IN THE SUPREME COURT OF TEXAS

No. 18-1134

W&T OFFSHORE, INC. V. WESLEY FREDIEU

ON REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

JUSTICE BOYD, dissenting.

Properly treating the determinative issue as a question of law, the trial court concluded that Wesley Fredieu was W&T Offshore's "borrowed employee" when he was injured while working on W&T's offshore platform. The Court says the trial court erred because W&T did not obtain favorable jury findings on, or otherwise "conclusively establish," four of the "factors" that federal courts consider when deciding the determinative issue. But "factors" are not "facts," and the facts here are undisputed. W&T was not required to obtain jury findings on or conclusively establish the "factors" that courts consider when deciding the borrowed-employee question as a matter of law. Instead, W&T merely had to submit sufficient evidence to support the trial court's favorable matter-of-law conclusion, and we must now decide the issue de novo based on that evidence. Because the facts are undisputed and support the conclusion that Fredieu was W&T's borrowed employee, I respectfully dissent.

I.
The Law on Borrowed Employees

The Court and I agree on most all of the governing legal principles. If Fredieu was W&T's borrowed employee when he was injured, he cannot recover on his tort claim against W&T and

instead is limited to recovering workers-compensation benefits. *See* 33 U.S.C. §§ 902–05 (Longshore and Harbor Workers' Compensation Act); 43 U.S.C. § 1333(a)(1), (b) (Outer Continental Shelf Lands Act). W&T's assertion that Fredieu was its borrowed employee constitutes an affirmative defense on which W&T bore the burden of proof. *See Allen v. Texaco, Inc.*, 37 F. App'x 91, 91 (5th Cir. 2002) (per curiam).

Whether a claimant was the defendant's borrowed employee, however, presents a question of law for the courts to decide. *Billizon v. Conoco, Inc.*, 993 F.2d 104, 105 (5th Cir. 1993); *Ruiz v. Shell Oil Co.*, 413 F.2d 310, 314 (5th Cir. 1969). Under the Fifth Circuit's approach, which the parties agree we should follow here, courts decide the question by considering nine "*Ruiz* factors": (1) who controlled the claimant's work at the time of the injury, (2) whose work the claimant was performing, (3) the terms of any agreement between the defendant and the claimant's original employer, (4) the claimant's acquiescence in the work arrangement, (5) whether the original employer temporarily terminated its relationship with the claimant while he was working for the defendant, (6) who furnished the claimant's tools and workplace, (7) the duration of the claimant's work for the defendant, (8) who had the right to discharge the claimant, and (9) who was obligated to pay the claimant. *Ruiz*, 413 F.2d at 312–13.

The defendant need not prove that every *Ruiz* factor supports the conclusion that the claimant was its borrowed employee. *Billizon*, 993 F.2d at 106. In fact, no single factor or any particular combination of factors is decisive. *Ruiz*, 413 F.2d at 312. Instead, courts must balance all the evidence in light of the *Ruiz* factors to determine whether the defendant was the claimant's "true employer," as opposed to a mere third party, in a sense that justifies limiting the claimant's

recovery consistent with the purposes of the workers-compensation system. *Gaudet v. Exxon Corp.*, 562 F.2d 351, 357 (5th Cir. 1977).

To answer this question of law, the courts must of course rely on the evidence the parties present regarding the *Ruiz* factors. If the parties dispute the relevant facts and provide conflicting evidence that creates a fact issue material to one or more of the factors, the court may be required to have a jury determine the true facts and resolve that dispute. *Brown v. Union Oil Co. of Cal.*, 984 F.2d 674, 677 (5th Cir. 1993) (per curiam). Once the jury resolves any material factual disputes, however, the court itself must consider the totality of the evidence, using the *Ruiz* factors as its guide, to decide whether the claimant was the defendant's borrowed employee. *Billizon*, 993 F.2d at 105; *Brown*, 984 F.2d at 679; *Ruiz*, 413 F.2d at 314.

Here, the trial court initially erred by instructing the jury to decide whether Fredieu was W&T's borrowed employee. But in response to W&T's post-verdict motions, the trial court corrected that error by disregarding the jury's answer and deciding the issue as a question of law. The Court and I agree that the trial court acted properly in doing so. *See, e.g.*, *ante* at ___ ("Submitting this legal question to the jury was improper, and the trial court did not err in disregarding the jury's answer to it."). We part ways, however, on whether fact issues precluded the trial court's answer to the legal question.

II.
W&T's Burden of Proof in the Trial Court

To the extent W&T bore an evidentiary burden on the question of law,[1] its burden was to establish the necessary facts by a preponderance of the evidence. *See Bergeron v. Tenneco Oil Co.*, No. Civ. A. 87–1317, 1988 WL 110445, at *5 (W.D. La. Oct. 18, 1988) ("[D]efendant has failed to establish by a preponderance of the evidence that plaintiff was a borrowed employee."), *aff'd* 880 F.2d 411 (5th Cir. 1989); *see also Rollans v. Unocal Expl. Corp.*, No. Civ. A. 93–431, 1993 WL 455731, at *2 (E.D. La. Nov. 4, 1993) ("Defendants failed to prove by a preponderance of the evidence that UNOCAL exercised sufficient control over Plaintiff, beyond mere suggestion of details or cooperation, to render him a borrowed employee."). Fredieu himself conceded at the charge conference that W&T only ever had to prove the necessary facts by a preponderance of the evidence.

W&T, therefore, merely had to submit sufficient evidence to enable the trial court to answer the question of law in its favor. If it failed to do that—whether by failing to obtain jury findings on disputed material facts or simply by failing to present the necessary evidence—the trial court should have concluded as a matter of law that W&T failed to carry its burden to establish that Fredieu was W&T's borrowed employee. But if W&T *did* submit sufficient evidence (with or without obtaining jury findings on particular disputed facts), the trial court properly concluded as a matter of law that Fredieu was W&T's borrowed employee. In either case, the trial court's answer

[1] *See Sw. Bell Tel. Co. v. Pub. Util. Comm'n*, 571 S.W.2d 503, 511 (Tex. 1978) ("It is, of course, incongruous to speak of deciding as a fact from the preponderance of the evidence a question of law.").

to the question of law depended on the sufficiency of the totality of the evidence presented regarding the *Ruiz* factors.

The Court asserts that W&T had to either secure "fact-findings in its favor on the *Ruiz* factors" or "conclusively establish[] that the factor weighs in its favor," and suggests that W&T agrees that it bore that burden. *Ante* at ___ ("W&T embraces this burden to some extent, arguing that the evidence conclusively establishes the disputed *Ruiz* factors in its favor."). This suggestion misstates W&T's position. In the trial court, in the court of appeals, and in this Court, W&T has repeatedly asserted two alternative arguments in support of the trial court's decision to disregard the jury's finding that Fredieu was not W&T's borrowed employee: (1) that the jury's answer is immaterial because the borrowed-employee issue presents a question of law that the jury could not decide, or alternatively, (2) that the trial court correctly disregarded the jury's answer because the evidence did not support it.

W&T acknowledges that, to prevail on its *alternative* argument, it would have to demonstrate that no evidence supports the jury's finding, or (as the Court states) that the evidence conclusively established that Fredieu was W&T's borrowed employee. *See Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017) ("When a party attacks the legal sufficiency of an adverse [jury] finding on an issue on which it bears the burden of proof, the judgment must be sustained unless the record conclusively establishes all vital facts in support of the issue."). In support of this alternative argument, W&T has acknowledged this burden and has argued that the evidence conclusively established that Fredieu was its borrowed employee.

But we need not reach W&T's alternative argument because, as the Court itself agrees, W&T's primary argument is correct: the trial court correctly disregarded the jury's answer as immaterial because the question presented a question of law that only the court could decide. A trial court may disregard an immaterial jury answer, and an answer to a question that should never have been submitted to the jury, such as a question of law, is immaterial. *Spencer v. Eagle Star Ins. Co. of Am.*, 876 S.W.2d 154, 157 (Tex. 1994); *see Quick v. City of Austin*, 7 S.W.3d 109, 116 (Tex. 1998) ("The submitted jury questions, being questions of law, are immaterial and will not be considered."). As the Court itself agrees, the question the trial court asked the jury in this case was a question of law, not a "roundabout way" of asking the jury to resolve disputed facts. *Ante* at __. And because it was a question of law, "the trial court did not err by disregarding [the jury's] answer as immaterial." *Ante* at __.[2]

Having properly disregarded the jury's immaterial answer, the trial court was then required to resolve the issue of Fredieu's borrowed-employee status as a question of law, considering the totality of the evidence in light of the *Ruiz* factors. And because Fredieu's borrowed-employee status presents a question of law, this Court must address that issue de novo and decide for ourselves whether, in light of the *Ruiz* factors and the evidence presented, Fredieu was W&T's borrowed employee. *See Williams v. Compression Coat Corp.*, 136 F.3d 138 (5th Cir. 1998) (per curiam) (conducting de novo review to decide claimant's borrowed-employee status); *see also*

[2] Fredieu argues that W&T waived any complaint about the jury question because W&T itself proposed the question and did not object to its submission to the jury. W&T disputes that it proposed the question, but we need not resolve that issue. "A party need not object to an immaterial question that should not have been submitted" and preserves error by moving to disregard the answer in a post-verdict motion, as W&T did here. *BP Am. Prod. Co. v. Red Deer Res., LLC*, 526 S.W.3d 389, 402 (Tex. 2017).

LaLonde v. Gosnell, 593 S.W.3d 212, 220 (Tex. 2019) ("Appellate courts do not defer to the trial court on questions of law. Deference must be afforded to the trial court's disposition of disputed facts, but when there are none, as here, our review is entirely de novo.").

Even if the fact-finder was required to resolve disputed facts, we must now decide the ultimate legal issue de novo in light of the totality of the evidence, including any such findings. *City of Austin v. Travis Cty. Landfill Co.*, 73 S.W.3d 234, 241 (Tex. 2002) ("While we depend on the fact-finder to resolve disputed facts regarding the extent of governmental intrusion, the ultimate issue whether the facts constitute a taking is a question of law."); *see Stockton v. Offenbach*, 336 S.W.3d 610, 615 (Tex. 2011) ("Under an abuse of discretion standard, the appellate court defers to the trial court's factual determinations if they are supported by evidence, but reviews the trial court's legal determinations de novo.").

W&T never had to "conclusively establish" that Fredieu was its borrowed employee. Once the trial court properly disregarded the jury's answer as immaterial, the court then had to decide that legal question based on the evidence submitted. And under the proper de novo standard of review, we must now do the same.

III.
Absence of Material Fact Issues

The Court concludes that W&T "failed to prove its borrowed-employee defense" because it failed to obtain "fact-findings in its favor on the *Ruiz* factors." *Ante* at ___. According to the Court, "[s]ubmission to the jury of individual *Ruiz* factors may be necessary . . . if the resolution of fact issues related to one or more factors would be material to the court's determination of the ultimate legal question." *Ante* at ___. But this reasoning conflates "disputed facts" with "disputed

factors." Although the parties dispute whether the facts relating to particular factors weigh for or against borrowed-employee status, the parties do not dispute the facts themselves.

The *Ruiz* factors are not facts. They merely guide a court's analysis as it determines the legal *conclusions* to draw from the facts. *See Gaudet*, 562 F.2d at 358 (explaining the borrowed-employee analysis considers "the implications to be drawn from the facts"). If the facts relevant to a particular factor are disputed, the court may need to have the fact-finder resolve that factual dispute before the court can decide how to weigh that factor when reaching its legal conclusion. But it need not ask the fact-finder to decide whether the factor weighs in favor of or against borrowed-employee statuts.[3]

Here, for example, the Court concludes that "conflicting evidence raises a material fact issue on the control factor," so that factor "should have been submitted to the jury." *Ante* at ___. But as the Court's own description of the facts confirms, the parties did not dispute any of the facts relevant to W&T's control over Fredieu's work at the time of his injury:

- The Wood Group hired and trained Fredieu and assigned him to work on the W&T platform.
- W&T was generally hands-off with respect to Fredieu's work, did not give Fredieu constant or regular instruction or tell him how to do things, and did not control the

[3] *See*, *e.g.*, *Skipper v. A&M Dockside Repair, Inc.*, 430 F. Supp. 3d 170 (E.D. La. 2020) (pending appeal) ("Here, the relevant facts are not in dispute. Rather, plaintiff disputes the legal conclusion that should be drawn from the facts."); *In re Weeks Marine, Inc.*, 88 F. Supp. 3d 593, 601 (M.D. La. 2015) ("If some of the *Ruiz* factors involve fact questions, those questions must be submitted to the fact finder unless a sufficient number of other factors clearly favor summary judgment." (citation and quotations omitted)); *Robertson v. W&T Offshore, Inc.*, 712 F. Supp. 2d 515, 522 (W.D. La. 2010) ("[Plaintiff] merely lists the nine legal factors comprising the borrowed employee analysis as set forth in [*Ruiz*] . . . [but] does not provide *any evidence* with respect to the underlying facts as they relate to the *Ruiz* factors."); *Bourgeois v. W&T Offshore, Inc.*, No. 13-294, 2013 WL 4501326, at *3 (E.D. La. 2013) ("The parties disagree on the application of the first factor to this case, but the following facts are undisputed.").

details of his day-to-day work. Instead, W&T generally allowed Fredieu to control his own work and supervise other contractors' workers.

- W&T did give Fredieu guidance and direction for non-routine activities outside of his typical day-to-day tasks.

- No W&T supervisor was present on the platform when Fredieu was injured. But when Fredieu discovered the faulty regulator, he knew he had to report it to W&T and find out how W&T wanted him to fix it, so he contacted W&T by radio.

- When the accident occurred, W&T was telling Fredieu the steps to take to remove the regulator, although it left a lot of steps out.

Neither party disputed any of these facts. Instead, they disputed whether (and the extent to which) W&T controlled Fredieu's work in light of these undisputed facts. That's not a factual dispute arising from conflicting evidence, it's a dispute over the correct answer to a question of law based on undisputed facts.

A genuine fact issue arises when the parties submit conflicting evidence on the events that occurred, creating a dispute as to what really happened. In *Brown*, for example, the claimant testified that the defendant never gave him instructions on how and when to clean the defendant's platform, but the defendant's employee testified that he *did* give the claimant such "specific cleaning instructions." *Brown*, 984 F.2d at 677. This conflicting evidence created a material fact issue about what really happened: "Who gave Brown instructions on how and when to clean the platform?" *Id.* at 679.

Here, the parties do not dispute the facts. They dispute whether the *undisputed* facts establish that the *Ruiz* factors support W&T's assertion that Fredieu was its borrowed employee. But that dispute does not create a fact issue that a jury must resolve. "A dispute over whether one is a borrowed servant . . . could still exist although all the facts were stipulated, for it concerns not

only the facts themselves but the implications to be drawn from the facts." *Gaudet*, 562 F.2d at 358.

The parties' dispute over whether the undisputed facts support a *Ruiz* factor or establishes that Fredieu was W&T's borrowed employee merely creates the question of law that the trial court had to decide. *See, e.g.*, *Ruiz*, 413 F.2d at 312–13 ("We have, however, carefully studied the record and find no element of control by National."); *see also Lomeli v. Sw. Shipyard, L.P.*, 363 S.W.3d 681, 688 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (concluding that the control factor weighed in favor of borrowed-employee status despite some undisputed evidence suggesting a lack of control). Fredieu "cannot generate a factual dispute merely by contesting the conclusion reached by the court, rather [he] must show that genuine disputes exist over enough determinative factual ingredients to make a difference in this result." *Gaudet*, 562 F.2d at 358.

Furthermore, even if the parties had submitted conflicting evidence that created a genuine fact issue relevant to one or more of the *Ruiz* factors, W&T's failure to obtain jury findings resolving those fact issues would not necessarily compel the conclusion that Fredieu was not W&T's borrowed employee. *See id.* ("[T]he trial court could have concluded that the test for borrowed employee status was met regardless of the ultimate resolution of the factual matter of the agreement between the employers."). Even assuming that disputed facts were resolved in favor of the claimant, if the totality of the circumstances nevertheless establishes the claimant's borrowed-employee status, the court may answer that question of law without requiring a jury to resolve those disputed facts. *See Billizon*, 993 F.2d at 106 ("Even if we assume that factor 3 weighs in favor of Billizon's position, the summary judgment record establishes that Billizon was

Conoco's borrowed employee."); *see also Lomeli*, 363 S.W.3d at 694 (holding that, even assuming one factor weighed against the claimant's borrowed-employee status and another was neutral, judgment for the defendant was proper because "the remaining factors weigh in favor of borrowed employee status"). Under those circumstances, the disputed but undetermined facts would simply be "immaterial" and would not prevent the court from deciding the question of law. *Reliance Nat'l Indem. Co. v. Advance'd Temps., Inc.*, 227 S.W.3d 46, 50 (Tex. 2007).

The Fifth Circuit "will not insist upon the expense and delay of a trial if the overall issue can be resolved through a preponderance of other factual matters not in dispute." *Gaudet*, 562 F.2d at 358; *see also Brown*, 984 F.2d at 678 n.5 ("[T]he terms of a contract and the related factual issues do not automatically prevent summary judgment or directed verdict. If the remaining borrowed employee factors overwhelmingly point to borrowed employee status, a summary judgment or directed verdict is appropriate."); *Capps v. N.L. Baroid-NL Indus., Inc.*, 784 F.2d 615, 617 (5th Cir. 1986) ("[I]f sufficient basic factual ingredients are undisputed, the court may grant summary judgment."). Neither should we. The parties' evidence in this case did not create any genuine factual issues, and even if it had, the trial court could have decided the question of law without obtaining jury findings on those issues if the disputes were ultimately immaterial in light of the totality of the evidence. W&T's failure to obtain jury findings did not prevent the trial court from answering the question of law or require W&T to "conclusively establish" any of the *Ruiz* factors, either in the trial court or on appeal.

IV.
Fredieu's Employment Status

Applying the proper standard of review, our task in this appeal is to decide de novo whether W&T met its burden to establish that Fredieu was its borrowed employee. Considering the totality of the evidence in light of the *Ruiz* factors, I agree with the trial court's conclusion that it did.

The undisputed evidence establishes that Fredieu was employed by and received his paychecks from the Wood Group. But he was assigned by the Wood Group to work for W&T pursuant to a Master Services Contract between those two employers. For at least fifteen months before his injury, Fredieu lived and worked on offshore platforms owned by W&T, and worked under the direction of a W&T supervisor. On the day of his injury, the W&T supervisor instructed Fredieu to travel with a group of other contractors' employees to a different, unoccupied platform to perform painting work and repair handrails. While on that platform, Fredieu discovered that a regulator appeared to be malfunctioning, and he reported that discovery to W&T by radio. The W&T supervisor instructed Fredieu to remove the regulator and bring it back to him on the other platform. Still using the radio, the W&T supervisor instructed Fredieu on the steps he should take to perform a safety check and eliminate pressure in the pipes connected to the regulator. Although Fredieu followed the W&T supervisor's instructions, an explosive release of pressurized gas occurred, flinging a pipe that struck Fredieu in the arm, causing significant fractures that required surgical repairs. Fredieu filed a claim for workers-compensation benefits under W&T's insurance policy, and he received and accepted those benefits for several months, until they were suspended because he failed to attend numerous follow-up appointments.

Using the *Ruiz* factors to guide our analysis of the undisputed evidence, Fredieu concedes that he was performing work for W&T when he was injured (factor 2), that he acquiesced in and agreed to his assignment to work for W&T (factor 4), that he worked for W&T for a lengthy period of time (factor 7), and that W&T had the right to terminate his work on W&T's platforms (factor 8). The trial court, the court of appeals, and the Court today have all agreed that the undisputed facts regarding these four factors support the conclusion that W&T was Fredieu's true employer at the time of his injury. The parties and the courts dispute whether the undisputed evidence relating to the remaining *Ruiz* factors also supports that conclusion.

The third *Ruiz* factor requires us to consider the evidence relating to the nature of the agreement between W&T and the Wood Group regarding Fredieu's employment status. *See Gaudet*, 562 F.2d at 355–56. As the Court explains, the Master Services Contract provided that the Wood Group's employees who worked for W&T would not be considered to be W&T's employees, but another provision required W&T to obtain workers-compensation insurance covering the Wood Group's employees and expressly provided that the Wood Group's employees would be deemed to be W&T's borrowed servants. *Ante* at ___. The Court concludes that these potentially conflicting contractual provisions create an "unresolved material fact question." *Ante* at ___. But the construction of a contract presents a question of law, not a fact issue. *URI, Inc. v. Kleberg County*, 543 S.W.3d 755, 763 (Tex. 2018). I would conclude that, although the agreement does not completely or overwhelmingly weigh in favor of establishing Fredieu's status as W&T's borrowed employee, the fact that W&T and the Wood Group specifically agreed that Fredieu

would be covered by W&T's workers-compensation policy and deemed to be W&T's borrowed servant in that context provides substantial support for that conclusion.

The fifth *Ruiz* factor addresses evidence whether Fredieu essentially ceased being the Wood Group's employee during the time he worked for W&T. *See Gaudet*, 562 F.2d at 355. Again, the parties do not dispute any of the facts that are relevant to this analysis; instead, they dispute whether the undisputed facts relevant to this factor support a finding that Fredieu was W&T's borrowed employee. The undisputed evidence established that while Fredieu was working for W&T, the Wood Group retained the authority to reassign him to a different platform or to a different customer and continued to provide him with training, work clothes, and equipment. But the undisputed evidence also established that during that time, the Wood Group never exercised the reassignment authority and never gave Fredieu instructions on how to perform his work for W&T. Overall, I agree with Fredieu that the Wood Group did not completely terminate its relationship with Fredieu, but it certainly surrendered much of the typical employer-employee relationship to W&T.

The sixth *Ruiz* factor instructs us to consider evidence whether W&T furnished Fredieu's workplace and the tools he needed for the job. *See Gaudet*, 562 F.2d at 355. Fredieu concedes that W&T furnished his workplace. The undisputed evidence established that Fredieu and the Wood Group furnished most of his tools and clothing (hard hat, work shirts, jacket, safety glasses, gloves, boots, wrenches, and pliers), but W&T provided other tools and equipment that Fredieu needed to perform the work W&T assigned him (tubing, fittings, bolts, and other wrenches). I agree with the Court that overall, this factor does not clearly favor either party. *See ante* at ___.

The ninth *Ruiz* factor asks whether W&T or the Wood Group was obligated to pay for Fredieu's services. *See Gaudet*, 562 F.2d at 355. The trial court and the court of appeals both concluded that this factor supports a determination that Fredieu was W&T's borrowed employee, but the Court disagrees. The undisputed evidence established that Fredieu maintained time cards for the work he performed for W&T, that W&T reviewed and approved the time cards and submitted them to the Wood Group, that the Wood Group issued invoices to W&T based on the time cards, that W&T paid the invoices to the Wood Group, that the Wood Group paid Fredieu, and that the Wood Group would accept and implement any salary increase W&T wanted to provide for Fredieu because W&T would be the one to "pay for it." The Court concludes that this evidence "favors Fredieu" because his paychecks came from the Wood Group, he believed the Wood Group was obligated to pay him, and no evidence established that the Wood Group's obligation was dependent on W&T first paying the Wood Group. *Ante* at ___. I agree with the trial court and the court of appeals that the evidence related to this factor favors W&T. Without regard to the Court's hypothetical, the undisputed evidence established that W&T was contractually obligated to pay for Fredieu's services and in fact did pay for them based on the hours he worked for W&T.[4]

[4] The Fifth Circuit under similar facts has deemed this factor as favoring borrowed-employee status even at the summary-judgment stage. *See Billizon*, 993 F.2d at 105 ("D & C paid Billizon, but his pay was based on time tickets verified by Conoco."); *Brown*, 984 F.2d at 679 ("Gulf Inland paid Brown, but his pay was based on time tickets that had to be verified daily by Union."); *Capps*, 784 F.2d at 618 ("Baroid in essence paid Capps" when "Davis had the obligation to pay Capps, [but] Davis received the funds to pay Capps from Baroid.").

Finally, the first *Ruiz* factor, which the Fifth Circuit has generally suggested is "central to" the analysis but not necessarily "dispositive,"[5] addresses the evidence regarding the amount of control that W&T had over the work Fredieu was performing when he was injured. The undisputed evidence establishes that W&T instructed Fredieu to travel to the platform to perform painting work and repair handrails. When Fredieu discovered the malfunctioning regulator, he reported it to his W&T supervisor because, as he testified, "any time I, you know, tampered with [W&T's] equipment or was going to go into working on it, something like that, it's theirs, so I have to call and let him know what my findings were and how he wanted to go about fixing it." Fredieu attempted to remove the regulator because the W&T supervisor instructed him to remove it and bring it back to the other platform. The W&T supervisor gave Fredieu step-by-step instructions on how to perform a safety check and to remove the regulator, although he did not cover all the specific steps.

It is also undisputed that no one from W&T was on the platform when the accident occurred, and that Fredieu generally controlled his own work for W&T on a day-to-day basis with little to no direction or supervision from W&T. But Fredieu does not claim that he was his own employer, and certainly, as between W&T and the Wood Group, W&T acted as Fredieu's employer and exercised whatever supervisory control Fredieu required. And even Fredieu admits that, when the accident occurred, he was "just doing as [he] was told" by the W&T supervisor.

[5] *See Brown*, 984 F.2d at 676–77; *Melancon v. Amoco Prod. Co.*, 834 F.2d 1238, 1245 (5th Cir. 1988); *West v. Kerr-McGee Corp.*, 765 F.2d 526, 530–31 (5th Cir. 1985); *Ruiz*, 413 F.2d at 312–13.

These facts support the conclusion that W&T exercised substantial supervisory control over the work Fredieu performed on W&T's behalf.

The undisputed evidence in this record does not overwhelmingly establish that each of the nine *Ruiz* factors completely supports the conclusion that Fredieu was W&T's borrowed employee. But none of the factors is "decisive, and no fixed test is used to determine the existence of a borrowed-servant relationship." *Ruiz*, 413 F.2d at 312. In the end, our task is to determine whether, as a whole, the totality of the evidence demonstrates that W&T was not just a third party for whom Fredieu was providing services, but was in reality Fredieu's "true employer" such that limiting his recovery for a work-related injury would support the policies underlying the federal workers-compensation system. *See Gaudet*, 562 F.2d at 357. Under these facts, I agree with the trial court that Fredieu was W&T's borrowed employee.

V.
Conclusion

Whether Fredieu was W&T's borrowed employee presents a question of law. The trial court thus erred by submitting that question to the jury, but it corrected that error by disregarding the jury's answer and deciding the question itself, considering the evidence presented in light of the *Ruiz* factors. W&T did not have to "conclusively establish" Fredieu's status as a borrowed employee in the trial court, either to justify the court's decision to disregard the jury's answer or to prevail on the question of law. Nor does W&T have to demonstrate in this Court that it conclusively established Fredieu's borrowed-employee status to uphold the trial court's judgment in its favor. Under the appropriate standard of review, we must decide the question of law de novo. Reviewing the evidence in light of the *Ruiz* factors, I conclude that Fredieu was W&T's borrowed

employee and thus cannot recover on his tort claims against W&T. Instead, his remedy was limited to the workers-compensation benefits he requested and received before he filed this suit. I would reverse the court of appeals' judgment and reinstate the trial court's judgment in W&T's favor. Because the Court holds otherwise, I respectfully dissent.

_____
Jeffrey S. Boyd
Justice

Opinion delivered: June 5, 2020