APPELLATE COURT OF ILLINOIS

Zuber v. Illinois Power Co.

158 Ill. App. 3d 353 (Ill. App. Ct. 1987) · Decided July 23, 1987

SUMMARY

The Illinois Appellate Court interpreted section 5(b) of the Illinois Workers' Compensation Act concerning an employer's reimbursement lien and responsibility for attorney fees and litigation costs after a third-party settlement. The court held that future workers' compensation payments offset by the settlement qualify as benefits to the employer for purposes of calculating fees and costs. It reversed and remanded with directions concerning reimbursement, weekly payments, attorney fees, and costs.

CASE DETAILS

COURT	Appellate Court of Illinois
WRITING FOR THE COURT	Justice Kasserman; Justice Harrison; Justice Lewis
JURISDICTION	Illinois
DECIDED	July 23, 1987
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order of the circuit court of St. Clair County determining the workers' compensation lien and allocating litigation costs, followed by an order denying plaintiff's motion to vacate or reconsider.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Virginia Zuber, as administratrix of the estate of Ralph Zuber, deceased v. Illinois Power Company, R. Dron Electrical Company, United States Fidelity and Guaranty Company

TOPICS

workers compensation · statutory interpretation · remedies · insurance

PRACTICE AREAS

workers compensation · insurance · employment law · remedies

QUESTIONS PRESENTED

1. Whether the employer's obligation to make future installment payments of workers' compensation benefits automatically terminates when the beneficiary obtains a third-party tort recovery.
2. Whether the term "gross amount of such reimbursement" in section 5(b) of the Illinois Workers' Compensation Act includes both workers' compensation benefits already paid and future benefits extinguished or offset by a third-party settlement for purposes of calculating the employer's responsibility for attorney fees and litigation costs.
3. How attorney fees and litigation costs attributable to future workers' compensation benefits avoided by the employer should be calculated and paid.

HOLDINGS

1. A beneficiary's recovery from a third-party tortfeasor does not automatically terminate the employer's obligation to make future workers' compensation installment payments, although a court may protect the employer's right of reimbursement by crediting or offsetting the third-party recovery against those future obligations.
2. For calculating the employer's responsibility for attorney fees and litigation costs, the "gross amount of such reimbursement" under section 5(b) includes both compensation already paid and compensation to be paid in the future when the third-party settlement relieves the employer of those future payments.
3. After the employer's full weekly compensation obligation is terminated by the settlement, the insurer must pay weekly attorney fees of $56.10 and costs of $14.32, for a total of $70.42 per week, until the original award would expire or the plaintiff dies, whichever occurs first.

KEY QUOTATIONS

> *“Furthermore, we also conclude that for purposes of computing the employer’s liability for attorney fees and costs, the term “gross amount of such reimbursement” as used in section 5(b) of the Workers’ Compensation Act includes both compensation already paid and compensation to be paid in the future.”*

> *“However, every payment that the employer is excused from making because of the third-party settlement is a benefit to it.”*

FACTUAL BACKGROUND

Ralph Zuber died while employed by R. Dron Electrical Company and working at a power substation owned by Illinois Power. His widow, Virginia Zuber, received $73,128.63 in workers' compensation benefits and later settled the third-party wrongful-death action against Illinois Power for a lump sum and an annuity. The settlement relieved the employer and its insurer of ongoing weekly workers' compensation payments, but the circuit court treated only benefits already paid as reimbursable for purposes of allocating attorney fees and litigation costs.

PROCEDURAL HISTORY

Virginia Zuber brought a wrongful-death action against Illinois Power after her husband died while working at an Illinois Power substation. The action was settled and dismissed with prejudice as to Illinois Power, while third-party claims remained pending. The circuit court calculated United States Fidelity and Guaranty

Company's workers' compensation lien and ordered plaintiff to pay $50,377.23 after allocating a pro rata share of costs. Plaintiff appealed, arguing that the calculation had to account for the value of future workers' compensation payments that would be terminated or offset because of the settlement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must determine the number of weeks elapsed since the last installment payment on May 4, 1983. USF&G must pay plaintiff a lump sum equal to that number of weeks multiplied by $70.42, then begin weekly payments of $70.42 until the original Industrial Commission award expires or plaintiff dies, whichever occurs first. USF&G must also repay plaintiff $198.65 because the proper reimbursement from the escrowed funds was $50,178.58 rather than $50,377.23.

CASES CITED

- Denius v. Robertson, 98 Ill. App. 3d 83, 87-88, 424 N.E.2d 336, 337, 339-40 (1981)
- Freer v. Hysan Corp., 108 Ill. 2d 421, 426, 484 N.E.2d 1073, 1079 (1985)
- Lewis v. Riverside Hospital, 116 Ill. App. 3d 845, 849, 851-52, 452 N.E.2d 611, 613-15 (1983)
- Jones v. Melroe Division, Clark Equipment Co., 102 Ill. App. 3d 1103, 1109-12, 430 N.E.2d 1385, 1388-90 (1981)
- Vandygriff v. Commonwealth Edison Co., 68 Ill. App. 3d 396, 399, 386 N.E.2d 318, 319-20 (1979)
- Williams, McCarthy, Kinley, Rudy & Picha v. Northwestern National Insurance Group, 750 F.2d 619, 620-22, 625 (7th Cir. 1984)