

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Estate of Monica Dunn

Opinion No. 36-11WC

v.

By: Jane Woodruff, Esq.
Hearing Officer

Windham Northeast
Supervisory Union

For: Anne M. Noonan
Commissioner

State File No. AA-62904

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT

APPEARANCES:

Jennifer Moore, Esq., for Claimant
Keith Kasper, Esq., for Defendant

ISSUE PRESENTED:

Is Defendant entitled to an offset under 21 V.S.A. §624(e) for the workers' compensation benefits paid and/or payable on account of Claimant's death from the proceeds of a life insurance policy?

FINDINGS OF FACT:

For the purposes of these cross motions, the following facts are undisputed:

1. Claimant was an employee and Defendant was her employer within the meaning of Vermont's Workers' Compensation Act.
2. On October 6, 2009 Claimant died from complications resulting from surgical treatment of a work-related knee injury. Defendant began paying workers' compensation death benefits to her estate accordingly.
3. At the time of her death Claimant had a life insurance policy that named her husband, David Dunn, as beneficiary. Mr. Dunn has collected death benefits from this life insurance policy since Claimant's death.
4. Claimant's life insurance policy provided for a lump sum payment upon proof of her death. The policy also provided for a payment to Claimant's children in the amount of \$3,000.00 per child for a maximum of four years while they attend college.

5. Defendant seeks reimbursement of the death benefits it has paid to date, as well as a credit against future benefits, to the full extent of Mr. Dunn's receipt of life insurance proceeds.

DISCUSSION:

1. These cross motions present a purely legal issue for determination – in order to prevent a double recovery, does 21 V.S.A. §624 require reimbursement and offset for the workers' compensation benefits that Defendant owes on account of Claimant's death from the proceeds of her life insurance policy? As the material facts are not disputed, summary judgment is an appropriate vehicle for resolving this issue. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996).
2. Vermont's workers' compensation subrogation statute, 21 V.S.A. §624, provides as follows:
 - (a) Where the injury for which compensation is payable under the provisions of this chapter was caused under circumstances creating a legal liability to pay the resulting damages in some person other than the employer, the acceptance of compensation benefits . . . shall not act as an election of remedies, but the injured employee or the employee's personal representative may also proceed to enforce the liability of such third party for damages in accordance with the provisions of this section.

. . .
 - (e) In an action to enforce the liability of a third party, the injured employee may recover any amount which the employee or the employee's personal representative would be entitled to recover in a civil action. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or its workers' compensation insurance carrier for any amounts paid or payable under this chapter to date of recovery, and the balance shall forthwith be paid to the employee or the employee's dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payment of compensation benefits. Reimbursement required under this subsection, except to prevent double recovery, shall not reduce the employee's recovery of any benefit or payment provided by a plan or policy that was privately purchased by the injured employee, including uninsured-under insured motorist coverage, or any other first party insurance payments or benefits.
3. Defendant argues that it is entitled to reimbursement and offset from Claimant's life insurance proceeds because they constitute "first party insurance payments" intended to cover the same economic losses for which workers' compensation benefits are payable – that is, to replace the loss of income to Claimant's family on account of her death. If

reimbursement and offset is not required Claimant's estate will reap a double recovery, which Defendant argues is prohibited by §624(e).¹

4. Claimant argues that the plain meaning of 21 V.S.A. §624, read as a whole, requires reimbursement and offset only in situations where an injured worker has recovered damages from the third party responsible for his or her injuries. As benefits payable under a life insurance policy are not the equivalent of damages from a tortfeasor, Claimant argues, the statute does not grant Defendant any right to reimbursement. I agree.
5. The flaw in Defendant's argument is that it reads the last sentence of §624(e) as though it has no accompanying statutory framework. The reimbursement right granted by that sentence, however, is specifically tied to the "recovery against the third party for damages" referenced in the preceding sentence. That language in turn must be read in the context of §624(a), which references the injured worker's right, in situations where his or her "injury . . . was caused under circumstances creating a legal liability" in some third party, to recover the "resulting damages."
6. Defendant equates the benefits payable under Claimant's life insurance policy with the term "damages" as used in §624. The two concepts are not equivalent, however. The term "damages" denotes "the money payable by a tortfeasor who is liable for injuries caused by his tortious act." *The Travelers Companies v. Liberty Mutual Insurance Co.*, 164 Vt. 368, 373 (1995), citing *Wincek v. Town of West Springfield*, 399 Mass. 700, 702 (1987) (quoting Restatement (Second) of Torts §12A (1965), defining "damages" as "a sum of money awarded to a person injured by the tort of another"). In contrast, a benefit paid under the terms of an insurance policy is "a payment made in performance of a contractual obligation," not a payment of "damages." *Wincek, supra* at 703 (internal citation omitted).
7. With this distinction in mind, even accepting that Claimant's life insurance proceeds represent monies recovered from a "third party," *Travelers Companies v. Liberty Mutual, supra* at 372, they still are not an appropriate source of reimbursement. Rather, to attach these monies Defendant must show *both* that they come from a third party *and* that they represent damages. *Id.*
8. Construed as a whole, and reading all parts of the statutory scheme in harmony, *In re Jenness*, 2008 VT 117, ¶24, I conclude that an employer's right to reimbursement under §624(e) only attaches to damages that the injured worker has recovered from a third party tortfeasor. *See, Progressive Casualty Ins. Co. v. Estate of Keenan*, 2007 VT 86, ¶11. I further conclude that the benefits paid under the terms of Claimant's life insurance policy do not constitute "damages." That being the case, I conclude that Defendant has no right to reimbursement or offset from them.

¹ Defendant acknowledges that it is only entitled to reimbursement and offset to the extent that the benefits payable under Claimant's life insurance policy represent economic, as opposed to non-economic, damages. *Traveler's Insurance Co. v. Henry*, 2005 VT 68. Beyond summary judgment in its favor as to its right to reimbursement, it seeks a hearing to determine the extent of these.

9. Claimant has submitted a request under 21 V.S.A. §678 for attorney fees totaling \$3,088.50. The decision whether to award attorney fees lies within the Commissioner's discretion. Among the factors to be considered are whether the attorney's efforts were integral to establishing the claimant's right to compensation and whether the claim for fees is proportional to the attorney's efforts in light of the difficulty of the issues raised and the skill and time expended. *Lyons v. American Flatbread*, Opinion No. 36A-03WC (October 24, 2003). Having reviewed the specific billing entries, I conclude Claimant is entitled to recover these fees.

ORDER:

Claimant's Motion for Summary Judgment is **GRANTED**. Defendant's Motion for Summary Judgment is **DENIED**. Claimant is awarded attorney fees in the amount of \$3,088.50.

Dated at Montpelier, Vermont, this 15th day of November 2011.

Anne M. Noonan
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.