

CASE NO. A08-55

**State of Minnesota
In Supreme Court**

TROELS BOTLER,

Employee/Relator,

vs.

WAGNER GREENHOUSES,

Employer/Respondent,

and

ONE BEACON INSURANCE CO.,

Insurer-Respondent.

BRIEF OF RESPONDENTS

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STATEMENT OF THE LEGAL ISSUES

1. Do the workers' compensation courts have jurisdiction to determine whether workers' compensation employers/insurers are obligated to pay ongoing costs and fees associated with the administration of a guardianship or conservatorship?

The compensation judge at the Office of Administrative Hearings determined that the plain language of the statute does not require an employer/insurer to pay any costs and fees beyond those required to establish the guardianship or conservatorship. The Workers' Compensation Court of Appeals vacated the trial court determination and concluded that jurisdiction over this issue should be in the district court. The Respondents seeks to have this Court reverse the W.C.C.A. and reinstate the determination of the compensation judge.

2. Can this Court review the determination of the compensation judge without a decision on the merits from the W.C.C.A.?

This issue has not been addressed by the lower courts in this case. It is the position of the Respondents that, before addressing this issue, this Court should remand this matter to the W.C.C.A. for a determination on the merits. The W.C.C.A. is a court uniquely charged with hearing workers' compensation matters, and deference should be given to this authority before review by the Supreme Court.

3. Should an employer and insurer, in a workers' compensation matter, be required to pay the ongoing costs and fees associated with a conservator and/or guardianship, pursuant to Minn. Stat. §§ 176.092, subd. 2 and 524.5-501(C)?

The compensation judge determined that the plain language of the statute limits the obligation of the employer and insurer to the fees and costs associated with appointment of a guardian or conservator. The W.C.C.A. did not address this issue.

It is the position of the Respondents that the statutes at issue require only that an employer and insurer pay the costs and fees associated with the appointment of the guardian or conservator, that this is supported by the legislative history presented to the compensation judge, and that, absent legislative action, no additional benefits should be awarded.

STATEMENT OF THE CASE AND FACTS

Factual Background

The underlying facts in this matter are not in dispute. The Employee sustained a work-related injury, including a closed head injury, on January 4, 2002. As a result of the injury, the Employee was rendered permanently and totally disabled, and found to have a 76.02% permanent partial disability of the body as a whole. The Employee has resided in a nursing home since 2004, and the Employer and Insurer are responsible for the cost of his case at the nursing home. As a result of his injuries, the Employee required appointment of a legal guardian pursuant to Minn. Stat. §176.092, subd. 1. The Employer and Insurer agreed that they were responsible for the court and legal fees associated with appointment of the Employee's first legal guardian and conservator. The Employee's first legal guardian and conservator was his now ex-wife. (Findings 2H and 2I.) Lutheran Social Services (hereinafter "LSS") has now been appointed the Employee's new (second) guardian and conservator. The issue presented in this matter is whether the Employer and Insurer are obligated to pay the ongoing fees and services of LSS, incurred while acting as the Employee's legal guardian.

Procedural Posture

Litigation of the issues before this Court began on or about December 8, 2005 when the Employee filed an Amended Claim Petition seeking ongoing permanent total disability benefits (PTD); 76.02% PPD; and conservatorship accounting fees attorney fees and yearly

fees incurred by LSS as his guardian. By the time this matter reached the Hearing, the parties had agreed that the Employee is PTD and had stipulated that he sustained PPD to the extent of 76.02% of the body as a whole. (Relator's Appendix, A-7; Findings and Order, Findings 2B and 2E.)

This matter came on for Hearing before Compensation Judge Jennifer Patterson of the Office of Administrative Hearings on March 7, 2007. (Relator's Appendix A-6.) The issues presented to Compensation Judge Patterson involved the Employee's claims that the Employer and Insurer are responsible for Court and legal fees associated with the appointment of his second guardian/conservator, LSS; the service fees of LSS; and the annual accounting fees of LSS. (Relator's Appendix A-6 to A-7; Findings and Order, Statement of Issues 1 and 2.) Compensation Judge Patterson concluded that the Employer and Insurer are responsible for the fees associated with appointment of the second guardian and conservator, but are not responsible for the various costs and fees associated with providing guardianship and conservatorship services, including an annual accounting to the probate court. (Relator's Appendix A-10; Findings and Order, Orders 1, 2 and 3.)

Compensation Judge Patterson's Findings include the following:

- That the plain language of the statute requires the Employer and Insurer to pay the court costs and reasonable attorney fees associated with the appointment of a guardian or conservator and any successor guardians or conservators. (*Unappealed Finding 3.*)
- That review of the tapes of the 1993 Minnesota House Labor-Management Relations subcommittee and full committee hearings on Minn Stat. §176.092 "clearly set out that the goal of the new legislation that became Minn. Stat. §

176.092 was to provide for the appointment of a guardian and conservator who could enter into settlement of minor or legally incompetent, employees after work injuries. Neither the subcommittee, nor the full committee hearing addressed the issues of whether an insurer would be responsible for the reasonable fees of a guardian and conservator for providing ongoing services and for preparing and filing the annual accounting required by the Probate Court. Neither the subcommittee nor the full committee hearing provides guidance on the issues in dispute on March 7, 2007.” (*Unappealed Finding 4.*)

- That, in usual cases, guardians and conservators are compensated for their services from the assets of the legally incapacitated adult or the county if the incapacitated adult is eligible for governmental services. (*Unappealed Finding 8.*)
- “Workers’ compensation insurers and self-insured employers in Minnesota are required to pay for the limited and defined benefits enumerated in Chapter 176 of the Minnesota Statutes. Workers’ Compensation insurers and self-insured employers in Minnesota are not required to pay benefits not enumerated in the statute.” (*Unappealed Finding 11.*)
- That the Workers’ Compensation Act does not require an insurer or self-insured employer to pay for the reasonable charges of guardians and conservators and costs of preparing and filing the annual accounting required by the Probate Court. (*Unappealed Finding 12.*)

(Relator’s Appendix A-6 through A-13.)

Pursuant to a Notice of Appeal filed on or about May 31, 2007, the Employee appealed Compensation Judge Patterson’s determinations, and specifically only Finding 13 and Order 3.

The matter was considered by the W.C.C.A. and it issued its decision, without oral argument, on December 17, 2007. The Court did not address the underlying merits of the appeal. Instead, the Court concluded that, in order to resolve the underlying issues in the

case, it must interpret Minn. Stat. § 524.5-501(c) of the Uniform Guardianship & Protective Proceedings Act. They concluded that the Act invests the District Court with the authority and jurisdiction to control and direct the actions of conservators and guardians and that the jurisdiction of the workers' compensation courts does not extend to interpreting or applying those statutory provisions. Therefore, it vacated the Findings and Order of Judge Patterson and dismissed the appeal.

ARGUMENT

I. THE WORKERS' COMPENSATION COURTS (OFFICE OF ADMINISTRATIVE HEARINGS AND WORKERS' COMPENSATION COURT OF APPEALS) HAVE JURISDICTION TO INTERPRET THE EXTENT OF BENEFITS OWED PURSUANT TO THE WORKERS' COMPENSATION ACT, AND IN PARTICULAR MINN. STAT. §176.092, SUBD. 2, THEREFORE THE W.C.C.A. ERRED IN VACATING THE COMPENSATION JUDGE'S INTERPRETATION OF THE STATUTE.

The W.C.C.A. erred in vacating the determination of the compensation judge who found that an employer and insurer are not required to pay the ongoing costs of a guardian or conservator appointed pursuant to Minn. Stat. §176.092, subd. 2. The primary issue on appeal is whether the Office of Administrative Hearings ("OAH") and the Workers' Compensation Court of Appeals ("W.C.C.A.") have jurisdiction to determine costs and fees associated with the ongoing services and reporting of a guardian or conservator appointed pursuant to Minn. Stat. § 176.092. Compensation Judge Jennifer Patterson of the Office of Administrative Hearings found that the Employer and Insurer are only responsible for the fees associated with appointment of the guardian or conservator. (Findings and Order of Compensation Judge Jennifer Patterson, May 23, 2007, Unappealed Findings 4, 8, 11 and 12;

Relator's Appendix A6-13.) On appeal, the W.C.C.A. vacated the Findings and Order of Judge Patterson, finding that the district court has the authority and jurisdiction to control and direct the actions of conservators and guardians, and that this jurisdiction does not extend to the workers' compensation courts. The Employer and Insurer agree with the Relator that the workers' compensation courts have jurisdiction to interpret Minn. Stat. §176.092, subs. 2 and 3.

The jurisdiction of the W.C.C.A. is established by Minn. Stat. § 175A.01, subd. 5, which indicates, in-part:

The workers' compensation court of appeals shall have statewide jurisdiction. Except for an appeal to the supreme court or any other appeal allowed under this subdivision, 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 . . .

Minn. Stat. §175.01, subd. 5 (2006). The W.C.C.A. concluded that this authority does not extend to the interpretation of what benefits an employer and/or insurer must pay pursuant to Minn. Stat. §176.092. The W.C.C.A.'s rationale is inconsistent with this Court's interpretation of the jurisdictional boundaries of the W.C.C.A. In addition, the W.C.C.A.'s decision appears to misinterpret the issue with which it was presented.

This Court has, on multiple occasions, reviewed the jurisdictional limitations of the workers' compensation courts. These cases establish that the workers' compensation courts can look to other statutory and common-law authority when interpreting rights under the

Workers' Compensation Act. For example, in *Freeman v. Armour Food Company*, 380 N.W.2d 816 (Minn. 1986) this Court held that the Workers' Compensation Court of Appeals can order a self-insured employer to reimburse a no-fault carrier for benefits paid for injuries which were also covered by workers' compensation. Similarly, in *Sundby v. City of St. Peter*, 693 N.W. 2d. 206 (Minn. 2005), this Court held that the W.C.C.A. did not exceed its authority by examining the Social Security Act when it looked to the Federal law for instruction in ascertaining whether Social Security Disability Insurance benefits may be included in the workers' compensation benefits offset calculation provided for in Minn. Stat. § 176.101, subd. 4 . In each of these cases, the issue of interpretation of another statute was before the workers' compensation courts because the underlying benefits arose under the Workers' Compensation Act.

Similarly, in this case, the underlying issue is what benefits are available pursuant to the Workers' Compensation Act. The W.C.C.A. simply misunderstood or misinterpreted the issue before it. The issue on appeal to the W.C.C.A. was, in requiring an employer/insurer to pay for the appointment of a guardian or conservator, did the legislature also intend to require an employer/insurer to pay for the ongoing services and fees of the guardian or conservator. The Compensation Judge, having reviewed all of the evidence, including legislative history, concluded that the legislature did not intend to extend these benefits, and therefore denied the claim. The W.C.C.A. completely passed over the "issue" and declared that a district court has the authority to determine the reasonableness of costs

and fees associated with the guardianship. However, the issue before the W.C.C.A. was not the amount of or reasonableness of the fees. The issue was whether the Employer and Insurer were obligated to pay ongoing fees pursuant to applicable provision of the Workers' Compensation Act.

Not only do the workers' compensation courts have jurisdiction to determine the issue in this case, they are the only courts, short of this Court, that have jurisdiction to determine the type and extent of benefits payable pursuant to the Workers' Compensation Act. The W.C.C.A. erred in determining that jurisdiction over this issue does not lie with the workers' compensation courts. The W.C.C.A. erred in misinterpreting the issue presented on appeal. The Employer and Insurer respectfully request that this Court reverse the vacation of the Compensation Judge's determination and remand this matter to the W.C.C.A. for a determination on the merits of the issue presented.

II. THIS COURT SHOULD NOT, AT THIS TIME, UNDERTAKE A DE NOVO REVIEW OF MERITS OF THE UNDERLYING CASE.

Relator's argument that this Court can, at this time, conduct a *de novo* review of the underlying merits of the case is misplaced. There is no question that this Court reviews, *de novo*, questions of law or interpretations of statute. See *Zurich American Ins. v. Bjelland*, 710 N.W. 2d 64, 68 (Minn. 2006.) However, Relator has failed to cite any statutory or case law standing for the proposition that this Court will interpret a workers' compensation statute when the W.C.C.A. has determined that there is no jurisdiction to do so and has, in-fact, vacated the trial court determination. The W.C.C.A. has not, at this time, ruled on the

underlying merits of the issues presented to the trial judge. In fact, the W.C.C.A. vacated the determinations of the trial judge. Therefore, a request to have this Court review the merits of the issues and interpret the Workers' Compensation Act, is not yet ripe for review and the Employer and Insurer respectfully request that this Court not address the underlying merits of this matter.

III. THE RULES OF STATUTORY CONSTRUCTION REQUIRE STRICT INTERPRETATION OF THE PLAIN MEANING OF MINN. STAT. §§176.092, SUBD. 2 AND 524.5-501(C).

The costs associated with the services of LSS, including the annual accounting expenses are not the responsibility of the Employer and Insurer. Minn. Stat. §§ 176.092, subd. 2 and 525.501(c) require only that the Employer and Insurer pay for the appointment of a guardian or conservator. The Employer and Insurer have paid for the appointment of a guardian or conservator. The plan language of the Statute does not require the Employer and Insurer to pay the ongoing costs associated with the guardianship. The position of the Employer and Insurer is supported by the rules of statutory interpretation, which require courts, when engaged in statutory interpretation, to adhere to the plain language of the statute. The position of the Employer and Insurer is also supported by the evidence of the legislative intent in establishing this provision as a companion to the pre-existing statutory provision regarding guardianships in District Court matters. The Employer and Insurer respectfully request affirmance of Compensation Judge Patterson's determination that the Employer and Insurer are not responsible for payment or reimbursement of the charges of Lutheran Social

Services for providing ongoing guardian and conservator services or for the costs of preparing and filing the annual accounting required by the Probate Court.

The arguments of the Employer and Insurer on each of these issues are presented in the Respondent's Brief of Employer and Insurer, presented to the Workers' Compensation Court of Appeals and the Employer and Insurer would refer this Court to that Brief versus repeating the same information. (See Relator's Appendix A28-47.)

IV. THE RELATOR'S ARGUMENTS THAT PRINCIPLES OF "EQUITY" SHOULD BE APPLIED TO A DETERMINATION IN THIS MATTER ARE MISPLACED AND INAPPLICABLE.

Again, on this issue, the arguments of the Employer and Insurer on each of these issues are presented in the Respondent's Brief of Employer and Insurer, presented to the Workers' Compensation Court of Appeals and the Employer and Insurer would refer this Court to that Brief versus repeating the same information. (See Relator's Appendix A28-47.)

CONCLUSION

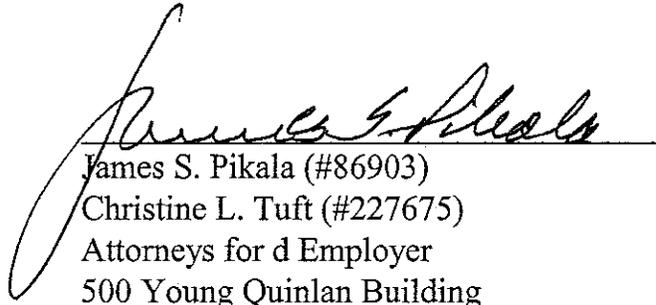
Minn. Stat. Sec. 176.092 is a provision within the Minnesota Workers, Compensation Act. The Legislature and prior rulings of this Court have established that the Workers' Compensation courts have jurisdiction to interpret provisions of the Minnesota Workers' Compensation Act. Therefore, there is jurisdiction within the Workers' Compensation judicial system to interpret and apply the provisions of Minn. Stat. Sec. 176.092, Subd. 2. The W.C.C.A. erred when it vacated the Decision of the compensation judge. Therefore, this case should be remanded to the W.C.C.A. to issue a decision on the merits of the issue

presented to it by Relator's appeal.

In the alternative, this Court should reinstate the determination of the compensation judge.

Dated: *March 11, 2009*

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