

A08-55

State of Minnesota
In Supreme Court

TROELS BOTLER,

Employee-Relator,

vs.

WAGNER GREENHOUSES,

Employer-Respondent

and

ONE BEACON INSURANCE Co.,

Insurer-Respondent.

RELATOR'S INFORMAL LETTER BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

PROCEDURAL POSTURE & STATEMENT OF THE CASE

On March 7, 2007, Workers' Compensation Judge Jennifer Patterson concluded that Minnesota law requires an insurer or self-insured employer to pay the court costs and reasonable attorney fees associated with the appointment of a guardian or conservator and, also, those court costs and legal fees associated with the appointment of successor guardians and conservators. Judge Patterson ordered the employer and insurer to pay all court costs and reasonable attorney fees associated with the appointment of Lutheran Social Services (hereinafter "LSS") as the successor guardian/conservator in this case.¹

Additionally, Judge Patterson went on to conclude that "Chapter 176 of the Minnesota statutes does not set out that a workers' compensation insurer or self-insured employer in Minnesota is responsible for paying the reasonable charges of guardians and conservators and the costs of preparing and filing the annual accounting required by the Probate Court." Workers' Compensation Court of Appeals Opinion, 3 (December 17, 2007). "Unfortunately," Judge Patterson said, "a workers' compensation judge has no jurisdiction to award payment of a new benefit not explicitly set out in the statute, in (sic) or as interpreted by the Minnesota Supreme Court." Findings and Or., 7 (Comp. Ct., May 22, 2007).

Employee appealed this latter decision and, on December 17, 2007, the Minnesota

¹ Previously, as noted in the Workers' Compensation Court of Appeals opinion and other documents, the wife of Troels Botler had been the conservator but relinquished that position after filing to divorce Troels Botler.

Workers' Compensation Court of Appeals vacated Judge Patterson's decision regarding an insurer or self-insured employer having to pay for the appointment of successor guardians or conservators. Also, the Workers' Compensation Court of Appeals dismissed employee's appeal of Judge Patterson's denial of awarding employee the annual costs for accountings made to the probate court for lack of jurisdiction. Subsequently, Employee petitioned for and was granted a Writ of Certiorari to this court.

RELATOR'S ARGUMENTS

Under Minn. Stat. § 176.092 subs. 2 and 3 (2006), an incapacitated or minor employee that has been injured within the course and scope of his or her employment shall seek a district court order appointing a guardian or conservator. Once the conservatorship has been established, the probate court (district court) has the authority to order the insurer or self insured employer to pay the costs, guardian, conservator and attorney fees associated with the appointment of the guardian or conservator as required under section 176.092; Minn. Stat. § 524.5-501(c).

Annual reports from the guardian/conservator are required by the district court on an annual basis. Minn. Stat. § 524.5-316(a) and Minn. Stat. § 524.5-420(a).

The Minnesota Workers' Compensation Court of Appeals dismissed Employee's appeal stating that the jurisdiction of the workers' compensation courts [do] not extend to interpreting or applying Minn. Stat. § 524.5-501(c).

A. This is a Case that Arises under the Minnesota Workers' Compensation Laws and Therefore The Workers' Compensation Court of Appeal Has Jurisdiction

The Workers' Compensation Court of Appeals shall...be the sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the workers' compensation laws of the state in those cases that have been appealed to the Workers' Compensation Court of Appeals.... The Workers' Compensation Court of Appeals shall have no jurisdiction in any case that does not arise under the workers' compensation laws of the state.

Minn Stat. § 175A.01 subd. 5. (2006).

Relator asserts that since Minn. Stat. § 176.092 mandates the appointment of a guardian or conservator, that such cases as the one at bar "arise" under the worker's compensation law. Accordingly, the Workers' Compensation Court of Appeals has jurisdiction to order an insurer or self-insured employer to pay the costs associated with the appointment of successor conservators or guardians. Also, Relator contends that the Workers' Compensation Court of Appeals has jurisdiction to order an insurer or self-insured employer to pay costs the conservator or guardian incur in complying with the statutes regarding annual accountings.

In support of his argument, Relator refers the court to Freeman v. Armour Food Co., 380 N.W.2d 816 (Minn. 1986). In Freeman, this court addressed the jurisdiction of the Workers' Compensation Court of Appeals under Chapter 176 in relation to Minn. Stat. § 65B (the Minnesota No-Fault Act). Specifically, the issue was whether or not the Workers' Compensation Court of Appeals had subject matter jurisdiction to award

reimbursement to a no-fault (automobile) carrier that intervened in a workers' compensation claim. Id. at 817. The self-insured employer in Freeman argued that while a no-fault carrier has a right of reimbursement under the No-Fault Act (Minn. Stat. § 65B.54, subd 3), such a right is conspicuously absent from Chapter 176, and as such the court lacks subject matter jurisdiction. Id. at 819. The Freeman Court, however, held that the No-Fault carrier had the right to intervene and seek reimbursement, but that the Workers Compensation Court did not have jurisdiction to determine the amount of reimbursement. Id. at 820.

This court, however, stated that “[t]he fact the right of reimbursement appears in Chapter 65B rather than Chapter 176 makes it no less a remedy the WCCA should recognize.” Id. at 820. The WCCA can determine if the no-fault carrier's intervention claim is for a period of time which should have been paid by the workers' compensation insurer because it is within the WCCA's jurisdiction to determine workers' compensation liability. Id. Also, the court noted, there are persuasive policy reasons for having the WCCA award reimbursement such as avoiding multiple litigation and involvement of another forum to enforce the remedy eliminating the likelihood of employee's double recovery. Id. at Fn. 5.

Relator concedes that the Workers' Compensation Court of Appeals does not have jurisdiction to determine the reasonableness of the costs and fees associated with appointment of a conservator or guardian or the costs and fees associated with annual

accountings. That is solely within the jurisdiction of the district court. *See, Freeman*, 380 N.W.2d at 820. However, similar to *Freeman*, it is within the Workers' Compensation Court of Appeals' jurisdiction to determine that a workers' compensation insurer or self-insured employer is responsible for those costs.

B. The Legislative Intent, Wage Loss Protection Provided by The Workers' Compensation Act, and Equity Dictate the Insurer Must Pay Ongoing Costs Associated with the Conservatorship/Guardianship.

The Relator respectfully requests that this court interpret the Minnesota Probate Code and relevant Workers Compensation Statutes to determine whether or not the workers compensation insurer is liable for the ongoing costs of maintaining a conservatorship. The Uniform Probate Code provides the method for how a conservator or guardian is to be reimbursed.

[A] lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the protected person's estate or personal affairs, or the restoration of that person's capacity or termination of the protective proceeding shall be entitled to compensation from the protected person's estate or from the county having jurisdiction over the proceedings if the ward or protected person is indigent.

Minn. Stat. 524.5-502 subd. (b).

The conservator or guardian is entitled to compensation from the protected person's estate. The protected person's estate includes not only their financial assets but also their workers compensation benefits carrier. The Minnesota Workers Compensation

Act specifically requires a person to have a conservator appointed when an injured person is incapacitated and applies for workers compensation benefits. *See*, Minn. Stat. 176.092 (2006). The probate code, likewise, provides for how the conservator is to be compensated.

When Minnesota Statute §176.092 (2006) is read in conjunction the Probate Code Minn. Stat. 524.5-502 subd. (b), it is evident that the word “estate” in the probate code includes the worker’s compensation benefits. Since the workers compensation act mandates a that a conservator be appointed, at the expense of the workers compensation insurer, and the intent of the workers compensation act is to make the employee whole, it logically follows that the workers compensation insurer should be required to pay for the ongoing costs associated with the conservatorship/guardianship. Therefore, when a conservator is appointed under the compensation act, that conservator must receive their fees from the insurer to maintain the legislative intent of the workers compensation act.

Just as jurisdiction is a question of law that the Supreme Court reviews *de novo*. *See*, Kellar v. Von Holtum 605 NW2d 696, 700 (Minn. 2000). Statutory interpretation also is a question of law the Supreme Court reviews *de novo*. *See*, State v. Knutson, 523 N.W.2d 909,912 (Minn.Ct.App. 1994), *rev. denied* (Jan 13, 1995).

Accordingly, since this court does have jurisdiction to interpret statutes and this is a case of first impression, Relator Troels Botler respectfully requests that this court assert its jurisdiction to interpret the statutes at issue and grant the realtor his insurance

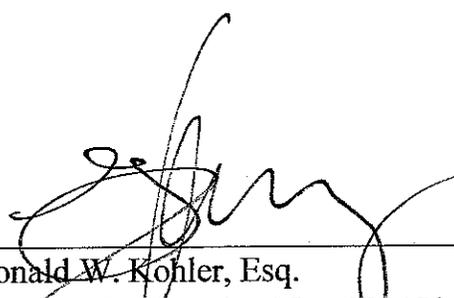
reimbursements.

CONCLUSION

Based upon the foregoing, Mr. Botler respectfully contends that Minnesota courts should determine that the ongoing conservatorship/guardianship fees should be paid by the workers' compensation insurer.

Respectfully submitted,

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