

SUPREME COURT OF KENTUCKY

Veronica Jewell v. Kentucky School Board Association

309 S.W.3d 232 (Ky. 2010) · No. 2008-SC-000244-DG · Decided January 21, 2010

SUMMARY

The Supreme Court of Kentucky held that an injured worker who received an assignment of her workers' compensation carrier's subrogation rights could not enforce those rights against her own underinsured motorist provider. The court also upheld an offset for workers' compensation benefits without credit for the claimant's attorney fees and expenses, but reinstated the trial court's deduction of only the basic reparation benefits actually paid rather than the full amount available. The judgment otherwise affirmed the Court of Appeals' remand for recalculation of damages.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Venters; Minton, C.J.; Abramson, J.; Cunningham, J.; Venters, J.; Noble, J.; Schroder, J.; Scott, J.
JURISDICTION	Kentucky
DECIDED	January 21, 2010
DOCKET	2008-SC-000244-DG
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a Court of Appeals decision concerning offsets and subrogation in an underinsured-motorist action following a jury verdict.
STANDARD OF REVIEW	De novo review of statutory interpretation and legal entitlement to offsets; appellate review may not resolve material factual disputes that were not resolved by the trial court.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Kentucky
PARTIES	Veronica Jewell v. Kentucky School Board Association

TOPICS

[uninsured motorist](#)[workers compensation](#)[subrogation](#)[insurance coverage](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an injured worker who receives an assignment of her workers' compensation carrier's subrogation rights may enforce those rights against her own UIM provider.
2. Whether attorney's fees and litigation expenses incurred by the injured worker may be offset against the UIM provider's credit for workers' compensation benefits.
3. Whether the judgment had to be reduced by the full \$20,000 in available basic reparation benefits or only by the \$333.45 actually paid.

HOLDINGS

1. An injured worker who receives an assignment of her workers' compensation carrier's subrogation rights may enforce those rights against a person legally liable for damages, but may not enforce them against her own UIM provider because the UIM provider's obligation arises from contract rather than legal liability for the tortfeasor's damages.
2. Attorney's fees and expenses incurred by the injured worker may not be offset against the UIM provider's credit for workers' compensation benefits.
3. The trial court properly deducted only the \$333.45 in basic reparation benefits actually paid rather than the full \$20,000 available under the policy because the Court of Appeals could not reverse on the basis of an unresolved factual issue when no party requested findings of fact as required by CR 52.04.

KEY QUOTATIONS

“The UIM carrier's responsibility to its insured does not arise from any relationship with the tortfeasor; it arises because of a contractual relationship with the tort victim to provide insurance for what the tortfeasor has failed to insure.” (236)

“It is not within the province of this Court, or the Court of Appeals, to resolve factual disputes material to the resolution of a claim.” (238)

“We therefore reverse the Court of Appeals on that point and reinstate the decision of the trial court to deduct from the judgment the actual BRB payment of \$333.45 rather than the full \$20,000.00 of available BRB.” (239)

FACTUAL BACKGROUND

Veronica Jewell was injured while working as a school-bus monitor when the bus was struck by another vehicle. Her workers' compensation carrier paid medical and temporary-disability benefits, and she later settled with that carrier; the carrier and her health insurer assigned third-party subrogation rights to her. After settling with the negligent driver for the driver's \$25,000 policy limits, Jewell pursued UIM benefits from the Kentucky School Board Association, which had provided coverage through a self-insurance trust. A jury awarded \$101,102.77, and the trial court deducted the tortfeasor's payment and the \$333.45 in basic reparation benefits actually paid.

PROCEDURAL HISTORY

Jewell sued the Kentucky School Board Association for available underinsured-motorist coverage after settling with the negligent driver's liability insurer. A Whitley Circuit Court jury awarded \$101,102.77 and the trial court deducted the tortfeasor's \$25,000 payment and \$333.45 in basic reparation benefits. The Court of Appeals held that workers' compensation benefits offset the UIM recovery, denied an offset for Jewell's attorney's fees and expenses, and required deduction of the full \$20,000 in available basic reparation benefits. The Supreme Court affirmed the first two rulings, reversed the third, and remanded for recalculation of damages.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the Court of Appeals insofar as it required deduction of the full \$20,000 in available BRB; reinstate the trial court's deduction of the \$333.45 actually paid; otherwise affirm the Court of Appeals' remand to the trial court for recalculation of damages consistent with the opinion.

CASES CITED

- Weinberg v. Crenshaw, 896 S.W.2d 22 (Ky. App. 1995)
- Krahwinkel v. Commonwealth Aluminum Corp., 183 S.W.3d 154 (Ky. 2005)
- Cincinnati Insurance Co. v. Samples, 192 S.W.3d 311 (Ky. 2006)
- State Farm Mutual Insurance Co. v. Fireman's Fund American Insurance Co., 550 S.W.2d 554 (Ky. 1977)
- G & J Pepsi-Cola Bottlers, Inc. v. Fletcher, 229 S.W.3d 915 (Ky. App. 2007)
- AIK Selective Self-Insurance Fund v. Minton, 192 S.W.3d 415 (Ky. 2006)
- State Farm Mutual Automobile Insurance Co. v. Fletcher, 578 S.W.2d 41 (Ky. 1979)
- Dudas v. Kaczmarek, 652 S.W.2d 868 (Ky. App. 1983)
- Bohl v. Consolidated Freightways Corp. of Delaware, 777 S.W.2d 613 (Ky. App. 1989)
- Slone v. Caudill, 734 S.W.2d 480 (Ky. App. 1987)
- Henson v. Fletcher, 957 S.W.2d 281 (Ky. App. 1997)
- Whicker v. Whicker, 711 S.W.2d 857 (Ky. App. 1986)
- S. Quarries & Contracting Co. v. Hensley, 313 Ky. 640, 232 S.W.2d 999 (1950)
- Dillman v. John Diebold & Sons Stone Co., 241 Ky. 631, 44 S.W.2d 581 (1931)
- Napier v. John P. Gorman Coal Co., 242 Ky. 127, 45 S.W.2d 1064 (1931)
- Berry v. Irwin, 224 Ky. 565, 6 S.W.2d 705 (1928)
- Williams v. Brown, 205 Ky. 74, 265 S.W. 480 (1924)
- Book v. City of Henderson, 176 Ky. 785, 197 S.W. 449 (1917)