

NEBRASKA SUPREME COURT

Rogers v. Jack's Supper Club

308 Neb. 107 (2021) · No. No. S-20-170 · Decided January 8, 2021

SUMMARY

The Nebraska Supreme Court affirmed an order of the Nebraska Workers' Compensation Court appointing Dr. Jonathan Daitch as Sheryl Rogers' Form 50 physician. The court held that the compensation court complied with the prior remand by addressing the physician designation and clarifying that it was not ordering a review of Rogers' treatment regimen. The court declined to determine in advance whether future treatment would be reasonable or necessary, noting that the employer and insurer could challenge such treatment in a subsequent proceeding.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Cassel, J.; Heavican, C.J.; Miller-Lerman, J.; Funke, J.; Papik, J.; Freudenberg, J., participating on briefs
JURISDICTION	Nebraska
DECIDED	January 8, 2021
DOCKET	No. S-20-170
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jack's Supper Club and its workers' compensation insurer appealed the Nebraska Workers' Compensation Court's order entered on remand after the Nebraska Supreme Court's prior reversal and remand.
STANDARD OF REVIEW	A compensation court judgment, order, or award may be modified, reversed, or set aside only for lack of or excess of power, fraud, insufficient competent evidence, or factual findings that do not support the order or award. The appellate court makes its own determinations on questions of law.
PRECEDENTIAL VALUE	Published state supreme court opinion; precedential
PARTIES	Jack's Supper Club, Continental Western Group v. Sheryl A. Rogers

TOPICS

workers compensation

appellate procedure

standard of review

final judgment rule

PRACTICE AREAS

workers' compensation

appellate procedure

employment law

QUESTIONS PRESENTED

1. Whether the compensation court's order on remand complied with Workers' Compensation Court Rule 11(A) by providing the basis for meaningful appellate review and specifying the evidence relied upon.
2. Whether the compensation court was required on remand to determine whether Dr. Daitch's treatment was reasonable and necessary.
3. Whether the compensation court complied with the Nebraska Supreme Court's specific remand mandate.

HOLDINGS

1. The order on remand complied with Rule 11(A) because it expressly found that changing Rogers' Form 50 physician was desirable or necessary and identified the evidence supporting that decision.
2. The compensation court was not required to determine whether Dr. Daitch's treatment was reasonable or necessary because the prior remand mandate did not direct it to make that determination, and doing so would have addressed a speculative future controversy.
3. The compensation court complied with the Nebraska Supreme Court's specific remand instructions by changing Rogers' Form 50 physician and clarifying the ambiguity regarding review of her treatment regimen.

KEY QUOTATIONS

"But, in this regard, JSC is anticipating a future controversy rather than seeking to resolve an existing dispute." (115-116)

"However, this court will not instruct the compensation court to indulge in speculation in anticipation of a future controversy." (116)

FACTUAL BACKGROUND

Sheryl A. Rogers injured her back during the course and scope of her employment with Jack's Supper Club in 2001. Her settlement included a Form 50 designating a physician for treatment of her work-related injuries, and after Rogers moved to Florida she sought to have Dr. Jonathan Daitch serve as her Form 50 physician. On remand from the prior appeal, the compensation court appointed Daitch as the Form 50 physician based on Rogers' move to Florida, his longstanding treatment relationship with her, and her desire to remain under his care, while clarifying that it was not ordering a review of his treatment regimen.

PROCEDURAL HISTORY

In the first appeal, the Nebraska Supreme Court reversed an order requiring the employer and insurer to pay for the employee's Florida medical treatment and remanded with instructions concerning the employee's Form 50 physician and the ambiguity regarding review of her treatment regimen. On remand, the compensation court appointed Dr. Jonathan Daitch as Rogers' Form 50 physician and clarified that it was not ordering a review of

her treatment regimen. The employer and insurer appealed, arguing that the order violated Workers' Compensation Court Rule 11(A) and that the court should have determined whether the treatment was reasonable and necessary.

DISPOSITION

affirmed

CASES CITED

- Rogers v. Jack's Supper Club, 304 Neb. 605, 935 N.W.2d 754 (2019)
- Picard v. P & C Group 1, 306 Neb. 292, 945 N.W.2d 183 (2020)
- Frans v. Waldinger Corp., 306 Neb. 574, 946 N.W.2d 666 (2020)
- TransCanada Keystone Pipeline v. Tanderup, 305 Neb. 493, 941 N.W.2d 145 (2020)
- Smith-Helstrom v. Yonker, 253 Neb. 189, 569 N.W.2d 243 (1997)
- Sellers v. Reefer Systems, 283 Neb. 760, 811 N.W.2d 293 (2012)