackwells sued to recover the benefits owed under the Texas Worker's Compensation Law. The trial court granted a summary judgment against the Blackwells on their claims and the Blackwells appealed to this court. In a published opinion, this court reversed the summary judgment in favor of the County. Thereafter, the case proceeded to trial. At trial, the jury returned a verdict in favor of the Blackwells. The trial court awarded the Blackwells $392,572 for worker's compensation indemnity payments. The County appeals on ten points of error. The Blackwells file two cross points of error.

DISCUSSION AND HOLDINGS

In its first point of error, the County contends the trial court erred in denying its motion for judgment n.o.v. because there was no evidence to support the jury answer to jury question one. The County argues that the motion should have been granted because there was no evidence (1) that Blackwell was acting in the course and scope of his employment and (2) that escorting the funeral procession was a duty he was required to perform as a law enforcement officer. In reviewing the denial of a judgment n.o.v., all testimony must be considered in the light most favorable to the party against whom the motion is directed. *See Dowling v. NADW Mktg., Inc.*, 631 S.W.2d 726, 728 (Tex. 1982). "In acting on the motion, all testimony must be considered in a light most favorable to the party against whom the motion is sought and every reasonable intendment deducible from the evidence is to be indulged in that party's favor." *Id.* All contrary evidence and inferences should be rejected. *See Dodd v. Texas Farm Products Co.*, 576 S.W.2d 812, 814-15 (Tex. 1979). A judgment n.o.v. is proper only when the rendition of a directed verdict would have been proper. *See* TEX .R. CIV. P. 301; *Fort Bend County Drainage Dist. v. Sbrusch*, 818 S.W.2d 392, 394 (Tex. 1991).

The County argues that Richard M. was not an employee, as defined by the Worker's Compensation Act, at the time of the accident, because he was not being paid by the County for his volunteer assignment as a funeral procession escort. It also argues that Richard M. was not acting in the course of his employment as a law enforcement officer, because he was not fulfilling a duty that he was required to perform as a law enforcement officer.

In our original *Blackwell* opinion, we settled these two issues. *See Blackwell v. Harris County, Texas*, 909 S.W.2d 135, 140 (Tex. App.—Houston [14th Dist.] 1995, writ denied). There, we held the following:

> We have already determined that escorting a motorcade for the purpose of directing traffic is a law enforcement function. Further, the City of Houston requires all funeral processions to be accompanied by peace officers for the purpose of directing traffic. If Deputy Blackwell was in the course of directing traffic for the funeral procession, he did so as an agent of the County (citations omitted).

See id. Thus, the only issue left for the jury was whether Blackwell was a part of the funeral procession when he was struck and killed. If he was a part of the procession, our original Blackwell opinion held that he was entitled to benefits under the Worker's Compensation Act.

Our original *Blackwell* opinion has become the law of the case. *See Hudson v. Wakefield*, 711 S.W.2d 628, 630 (Tex. 1986). "The 'law of the case' doctrine is defined as that principle under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages." *Id.* (citing *Trevino v. Turcotte*, 564 S.W.2d 682, 685 (Tex. 1978); *Governing Bd. v. Pannill*, 659 S.W.2d 670, 680 (Tex. App.—Beaumont 1983, writ ref'd n.r.e.); *Kropp v. Prather*, 526 S.W.2d 283 (Tex. Civ. App.—Tyler 1975, writ ref'd n.r.e.)). Thus, by narrowing the issues in the successive stages of litigation, the law of the case doctrine achieves uniformity of decision as well as judicial economy and efficiency. *See id.* The law of the case doctrine is based on public policy and is aimed at putting an end to litigation. *See id.*

Because of the law of the case doctrine, we need not determine the issues we previously determined—whether working as a volunteer escort satisfies the definitions of the Worker's Compensation Act or if escorting a funeral procession fulfilled a duty that he was required to perform as a law enforcement officer to satisfy the requirements of the Worker's Compensation Act. In our previous opinion, we answered those questions. *See Blackwell*, 909 S.W.2d at 140.

In short, we have already decided the questions the County is asking us to address on this appeal. We decline to revisit them here. Therefore, we overrule the County's first point of error.

In its second point of error, the County contends the trial court erred in denying its motion for new trial because there was factually insufficient evidence to support the jury's answer to jury question number one. However, in its brief the County admits that ". . . the most favorable evidence in support of the jury's answer is that Blackwell participated in a funeral escort at the time of injury." For the County to be liable for worker's compensation benefits, this is the only evidence Blackwell's representatives needed to put before the jury. *See Blackwell*, 909 S.W.2d at 140.

Only one standard of review is used in reviewing factual sufficiency challenges, regardless of whether the court of appeals is reviewing a negative or affirmative jury finding or whether the complaining party had the burden of proof on the issue. *See Merckling v. Curtis*, 911 S.W.2d 759, 763 (Tex. App.—Houston [1st Dist.] 1995, writ denied); *M. J. Sheridan & Son Co. v. Seminole Pipeline Co.*, 731 S.W.2d 620, 623 (Tex. App.—Houston [1st Dist.] 1987, no writ). In determining factual sufficiency, we must weigh all the evidence, both supporting and conflicting, and should set aside the verdict only if the evidence is so weak, or the finding is so against the great weight and preponderance of the evidence, that it is clearly wrong and unjust. *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

After reviewing the evidence, we find that the jury's finding was not against the great weight and preponderance of the evidence so that it is clearly wrong or unjust. The evidence shows that Richard M. had joined the funeral escort and was in the course of directing traffic for the funeral procession at the time his injury occurred. Our previous opinion determined that in directing traffic for the funeral procession, Richard M. was an agent for the County. *See Blackwell*, 909 S.W.2d at 140. That same opinion also determined that escorting a motorcade for the purpose of directing traffic was a law enforcement function.

See id. The evidence was factually sufficient to support the jury's finding[1], and, therefore, we overrule the County's second point of error.

In its third, fourth and fifth points of error, the County contends the trial court erred by refusing to submit (1) its requested jury question number one, which asked whether Blackwell was an employee, (2) an instruction for question one defining "employee", and (3) its requested jury question two as to whether Richard M. received his injury in the course of his employment. We disagree. In our previous opinion, we

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[1] The evidence reveals that an eyewitness, Orval Downing, standing in a parking lot as the funeral procession drove by, testified as follows:

Q: All right, sir. And then what happened?
A: I saw a funeral procession when I was going toward the parking lot and was watching the funeral procession go by and then stuck the key in the door of my truck to unlock it.

* * *

Q: As you were watching the funeral procession, then what else did you see?
A: I saw a Harris County Sheriff at that intersection at the light.

* * *

Q: This would be the 610 and Ella intersection?
A: Yes, sir.
Q: You saw a Harris County Sheriff's Department motorcycle officer right here (indicating)?
A: Yes, sir.
Q: And what was the deputy doing?
A: He had traffic stopped.
Q: And then what's the next thing that you saw?
A: I saw the funeral procession go on through and him take off to catch up with the funeral procession, and that's when that lady pulled out in front of him.
Q: All right, sir. And did the lady pull out in front of him here at West 27th (indicating)?
A: Yes, sir.
Q: And prior to that time that was the officer up here (indicating) who was directing traffic?
A: Yes, sir.

* * *

Q: Did you actually see the collision itself take place?
A: Yes, sir.
Q: Please describe for us what you saw.
A: He was coming down Ella and that lady pulled out in front of him, and he hit her car right by the door and went through the windshield and glanced right by the median.

* * *

Q: Is there any doubt in your mind, Mr. Downing, that the officer you saw directing traffic here at the intersection of the 610 feeder and Ella was the same officer that was involved in the collision here at 27th and Ella?
A: Same officer.

stated the conditions under which Richard M. would be an employee of the County. *See id*. The County's questions and instruction did not address those conditions, and, instead, attempted to relitigate issues this Court had already decided. Therefore, the trial court did not err in refusing to submit the County's proposed jury question number one and two or the instruction submitted with it question one. We overrule the County's third, fourth and fifth points of error.

In its sixth and seventh points of error, the County argues the trial court abused its discretion in allowing Sheriff Klevenhagen and Captain Henderson to give testimony regarding whether Officer Blackwell was furthering the business of Harris County at the time of the accident. The County argues that by giving this testimony, these witnesses were offering legal conclusions on the ultimate issue in this case. While we agree that this testimony was improperly admitted, we find the admission to be harmless error. Under traditional rules of agency law, so long as there is other evidence on the issue of course and scope, the admission of testimony such as this is harmless error. *Lynch Oil v. Shepard*, 242 S.W.2d 217, 218-19 (Tex.Civ.App.–Eastland 1951, writ ref'd). Because we find there is other evidence on course and scope, we overrule the County's sixth and seventh points of error.

In its eighth point of error, the County argues the trial court abused its discretion in admitting an exhibit because (1) it contained legal conclusions on the ultimate issue in this case, and (2) is prohibited from evidence under the Workers Compensation Act. The Blackwells contend that the County waived error because it did not properly or timely object. We agree with the Blackwells. Before the form was admitted into evidence, the County objected on the grounds that the form had not been authenticated and that it contained legal conclusions. After the form was admitted into evidence, the County raised another objection, saying only, "Worker's Compensation Act." While this objection was closer to a proper objection, it was not specific enough to call the trial court's attention to the section of the Act that governs the admissibility of these forms. *See* TEX. R. APP. P. 33.1. We overrule the County's eighth point of error.

In its ninth and tenth points of error, the County contends the trial court abused its discretion in excluding the testimony of two deputies who would have testified that Richard M. was not paid by the County for the activity in question and that he was a volunteer at the time of the accident. As discussed

above, our previous opinion had already determined this issue. *See id.* However, the County argues that the law of the case doctrine does not apply to preclude the admission of this evidence. We disagree. Any evidence of whether Richard M. was a volunteer at the time of the accident does not alter the fact that he was acting as an agent of the County. Because we previously determined that an off-duty deputy (*i.e.*, a volunteer) who escorts a funeral procession for the purpose of directing traffic does so as an agent for the County, the County did not need to present evidence on this issue at trial. *See id.* The trial court did not abuse its discretion when it excluded this evidence, and we overrule the County's ninth and tenth points of error.

In two cross-points, the Blackwells contend (1) that the trial court abused its discretion in precluding evidence of the fact that the County has now modified its position so that any officer injured while escorting a funeral procession is now covered by the Worker's Compensation Act and (2) that the trial court erred by excluding testimony from a Deputy James Kratz about his conversation with a deceased deputy who was involved in the funeral procession and had told Kratz that Richard M. had joined the funeral procession at the time of the accident. In light of our decision affirming the judgment, these issues are moot.

We overrule the Blackwells' cross-points, and accordingly, affirm the judgment of the trial court.

Wanda McKee Fowler
Justice

Judgment rendered and Opinion filed October 14, 1999.

Panel consists of Justices Yates, Fowler and Sondock.[2]

Do Not Publish — TEX. R. APP. P. 47.3(b).

[2] Senior Justice Ruby K. Sondock sitting by assignment.