Huff v. Masonic Homes

2005 | Cited 0 times | Court of Appeals of Kentucky | December 9, 2005

NOT TO BE PUBLISHED

OPINION

AFFIRMING

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

Ched Jennings appeals from the order of the Workers' Compensation Board imposing sanctions for filing a frivolous appeal.[1] The Board relied on Kentucky Revised Statutes (KRS) 342.310 and 803 KAR 25:010 §24 to impose sanctions on Jennings as counsel for appellant Loretta Marie Huff. Jennings argues that the statute does not authorize sanctions on an attorney, only on a litigant, and therefore his client must be ordered to pay the sanctions, which were the employer's expenses incurred in defending the appeal. While the above-cited regulation specifically authorizes sanctions against an attorney instead of a claimant, Jennings argues that the regulation is an unauthorized extension of the statute. We disagree and affirm.

Jennings filed an appeal on Huff's behalf to the Workers' Compensation Board in her claim against employer Masonic Homes, Inc., for a lower back injury. During the course of the litigation, it was revealed that Huff had similar complaints at her previous employment at Pizza Hut and had been treated with physical therapy and medication for the same condition in 1996. She missed work for approximately three months during that time. She began working for Masonic Homes in 1998, and alleged this injury occurred on September 14, 2003. At first she denied having reported similar problems, but later admitted that she had called in sick the week before the alleged injury with similar symptoms and she had those symptoms on a chronic and ongoing basis. Her claim was accordingly denied by the ALJ.

Nevertheless, Huff appealed to the Board, arguing that the law in Kentucky requires the payment of temporary total disability benefits and medical expenses when there is an "occurrence" at work, regardless of work-related causation. The Board was less than impressed with this argument:

. . . Huff has not directed our attention to any authority in support of this supposed proposition of law. The reason for this lapse should be readily apparent to every practitioner and party that appears before this Board. Work related causation is the most basic and essential element that must be proven in a workers' compensation claim. . . . We feel confident that, at the very least, counsel for

Huff was aware of this most fundamental of legal verities at the time this review was first contemplated and then prosecuted. We conclude, therefore, that Huff's appeal is both contrived and disingenuous, and has been prosecuted without reasonable grounds.

The Board went on to order the imposition of sanctions and to remand the matter to the ALJ for consideration and assessment of costs and attorney's fees. The ALJ ordered that counsel for appellant should pay the fees, and not the appellant herself, pursuant to the above-cited regulation. It is from that determination that this appeal is taken.

At the outset, we note that Masonic argues that this appeal, too, should be regarded as a frivolous appeal, and that sanctions should again be imposed on counsel. We understand Masonic's frustration with the continuing litigation in connection with the underlying meritless claim, but we must deny the request for sanctions as to the current appeal for reasons which will be explained below.

Jennings's argument is a simple one. The statute itself, KRS 342.310, contains no mention of sanctions being imposed on attorneys. Instead, the statute says, in pertinent part, that the whole cost of the proceedings may be assessed "upon the party who has so brought, prosecuted or defended" a proceeding that is brought without reasonable ground. The regulation promulgated to effectuate this statute includes the provision, stating "a sanction may be assessed against an offending attorney or representative rather than against the party." Jennings, in his primary brief, overlooks this regulation completely. In his reply brief, after Masonic raises the regulation in support of the ALJ's action, Jennings argues that the regulation is inconsistent with the statute, and is thus not effective. Even though we disagree, it is arguable that Jennings has brought this appeal in good faith, and we therefore grant him the benefit of the doubt and deny the request for sanctions as to the current appeal.

Regulations that are properly adopted have the full force and effect of law. Centre College v. Trzop, 127 S.W.3d 562 (Ky. 2003). A regulation, however, may not be inconsistent with or more stringent than the statute. Kentucky Assoc. of Chiropractors, Inc., v. Jefferson County Medical Soc., et al., 549 S.W.2d 817 (Ky. 1977), Brown v. Jefferson County Police Merit Bd., 751 S.W.2d 23 (Ky. 1988). The rule making power of a public administrative body is a delegated legislative power which the administrative body "may not use either to abridge the authority given it by the legislature or to enlarge its powers beyond the scope intended by the legislature." Id. at 25, citing Alcoholic Beverage Control Bd. v. Hunter, 331 S.W.2d 280, 283. An administrative body must find within the statute warrant for the exercise of any authority which it claims.

Dept. for Natural Resources v. Stearns Coal, 563 S.W.2d 471, 473 (Ky. 1978). We also note that as a general rule, statutes are to be interpreted liberally so as to give effect to the intent of the legislature.

Masonic cites Kentucky Rule of Civil Procedure 11, which authorizes sanctions against a represented party, the person who signed a pleading, or both, for violation of its provisions, in support of the

general proposition that Kentucky law recognizes that there are occasions where the responsibility for meritless filings may fall with either the party or the attorney representing the party. Indeed, the reality of litigation is that an attorney, in the course of representation, uses his judgment as to what arguments are made and the contents of filings with the courts and administrative bodies of this Commonwealth, and the client may have little to no input. Also, there are times when a client may want the impossible, and the attorney is obligated to inform the client that there is no basis for requesting what the client wants. When the attorney does not use his better judgment and brings a proceeding that is clearly unreasonable, responsibility must in whole or in part be charged to the attorney.

The statute, by the use of the language "upon the party who has so brought, prosecuted, or defended" a proceeding, is not intended to shield attorneys from liability for bringing unreasonable proceedings. The regulation is not in conflict with the intent of the statute, which is to provide some disincentive to unnecessarily initiate or prolong the claims process, often at great expense in terms of time, labor and money to the opposite party. Indeed, it would be manifestly unfair, in many cases, to read the statute as narrowly as Jennings suggests it should be. There are types of misconduct during the course of litigation for which the attorney must be held responsible, and we cannot disagree that this is such a case, as it involves an appeal based on a blatant misstatement of a fundamental principle of workers' compensation law, namely, work-related causation. As the Board pointed out, any attorney who practices in this field knows or ought to know that a claim will fail if such causation cannot be established. Therefore, as the attorney should know what the client does not, the attorney must be held responsible for this lapse.

As the statute is not in conflict with the regulation, then, the regulation has the full effect of law, and the sanction imposed by the ALJ is proper.

For the foregoing reasons, the judgment of the Workers' Compensation Board is affirmed.

ALL CONCUR.

1. Even though Loretta Marie Huff is nominally an appellant in this case, the interests of her attorney are adverse to her own interest, as the attorney seeks to avoid sanctions imposed by the Workers' Compensation Board and argues that the sanctions can only be paid by his client. We therefore will refer to Jennings and not Huff as the appellant throughout this opinion.