STATE OF MICHIGAN

COURT OF APPEALS

VERNA L. COLEGROVE,

Plaintiff-Appellant,

v

KROGER COMPANY, and TRANSPORTATION INSURANCE COMPANY,

Defendants-Appellees.

UNPUBLISHED
August 4, 1998

No. 199721
WCAC
LC No. 94-000833

Before: Markman, P.J., and Saad and Hoekstra, JJ.

PER CURIAM.

Plaintiff Verna Colegrove appeals by leave granted a decision of the Worker's Compensation Appellate Commission (WCAC) affirming the decision of the magistrate that defendants were entitled to coordinate plaintiff's worker's compensation and pension benefits. We affirm.

Plaintiff began receiving worker's compensation benefits in the amount of $289.27 per week in 1987. On July 1, 1992, she began receiving disability pension benefits through the Michigan United Food and Commercial Workers' Union and Food Employers Joint Pension Plan in the amount of $594 per month. Thereafter, defendant Kroger Company began coordinating plaintiff's pension with her worker's compensation benefits, reducing plaintiff's worker's compensation benefits to $173.38 per week.

Plaintiff filed a petition in September 1992, asserting that defendant was improperly coordinating her benefits. Charles Lax, an attorney who practices in the areas of taxation and employee benefits, testified on behalf of plaintiff at the hearing. He testified that plaintiff's pension plan was established on December 16, 1965. The plan was subsequently amended on three occasions, first on April 1, 1976 and then on January 1, 1982. The final amendment was made to comply with various federal laws. The plan indicated that it was "amended and restated through April 1, 1984." Lax stated that the phrase "amended and restated" was not defined in the plan; however, it was generally understood to mean a plan that has been amended so extensively that it was equivalent to a new plan document. Lax stated that nothing suggested that the plan had been renewed. While acknowledging that the term "renewal"

was not familiar, he considered that the term referred to starting a plan again after it had been terminated.

The magistrate found that defendant was entitled to coordinate plaintiff's benefits. The magistrate noted that in *Scott v Jones & Laughlin Steel Corp (On Remand)*, 202 Mich App 408; 509 NW2d 841 (1993), this Court held that a pension plan established or renewed after March 31, 1982 is not automatically exempt from coordination pursuant to MCL 418.354(1)(d); MSA 17.237(354)(1)(d), but may be exempt if the plan so provides. In addition, the magistrate determined that coordination was allowed where a plan had been modified after March 31, 1982. The magistrate concluded that the Legislature intended the term "renewed" to refer to a continuing plan that had been amended. Defendant was allowed to coordinate benefits because plaintiff's pension plan, as "amended and restated through April 1, 1984," did not specifically disallow coordination.

On appeal, the WCAC affirmed the decision of the magistrate. The WCAC rejected plaintiff's argument that because her plan was established on December 16, 1965, it was "in existence" on March 31, 1982 and, therefore, coordination could not take place. The WCAC also rejected plaintiff's contention that the term "renew" was not largely synonymous with the term "amend," and noted that plaintiff's plan was "amended and restated" through April 1, 1984.

This Court's review in a worker's compensation case "does not include an independent review of the magistrate's decision or a substantial evidence review of the facts." *York v Wayne Co Sheriff's Dept*, 219 Mich App 370, 375; 556 NW2d 882 (1996). The limited scope of judicial review is established in Const 1963, art 6, § 28, which provides:

> Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.

Similarly, MCL 418.861a(14); MSA 17.237(861a)(14), which provides for review of WCAC decisions, states:

> The findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have the power to review questions of law involved with any final order of the commission . . .

Findings of fact made by the WCAC are conclusive if there is any competent evidence in the record to support them. *Holden v Ford Motor Co*, 439 Mich 257, 263; 484 NW2d 227 (1992).

Plaintiff argues on appeal that the magistrate and the WCAC erred by finding that an amendment to a pension plan constituted a "renewal" of the plan. The coordination of worker's compensation benefits is controlled by MCL 418.354; MSA 17.237(354), which generally allows coordination of benefits. However, subsection 14 provides for an automatic exception from coordination, as follows:

> This section does not apply to any payments received or to be received under a disability pension plan provided by the same employer which plan is in existence on March 31, 1982. Any disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this section. [MCL 418.354(14); MSA 17.237(354)(14).]

In *Scott, supra* at 415, this Court held that changes instituted in a pension plan as a result of collective bargaining effectively "renewed" the plan within the meaning of this exception, so that the benefits at issue were not automatically exempt from coordination. In *Murphy v City of Pontiac*, 221 Mich App 639, 643-644; 561 NW2d 882 (1997), this Court determined that the legislative "intent underlying this section is to prevent retroactive application of the act's coordination provisions and thus protect retirees who may have retired on the assumption that their worker's compensation and disability pension benefits would not be coordinated." However, the Court also found that the Legislature intended to allow employees to bargain with their employers regarding coordination after March 31, 1982. *Id.* Thus, where a pension plan is changed after March 31, 1982, the plan is "renewed" within the meaning of section 354(14). *Id.* at 644. Consistent with this section, coordination would then be allowed in the absence of an affirmative statement disallowing coordination. *Sterner v McLouth Steel Products,* 211 Mich App 354, 356: 536 NW2d 225 (1995).

Plaintiff continues to argue that the term "renew" presupposes termination of an agreement, as opposed to "amend" which refers to an ongoing agreement. Therefore, she argues, the amendments of her plan after March 31, 1982 were not a "renewal" of the plan that would allow coordination under the meaning of the statute. However, when interpreting a statute, each word should be given meaning. *Baker v General Motors Corp,* 409 Mich 639, 665; 297 NW2d 387 (1980). Plaintiff's interpretation of section 354(14), reading the terms "entered into" and "renewed" in a similar manner, would essentially render the term "renewed" a nullity; since "entered into" already includes within its definition plans that were terminated and later "entered into" again. Thus, "renewed" must have a broader meaning, referring to a change or amendment, as determined in *Murphy, supra.* Further, plaintiff's reliance on *Tyler v Livonia Public Schools (On Remand),* 220 Mich App 697; 561 NW2d 390 (1996), for the proposition that technical amendments to a plan do not constitute a renewal of the plan, is misplaced. The issue in *Tyler* was actually whether section 354(14) applied to a statutorily created program, as opposed to a contractual plan as here. Thus, any discussion of renewal in *Tyler* constitutes dicta and does not, in our judgment, prevail over *Scott* and *Murphy*.

Accordingly, in an effort to analyze this case consistently with existing law, we must determine first whether the plan at issue was "renewed" within the meaning of the statute. Plaintiff admits that the plan was "amended a third time on April 1, 1984, to incorporate changes mandated by three pieces of federal legislation . . . ." Although the plan itself stated that it had been "amended and restated," we need not determine whether this language showed an intent to terminate and "enter into" the plan again: termination is not required to renew a plan under section 354(14). *Murphy, supra* at 644. Rather, a change in the plan is sufficient to renew the plan, and here, the plan was changed to comply with three different federal statutes. Thus, the plan was "renewed" within the meaning of the statute.[1] However,

even if a plan is renewed after March 31, 1982, so that coordination of benefits would generally be allowed, the plan itself may prohibit coordination. *Sterner, supra* at 356. In this case, there is no indication that the plan specifically disallowed coordination, as provided for in section 354(14). Thus, we find no reason to dispute the findings of the WCAC regarding coordination of benefits in this case.

For these reasons, we affirm the WCAC's affirmation of the magistrate's decision allowing coordination of plaintiff's worker's compensation and pension benefits.

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Joel P. Hoekstra

[1] We are not oblivious to the concern that this interpretation of "renewed" has the potential to discourage a plan from undertaking relatively minor or technical changes in order to avoid opening itself up to coordination of benefits under MCL 418.354; MSA 17.237(354).