STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0535

Thomas Davison,
Appellant,

vs.

City of Minneapolis,
Respondent.

Filed February 3, 2009
Reversed and remanded
Huspeni, Judge[*]

Hennepin County District Court
File No. 27-CV-07-11640

Ronald F. Meuser, Jr., Meuser & Associates, P.A., 10925 Valley View Road, Suite 202, Eden Prairie, MN 55344 (for appellant)

Susan L. Segal, Minneapolis City Attorney, Timothy S. Skarda, Assistant City Attorney, 300 Metropolitan Centre, 333 South Seventh Street, Minneapolis, MN 55402 (for respondent)

Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Huspeni, Judge.

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

HUSPENI, Judge

Appellant challenges the district court's grant of summary judgment dismissing his declaratory-judgment claim, arguing that the district court erred in determining that he was ineligible for continuing health-insurance coverage, under Minn. Stat. § 299A.465 (2002), because he did not individually subscribe to city health insurance, but rather was covered through his wife's city policy, at the time that he retired. Because the statute is not ambiguous regarding the employer's obligation for the continued coverage and payment of the employer's contribution for coverage until the officer or firefighter reaches the age of 65 with no conditions or restrictions prohibiting coverage when the employee was listed as a dependent on a spouse's policy through the same employer, we reverse. Because the district court did not reach the issue of the interpretation of Minn. Stat. § 299A.465, subd. 1(a), and because material fact questions remain regarding whether appellant's permanent-disability pension was based upon a duty-related injury, we remand that issue for further proceedings.

FACTS

Appellant Thomas Davison was employed as a firefighter for the Minneapolis Fire Department from March 1979 to July 2004. In 1980 and 1989, he suffered work-related injuries to his lower back. In 1997, he underwent a right-sided L5-S1 lateral recess stenosis and neural foraminal decompression on his lower back.

Effective January 1, 2001, appellant waived his health-insurance coverage and instead obtained dependent coverage through his wife, who also works for the

Minneapolis Fire Department and had a family health-insurance policy. Several months later, appellant suffered a non-work-related heart attack. He applied for temporary-disability benefits based on his heart condition, and was approved for temporary-disability benefits related to that condition effective December 2001. In early 2002, respondent City of Minneapolis notified appellant that his Family-and-Medical-Leave-Act benefits had expired and that he had been placed on medical layoff effective December 18, 2001. Appellant was informed that he could remain on medical layoff until December 17, 2004, unless he retired or returned to work prior to that date.

In 2003, appellant underwent an anterior and posterior lumbar fusion due to his continuing back problems. While recovering in the hospital from the back surgery, he was diagnosed with gastric carcinoma. He underwent a definitive laparotomy, had a partial gastrectomy for removal of the cancer, and subsequently received chemotherapy and radiation treatment. In May 2004, he was given an independent medical evaluation (IME), the result of which indicated that his heart condition played a more significant role in his inability to work than the back problems.

In June 2004, appellant applied for a permanent-disability pension. At some point, he also applied for continued health-insurance coverage under Minn. Stat. § 299A.465. He retired effective July 1, 2004.

The Public Safety Officer Benefit Committee initially denied appellant's request for continued health-insurance coverage. On October 6, 2004, it issued a decision upholding the determination on reconsideration, based on the following factors: (1) the statute requires that the applicant suffer a disabling injury that results in the firefighter's

retirement or separation from service and occurs while the firefighter is acting in the course and scope of his duties; (2) appellant became disabled as a result of his non-work-related heart condition, and, therefore, his disability did not occur in the course and scope of his duties; (3) appellant's separation from service in 2001 was a result of his heart condition; (4) his original disability pension was based on his heart condition and not his lower back injury; (5) appellant's treating physician opined in 2001 that appellant was totally and permanently disabled; (6) a letter from the doctor who conducted the 2004 IME states that appellant's heart condition, as well as his cancer diagnosis, play a more significant role in his inability to work than his back condition; and (7) even if appellant was able to establish that he meets the eligibility requirements of Minn. Stat. § 299A.465, subd. 1, he is still not eligible for continued health-insurance coverage because he waived his insurance coverage as of January 1, 2001.

Appellant's application form for a permanent-disability pension in the record indicates that it was approved on October 1, 2004.[1] But appellant repeatedly asserts on appeal that on January 1, 2005, the Minneapolis Firefighters' Relief Association (MFRA) approved his service-related permanent-disability pension. While respondent likewise referred to appellant's permanent-disability pension pursuant to Minn. Stat. § 423C.05, subd. 5 (2002), which addresses service-related permanent-disability pensions, it disputes that the pension was service-based on appeal.

[1]On the bottom of the application form, there is a parenthetical reference regarding an "[o]ption [c]hosen" that states "[w]ill take effect upon transfer to Service Pension," but there is otherwise no designation of the permanent-disability pension as service-related or non-service-related.

Subsequently, appellant brought this action seeking a declaratory judgment under Minn. Stat. § 299A.465. Both parties moved for summary judgment. The district court granted summary judgment for respondent, dismissing appellant's declaratory-judgment action. This appeal follows.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

> A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law. On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted.

Fabio v. Bellomo, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted).

Several subdivisions of Minn. Stat. § 299A.465 impact the decision in this case. A firefighter is eligible for continued health-insurance coverage after suffering a disabling injury that: "(1) results in the . . . firefighter's retirement or separation from service; (2) occurs while the . . . firefighter is acting in the course and scope of duties as a . . . firefighter; and (3) the . . . firefighter has been approved to receive the . . . firefighter's duty-related disability pension." Minn. Stat. § 299A.465, subd. 1(a). When such eligibility is shown, "[t]he . . . firefighter's employer shall continue to provide health coverage for: (1) the . . . firefighter; and (2) the . . . firefighter's dependents if the . . .

firefighter was receiving dependent coverage at the time of the injury under the employer's group health plan." *Id.*, subd. 1(b). Finally, subdivision 1(c) provides:

> The employer is responsible for the continued payment of the employer's contribution for coverage of the . . . firefighter and, if applicable, the . . . firefighter's dependents. Coverage must continue for the . . . firefighter and, if applicable, the . . . firefighter's dependents until the . . . firefighter reaches the age of 65. However, coverage for dependents does not have to be continued after the person is no longer a dependent.

In granting summary judgment to respondent, the district court stated in pertinent part: "Minn. Stat. § 299A.465, subd. 1, requires an employer to 'continue' to provide health coverage. [Appellant] did not have insurance coverage when he discontinued his employment with the fire department due to disability. Therefore, continuing medical insurance coverage is not available to [appellant]. He is a dependent on his wife's policy and can continue in this status."

The district court, by concluding that appellant did not have any coverage that could be continued, was not required to address whether appellant met the requirements of subdivision 1(a). Therefore, we first address the issue actually decided by the district court. Assuming for the sake of further analysis that appellant met the requirements of subdivision 1(a), did he, in fact, have coverage that could be continued under subdivision 1(b) and (c)?

It is uncontested that at the time of his qualification for a permanent-disability pension appellant did not have his own health-insurance policy, but rather was covered as a dependent under his wife's policy through the same employer. The district court

deemed that status insufficient to qualify appellant for the continuing contribution by respondent mandated by subdivision 1(b) and (c). Examination of the language of the statute and consideration of the underlying public policies implicated here, however, causes us to conclude otherwise.

Initially, the facts of this case—that both the firefighter and the spouse were employed by the same employer—might very well be ones not considered by the legislature in adopting the statutory provisions. Had the legislature intended that a firefighter was required to have his or her own coverage, rather than being a dependent on the policy of a spouse who was employed by the same employer, it could have provided language to that effect in the statute. The statute, however, is silent.

In 200l, appellant and his wife chose to be insured under one family policy; she as the primary insured, he as a dependent. Interpreting the statute to require that the firefighter have his or her own policy would require, in a situation such as here, either that each spouse maintain an individual policy (very likely incurring an increased cost for both the insureds and respondent as employer), or that they "gamble" with one policy and trust that if one of the spouses became disabled it be the one who is the primary insured and not the dependent. We agree with appellant's observation that the legislature could not have intended that a firefighter married to a fellow-employee should bear a significantly greater financial burden by maintaining two separate policies in order to assure eligibility for the benefits provided under section 299A.465.

Additionally, we note that the provisions of subdivision 1(c), requiring that coverage continue for the firefighter and, if applicable, for the firefighter's dependents

until the firefighter reaches age 65, contain no requirement that the firefighter must be the primary insured at the time of retirement or injury. Finally, we note the possible unfortunate consequences for appellant if, as the district court noted, continued insurability depends on the policy of appellant's wife. That eligibility may prove to be a slender thread, indeed, dependent upon the wife's continued employment, as well as other possibly unforeseen eventualities. We believe that the legislature did not intend that a firefighter in appellant's position be cast upon such uncertain waters, or be "disqualified from benefits that the legislature intended all officers to receive for the risks they incur while guarding the peace and safety of the citizens of this state." *In re Claim for Benefits by Meuleners*, 725 N.W.2d 121, 125 (Minn. App. 2006.)

We conclude, therefore, that the duty of respondent to continue to provide health-insurance coverage for appellant and to continue to pay the employer's contribution for that coverage under subdivision 1(b) and (c) extends to appellant. Having determined that appellant qualifies for the continued coverage and payment of the employer's contribution for coverage because he is a dependent on his wife's policy, we need not address appellant's alternative arguments that (1) he should qualify even if he had no coverage at the time of retirement or that (2) the critical date for qualification should be the date of injury rather than the date of retirement.

Because we have resolved in appellant's favor the issue of his qualification for continued health-insurance coverage and respondent's duty to pay the employer's contribution to that coverage, we now turn to the next issue. Did appellant meet the requirements of subdivision 1(a)? The district court ruled "[t]he MFRA did not

specifically find that there was a duty-related disability and there is disputed evidence on this issue." Because both parties moved for summary judgment, it may be appropriate to infer that there is agreement between them that no material fact issues are present. Such an inference is not always made by the courts, however, and the district court here ruled that there are disputed facts. With that we must agree because, at a minimum, the type of permanent-disability pension appellant received is in dispute.

Under Minn. Stat. § 299A.465, subd. 1(a), a firefighter is eligible for continued health coverage after suffering a disabling injury that: "(1) results in the . . . firefighter's retirement or separation from service; (2) occurs while the . . . firefighter is acting in the course and scope of duties as a . . . firefighter; and (3) the . . . firefighter has been approved to receive the . . . firefighter's duty-related disability pension." The parties dispute whether appellant's permanent-disability pension in itself is sufficient to meet the requirements of subdivision 1(a), but the district court did not address this issue. We decline to resolve this issue for the first time on appeal and instead remand for further proceedings.

Reversed and remanded.