

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