

# Supreme Court of Florida

No. 65,255

GERALD BOOHER, Petitioner,

v.

PEPPERIDGE FARM, INC., and LIBERTY  
MUTUAL INSURANCE COMPANY, Respondents.

May 2, 1985

McDONALD, J.

We have for review Pepperidge Farm, Inc. v. Booher, 446 So.2d 1132 (Fla. 4th DCA 1984), in which the district court acknowledged apparent conflict with Thornton v. Paktank Florida, Inc., 409 So.2d 31 (Fla. 2d DCA 1981), review denied, 419 So.2d 1199 (Fla. 1982). We have jurisdiction. Art. V, § 3(b)(3), Fla. Const. We approve Booher.

Dixie Driving Service provides truck drivers on a temporary basis to companies such as Pepperidge Farm. Dixie employed Booher, but he had been driving exclusively for Pepperidge Farm when he suffered a work-related injury at a Pepperidge Farm warehouse. After Dixie paid workers' compensation to Booher, he filed a negligence action against Pepperidge Farm. Pepperidge Farm's defense included its contention that Booher, as its special employee, was barred from recovering tort damages for a compensable on-the-job injury. At trial the jury awarded damages against Pepperidge Farm after finding that no special employment relationship existed between Booher and Pepperidge Farm. The district court reversed, finding that the trial court should have granted Pepperidge Farm's motion for directed verdict on this issue. The district court acknowledged its conflict with Thornton and agreed with Judge Grimes' dissent in that case.

The actual employment relationship rather than the subjective intent of the parties should control in any determination of whether a special employee may sue the special employer for work-related injuries. Booher's own trial testimony belies his contention that he never consented to an implied contract of hire with Pepperidge Farm. We agree with the district court that Pepperidge Farm was entitled to a directed verdict on this issue as a matter of law.

Accordingly, we approve Booher and disapprove Thornton to the extent that it conflicts with this opinion.

It is so ordered.

BOYD, C.J., OVERTON, ALDERMAN, EHRLICH and SHAW, JJ., Concur  
ADKINS, J., Dissents

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF  
FILED, DETERMINED.

Application for Review of the Decision of the District Court  
of Appeal - Direct Conflict of Decisions

Fourth District - Case No. 83-668

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for Petitioner

Blackwell, Walker, Gray, Powers, Flick and Hoehl, Miami, Florida;  
and James C. Blecke, Miami, Florida,

for Respondents