

S. C. v. Town of Randolph

(August 7, 2008)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

S. C.

Opinion No. 34-08WC

v.

By: Jane Gomez-Dimotsis
Hearing Officer
Adam Sherwin
Law Clerk

Town of Randolph

For: Patricia Moulton Powden
Commissioner

State File No. U-09762

**DECISION REGARDING MOTION AND CROSS MOTION FOR SUMMARY
JUDGMENT**

ATTORNEYS:

Jill E. Jourdan, Esq. for Claimant
John Leddy, Esq. for Defendant/Insurer

ISSUE:

May the Claimant's attorney, pursuant to 21 V.S.A. Section 682, enforce payment of her claims for services rendered to the claimant against the claimant's permanent partial disability benefit award, after the Commissioner approved lump sum payment of the same and after Defendant's insurance carrier disbursed the entire amount of benefits without withholding the amount claimed for attorney's fees?

FINDINGS OF FACT:

For purposes of this motion, the Department finds that the following facts are undisputed:

1. The Claimant worked as a volunteer firefighter for Defendant and was injured on the job on December 16, 2003.
2. On August 10, 2005, attorney Jill Jourdan gave notice to the Department that she represented the claimant in connection with his claim for Worker's Compensation benefits.

3. On June 10, 2006, the Defendant's insurance carrier, the Vermont League of Cities and Towns (VLCT), sent to attorney Jourdan a copy of Department Form 22, "Agreement for Permanent Partial or Permanent Total Disability Compensation." The proposed Agreement provided that the claimant was entitled to permanent partial disability benefits in the total amount of \$9,784.63. VLCT requested attorney Jourdan to have the claimant execute and return the same and, in addition, asked whether the claimant would like to receive the benefits in a lump sum. There is no indication that the parties ever disputed that benefit amount. For reasons unknown, the claimant did not execute and return the Agreement to VLCT until April 13, 2007, nearly ten months later.
4. By letter dated October 12, 2006, the Vermont Office of Child Support ("OCS") advised attorney Jourdan that it "filed liens with regard to Mr. Colson's two child support cases" with VLCT.
5. By letter dated December 18, 2006, attorney Jourdan sent to the Department a copy of her fee agreement with the claimant, noting, in part, that she "had been instructed by OCS to file my fee agreement with the department so that my attorney's fees may be paid before distribution of the settlement with OCS." Not included with that letter was any itemization of attorney's fees actually incurred in representing the claimant. At the time, the parties had still not filed the Form 22 Agreement with the Department.
6. The Department treated attorney Jourdan's December 18 letter as her request for an attorney's lien for services rendered against any entitlement of the claimant to benefits. On January 4, 2007, the Department issued its "Approval" of attorney Jourdan's request. Copies of the Approval were sent to the claimant and VLCT. The transmittal letter accompanying the Approval advised attorney Jourdan that, to enforce her lien, she must file an itemized statement of charges for services rendered to the claimant.
7. On January 20, 2007, attorney Jourdan sent to the Department itemized statements of attorney's fees she incurred in representing the claimant.
8. The claimant executed the Form 22 Agreement on April 13, 2007 and returned it to VLCT. A VLCT representative, in turn, executed the Agreement and forwarded it to the Commissioner for review.
9. The Commissioner received the proposed settlement agreement on April 19, 2007. That same day, the Commissioner also received from attorney Jourdan a letter relating to the distribution of the claimant's benefit entitlement. In her letter, attorney Jourdan wrote, in part:
 - "1) The settlement is going to be distributed to the Office of Child Support toward Mr. Colson's child support arrearage.
 - 2) If the Department determines that a lump sum payment is not appropriate, we request that you distribute 20% of the lump sum payment for payment of Mr. Colson's attorney's fees as he cannot pay these fees otherwise."

10. On April 30, 2007, the Commissioner approved the parties' settlement agreement. In addition, the Commissioner approved "[the claimant's] request to have the permanency benefits paid in a lump sum."
11. At some uncertain date shortly after the Commissioner approved the settlement agreement, VLCT sent the total amount of the claimant's benefit entitlement to the OCS, without withholding any amount for attorney's fees.
12. By letter dated August 1, 2007, the claimant's attorney requested the Commissioner to enforce her lien by ordering VLCT to pay to her \$1,956.26 in attorney fees. That request was denied under date of December 31, 2007. Thereafter, the matter was placed on the formal docket for resolution.

CONCLUSIONS OF LAW

1. Pursuant to V.R.C.P. 56(c), summary judgment is appropriate when the moving party demonstrates that there is no genuine issue as to any material fact and that the party is entitled to judgment as a matter of law. *Toy, Inc. v. F. M. Burlington Co.*, 155 Vt. 44, 48 (1990). "The moving party has the burden of proof, and the opposing party must be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue of material fact exists." *Price v. Leland*, 149 Vt. 518, 521 (1988). For the following reasons, the Claimant's motion for summary judgment is denied, and the Defendant's motion for summary judgment is granted.
2. The issue in this case boils down to whether the Defendant's insurance carrier, VLCT, should be liable for payment of the claimant's attorney's fees because it disbursed the entire amount of the claimant's benefit entitlement without withholding attorney's fees claimed under 21 VSA Section 682, "Liens Against Compensation." In this case, we conclude that VLCT properly disbursed the entire amount of the claimant's benefit entitlement and was not obliged to withhold any amount for attorney's fees. Accordingly, VLCT cannot be held liable to pay the claimant's attorney's fees.
3. For purposes of this decision, we assume that before VLCT disbursed the benefits, attorney Jourdan complied with all prerequisites to establish a lien against the claimant's benefit entitlement for services rendered to the claimant, pursuant to 21 V.S.A. § 682 and the applicable Departmental rules.
4. The key to whether VLCT properly disbursed the claimant's benefit entitlement is found in attorney Jourdan's letter to the Department dated April 19, 2007, and the Department's response which followed. Apparently, the Department interpreted the foregoing letter as proposing two possible methods of disbursing the claimant's benefit entitlement: first, by lump sum with no provision for attorney fees and, second, by a means other than lump sum disbursement, with a provision for payment of attorney fees. Whether or not attorney Jourdan intended her letter to be so understood, the plain language of her letter supports that interpretation.

5. Specifically, attorney Jourdan wrote that if the disbursement of the claimant's disability benefit is by lump sum, "[t]he settlement is going to be distributed to the Office of Child Support toward Mr. Colson's [the claimant's] child support arrearage." Second, if the lump sum disbursement is not approved, attorney Jourdan wrote "we request that you distribute 20% of the lump sum payment for payment of Mr. Colson's attorney's fees as he cannot pay these fees otherwise." Attorney Jourdan's letter may be reasonably interpreted to mean that she requested payment of her attorney's fees from the claimant's benefit entitlement only if lump sum disbursement is not approved. That being the case, attorney Jourdan's claim for attorney's fees was reasonably understood to be contingent upon approval of periodic payment of the claimant's benefit entitlement.
6. The Commissioner responded to attorney Jourdan's April 19, 2007 letter by approving both the Form 22 Agreement of the parties and the request for a lump sum payment of the claimant's benefit entitlement to the OCS. Given that the claim for attorney's fees was understood by the Department to be asserted only if lump sum disbursement was not approved, the fee claim was constructively waived upon approval of the lump sum payment. Therefore, following the Commissioner's approval, Volt's disbursement of the entire amount of the claimant's benefits without withholding the claimed attorney's fees cannot be deemed improper. Consequently, VLCT cannot be held liable to pay attorney Jourdan's claim for fees from the claimant's benefit entitlement.
7. In conclusion, although there may exist other civil remedies in another forum for attorney Jourdan to recoup her fees, under the circumstances of this case she is not entitled to enforce collection of her attorney's fees from the claimant's benefit entitlement.

ORDER:

Claimant's motion for summary judgment is DENIED with prejudice.
Defendant's motion for summary judgment is GRANTED.

DATED at Montpelier, Vermont this 7th day of August 2008.

Patricia Moulton Powden
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.