[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-11995

D.C. Docket No. 8:17-cv-1753-MSS-AEP

JOSE RAMIREZ,
JOEL SANTANA,

Plaintiffs-Appellees,

versus

STATEWIDE HARVESTING & HAULING, LLC,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(May 21, 2021)

Before WILLIAM PRYOR, Chief Judge, LUCK, Circuit Judge, and MARKS,* District Judge.

WILLIAM PRYOR, Chief Judge:

* Honorable Emily Coody Marks, Chief United States District Judge for the Middle District of Alabama, sitting by designation.

This appeal involves the agriculture exemption from the overtime-compensation requirements in the Fair Labor Standards Act. 29 U.S.C. § 213(b)(12). A fruit-harvesting company required its crew leaders to transport field workers between company-provided housing and a grocery store, laundromat, and bank every week. Two crew leaders sued the company for failure to pay them overtime compensation for the trips. Because we agree with the district court that these activities do not fall within the agriculture exemption, we affirm the judgment in favor of the crew leaders.

I. BACKGROUND

Statewide Harvesting & Hauling, LLC, harvests fruit from about 1,500 fields for multiple farmers in Florida and hauls that fruit to various packinghouses or processing plants. It does not own any of the land it harvests. For the harvest seasons between 2014 and 2017, Statewide employed mostly temporary foreign guest workers as its seasonal harvest workers, through the federal H-2A program. *See* 20 C.F.R. §§ 655.100 *et seq.*

The H-2A program requires a labor contractor to provide workers with housing. *Id.* § 655.122(d)(1). It also requires a labor contractor to provide harvest workers with either three meals a day or "free and convenient cooking and kitchen facilities." *Id.* § 655.122(g). And the contractor must provide access to other basic housing amenities including laundry facilities. *Id.* § 655.122(d)(1)(i).

Statewide housed its harvest workers in three cities. The traveling distance from the accommodations to the fields varied: some fields were across the street from the accommodations, and others were up to two hours away. It chose to provide its harvest workers with cooking facilities instead of meals and with transportation from the accommodations to a grocery store, laundromat, and bank. Statewide also contractually agreed to provide the grocery store and bank transportation to the harvest workers.

Statewide employed Jose Ramirez and Joel Santana as crew leaders responsible for supervising the field workers during the harvest seasons. Ramirez and Santana also drove the workers to and from the accommodations and the grocery store, laundromat, and bank. These weekly trips lasted approximately four hours. Between 2014 and 2017, Ramirez and Santana worked anywhere from three-and-a-half to over 80 hours a week. Neither crew leader received any overtime compensation when he worked over 40 hours a week.

In 2017, Ramirez and Santana sued Statewide under the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, for unpaid overtime compensation for the basic-necessities driving trips. They alleged that Statewide willfully refused to pay them overtime wages as required under the Act and sought damages. Statewide did not deny that Ramirez and Santana were covered by the Act, but it maintained that

all of their employment activities fell under the exemption from the overtime requirements for agricultural work. *Id.* § 213(b)(12).

Both sides moved for summary judgment. The district court referred the motions to a magistrate judge, who concluded that Statewide was not a farmer, the driving trips were not actually performed on a farm, and the trips were not a minor part of their work—all reasons why the exemption would not apply. But the magistrate judge decided that the agriculture exemption includes "work activities performed neither by a farmer nor on a farm when those work activities are incidental to primary agricultural activities performed on a farm." Because Statewide provided the transportation to comply with H-2A requirements for its harvest workers, the magistrate judge recommended concluding that the transportation fell under the exemption.

The district court rejected the magistrate judge's recommendation. It explained that the activities must be performed by a farmer or on a farm to fall under the exemption. Because Statewide did not object to the magistrate judge's conclusion that it is not a farmer or that the work was minor, and the activities at issue occurred wholly off a farm, the exemption did not apply. It denied Statewide's motion and it granted in part Ramirez and Santana's motion; it denied summary judgment for Ramirez and Santana on the issue of willfulness. The

parties resolved the remaining issues by stipulating that Statewide's conduct was not willful and agreeing to the amount of damages.

II. STANDARDS OF REVIEW

We review summary judgment *de novo*. *Buckner v. Fla. Habilitation Network, Inc.*, 489 F.3d 1151, 1154 (11th Cir. 2007). "Whether an employee meets the criteria for" an exemption under the Fair Labor Standards Act, "although based on the underlying facts, is ultimately a legal question." *Pioch v. IBEX Eng'g Servs., Inc.*, 825 F.3d 1264, 1268 (11th Cir. 2016). And we review legal questions *de novo*. *Buckner*, 489 F.3d at 1154.

III. DISCUSSION

The Fair Labor Standards Act requires employers to pay overtime to covered employees for all hours worked in excess of forty hours a week, 29 U.S.C. § 207(a)(1), but it exempts from this requirement "any employee employed in agriculture," *id.* § 213(b)(12). The Act includes primary and secondary definitions of "agriculture." *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 762–63 (1949). The primary definition is "farming in all its branches . . . includ[ing] the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . , [and] the raising of livestock, bees, fur-bearing animals, or poultry[.]" 29 U.S.C. § 203(f). And the secondary definition is "any practices

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