

COMMONWEALTH COURT OF PENNSYLVANIA

Jo Jo Pizza and Eastern Alliance Insurance Company v. Larry Pitt & Associates, P.C.

Jo Jo Pizza · No. 1162 C.D. 2021 · Decided August 5, 2022

SUMMARY

The Pennsylvania Commonwealth Court affirmed a trial court order holding Larry Pitt & Associates, P.C. in civil contempt for refusing to comply with a workers’ compensation judge’s subpoena concerning the distribution of a third-party settlement. The court held that the workers’ compensation judge retained jurisdiction over the employer’s subrogation interests despite the earlier compromise and release of the benefits portion of the claim. The court also rejected the argument that subpoena enforcement proceedings violated separation-of-powers principles and concluded that the appellate issues were waived due to an untimely Rule 1925(b) statement.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Christine Fizzano Cannon; Michael H. Wojcik; Mary Hannah Leavitt
JURISDICTION	Pennsylvania
DECIDED	August 5, 2022
DOCKET	1162 C.D. 2021
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Dauphin County Court of Common Pleas order finding Larry Pitt & Associates, P.C. in civil contempt for failing to comply with a Workers’ Compensation Judge’s subpoena. The Superior Court transferred the appeal to the Commonwealth Court.
STANDARD OF REVIEW	A contempt order is reviewed for abuse of discretion; the court’s action will be reversed only upon a plain abuse of discretion. An abuse of discretion occurs when the judgment is manifestly unreasonable, the law is not applied, or the record shows partiality, prejudice, bias, or ill will.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Larry Pitt & Associates, P.C. v. Jo Jo Pizza, Eastern Alliance Insurance Company

TOPICS

appellate procedure

waiver

contempt

subject matter jurisdiction

insurance

PRACTICE AREAS

appellate procedure

workers' compensation

civil contempt

insurance subrogation

constitutional law

QUESTIONS PRESENTED

1. Whether the Workers' Compensation Judge retained subject matter jurisdiction over Employer's subrogation petitions and subpoena after the benefits portion of the workers' compensation matter was resolved by a compromise and release agreement.
2. Whether the Workers' Compensation Judge violated separation-of-powers principles by advising Employer that it could seek enforcement of the subpoena in the Court of Common Pleas.
3. Whether the contempt order was properly affirmed despite Attorney Pitt's untimely Rule 1925(b) statement.
4. Whether the trial court's award of attorneys' fees and costs was properly before the Commonwealth Court.

HOLDINGS

1. An untimely Rule 1925(b) statement generally results in waiver of the appellant's issues, even when the trial court addresses the merits in a Rule 1925(a) opinion, absent an approved extension or good cause. Because the appeal itself was timely, the untimely statement did not deprive the Commonwealth Court of jurisdiction.
2. A Workers' Compensation Judge retains jurisdiction over workers' compensation subrogation questions, including the extent of an employer's lien, even after the benefits portion of the workers' compensation case has been resolved by a compromise and release agreement, so long as the subrogation interest has not been extinguished.
3. The Workers' Compensation Judge properly issued the subpoena, and the Court of Common Pleas properly exercised authority to enforce it and hold Attorney Pitt in civil contempt for willful noncompliance.
4. The Workers' Compensation Judge did not violate separation-of-powers principles by advising Employer of its statutory right to seek subpoena enforcement in the Court of Common Pleas.

KEY QUOTATIONS

"Thus, we are constrained to conclude that all issues have been waived. However, because Attorney Pitt's appeal itself was timely, this Court is not deprived of jurisdiction over the matter." (5)

"The broad and clear language of Section 319 supports an employer's subrogation rights to third-party recoveries, and those rights would not be viable without the legal means to protect and enforce them until they are extinguished, either by payment in full of the lien or a waiver or compromise by the employer of the amount of the lien." (10)

“The record therefore does not support Attorney Pitt’s argument that the WCJ ordered Employer to commence subpoena enforcement proceedings in the trial court.” (15)

FACTUAL BACKGROUND

Martha Mondragon Garduno was injured in Employer’s parking lot and received workers’ compensation benefits. Her workers’ compensation claims were resolved by a 2018 compromise and release agreement, but Employer retained a substantial statutory subrogation lien against any recovery from Garduno’s third-party premises-liability action. That action settled for \$80,000, and Employer suspected that Attorney Pitt had diverted settlement proceeds to Garduno through an attorneys’ fee arrangement. Employer therefore sought fee agreements, settlement-distribution records, releases, and checks through a subpoena issued by the Workers’ Compensation Judge.

PROCEDURAL HISTORY

The employer issued a subpoena, approved by the Workers’ Compensation Judge, seeking records concerning the distribution of a third-party settlement and the employer’s workers’ compensation subrogation lien. Attorney Pitt refused to comply and did not participate in proceedings before the Workers’ Compensation Judge. The employer then filed a civil-contempt petition in the Court of Common Pleas, which found Attorney Pitt in contempt, ordered disclosure, and awarded fees and costs. The Commonwealth Court affirmed, while also concluding that the appellate issues were waived because the Rule 1925(b) statement was untimely.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The trial court may address the reasonableness of the attorneys’ fees and costs after the appeal concludes, consistent with its statement that Attorney Pitt would receive an opportunity to adjudicate that issue.

CASES CITED

- In re Campaign Expense Reports of Michele Corignani, 873 A.2d 790, 794 (Pa. Cmwlth. 2005)
- Commonwealth v. Castillo, 888 A.2d 775, 780 (Pa. 2005)
- Jenkins v. Fayette County Tax Claim Bureau, 176 A.3d 1038, 1042-43 (Pa. Cmwlth. 2018)
- Paluch v. Beard, 182 A.3d 502, 506 & n.5 (Pa. Cmwlth. 2018)
- Commonwealth v. Williams, 106 A.3d 583, 587 (Pa. 2014)
- Ligonier Township v. Nied, 161 A.3d 1039, 1045 n.4 (Pa. Cmwlth. 2017)
- Thompson v. Workers’ Compensation Appeal Board (USF&G Co.), 781 A.2d 1146, 1151-53 (Pa. 2001)
- Gillette v. Wurst, 937 A.2d 430, 435-36 (Pa. 2007)
- Romine v. Workers’ Compensation Appeal Board (CNF, Inc./Potato Sack), 798 A.2d 852, 856-57 n.10 (Pa. Cmwlth. 2002)

- Stout v. Workers' Compensation Appeal Board (Pennsbury Excavating, Inc.), 948 A.2d 926, 931 (Pa. Cmwlth. 2008)
- Wilson v. Travelers Casualty and Surety Company, 88 A.3d 237, 247 n.12, 250 (Pa. Cmwlth. 2013)
- Growth Horizons, Inc. v. Workers' Compensation Appeal Board (Hall), 767 A.2d 619, 621-22 (Pa. Cmwlth. 2001)
- Good Tire Service v. Workers' Compensation Appeal Board (Wolfe), 978 A.2d 1043, 1048 (Pa. Cmwlth. 2009)
- Pa. Manufacturers' Association Insurance Co. v. Wolfe, 626 A.2d 522, 526 (Pa. Cmwlth. 1993)
- Lehigh Specialty Melting, Inc. v. Workers' Compensation Appeal Board (Bosco), 260 A.3d 1053, 1062 (Pa. Cmwlth. 2021)
- Stroehmann Bakeries v. Workers' Compensation Appeal Board (Plouse), 768 A.2d 1193, 1196 (Pa. Cmwlth. 2001)
- Kramer v. Workers' Compensation Appeal Board (Rite Aid Corp.), 883 A.2d 518, 535 (Pa. 2005)
- Office of Disciplinary Counsel v. Baldwin, 225 A.3d 817, 837-38 (Pa. 2020)
- Kremer v. State Ethics Commission, 469 A.2d 593, 595 (Pa. 1983)
- Commonwealth v. Stern, 701 A.2d 568 (Pa. 1997)
- Stover v. Workmen's Compensation Appeal Board (SCI Graterford), 671 A.2d 1217, 1219 (Pa. Cmwlth. 1996)
- Creighan v. Workers' Compensation Appeal Board (Mellon Stuart Corp.), 624 A.2d 680, 682 (Pa. Cmwlth. 1993)