

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000871-MR

DONALD REYNOLDS

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE CHARLES E. LOWE, JR., JUDGE  
ACTION NO. 97-CI-000208

KENTUCKY CARBON CORPORATION  
AND LIFE INSURANCE COMPANY OF  
NORTH AMERICA, A SUBSIDIARY  
OF CIGNA

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. Donald Reynolds (Reynolds) appeals from a judgment of the Pike Circuit Court entered April 3, 1998. Reynolds had filed a petition to enforce a workers' compensation opinion and award entered by the Administrative Law Judge (ALJ) on February 19, 1991, as amended by order on remand entered March 26, 1992. Appellant argued to the trial court and on appeal that he was denied statutory interest on the principal due under the workers' compensation claim. Having thoroughly reviewed this matter, we affirm.

On February 19, 1991, Reynolds received an opinion and award from the ALJ awarding him benefits for permanent and total disability under the Kentucky Workers' Compensation Act in the amount of \$294.86 per week based upon work-related injuries he sustained while working for Kentucky Carbon Corporation (Kentucky Carbon). Prior to the award being entered, Kentucky Carbon had paid temporary benefits of \$61.92 and Life Insurance Company of North America, a subsidiary of CIGNA (Cigna), Kentucky Carbon's disability carrier, paid Reynolds benefits under its disability plan. In the ALJ's opinion and award, the ALJ indicated that Kentucky Carbon would not be credited for disability payments made by Cigna to Reynolds. Specifically, paragraph five of the award section provided:

The defendant-employer shall be afforded a credit for all payments heretofore made whether such payments are representative of a voluntary payment of workers' compensation, salary continuation for disability, and/or a disability pension plan. However, such credit shall not be prospective and shall affect no future payments to be made under the compulsion of this Award.

After an appeal to the Workers' Compensation Board filed by Kentucky Carbon, the opinion and award was modified to provide that Kentucky Carbon would receive credit for payments made by Cigna prior to the award but retained the provision that the employer would not receive credit for "future payments to be made under the compulsion of this Award." In other words, the ALJ's order required Kentucky Carbon to pay the full amount of \$294.86 to Reynolds.

However, from February 19, 1991 through December 4, 1996, both Kentucky Carbon and Cigna continued to make the same payments to Reynolds. Kentucky Carbon paid only \$61.92 while Cigna paid \$232.95. Once this situation was discovered Cigna notified Reynolds of its overpayment and Kentucky Carbon began making its full workers' compensation payment to Reynolds on November 20, 1996.

Thereafter, on February 6, 1997, Reynolds filed a "petition to enforce workers' compensation award" seeking full payments of past due benefits allegedly owed him and claiming statutory interest thereon pursuant to KRS 342.040. Reynolds' action was filed against Kentucky Carbon which then filed a third-party complaint against Cigna. After discovery was completed and summary judgment motions considered, the trial court entered its first "Findings of Fact, Conclusions of Law and Judgment" on November 24, 1997. That order granted judgment to Reynolds against Kentucky Carbon in "the sum of \$73,561.65 plus interest at the rate of 12% per annum for and after December 4, 1996, until paid." The judgment further awarded Cigna a judgment against Reynolds in the sum of \$12.38 plus interest and awarded Reynolds a \$1,000 attorney fee. Motions to reconsider and alter or amend were timely filed and the trial court subsequently entered a second judgment on December 19, 1997. That judgment awarded Reynolds the sum of \$73,561.65 from Kentucky Carbon (\$49,000.61 in additional workers' compensation benefits and \$24,516.95 in interest), but also adjudged that Cigna recover

from Reynolds the sum of \$49,013.64, representing its overpayment of disability insurance.

Kentucky Carbon's motion to reconsider and alter or amend that judgment was granted and the Pike Circuit Court entered its final judgment in this matter on April 7, 1998. After considering "the pleadings, affidavits, depositions and memoranda of all parties, as well as hearings before the Court," the trial court ordered and adjudged the following:

1. Reynolds was granted judgment against Kentucky Carbon in the sum of \$49,000.61 for additional workers' compensation benefits.
2. Cigna was granted judgment against Reynolds in the sum of \$49,000.66 for overpayment of long term disability benefits paid.
3. Reynolds' claim against Kentucky Carbon for pre-judgment interest on the additional workers' compensation benefits was denied because Reynolds "was not deprived of the use of, or entered [sic] to interest on the \$49,000.66 underpayment of workers' compensation.
4. The Judgment permitted Kentucky Carbon to pay the judgment of \$49,008.68 directly to Cigna.
5. Awarded Reynolds attorneys' fees in the sum of \$1,000 and costs herein expended.

From this final order Reynolds appealed.

On appeal the only issue presented by Reynolds is that the trial court erred in not awarding him interest on the workers' compensation benefits Kentucky Carbon was originally ordered to pay. Reynolds claims that pursuant to KRS 342.040 he is statutorily entitled to said interest. KRS 342.040 states in pertinent part:

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid....

Relying on Stone v. Kentucky Ins. Guar. Ass'n. Ky., Ky. App., 908 S.W.2d 675, 677 (1995), appellant claims "that the obvious purpose of an interest statute is to encourage a judgment debtor to promptly comply with the terms of the Judgment and to compensate the judgment creditor for the judgment debtor's use of his money." Reynolds contends that Kentucky Carbon had the use of his money during that period of time and therefore would be unjustly enriched if interest is not ordered. Reynolds also argues that not to follow KRS 342.040 and order interest will undermine the beneficial purposes of the Workers' Compensation Act, including the timely payment of benefits. We disagree.

Kentucky Carbon contends that, although they did underpay benefits owed Reynolds, he did not suffer any loss since Cigna overpaid under the disability plan the amount equal to the underpaid workers' compensation benefits. As such, Reynolds did not suffer an actual loss. Kentucky Carbon admitted the underpayment and filed a third-party complaint to join Cigna as an indispensable party. As seen by the final judgment entered April 3, 1998, Reynolds owed Cigna the same amount Kentucky Carbon owed Reynolds. That issue has not been appealed.

Kentucky Carbon contends the clear purpose of KRS 342.040 "is to penalize the paying party for depriving another party who has obtained an award or judgment of the use and benefit of the money awarded." Since Reynolds did in fact receive all he was entitled to, although from the wrong source, Kentucky Carbon claims that from a standpoint of equity and fairness, Reynolds should not profit from this situation. They claim that both the workers' compensation benefits and the long term disability benefits are funded by the same company and thus, in reality, Kentucky Carbon was responsible for the total benefits Reynolds received. Kentucky Carbon argues that Reynolds would be unjustly enriched if he were awarded interest. Its argument was succinctly stated in a memorandum filed on September 17, 1997, which, in relevant part, states:

If the Court does sustain plaintiff's motion to enforce this compensation award, it should also allow Kentucky Carbon an off set or credit for all over payments made by Kentucky Carbon through CIGNA to Reynolds under the long term disability plan (the record actually shows \$12.38 credit or over payment by CIGNA when the off set is taken). Whether Reynolds got the money due him out of his employer's right pocket or left pocket is inconsequential as far as these proceedings.

No interest should be required to be paid to Reynolds by Kentucky Carbon because Reynolds got the amount of money to which he was entitled to from his employer, Kentucky Carbon, who, as mentioned above, is the same payor under both plans. Interest is awarded on money for which one does not have the actual use of. This was certainly not the case with Reynolds since Reynolds received the same amount of money owed to him by his employer, Kentucky Carbon, but only under a different plan.

Kentucky Carbon argues that in Stone, supra, cited by Reynolds, the facts are distinguishable since in Stone there had been significant delays in the case and in payment of benefits caused by the employer. This is not the case in the matter sub judice. In Stone, the Court set forth the general purpose for statutory interest as follows:

In Kentucky, a prevailing party's right to recover post-judgment interest is granted by statute. KRS 360.040 provides that "[a] judgment shall bear twelve percent (12%) interest compounded annually from its date." The language of the statute has been interpreted as requiring the imposition of interest on a judgment unless there are factors which would make an award of interest inequitable. Courtenay v. Wilhoit, Ky.App., 655 S.W.2d 41, 42 (1983). The statute's obvious purpose is to encourage a judgment debtor to promptly comply with the terms of the judgment and to compensate the judgment creditor for the judgment debtor's use of his money.

...

Our position is strengthened by policy reasons of concern in Kentucky and identified in other jurisdictions that have addressed the same question. Unless KIGA [Kentucky Insurance Guaranty Association] is liable for post-judgment interest, delaying tactics will be encouraged and policyholders, such as Stone, may be exposed to the risk of significant financial loss. Ramage v. Alabama Ins. Guar. Ass'n, 919 F.2d 1010, 1014 (5<sup>th</sup> Cir. 1990). KIGA should not be "rewarded for excessive delay in payment, as it would be if it could invest the limit [its statutorily determined liability amount] in a large claim yet not have to pay interest." [citations omitted].

Stone, 908 S.W.2d at 677-678.

The issue of when and under what circumstances interest should be awarded is within the sound discretion of the trial court.

A number of other Kentucky cases explain that the award of interest is within the judicial discretion of the trial court. See, for example, Curtis v. Campbell, Ky., 336 S.W.2d 355 (1960); Beckman v. Time Fin. Co., Ky., 334 S.W.2d 898 (1960); Avritt v. O'Daniel, Ky.App., 689 S.W.2d 36 (1985). In 47 C.J.S., "Interest and Usury," § 6 (1982), the underlying principles are thus explained:

Interest is charged not only because of the value to the one who uses money, but also as compensation to the one who has been deprived of the use of money. Interest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to considerations of fairness; it is denied when its exaction would be inequitable....the tendency of the courts is to charge and allow interest in accordance with the principles of equity, to accomplish justice in each particular case.

Nucor Corp. v. General Elec. Co., Ky., 812 S.W.2d 136, 143(1991).

Having reviewed this matter, we agree with the trial court that Reynolds was not deprived of the use of, or entitled to interest on the \$49,000.66 underpayment of workers' compensation benefits owed by Kentucky Carbon. We believe the factual situation is distinguishable from Stone and that "there are factors which would make an award of interest inequitable."



Stone, supra, at 677 citing Courtenay v. Wilhoit, Ky. App., 655 S.W.2d 41, 42 (1983). Further, we do not believe the trial court abused its discretion nor that the judgment was clearly erroneous.

For the foregoing reasons, the judgment of the Pike Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert J. Greene  
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BRIEF FOR APPELLEE:

William J. Baird, III  
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