

SUPREME COURT OF INDIANA

Wernle, Ristine & Ayers v. Yund

790 N.E.2d 992 (Ind. 2003) · No. No. 93S02-0207-EX-399 · Decided June 30, 2003

SUMMARY

The Indiana Supreme Court held that the Indiana Workers’ Compensation Board has authority to approve or disallow fees charged by both treating and non-treating physicians, including an expert witness. The court affirmed an order providing that the claimant would not pay Dr. Nash’s expenses and concluded that the order did not necessarily conflict with the attorney-client fee agreement or Indiana Professional Conduct Rule 1.8(e).

CASE DETAILS

COURT	Supreme Court of Indiana
WRITING FOR THE COURT	Dickson, Justice; Shepard, Chief Justice; Sullivan, Justice; Rucker, Justice; Boehm, Justice
JURISDICTION	Indiana
DECIDED	June 30, 2003
DOCKET	No. 93S02-0207-EX-399
DISPOSITION	affirmed
PROCEDURAL POSTURE	Intervenor-appellant law firm appealed from the Indiana Worker's Compensation Board's order limiting the amount payable to counsel and providing that no expenses relating to the claimant's physician, Dr. Nash, be paid by the claimant. The Indiana Court of Appeals affirmed, and the Indiana Supreme Court granted transfer.
STANDARD OF REVIEW	The opinion does not expressly state a separate standard of review. It reviews the Board's statutory authority and the legal effect of its order.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Indiana
PARTIES	Wernle, Ristine & Ayers v. Janice Yund, The Kroger Company

TOPICS

- workers compensation
- administrative law
- statutory interpretation
- employment contracts
- appellate procedure

PRACTICE AREAS

workers compensation

administrative law

employment law

contracts

appellate procedure

QUESTIONS PRESENTED

1. Whether the Indiana Worker's Compensation Board had statutory authority to approve or disallow fees charged by a non-treating physician hired to examine a claimant and provide expert testimony.
2. Whether the Board's disallowance of Dr. Nash's fees conflicted with the attorney-client agreement requiring Yund to pay litigation expenses.
3. Whether the Board's order necessarily required the law firm to violate Indiana Professional Conduct Rule 1.8(e) by absorbing or paying the physician's expenses.

HOLDINGS

1. The Board's statutory authority to approve physicians' fees in workers' compensation matters encompasses fees charged by non-treating physicians, including physicians providing examinations, evaluations, consultation, and testimony. The Board therefore could determine that Dr. Nash was entitled to no fee for his services in this case.
2. The Board's order did not improperly conflict with the attorney-client agreement because the agreement itself limited attorney fees to amounts approved by the Board, and Yund had no contractual responsibility to reimburse Dr. Nash's fees after the Board determined that Dr. Nash was entitled to no fee.
3. The law firm failed to demonstrate that the Board's order necessarily required a violation of Indiana Professional Conduct Rule 1.8(e).

KEY QUOTATIONS

"In the absence of contrary statutory language, we conclude that the Board's authority to limit physicians' fees in worker's compensation cases encompasses all fees of physicians, including those of non-treating physicians." (995)

"We hold that the Board's order that 'no expenses of Dr. Nash as they relate to the plaintiff shall be paid by the plaintiff' is within the Board's statutory authority to approve the fees of physicians." (996)

FACTUAL BACKGROUND

Janice Yund retained Wernle, Ristine & Ayers to represent her in a workers' compensation claim arising from an employment injury. The firm hired Dr. Franklin D. Nash to examine Yund and provide expert testimony, but the Board later determined that no expenses relating to Dr. Nash were to be paid by Yund. Yund terminated the firm and settled directly with Kroger for \$8,500; the firm then sought a \$1,700 attorney fee and \$2,336.63 in expenses under its contingency-fee agreement.

PROCEDURAL HISTORY

Yund retained Ayers and his firm to pursue a workers' compensation claim. After Yund discharged Ayers and settled directly with Kroger, Ayers petitioned the Board for attorney fees and litigation expenses. The Board awarded \$1,200 in attorney fees and ordered that no expenses for Dr. Nash be paid by Yund; the Full Board affirmed. The Court of Appeals affirmed, holding that the Board's ruling did not supersede the attorney-client contract, and the Supreme Court granted transfer and affirmed the Board.

DISPOSITION

affirmed

CASES CITED

- Stump v. Commercial Union, 601 N.E.2d 327, 331-32 (Ind. 1992)
- Talas v. Correct Piping Co., Inc., 435 N.E.2d 22, 28 (Ind. 1982)
- Buckler v. Hilt, 209 Ind. 541, 200 N.E. 219 (1936)
- Bauer v. Biel, 132 Ind. App. 224, 177 N.E.2d 269 (1961)
- Rickert v. Schreiber, 116 Ind. App. 621, 66 N.E.2d 769 (1946)
- Wernle, Ristine & Ayers v. Yund, 758 N.E.2d 558, 562 (Ind. Ct. App. 2001)
- Wernle, Ristine & Ayers v. Yund, 764 N.E.2d 716 (Ind. Ct. App. 2002)
- In re Maley, 674 N.E.2d 544, 546 (Ind. 1996)

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