

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

Texas Workers' Compensation Commission v. Flurry

908 S.W.2d 43 (Tex. App.—Houston [14th Dist.] 1995) · Decided September 21, 1995

SUMMARY

The Texas Court of Appeals considered whether attorney’s fees could be paid from a recovery awarded to the Subsequent Injury Fund under Texas’s workers’ compensation law. The court held that the Fund was not a claimant under the applicable statute and that no statutory authority permitted fees when the claimant did not prevail. The court reversed the attorney’s-fees award and rendered judgment that no fees be awarded.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Hedges, Justice; Cohen, Justice; Taft, Justice
JURISDICTION	Texas
DECIDED	September 21, 1995
DISPOSITION	reversed
PROCEDURAL POSTURE	The Texas Workers' Compensation Commission appealed the district court's award of attorney's fees from the Subsequent Injury Fund's recovery after the court set aside the Commission's determination that Nancy Flurry was a legal beneficiary.
PRECEDENTIAL VALUE	published opinion
PARTIES	Texas Workers' Compensation Commission v. Nancy Flurry

TOPICS

workers compensation administrative law remedies statutory interpretation

PRACTICE AREAS

workers' compensation administrative law attorney's fees statutory interpretation remedies

QUESTIONS PRESENTED

1. Whether attorney's fees may be awarded from a recovery paid to the Subsequent Injury Fund under section 408.221 of the Texas Workers' Compensation Act when the claimant did not prevail and the Fund intervened only to protect the recovery.

HOLDINGS

1. The Subsequent Injury Fund is not a claimant for purposes of section 408.221 because it did not claim a recovery through its intervention and is instead a recipient of compensable funds when no legal beneficiary exists.
2. Attorney's fees may not be awarded from a recovery paid to the Subsequent Injury Fund when the claimant's attorney's client did not prevail and no statutory, constitutional, or contractual authority permits the award.

KEY QUOTATIONS

“A court may not award attorney’s fees to be paid from a claimant’s recovery absent either statutory or constitutional authority or agreement of the parties.” (45)

“There is no basis to believe that the Legislature intended that an attorney be paid fees when his or her own client does not prevail.” (45)

FACTUAL BACKGROUND

Kenneth Flurry died in a work-related accident. Nancy Flurry claimed death benefits as his common-law spouse and was initially awarded \$110,065.02 by the Texas Workers' Compensation Commission. After Service Lloyds challenged the award, a jury found that Nancy was not Kenneth's common-law spouse or legal beneficiary, requiring the death benefits to be paid to the Subsequent Injury Fund. The trial court nevertheless awarded Nancy's attorney 25 percent of that Fund recovery.

PROCEDURAL HISTORY

Flurry was awarded \$110,065.02 in death benefits by the Commission, and the Commission's appeals panel confirmed the award. Service Lloyds Insurance Company sued in district court to set aside the award, and the Commission intervened to defend the appeals-panel decision. The jury found that Kenneth Flurry was acting in the course and scope of employment but that Nancy Flurry was not his common-law spouse or legal beneficiary. The trial court therefore awarded the \$110,065.02 to the Subsequent Injury Fund and awarded Flurry's attorney \$27,516.25, or 25 percent of the Fund's recovery. The Commission appealed the attorney's-fees award.

DISPOSITION

reversed

OPINION

HEDGES, J.

OPINION HEDGES, Justice. In this case we are presented with the issue whether attorney’s fees are properly awarded from a recovery paid to the Subsequent Injury Fund under the “new law” workers’ compensation scheme.

We hold that such an award is improper. Appellee Nancy Flurry brought a claim with the Texas Workers' Compensation Commission (the "Commission") against Service Lloyds Insurance Company ("Lloyds") for workers' compensation benefits resulting from the death of her common-law husband, Kenneth Flurry. She was awarded benefits at the benefits review conference, and the award was confirmed at the contested case hearing by the appeals panel.

In Appeals Panel Decision No. 92324, the Commission found that Kenneth Flurry was acting in the course and scope of his employment at the time of his fatal accident and that as his common law spouse at the time of his death, appellee was his legal beneficiary. She was awarded \$110,065.02 in death benefits. Lloyds sued appellee in district court to set aside the Commission award.

The Commission intervened in the suit "to show the Court and the jury that the decision of the [Commission] Appeals Panel is correct and should be upheld by this Court." In its prayer for relief, the Commission asked that the trial court affirm the final decision of the appeals panel.

The jury found that Kenneth Flurry was acting in the course and scope of his employment at the time of his death. It also found, however, that appellee was not the common-law spouse of Kenneth Flurry at the time of his death, and therefore was not his legal beneficiary. Section 408.182(e) of the Workers' Compensation Act provides that, "If an employee is not survived by legal beneficiaries, the death benefits shall be paid to the subsequent injury fund under Section 403.007." Tex.Lab.Code ANN. § 408.182(e) (Vernon Pamp.1995).

Accordingly, the trial court entered judgment that the Commission Subsequent Injury Fund recover \$110,065.02 from Lloyds. The judgment also awarded attorney's fees to appellee's attorney in the amount of \$27,516.25, which represents 25 per cent of the Fund's recovery.

The Commission appealed the attorney's fees award. Because we agree that the award was improper, we reverse and render. Award of Attorney's Fees In point of error one, appellant contends that the trial court erred in awarding attorney's fees to appellee's attorney because there is no authority that would allow attorney's fees to be paid from the Subsequent Injury Fund where the claimant was unsuccessful in defending a death benefits claim.

A court may not award attorney's fees to be paid from a claimant's recovery absent either statutory or constitutional authority or agreement of the parties. Tex.Civ.Prac. & Rem.Code Ann. §§ 38.001-38.006 (Vernon Supp.1995). Section 408.221(a) of the Workers' Compensation Act provides that "[a]n attorney's fee, including a contingency fee, for representing a claimant before the commission or court under this subtitle must be approved by the commission or the court." Subsection (b) provides in part that "the attorney's fee shall be paid from the claimant's recovery." Tex.Lab.Code Ann. § 408.221(a), (b) (Vernon Pamp.1995).

Appellee argues that the Subsequent Injury Fund is a claimant under this section, and therefore, attorney's fees are properly paid from its recovery. We disagree. We do not believe that the Subsequent Injury Fund is a claimant for purposes of section 408.221.

The Fund's only interest in its intervention was the protection of the recovery awarded to appellee by the Commission. The Fund never claimed any recovery through its intervention. In fact, such a claim would have been directly contrary to the position it took in intervention.

The Fund is not defined as a legal beneficiary, but rather as a recipient of compensable funds in default of a legal beneficiary. Tex. Lab.Code Ann. § 403.007(a) (Vernon Pamp. 1995). If the Fund is not a claimant, section 408.221(b) does not provide authority for *45payment of attorney's fees out of its recovery.

We believe that section 408.221 contemplates payment of attorney's fees from appellee's recovery, if any. There is no basis to believe that the Legislature intended that an attorney be paid fees when his or her own client does not prevail.

We reverse the judgment of the trial court insofar as it awards attorney's fees to appellee's attorney and render judgment that no attorney's fees be awarded to appellee's attorney.