IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 19, 2018 Session

SALVADOR SANDOVAL v. MARK WILLIAMSON, ET AL.

Appeal from the Workers' Compensation Appeals Board
Appeal from the Court of Workers' Compensation Claims
No. 2017-06-017 Joshua Baker, Judge

No. M2018-01148-SC-R3-WC – Mailed January 8, 2019
Filed March 28, 2019

Salvador Sandoval ("Employee"), an undocumented immigrant, suffered an injury while working for Tennessee Steel Structures ("Employer"). The parties settled the claim, and Employee failed to return to work at the end of the initial compensation period. Employee now seeks additional permanent disability benefits pursuant to Tennessee Code Annotated 50-6-207(3)(B) because Employee cannot return to work after the injury as he is not eligible or authorized to work in the United States under Federal Immigration Law.[1] Employee challenges the constitutionality of Tennessee Code Annotated section 50-6-207(3)(F) which does not allow for additional benefits set forth in subdivision (3)(B) for any employee who is not eligible or authorized to work in the United States. The Court of Workers' Compensations Claims held that it had no jurisdiction to make this determination and denied Employee's request for increased benefits. Employee appealed. The appeal has been referred to the Special Workers' Compensation Appeals Panel pursuant to Tennessee Rule of the Supreme Court 51 section 1. We affirm the judgment of the trial court and hold that Tennessee Code Annotated section 50-6-207(3)(F) is constitutional.

Tenn. Code Ann. § 50-6-225(a) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Court of Workers' Compensation Claims Affirmed

[1] The record is unclear whether Mr. Sandoval's immigration status alone is the reason why he cannot return to work or if his injury also prevents him from doing so.

ROBERT E. LEE DAVIES, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and WILLIAM B. ACREE, SR. J., joined.

James Higgens and Donald Byrd, Nashville, Tennessee, for the appellant, Salvador Sandoval.

Michael L. Haynie, Nashville, Tennessee, for the appellee, Mark Williamson.

Herbert H. Slatery III, Attorney General and Reporter; Andree S. Blumstein, Solicitor General; and Alexander S. Rieger, Assistant Attorney General for the Appellee, Attorney General of Tennessee.

OPINION

Factual and Procedural Background

The facts of this case are undisputed. Employee suffered an injury while working for Employer, and the parties settled the claim. However, Employee failed to return to work at the end of the initial compensation period. On September 12, 2017, Employee filed a petition for additional benefits, and Employer filed a dispute certification notice on November 17, 2017.

The parties stipulated that Employee was not eligible or authorized to work in the United States under Federal Immigration Law and that pursuant to Tennessee Code Annotated section 50-6-207(3)(F), Employer had no liability for increased benefits under section 50-6-207(3)(B). However, Employee argued that Tennessee Code Annotated section 50-6-207(3)(F) is facially unconstitutional.

Finally, the parties stipulated that should the statute be determined unconstitutional, Employee would be entitled to $12,398.86 in additional benefits.

Analysis

Jurisdiction

The Court of Workers' Compensation Claims was correct in determining that it lacked jurisdiction to consider the facial constitutional validity of Tennessee Code Annotated section 50-6-207(3)(F). Administrative tribunals "have no authority to determine the facial constitutionality of a statute." Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 455 (Tenn. 1995). However, this Special Workers'

Compensation Appeals Panel does have jurisdiction to adjudicate this constitutional question of law.

Constitutionality of Tenn. Code Ann. § 50-6-207(3)(F)

The issue presented to this Court is whether the Federal Immigration Reform and Control Act ("IRCA") preempts Tennessee Code Annotated section 50-6-207(3)(F). Congress enacted the Immigration Reform and Control Act of 1986 (codified primarily in 8 U.S.C. §§ 1324a and 1324b). IRCA is a comprehensive federal law aimed at "combating the employment of illegal aliens." Hoffman Plastic Compounds, Inc. v. N.L.R.B., 535 U.S. 137, 147 (2002). IRCA imposes a series of civil penalties on employers who hire or continue to employ illegal immigrants who are not authorized to work in the United States.

> Under IRCA, an employer who knowingly hires an unauthorized alien shall be ordered to cease and desist the violation, and to pay between $250 and $2[,]000 per unauthorized alien for a first offense, between, $2[,]000 and $5[,]000 per unauthorized alien for a second offense, and between $3[,]000 and $10[,]000 per unauthorized alien for a third or greater offense. 8 U.S.C. § 1324a(e)(4). An employer who fails to verify the work authorization of its employees can be ordered to pay between $100 and $1[,]000 for each person whose authorization it failed to authenticate. 8 U.S.C. § 1324a (e)(5). Employers who engage in a "pattern or practice" of hiring unauthorized aliens shall be fined up to $3[,]000 per unauthorized alien, imprisoned for not more than six months, or both. 8 U.S. C. § 1324a(f)(1).

Lozano v. City of Hazelton, 620 F.3d 170, 199 (3d Cir. 2010), cert. granted, judgment vacated sub nom. City of Hazleton, Pa. v. Lozano, 563 U.S. 1030, (2011).

The statute that Employee challenges in this case is a component of Tennessee's statutory system for awarding workers' compensation benefits. Under our workers' compensation law, if an employee is not found to be permanently and totally disabled, the court will award a number of weeks of permanent partial disability based upon the employee's weekly wages and impairment rating. Tenn. Code Ann. § 50-6-207(3)(A) (2014 & Supp. 2018). If the employee has not returned to work by the expiration of the permanent partial disability award (or returned to work at a lower wage), the employee may file a claim for increased benefits set forth in Tennessee Code Annotated section 50-6-207(3)(B). These increased benefits are determined using multipliers based upon return to work, education, age, and unemployment rate. Tenn. Code Ann. § 50-6-207(3)(B).

However, Tennessee Code Annotated section 50-6-207(3)(F) provides that the increased benefits available under subdivision (3)(B) "shall not apply to injuries sustained by an employee who is not eligible or authorized to work in the United States under federal immigration laws." Thus, while every person who is injured on the job will receive the initial permanent partial disability award, undocumented workers are not eligible to receive increased benefits.

Under the Supremacy Clause of the United States Constitution, federal law preempts state law. U.S. Const. art. VI, cl. 2; McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 427 (1819). Employee asserts that Tennessee Code Annotated section 50-6-207(3)(F) is preempted by both field and conflict preemptions under IRCA. The Supreme Court has held that "the Federal Government has occupied the field of alien registration," by creating a "full set of standards governing alien registration, including the punishment for non-compliance." Arizona v. United States, 567 U.S. 387, 401 (2012). In Arizona, the Supreme Court struck down four state statutes on preemption grounds. Id. at 416. In doing so, the Court found that the State of Arizona could not enact parallel penalties for IRCA violations since the field of alien registration had been occupied by Congress. Id. at 402.

Preemption may occur through "express" or "implied" preemption. Express preemption occurs when Congress "indicate[s] pre-emptive intent through a statute's express language." Atria Group, Inc. v. Good, 555 U.S. 70, 76 (2008). Implied preemption may occur in the absence of express language through either conflict preemption or field preemption. Sprietsma v. Mercury Marine, 537 U.S. 51, 64–65 (2002) (citing English v. General Elec. Co., 496 U.S. 72, 78–79 (1990)). Conflict preemption applies where it is not possible to comply with both state and federal law or where the state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 141 (1963) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). Field preemption occurs when Congress regulates conduct in a particular field that Congress has determined must be regulated by its exclusive governance. Arizona., 567 U.S. at 399. "The intent to displace state law altogether can be inferred from a framework of regulation 'so pervasive . . . that Congress left no room for the States to supplement it' or where there is a 'federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" Id. (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). If field preemption exists, then it makes no difference whether state law is consistent or inconsistent with the federal law, Congress has forbidden the States to take action in that particular field and the federal statute preempts. Oneok, Inc. v. Learjet, Inc., 135 S.Ct. 1591, 1595 (2015).

There are two presumptions that courts apply in cases involving preemption analysis: (1) "the task of statutory construction must in the first instance focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent," and (2) a court interpreting a federal statute pertaining to a subject traditionally governed by state law will apply a presumption against federal preemption of state authority. CSX Transp., Inc. v. Easterwood, 507 U.S. 658, 664 (1993). Therefore, preemption will not be found unless it is "the clear and manifest purpose of Congress." Rice., 331 U.S. at 230.

Although workers compensation is a field traditionally occupied by the States, in an unpublished opinion, the Special Workers' Compensation Appeals Panel examined a prior, similar statute that restricted benefits based upon immigration status and penalized employers who knowingly hired undocumented workers. In that case, the Court held the statute unconstitutional because of express preemption by the Immigration Reform Act. Martinez v. Lawhon, No. M2015-00635-SC-R3-WC, 2016 WL 6840487 (Tenn. Workers' Comp. Panel 2016). The Martinez court held Tennessee Code Annotated section 50-6-241(e)(2)(B)(ii) (2008) unconstitutional because "both the plain language and legislative history evince the General Assembly's intention that the 'additional sum' was enacted as a civil penalty against employers who hire undocumented employees. Consequently, subsection (e)(2)(B)(ii) is expressly preempted by the Immigration Reform Act." Id. at *8. The statute in Martinez sanctioned employers for willfully hiring undocumented workers and contained a preamble that demonstrated the Legislature's intent to "establish what amount[ed] to a State immigration policy." Id. at *10.

After finding express preemption, the Martinez court went on to consider field preemption "because the General Assembly had intended and attempted to 'establish what amounts to a State immigration policy.'" Id. at *15. Relying on the statute's preamble, the court found the statute furthered the stated policy of the General Assembly of "clos[ing] the door to illegal workers in this state." Id. (quoting Tenn. Code Ann. § 50-6-241(e)(2)(A)). "To the extent the statute attempts to establish a state immigration policy, it crosses into Congress's exclusive constitutional power of Congress to 'establish a[ ] Uniform Rule of Naturalization.'" Id. at *10 (quoting U.S. Const. art. I, § 8, cl. 4).

Finally, the Martinez court found section 50-6-241(e)(2)(A) was subject to conflict preemption because the statute dramatically reduced the base amount of the permanent partial disability award for undocumented workers, thus creating the potential for a "perverse incentive" to hire unauthorized workers. Id. (quoting Gonzalez v. Performance Painting, Inc., 303 P.3d 802, 807 (N.M. 2013)).

We agree with the State that Tennessee Code Annotated section 50-6-207(3)(F) is significantly different from the statute analyzed in Martinez. Although both statutes addressed unauthorized workers, section 50-6-207(3)(F) does not punish employers for willfully hiring unauthorized workers, it has no preamble nor expresses any intent to establish a State immigration policy, and it does not reduce the permanent partial disability award provided by subsection (3)(A). Consequently, we conclude there is no express preemption of section 50-6-207(3)(F) by IRCA.

We next turn to whether there is field preemption. We are mindful of the presumption against federal preemption of state authority in areas traditionally governed by State law. "Pre-emption analysis should not be a freewheeling judicial inquiry into whether a state statute is in tension with federal objectives, but an inquiry into whether the ordinary meanings of state and federal law conflict." Arizona, 567 U.S. at 437 (Thomas, J., concurring in part and dissenting in part) (quoting Wyeth v. Levine, 555 U.S. 555, 588 (2009) (Thomas, J., concurring)). We do not interpret Arizona v. United States to prohibit States from legislating in traditionally state-occupied fields such as labor and tort law, where immigration status may necessarily be relevant. See Grocers Supply, Inc. v. Cabello, 390 S.W.3d 707 (Tx. Ct. App. 2012). The Grocers Supply court considered the question of whether Congress' goal of combatting illegal immigration under IRCA included the intent to preempt state laws that allow recovery for wage-related injuries when the injured person was present in the United States illegally. Id. at 716. "While Congress may thoroughly regulate immigration and naturalization law, immigration is a distinct and separate field from state tort law. . . . '[I]mmigration is plainly a field in which the federal interest is dominant. . . . State tort and labor laws, however, occupy an entirely different field.'" Id. at 717(quoting Madeira v. Affordable Housing Foundation, Inc., 469 F.3d 219, 240 (2d Cir. 2006)). In rejecting a preemption challenge to a local housing ordinance directed at undocumented immigrants, the Eighth Circuit Court of Appeals found that "[l]aws designed to deter, or even prohibit, unlawfully present aliens from residing within a *particular locality* are not tantamount to immigration laws establishing who may enter or remain in the country." Keller v. City of Fremont, 719 F.3d 931, 941 (8th Cir. 2013). Many state courts around the country have considered whether federal immigration law preempts state workers' compensation laws regulating benefits provided to unauthorized immigrants. These courts have uniformly concluded there is no field preemption of state law in this area. See Packers Sanitation Servs., Inc. v. Quintanilla, 518 S.W.3d 701, 706–07 (Ark. Ct. App. 2017); Salas v. Sierra Chem. Co., 327 P.3d 797, 806 (Cal. 2014); Dowling v. Slotnik, 712 A.2d 396, 405 (Conn. 1998); Delaware Valley Field Servs. v. Ramirez, 105 A.3d 396, 405 (Del. Super. Ct. 2012), aff'd sub nom. Delaware Valley Field Servs. v. Melgar-Ramirez, 61 A.3d 617 (Del. 2013); HDV Const. Sys., Inc. v. Aragon, 66 So. 3d 331, 333 (Fla. Dist. Ct. App. 2011); Wet Walls, Inc. v. Ledezma, 598 S.E.2d 60, 63 (Ga. Ct. App. 2004); Econ. Packing Co. v. Illinois Workers' Comp. Comm'n, 901 N.E.2d 915, 921 (Ill. App. Ct. 2008); Staff Mgmt. v. Jimenez, 839 N.W.2d 640, 652 (Iowa 2013), as corrected (Nov. 18,

2013); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 755 (Ky. 2011), as corrected (Aug. 30, 2011); Rodriguez v. Integrity Contracting, 38 So. 3d 511, 520 (La. Ct. App. 2010); Design Kitchen & Baths v. Lagos, 882 A.2d 817, 829–30 (Md. 2005); Correa v. Waymouth Farms, Inc., 664 N.W.2d 324, 331 (Minn. 2003); Tarango v. State Indus. Ins. Sys., 25 P.3d 175, 178–83 (Nev. 2001); Mendoza v. Monmouth Recycling Corp., 672 A.2d 221, 225 (N.J. Super. Ct. App. Div. 1996); Gonzalez, 303 P.3d at 807–08; Amoah v. Mallah Mgmt., LLC, 866 N.Y.S.2d 797, 801 (2008); Cherokee Indus., Inc. v. Alvarez, 84 P.3d 798, 801 (Okla. Civ. App. 2004); Curiel v. Envtl. Mgmt. Servs. (MS), 655 S.E.2d 482, 484 (S.C. 2007). We conclude section 50-6-207(F) is not preempted by field preemption.

We next consider whether section 207(3)(F) is constitutional under conflict preemption. The State maintains that IRCA prohibits employers from returning undocumented immigrants to work and emphasizes that this federal prohibition applies independently of Tennessee Workers' Compensation law. The State argues that the portion of Tennessee's Workers' Compensation law that encourages employers to return partially disabled employees to work is not designed to combat illegal immigration or penalize employers for hiring practices that would be inconsistent with IRCA. We agree that the purpose of section 50-6-207(3) is to provide predictability for workers' compensation awards, so that similar impairment ratings do not produce vastly dissimilar awards. See Lynch v. City of Jellico, 205 S.W.3d 384, 396–97 (Tenn. 2006). Section 50-6-207(3)(B) also encourages employers to retain injured workers at wages equal to or greater than the wages received prior to the injury by providing for lesser disability awards if the employee is retained.

Tennessee Code Annotated section 50-6-207(3)(F) addresses the situation that arises when an employer cannot under IRCA return an injured employee to work. If an employer unwittingly hires an undocumented employee, and the employee subsequently becomes injured, the employer cannot return the undocumented employee to work without violating federal law. In that circumstance, an employer can no longer be incentivized to return an employee to work under the onus of an additional award. Section 50-6-207(3)(F) does not reduce the permanent partial disability award under subdivision 3(A). All injured employees receive the same award under this subdivision, regardless of immigration status; however, only injured employees who are in the country legally can receive additional benefits. Conversely, if we were to hold the statute unconstitutional, an undocumented employee, who was injured, treated, received permanent partial disability, and was able to return to work; still would be eligible to receive additional benefits, which a legal employee would not be entitled to receive under the same circumstances.

In Torres v. Precision Industries, P.I. Inc., No. 116CV01319STAEGB, 2018 WL 3474088 (W.D. Tenn. 2018), the employer, relying on Hoffman, argued that federal law and policy precluded the award of backpay and damages sought by an undocumented worker who filed a retaliatory discharge action because he sought to claim benefits under the Tennessee Workers' Compensation statute. While the Martinez court citing Torres v. Precision Industries, P.I. Inc., No. W2014-00032-COA-R3-CV, 2014 WL 3827820 (Tenn. Ct. App. 2014), found greater cause for concern in how such statute may function as a "perverse incentive" for employers to hire unauthorized immigrants by assuring employers that they will never be responsible for paying increased benefits if an undocumented worker is injured, see Martinez, 2016 WL 6840487, at *10 n.9, that analysis was recently criticized by the federal district court in Torres applying the principles set forth in Hoffman Plastic Compounds, Inc., 535 U.S. at 150–51, see Torres, 2018 WL 3474088, at *4–6. The district court found that, contrary to the Court of Appeals' analysis in Torres v. Precision Industries, P.I. Inc., 2014 WL 3827820, Hoffman did prevent an undocumented employee from receiving damages for a retaliatory discharge since it would involve using a monetary award to return the worker to the position he was in before the termination — a position that was not allowed under federal law. Torres, 2018 WL 3474088, at *6–7.

> As it considers the Supreme Court's reasoning in Hoffman, the Court cannot see why Plaintiff would be entitled to employment benefits under Tennessee Workers' Compensation law in the first place since, absent the allegedly retaliatory conduct of Defendant, Plaintiff would have continued working illegally and evading detection by immigration authorities. If IRCA prohibits the award of backpay for an employer's retaliatory discharge of an illegal immigrant under the NLRA in order to avoid incentivizing illegal immigration, then would it not prohibit the State of Tennessee from mandating the provision of worker's compensation benefits to an illegal immigrant for the same reason? . . . If "IRCA 'forcefully' made combatting the employment of illegal aliens central to 'the policy of immigration law,'" then a labor policy permissive of and incentivizing such employment by providing persons who were unlawfully employed with benefits stands athwart the federal policy.

Torres, 2018 WL 3474088, at *7 (quoting Hoffman, 535 U.S. at 147)..

In finding there is no conflict preemption, we also note that the Legislature altered the way judges interpret the Tennessee Workers' Compensation statutes in the Workers' Compensation Reform Act of 2013. When the Martinez court considered this issue, our workers' compensation statutes were interpreted as remedial in nature in favor

of the employee.[2] However, this appeal arises under the revised version of Tennessee Code Annotated section 50-6-116(2014) which requires interpretation not "in a manner favoring either the employee or the employer."

Conclusion

The trial court's judgment that it had no jurisdiction to interpret the constitutional validity of Tennessee Code Annotated section 50-6-207(3)(F) is affirmed. Tennessee Code Annotated section 50-6-207(3)(F) is found to be constitutional, and therefore, employee's request for increased benefits is denied. Costs are taxed to Salvador Sandoval and his surety, for which execution may issue if necessary.

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ROBERT E. LEE DAVIES, SENIOR JUDGE

[2] The employee in Martinez was injured prior to July 1, 2014.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

SALVADOR SANDOVAL v. MARK WILLIAMSON ET AL.

Court of Workers' Compensation Claims
No. 2017-06-0172

No. M2018-01148-SC-R3-WC – Filed March 28, 2019

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Salvador Sandoval pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Salvador Sandoval, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

CORNELIA A. CLARK, J., not participating