

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

CEDRICK CLARK,
Plaintiff,

v.

F.H. PASCHEN, S.N. NIELSEN, INC., an Illinois
Corporation, F.H. PASCHEN, S.N. NIELSEN &
ASSOCIATES, L.L.C., an Illinois Limited Liability
Corporation, THE CITY OF CHICAGO, a Municipal
Corporation, WSP USA, INC., a Foreign Corporation,
and MILHOUSE ENGINEERING &
CONSTRUCTION, INC., an Illinois Corporation,
Defendants
(Cedrick Clark, as assignee of Milhouse Engineering
& Construction, Inc., Third-Party Plaintiff-Appellee,
v. Garth Masonry Corporation d/b/a Garth
Construction Services, Corp., Third-Party Defendant-
Appellant).

ORDER

¶ 1 *Held:* The contribution claim was barred under section 2(e) of the Illinois Contribution Act as the third-party defendant was not expressly released in the settlement agreement.

¶ 2 These consolidated appeals arise out of an assignment of a third-party contribution action in connection with a worksite accident. In the underlying lawsuit, plaintiff, Cederick Clark, sued Milhouse Engineering & Construction, Inc. (Milhouse), and other defendants, after he was injured while working at O’Hare International Airport. Milhouse, in turn, filed a contribution claim against Clark’s employer, Garth Masonry Corporation (Garth), which it assigned to Clark as part of a settlement agreement. Following a jury trial, Garth was found 75% liable for Clark’s injuries. On appeal, Garth contends that (1) the assignment of the contribution claim was invalid, (2) the settlement agreement allowed for double recovery, (3) the settlement agreement failed to extinguish its liability, (4) section 2-1117 of the Code of Civil Procedure (735 ILCS 5/2-1117 (West 2022)) does not subject employers to liability in tort, (5) section 2-1117 established a workers’ compensation exclusivity defense, and (6) the circuit court erred in entering a money judgment and allowing post-judgment interest. Because we agree that the contribution claim was barred, we reverse.

¶ 3 I. BACKGROUND

¶ 4 Clark was injured on December 31, 2018 while working as a bricklayer for his employer Garth at O’Hare. On May 18, 2021, Clark filed a second amended complaint for alleged injuries that occurred on December 31, 2018. Milhouse timely filed a third-party complaint against Garth under the Illinois Joint Tortfeasor Contribution Act (Contribution Act) (740 ILCS 100/5 *et seq.* (West 2022)).

¶ 5 Milhouse and Clark entered into a settlement agreement. Pursuant to the settlement agreement, Milhouse made a cash payment for \$1.8 million to Clark, in excess of its *pro rata* share. The agreement purported to preserve Milhouse’s contribution rights against Garth, and it assigned those rights to Clark. Finally, Milhouse “specifically allocate[d]” \$674,796.75 from the settlement payment “to extinguish GARTH’s third-party liability.” Milhouse filed a motion for a good faith finding. The circuit court ruled that the settlement agreement was made in good faith and found

there was no collusion between the settling parties. The circuit court also found that Milhouse's contribution claim was assignable to Clark.

¶ 6 Clark's contribution claim, as Milhouse's assignee, proceeded to a jury trial. The jury allocated 75% of the legal responsibility for Clark's injury to Garth and 25% Milhouse. On February 26, 2024, the circuit court entered judgment on the jury verdict and limited Garth's liability pursuant to *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155 (1991).

¶ 7 Following the judgment, Garth filed a motion for judgment notwithstanding the verdict, which was denied.

¶ 8 Clark moved to enter a money judgment on the February 26 judgment. The circuit court granted Clark's motion and entered a money judgment for \$674,796.75, Garth's contribution liability pursuant to *Kotecki*. Clark also filed a motion for post-judgment interest. The circuit court ordered that interest would accrue from June 26, 2024, and would not apply *nunc pro tunc* to February 26, 2024.

¶ 9 Garth timely appealed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, Garth argues that (1) the settlement agreement extinguished any potential third-party liability it had and any assignment to Clark was a "legal nullity," (2) the settlement agreement against public policy as it allowed for double recovery, (3) the settlement agreement failed to extinguish Garth's tort liability to Clark and therefore Milhouse had no right of contribution to assign, (4) section 2-1117 of the Code of Civil Procedure does not subject employers to liability in tort, (5) Garth established workers' compensation exclusivity defense and was no longer subject to liability in tort or contribution, and (6) the circuit court erred in entering a money judgment and awarding post-judgment interest.

¶ 12 As Garth's argument that its liability was not extinguished by the settlement agreement is dispositive of this case, we will consider it first.

¶ 13 Section 2(e) provides, “A tortfeasor who settles with a claimant pursuant to paragraph (c) is not entitled to recover contribution from another tortfeasor whose liability is not extinguished by the settlement.” 740 ILCS 100/2(e) (West 2024). Under section 2(c),

“When a release * * * not to sue or not to enforce judgment is given in good faith to one or more persons liable in tort arising out of the same injury or the same wrongful death, it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide but it reduces the recovery on any claim against the others to the extent of any amount stated in the release * * *, or in the amount of the consideration actually paid for it, whichever is greater.” *Id.* § 2(c).

¶ 14 This means that “[a] party that settles may seek contribution only from parties whose liability was extinguished by the same settlement.” *Dixon v. Chicago & North Western Transportation Co.*, 151 Ill. 2d 108, 116 (1992) (citing *Pearson Brothers Co. v. Allen*, 131 Ill. App. 3d 699, 701-02 (1985)). A release does not discharge a nonsettling tortfeasor from liability unless they are specially named in the release. *Guerrero v. Sebastian Contracting Corp.*, 321 Ill. App. 3d 32, 36 (2001) (citing *Alsup v. Firestone Tire & Rubber Co.*, 101 Ill. 2d 196, 201-02 (1982); *Stro-Wold Farms v. Finnell*, 211 Ill. App. 3d 113, 116 (1991)).

¶ 15 The relevant portion of the settlement agreement, entitled “Release and Discharge,” provides as follows:

“In consideration of payments and other consideration set forth herein, the sufficiency of which is hereby acknowledged, [Clark] completely releases, relieves, acquits and forever discharges MILHOUSE from any and all past, present, and future claims, action, causes of action, liabilities, demands, debts, obligations, rights, damages, costs, losses of services, expenses, restitutions, and compensation of every kind and description * * *. [Clark] intends that this Agreement fully and completely resolves all pending litigation,

motions, and disputes that [Clark] has, may have, or could have had against MILHOUSE * * *, specifically including but not limited to, all claims resulting from, arising out of, connected with, directly or indirectly:

1) [Clark's] alleged damages arising out of the accident that occurred on December 31, 2018 at O'Hare Airport * * *; and

2) All claims which were asserted, or could have been asserted against Defendant, MILHOUSE and Third-Party Defendant, GARTH."

¶ 16 The settlement agreement released and discharged Milhouse. Garth was not named as a released party in the settlement agreement. Therefore, Garth's liability was not extinguished and Clark, as Milhouse's assignee, was not entitled to contribution. See *Guerrero*, 321 Ill. App. 3d at 37; see also *Stro-Wold*, 211 Ill. App. 3d at 118 (the " 'bright-line rule' is that a tortfeasor who settles a claim is not entitled to contribution from another tortfeasor whose liability is not explicitly extinguished by name in the settlement.").

¶ 17 Clark argues that Garth is expressly named as a released party in the settlement agreement. The sections of the settlement agreement referenced state that Milhouse allocates \$674,796.75 to "extinguish Garth's Third-Party liability" and Clark's cause of action against Milhouse and Garth will be dismissed with prejudice. These references to Garth do not overcome the fact that Garth was not specially named as a released party. The settlement agreement only expressly names Milhouse as a released party.

¶ 18 Clark also argues that Garth's argument is foreclosed by *Guerrero*; however, the facts are similar. In *Guerrero*, the plaintiff filed a complaint after her husband died following a workplace accident. *Guerrero*, 321 Ill. App. 3d at 33-34. The plaintiff sued five physicians and the general contractor. *Id.* The physician defendants filed a third-party complaint for contribution against the decedent's employer. *Id.* at 34. The plaintiff settled with the physician defendants. *Id.* at 35. The settlement agreement named the defendants and their employer as released parties, but it did not

name the decedent's employer. *Id.* Following a jury trial for the contribution claim, a verdict was entered in favor of the plaintiff. *Id.*

¶ 19 On appeal, we reversed the trial court's judgment in favor of the third-party plaintiffs finding that as the decedent's employer was not named as a released party in the settlement agreement, its liability was not extinguished, and the third-party plaintiffs were not entitled to recovery under section 2(e). *Id.* at 37, 41.

¶ 20 As is the case here. Garth was not named as a released party in the settlement agreement, therefore the contribution claim against Garth is barred under section 2(e). Because this issue is dispositive, we need not address Garth's remaining arguments. We reverse the circuit court's judgment in favor of Clark, as assignee of Milhouse, as to his contribution claim, as well as the circuit court's denial of Garth's motion for judgment notwithstanding the verdict.

¶ 21 III. CONCLUSION

¶ 22 Based on the foregoing reasons, we reverse the circuit court's judgment.

¶ 23 Reversed.