

NOT DESIGNATED FOR PUBLICATION

DIRK MAISE

NO. 02-CA-594

VERSUS

FIFTH CIRCUIT

CALEB BRETT USA, INC.

COURT OF APPEAL

STATE OF LOUISIANA

**COURT OF APPEALS
FIFTH CIRCUIT**
FILED DEC 11 2002

Peter J. Fitzgerald

ON APPEAL FROM THE OFFICE OF WORKERS' COMPENSATION
STATE OF LOUISIANA
NO. 01-00606, DISTRICT "7"
HONORABLE JOHN C. GROUT, JR., JUDGE PRESIDING

DECEMBER 11, 2002

**JAMES L. CANNELLA
JUDGE**

Panel composed of Judges James L. Cannella,
Susan M. Chehardy and Walter J. Rothschild

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COUNSEL FOR APPELLANT
DIRK MAISE

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CALEB BRETT USA, INC.

AFFIRMED.

JRC
SMC
WGR

In this worker's compensation case, Claimant, Dirk Maise, appeals from the trial court judgment in favor of counsel for the Employer, Caleb Brett USA, Inc., awarding him "attorney's fee[s] of five-hundred (\$500.00) for being required to attend and defend discovery requests filed by Claimant's counsel." For the reasons which follow, we affirm.

The record is limited. However, from the defense brief, it appears that this action arose out of a work-related accident suffered by the Claimant on December 4, 1997. Issues concerning the accident, whether it was work-related and whether the injuries resulted from the accident were resolved. The Employer eventually paid the appropriate worker's compensation, medical bills for two surgeries and expenses related thereto. On January 22, 2001, the Claimant filed a new claim in which he alleged a dispute over outstanding medical bills and attorney's fees. Thereafter, the parties filed cross discovery requests, which led to cross motions to compel and cross motions for contempt.¹ All matters were eventually set for hearing on November 16, 2001. Following the hearing, the worker's compensation judge issued a judgment which provided, in pertinent part, as follows:

¹ It appears from the record that both parties made discovery requests, starting with the Employer's request of the Claimant, which they both felt were not timely and/or adequately answered. They both provided argument concerning their responses.

IT IS ORDERED, ADJUDGED AND DECREED that the Court has no jurisdiction to award penalties for contempt of court, and those cross-motions are dismissed with prejudice; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Claimant, through his counsel, has not complied with the written interrogatories and request for production served on him by Employer/insurer, and is given fifteen days from receipt of this judgment to comply fully with same; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the notices of deposition and subpoenas duces tecum served on National Union Fire Insurance and Crawford and Company be, and the same are, hereby quashed; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Motion to Compel brought by Claimant's counsel is denied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED counsel for Employer/Insurer is awarded attorney's fee of five-hundred (\$500.00) for being required to attend and defend discovery requests filed by Claimant's counsel. All costs of these proceedings are to be borne by Claimant.

It is from this judgment that Claimant appeals. On appeal, Claimant assigns one error, that the trial judge erred in assessing attorney fees against him and in favor of the Employer and in failing to award costs to him.²

As correctly stated by the Claimant, the imposition of sanctions by a worker's compensation judge will not be disturbed on appeal absent a showing of manifest error or abuse of discretion. Doe v. Jeansonne, 98-183 (La. App. 3rd Cir. 10/7/98), 719 So.2d 690. No such showing has been made in this case.

What we glean from the transcript of the hearing is that Claimant's counsel propounded extensive discovery, which the Employer has attempted to answer. Conversely, it appears that Claimant was not as forthcoming with his discovery responses. Claimant filed a request for a subpoena duces tecum and a motion to

² Claimant did not assign as error the rulings concerning the denial of the motion to compel or the quashing of the notice of deposition and subpoena duces tecum, although he did refer to them in argument. We note that these rulings are interlocutory and are not appealable.

compel a deposition, both of which were quashed by the worker's compensation judge, who is given wide discretion in discovery matters because he is in the best position to see and know whether the requests are necessary and legitimate or overbroad and burdensome. Belonga v. Crescent City Dodge, L.L.C., 00-0034 (La. 3/8/01), 781 So.2d 1247; Krepps v. Hindelang, 97-0980 (La. App. 5th Cir. 4/15/98), 713 So.2d 519.

Based on the record before us and the arguments of both parties, we find no manifest error or abuse of discretion in the ruling of the worker's compensation judge in awarding defense counsel \$500 for attending the hearing and defending against what the trial court considered to be improper discovery requests.

Accordingly, we affirm the judgment of the worker's compensation judge which awards defense counsel attorney's fees of \$500. Costs of appeal are assessed against the Claimant.

AFFIRMED.



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEHARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD

JUDGES

Court of Appeal

FIFTH CIRCUIT
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CLERK OF COURT

GENEVIEVE L. VERRETTE
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FIRST DEPUTY CLERK

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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY DECEMBER 11, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

PETER J. FITZGERALD, JR.
COURT OF COURT

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