

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD L. PIESER,

Plaintiff-Appellee,

v

SARA LEE BAKERY and TRAVELERS
PROPERTY CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendants-Appellants,

and

SECOND INJURY FUND (VOCATIONALLY
HANDICAPPED PROVISION),

Defendant-Appellee.

UNPUBLISHED
March 20, 2008

No. 275608
WCAC
LC No. 05-000354

RICHARD L. PIESER,

Plaintiff-Appellee,

v

SARA LEE BAKERY and TRAVELERS
PROPERTY CASUALTY INSURANCE
COMPANY OF AMERICA,

Defendants-Appellees,

and

SECOND INJURY FUND (VOCATIONALLY
HANDICAPPED PROVISION),

Defendant-Appellant.

No. 277884
WCAC
LC No. 05-000354

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

In these consolidated cases, the Second Injury Fund (the fund) and defendants Sara Lee Bakery and Travelers Property Casualty Insurance Company of America (defendants) appeal by leave granted a December 27, 2006 order of the Worker's Compensation Appellate Commission (WCAC) directing the fund to reimburse defendants for benefits paid to plaintiff on and after June 29, 2005. At issue is whether defendants are entitled to the reimbursement ordered by the WCAC as a result of a change in law precipitated by our Supreme Court's decision in *Bailey v Oakwood Hosp & Medical Ctr*, 472 Mich 685; 698 NW2d 374 (2005), which overruled this Court's decision in *Robinson v Gen Motors Corp*, 242 Mich App 331; 619 NW2d 411 (2000). Because we perceive no reason to stray from the usual rule of limited retroactivity applicable to judicial decisions overruling prior law, we reverse.

I. Basic Facts and Procedural History

This case arises out of plaintiff Richard Pieser's employment with Sara Lee Bakery. At all relevant times, Pieser was certified as vocationally disabled under the worker's disability compensation act. See MCL 418.901(a). On October 10, 1994, Pieser injured his back at work. Pieser subsequently filed a petition for worker's compensation benefits, and defendants filed a petition for reimbursement against the fund. The petition for reimbursement was based on MCL 418.921, which provides that, in the case of a vocationally disabled employee, the employer's liability is limited to those benefits accruing during the period of 52 weeks after the date of injury and that, thereafter, "all compensation and the cost of all medical care and expenses of the employee's last sickness and burial shall be the liability of the [f]und."

Ultimately, the magistrate granted Pieser benefits but dismissed the fund from any liability for reimbursement because defendants failed to provide the fund with the statutorily required notice of "whether it is likely that compensation may be payable beyond a period of 52 weeks after the date of injury." MCL 418.925(1). In support, the magistrate cited *Robinson, supra*, which held that the consequence of the failure to provide the notice required by MCL 418.925(1) was dismissal of the fund from liability for reimbursement. The magistrate's decision was affirmed by the WCAC.

On June 29, 2005, our Supreme Court released *Bailey, supra*, wherein *Robinson* was specifically overruled. Essentially, the Court held that the fund has an obligation to reimburse a carrier after the fifty-second week following the injury of a vocationally disabled employee, regardless of the carrier's failure to provide the fund with timely notice of the injury as required by MCL 418.925(1). *Bailey, supra* at 688. Soon after *Bailey* was released, defendants filed the instant petition for reimbursement. Defendants claimed that, in light of *Bailey*, the fund should be ordered to reimburse defendants for all benefits paid to Pieser after 52 weeks following the date of his injury, regardless of the timeliness of the notice provided to the fund. The fund answered by arguing that *res judicata* barred defendants' petition. The magistrate agreed and dismissed defendants' petition.

The WCAC subsequently reversed the magistrate's decision, opining that relief was warranted because the general rule is to apply judicial decisions with full retroactivity, and our Supreme Court did not limit the retroactive effect of *Bailey*. Thus, the WCAC ordered that the fund reimburse defendants for benefits paid to Pieser on and after June 29, 2005, the date of the Supreme Court's decision in *Bailey*. Both parties subsequently sought leave to appeal, which this Court granted.

II. Analysis

Defendants challenge the WCAC's decision to the extent it ordered reimbursement only as of June 29, 2005, the date on which *Bailey* was released. Defendants contend that the general rule of full retroactivity of judicial decisions should apply and the fund should thus reimburse defendants for benefits paid to Pieser after October 10, 1995, which was 52 weeks after the date of plaintiff's injury. The fund counters that a decision such as *Bailey*, which overrules prior law, applies only to the case before the Court and to those pending cases in which a party has raised and preserved the same legal issue. Because the instant case was resolved before the release of *Bailey*, the fund asserts that the decision is inapplicable and that any reimbursement is improper.

Whether the Supreme Court's decision in *Bailey* should be given full retroactive effect or, as argued by the fund, limited in its application to those pending cases in which a party has raised and preserved the notice issue is a question of law that this Court reviews de novo. *Lincoln v Gen Motors Corp*, 461 Mich 483, 490; 607 NW2d 73 (2000); see also MCL 418.861a(14). While we recognize that judicial decisions generally are given full retroactive effect, *Hyde v Univ of Michigan Bd of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986), "limited retroactivity" is the favored approach when overruling prior law. *Tebo v Havlik*, 418 Mich 350, 360, 343 NW2d 181 (1984). Both our Supreme Court and this Court have stated that the rule of limited retroactivity means that the decision will apply to pending cases in which the same challenge has been raised and preserved, and it has become the "usual" rule where, as here, a decision overrules prior law. See *Devillers v Auto Club Ins Ass'n*, 473 Mich 562, 586-587, 587 n 57; 702 NW2d 539 (2005); *Paul v Wayne Co Dep't of Pub Service*, 271 Mich App 617, 620; 722 NW2d 922 (2006).

In the instant case, we see no reason for this Court to stray from the "usual" rule of limited retroactivity. Therefore, because this case was no longer pending at the time *Bailey* was released, that case is inapplicable to the instant matter and the fund is correct in its assertion that the WCAC erred in granting defendants any reimbursement at all.¹

Reversed.

/s/ Joel P. Hoekstra

/s/ Bill Schuette

¹ In light of this conclusion, we need not address whether the WCAC erred in reversing the magistrate's ruling on the issue of res judicata.