MICHELLE MILNER, Employee/Petitioner, v. SCHWAN'S SALES ENTERS. and LIBERTY MUT. INS. CO., Employer-Insurer.

WORKERS' COMPENSATION COURT OF APPEALS
JUNE 9, 1999

No. [REDACTED SSN]

HEADNOTES

VACATION OF AWARD - VOIDABLE AWARD. Where the compensation judge erroneously entered an order precluding a potential intervenor in South Dakota from asserting a claim for medical expenses against the employee, and where the parties subsequently entered into a Stipulation for Settlement premised on their belief that the potential intervenor was barred from asserting a claim against the employee, and where the potential intervenor obtained a judgment against the employee in South Dakota which was enforceable in Minnesota, the Award on Stipulation is voidable, and the employee's petition to vacate the award is granted.

Petition to vacate award on stipulation granted.

Determined by Johnson, J., Wilson, J., and Wheeler, C.J.

OPINION

THOMAS L. JOHNSON, Judge

The employee petitions to vacate the Award on Stipulation served and filed January 6, 1994, on the basis of a mutual mistake of fact. We conclude the award on stipulation is voidable and the employee has established sufficient grounds to vacate the award on stipulation. Accordingly, we grant the petition to vacate.

BACKGROUND

The employee, Michelle Milner, sustained an admitted work-related injury in the nature of left upper extremity tendinitis in July 1991, while working for the employer, Schwan's Sales Enterprises. The employer and its insurer, Liberty Mutual Insurance Company, accepted liability and paid wage loss and medical benefits through November 11, 1991. The employee subsequently alleged the work injury also caused thoracic outlet syndrome, left shoulder tendinitis, and carpal tunnel syndrome. She claimed entitlement to further wage loss, rehabilitation benefits and medical expenses, including the costs of surgery for thoracic outlet syndrome at McKennan Hospital in Sioux Falls, South Dakota. The employer and insurer denied liability for any injury except the admitted left upper extremity tendinitis, and maintained that the employee had received all benefits to which she was entitled.

The matter came on for hearing before Compensation Judge Bernard Dinner at the Office of Administrative Hearings in April 1993. The case was stricken from the calendar due to counsel's failure to notify all potential intervenors of their right to intervene in the action. Service was subsequently accomplished on all potential intervenors, and three intervened.[1] No response was received from the others, including McKennan Hospital. Compensation Judge Dinner found this failure to respond materially prejudiced the rights and interests of the parties.[2] On September 8, 1993, the compensation judge issued an order precluding these providers, including McKennan Hospital, from intervening in the action and/or claiming reimbursement from the employee, the employer or the insurer. The compensation judge's order stated in part:

> NOW, THEREFORE, IT IS HEREBY ORDERED, that all medical providers and potential intervenors herein, with the exception of Blue Cross-Blue Shield of Minnesota, Surgical Associates of Sioux Falls and Medical X-ray Center, are hereby precluded from intervening in this matter and are hereby precluded from claiming reimbursement as against the employee, the employer or insurer and any of the other named intervenors herein. (Ex. B.)[3]

The parties, including the three intervenors, thereafter entered into a Stipulation for Settlement in which the employee accepted $6,500 in settlement of "any and all claims" for workers' compensation benefits "to date and for five years in the future, through July 27, 1998." The employee's claims for benefits arising after that time were left open. The employee specifically settled her claims for medical expenses incurred to date. The settlement referenced the compensation judge's September 8, 1993 order and recited that the claims of the non-intervening medical providers were barred. An Award on Stipulation was served and filed on January 6, 1994.[4] (Ex. A.)

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[1] According to documents submitted to Compensation Judge Dinner, 14 medical providers and Blue Cross and Blue Shield of Minnesota were notified of their right to intervene in the matter. All but one of these providers, including McKennan Hospital, are located in the Sioux Falls, South Dakota area.

[2] Failure to comply with the requirements of Minn. Stat. § 176.361, subd. 2, regarding applications to intervene, may result in denial of a claim for reimbursement if the compensation judge "determines that the noncompliance has materially prejudiced the interests of the other parties." Id. at subd. 7.

[3] References to exhibits are those exhibits attached to the employee's petition to vacate, filed January 11, 1999.

[4] One of the intervenors did not sign the original settlement agreement, but subsequently settled with the other parties. A second Award on Stipulation regarding this intervenor was served

McKennan Hospital's bill for services provided to the employee remained unpaid, and McKennan assigned its interest in the account to Accounts Management, Inc. (AMI) for collection. On January 10, 1994, AMI served a South Dakota Summons and Complaint on the employee. AMI obtained a default judgment against the employee in South Dakota in late February 1994, entitling it to recover more than $8,600 from the employee. (Ex. D.) In an effort to preclude AMI from docketing the South Dakota default judgment in Minnesota and enforcing the judgment against the employee, the parties sought to convert Compensation Judge Dinner's Order Precluding Intervention into a judgment in Hennepin County. The Hennepin County District Court determined that it did not have authority to enter judgment on the workers' compensation court's order, (Ex. E.) and the Minnesota Court of Appeals affirmed. See Milner v. McKennan Hospital, 529 N.W.2d 498 (Minn. Ct. App. 1995).[5]

AMI subsequently obtained a notice of filing and docketing of the South Dakota default judgment in the District Court in Lyon County, Minnesota. (Ex. G.) The employee then filed a claim petition seeking payment of the medical expenses for her treatment at McKennan Hospital. (Judgment Roll, Claim Petition filed 10/28/96). A settlement judge at the Department of Labor and Industry granted the employer and insurer's motion to dismiss the claim petition. The judge concluded the employee had no legal basis to pursue the claim as Compensation Judge Dinner's order precluding McKennan from intervening or seeking reimbursement was not appealed and thus was *res judicata*. (Judgment Roll, Order of Settlement Judge James F. Cannon, served and filed 2/19/97.) The employee filed a Petition to Vacate the Award on Stipulation on April 9, 1997. The employer and insurer filed an objection to the petition on April 14, 1997. By decision filed August 19, 1997, this court denied the employee's petition to vacate. The court concluded the petition to vacate was premature since it was not determined whether the employee might obtain a stay of execution. Milner v. Schwan's Sales Enterprises, slip op. (W.C.C.A. August 19, 1997).

The employee next filed a motion in the District Court, Lyon County, Minnesota seeking to vacate AMI's judgment against the employee or, in the alternative, seeking to stay enforcement of the judgment. By Order filed December 21, 1998, Judge George Marshall denied the employee's motion. In his memorandum, Judge Marshall concluded the employee's liability to AMI stemmed from a contract with McKennan Hospital in which the employee agreed to be personally responsible for any amounts not paid by the workers' compensation carrier. The judge further concluded that McKennan Hospital, a South Dakota corporation, is not subject to the

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and filed on April 5, 1994.

[5] The parties sought to convert Compensation Judge Dinner's order to a judgment under Minn. Stat. § 176.451, which provides that where there has been a default of more than 30 days in the payment of compensation due under a workers' compensation award, the employee may apply to district court for entry of judgment upon the award. Both the district court and the court of appeals found the statute was not applicable in this case.

workers' compensation laws of Minnesota, was not required to intervene and is not bound by the effects of noncompliance set forth at Minn. Stat. § 176.361, subd. 7. Accordingly, the judge concluded AMI's judgment was valid and entitled to full faith and credit in Minnesota. (Ex. H.) This order was not appealed. On January 11, 1999, the employee filed a second petition with the Workers' Compensation Court of Appeals again seeking to vacate the Award on Stipulation filed January 6, 1994.

DECISION

The compensation judge's Order Precluding Intervention and Reimbursement of Medical Providers provides that McKennan Hospital is precluded from claiming reimbursement against the employee, the employer or the insurer. The Lyon County District Court concluded McKennan Hospital's South Dakota judgment is entitled to full faith and credit in Minnesota. Accordingly, the court refused to vacate the judgment or enjoin McKennan from enforcing its South Dakota judgment in Minnesota. The employee argues that both parties to the stipulation for settlement assumed the compensation judge's order was binding on McKennan Hospital and enforceable with respect to the employee. That is, the parties believed McKennan Hospital was barred from pursuing its medical claim against the employee. This misapprehension, the employee argues, constitutes a mutual mistake of fact and the award should be vacated. The respondents assert any mistake is one of law rather than fact and is unilateral rather than mutual. Further, the respondents argue the Lyon County District Court erred in denying the motion to vacate or stay enforcement of the judgment. Respondents contend Judge Dinner's 1993 order is valid and McKennan Hospital is legally barred from seeking payment from the employee. Accordingly, respondents assert the employee has not established good cause to vacate the award under Minn. Stat. § 176.461 and § 176.521.

McKennan Hospital is a South Dakota corporation and the medical services in question were rendered in South Dakota. McKennan Hospital did not intervene under Minn. Stat. § 176.361 or otherwise appear in the employee's Minnesota workers' compensation proceeding. Thus, personal jurisdiction was never obtained over McKennan Hospital.[6] McKennan's claim against the employee was based on a South Dakota contract for the provision of medical services by McKennan to the employee in South Dakota. That contract and the lawsuit brought by McKennan against the employee are both subject to South Dakota jurisdiction. Under these facts, the compensation judge lacked jurisdiction to bar or preclude McKennan Hospital from bringing a claim against the employee. Accordingly, that portion of the compensation judge's September 8, 1993 Order precluding McKennan Hospital from "claiming reimbursement as against the employee" is void.

[6] Since this matter involved claims for workers' compensation benefits under Chapter 176, the compensation judge had subject matter jurisdiction. Breimhorst v. Beckman, 227 Minn. 409, 35 N.W.2d 719, 15 W.C.D. 395 (1949).

In the stipulation for settlement, the employee foreclosed her right to seek payment from the insurer for the medical expenses incurred at McKennan Hospital. The parties specifically made reference in the stipulation to the compensation judge's September 8, 1993 Order and recited that the claims of the non-intervening medical providers were barred. We further note the employee received $6,500.00 in the settlement and the medical expenses of McKennan Hospital were approximately $8,600.00. From these facts, we conclude the parties' settlement was based on the assumption that McKennan Hospital was precluded or barred from asserting a claim directly against the employee. The parties were relying on their belief that the compensation judge had jurisdiction to enter the September 1993 order. Given the circumstances of the parties, and the subject matter and purpose to be served by this settlement, it appears that at the time the agreement was executed, the parties were mistaken as to a fundamental term of the agreement.

In Gutierrez v. Red River Distrib., Inc., 523 N.W.2d 907, 50 W.C.D. 244, 252 (Minn. 1994) the supreme court held a settlement agreement was voidable where parties were mistaken with respect to the terms of the settlement agreement, and where the primary objectives of the compensation system were not served. See also Napper v. Boise Cascade Corp., 348 N.W.2d 81, 36 W.C.D. 731 (1984). One fundamental objective of the workers' compensation system is payment of reasonable and necessary medical expenses under Minn. Stat. § 176.135. The settlement agreement in this case was premised on the belief that the September 8, 1993 Order precluded McKennan Hospital from asserting a claim against the employee for payment of medical expenses. Since the compensation judge lacked personal jurisdiction over McKennan Hospital, that assumption was erroneous. Given all the attendant circumstances in this case, we conclude the award on stipulation is voidable.

In determining whether a voidable award should be vacated, this court must consider whether the stipulation was reasonable, fair, and in conformity with the Workers' Compensation Act at the time it was entered into; whether the stipulation fairly reflects the intent of the parties; and whether there is any prejudice to the parties. Sondrol v. Del Hayes & Sons, 47 W.C.D. 659, 666- 67 (W.C.C.A. 1992). Here, the parties were clearly mistaken as to a fundamental basis for the award, and as a consequence, the award does not appear to reflect the intent of the parties. We further note the parties's settlement provided for closeout of all claims by the employee for a five-year period ending July 27, 1998. Since the five-year period has lapsed, with the exception of the McKennan Hospital bill, all other objectives of the parties' settlement have been accomplished.

We, accordingly, vacate the award on stipulation filed December 6, 1994. The employee may file a claim petition seeking payment from the employer and insurer of the medical expenses incurred at McKennan Hospital.