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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-20-744

METROPOLITAN TOWER LIFE INSURANCE COMPANY AND METLIFE ASSIGNMENT COMPANY, INC. APPELLANTS V. ROOSEVELT LAND PARTNERS CORP. AND DONALD HILL APPELLEES	Opinion Delivered March 1, 2023 APPEAL FROM THE CLARK COUNTY CIRCUIT COURT [NO. 10CV-20-78] HONORABLE BLAKE BATSON, JUDGE REVERSED AND REMANDED

RAYMOND R. ABRAMSON, Judge

Appellants, Metropolitan Tower Life Insurance Company and MetLife Assignment Company, Inc. (collectively referred to as "MetLife"), became obligated to make payments to appellee, Donald Hill ("Hill"), under a structured settlement annuity agreement pursuant to the Longshore and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901 et seq., for work-related injuries Hill suffered while working in Afghanistan. A settlement was reached between Hill; his employer, Dyncorp International; and the employer's insurer, Continental Insurance Company/CNA ("CNA"), which necessitated the contract for the structured settlement annuity agreement with MetLife. Hill sought to transfer his LHWCA payments to Genex Capital Corporation ("Genex") in accordance with the Arkansas

Structured Settlement Protection Act ("ARSSPA"), codified at Ark. Code Ann. §§ 23-81-701 et seq. (Repl. 2014), for a discounted lump-sum payment by executing a structured settlement annuity sale and assignment agreement ("Assignment Agreement") on June 14, 2020. Genex subsequently assigned its interest in the Assignment Agreement to appellee, Roosevelt Land Partners Corp. ("Roosevelt"). The Clark County Circuit Court approved the transfer of Hill's structured settlement rights to Roosevelt, and MetLife appeals. We reverse and remand the circuit court's order approving the transfer.

I. *Facts*

Roosevelt filed its application for approval of a transfer of structured settlement payment rights ("Application for Approval") before the Circuit Court of Clark County, Arkansas, on June 22, 2020. On July 2, Roosevelt filed and served its notice of hearing on Roosevelt's application, informing appellants that the hearing was set for July 23, 2020, at 9:00 a.m. In accordance with Ark. Code Ann. § 23-81-706(b)(5), MetLife was "entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing." On July 22, MetLife filed an emergency motion to continue the July 23 hearing, noting that counsel had just been assigned to the matter that day. The circuit court heard oral argument on MetLife's motion to continue on July 23, 2020.

At the hearing, Roosevelt's counsel objected to the continuance for MetLife's lack of diligence noting that the Application for Approval had been mailed to MetLife on July 3.

Roosevelt's counsel also argued that the "mandatory" deadline for MetLife to respond was July 23, pursuant to Ark. Code Ann. § 23-81-706(b)(6)(B). Roosevelt's counsel referred to a "mandatory" twenty-day deadline repeatedly throughout the hearing.[1] The circuit court ordered MetLife to file its objection by the end of the day on July 23 and continued the hearing on Roosevelt's Application for Approval for one week.

Later that day, MetLife filed its objection and response to Roosevelt's Application for Approval, arguing that the assignment was prohibited by section 916 of the LHWCA; Hill's LHWCA settlement agreement; and MetLife's annuity contract. MetLife attached the following exhibits to its objection: (1) settlement agreement and application for approval of agreed settlement agreement under LHWCA section 8(i)(1) where parties are represented by counsel ("LHWCA Settlement"); (2) terms of structured settlement rider that was attached to the LHWCA Settlement ("LHWCA Terms Rider"); (3) order approving agreement settlement – section 8(i) ("LHWCA Settlement Order"); and (4) MetLife annuity contract.

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[1]Ark. Code Ann. § 23-81-706(b) provides:

> *Not less than twenty (20) days* prior to the scheduled hearing on any application for approval of a transfer of structured settlement payment rights under § 23-81-704, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization . . . .

(Emphasis added.) Similarly, Ark. Code Ann. § 23-81-706(b)(6)(B) provides that "The time by which written responses to the application *must be filed shall be not less than twenty (20) days* after service of the transferee's notice." (Emphasis added.) The only time restrictions set forth in section 23-81-706(b) do not establish deadlines for the filings pursuant to the act but instead set a minimum number of days for certain filings.

The LHWCA Settlement and the LHWCA Terms Rider were signed by Hill on February 6, 2019, upon the settlement of his work-related injuries pursuant to § 8(i) of the LHWCA.

In the LHWCA Terms Rider, the insurance carrier agreed "to pay or cause to be paid" upfront cash and future periodic payments for Hill's work-related injuries. The LHWCA Terms Rider further stated:

> No payee shall have the right to accelerate or defer the Periodic Payments; receive the present discounted value of the Periodic Payments; have any control of the investments or funds from which payments are made; have any right to increase or decrease the Periodic Payments; change or modify the manner, mode or method of meeting any of the Periodic Payments or discharging any obligations set forth in this agreement; have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

The March 6, 2019 LHWCA Settlement Order, by its terms, incorporated the LHWCA Terms Rider.

On July 29, 2020, Roosevelt filed its submissions in support of its petition for approval of transfer of structured settlement payment rights and reply to the objection and response of MetLife arguing, in relevant part, that the LHWCA did not prohibit the transfer of Hill's structured settlement payments because they were not "due or payable" under the Act.

At the July 30 hearing, Hill testified that a representative from MetLife had previously informed him via telephone and in writing that he could not use his payments for collateral on a loan and could not assign his benefits. Hill testified that he informed Genex that his initial structured settlement agreement was covered under the Defense Base Act and the

Longshoremen's Act. Hill testified that he provided Genex with copies of the settlement agreement he received from CNA and MetLife as well as a copy of the MetLife annuity. Upon questioning by MetLife, Hill could not confirm the authenticity of the LHWCA Settlement or the LHWCA Terms Rider.

Upon resting its case, Roosevelt objected to the admission of MetLife's exhibits because the documents had not been authenticated or verified via affidavit or testimony. MetLife argued that its exhibits were attached to its objection and, as such, could be considered by the court because the ARSSPA does not require compliance with the rules of evidence. MetLife moved the court on multiple occasions to hold the record open to allow MetLife sufficient time to submit additional authentication documents in support of exhibits 1, 2, 3, and 4. The circuit court sustained Roosevelt's objections to holding the record open but granted MetLife until the end of the day to submit a complete copy of exhibit 3, the LHWCA Settlement Order.

Later that day, MetLife filed a motion to hold open the record and for additional time to authenticate documents noting that its exhibit 3, order of the Office of Workers' Compensation Programs Division of the U.S. Department of Labor, was not a readily available document, to which Roosevelt filed an objection. On August 6, the circuit court denied MetLife's motion and entered an order approving the transfer of Hill's structured settlement payment rights to Roosevelt. The circuit court specifically found that the transfer of Hill's structured settlement payments fully complied with the ARSSPA and did not violate any federal or state statute or any other applicable law. The circuit court recognized that the

structured settlement payments were the result of a settlement of Hill's claims under the LHWCA but found that the payments from MetLife were not "due or payable" under the Act.

On August 14, MetLife moved to vacate and amend the August 6 order, attaching affidavits authenticating the exhibits attached to its original objection. MetLife set forth several arguments in support of its motion to vacate, including that it was not afforded a reasonable opportunity to authenticate the LHWCA Settlement and the LHWCA Settlement Order because the circuit court forced unreasonable deadlines on MetLife that were contrary to Ark. Code Ann. § 23-81-706(b) and (b)(6)(B). MetLife further alleged that the circuit court erred in its interpretation of the ARSSPA and the LHWCA, 33 U.S.C. § 916 because the LHWCA expressly prohibits the assignment of payments or benefits under the Act.

The circuit court denied MetLife's motion to vacate or amend on September 3.[2] On September 30, MetLife filed its notice of appeal and designation of record. MetLife has raised two points on appeal. First, MetLife argues that "[t]he trial court erred in (1) granting Roosevelt's Petition to Approve the transfer of Mr. Hill's Longshore and Harbor Workers'

[2]The circuit court specifically found that "MetLife failed to specify the Rule of Civil Procedure under which it seeks the relief it requests." The circuit court further held that "MetLife received due process in this Docket. Indeed, MetLife received more process than the statutory framework provides an interested party challenging a transfer under the Arkansas SSPA." Finally, the circuit court concluded that "[t]here is no Rule of Civil Procedure that vests this Court with the authority to vacate or amend its Order based on the grounds assert [sic] by MetLife in its Motion."

Compensation Act structured settlement payment rights and (2) denying MetLife's Motion to Vacate or Amend based on its erroneous interpretation of 33 U.S.C. § 916." Second, MetLife argues that "[t]he trial court erred in (1) granting Roosevelt's Petition to Approve the transfer of Mr. Hills Longshore and Harbor Workers' Compensation Act structured settlement payment rights and (2) denying MetLife's Motion to Vacate or Amend based on its erroneous interpretation of Arkansas Structured Settlement Protection Act, Ark. Code Ann. 23-81-701 *et seq.*"

II. *Standard of Review*

In *Metropolitan Life Insurance Co. v. B.J.L.Y., LLC*, 2016 Ark. App. 201, at 5, 489 S.W.3d 210, 213–14, this court affirmed that it will review issues concerning statutory interpretation de novo:

> This court reviews issues of statutory interpretation de novo. *Steele v. Lyon*, 2015 Ark. App. 251, 460 S.W.3d 827. In reviewing issues of statutory interpretation, a court will determine the meaning and effect of a statute first by construing the statute just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* When the statute's language is clear and unambiguous, there is no need to look further and apply the rules of statutory construction. *Id.*

"In deciding issues of law, our standard of review is de novo. 'De novo review means that the entire case is open for review.'" *First Nat'l Bank of Izard Cnty. v. Old Republic Nat'l Title Ins. Co.*, 2022 Ark. App. 440, at 7, 655 S.W.3d 108, 113 (citations omitted).

III. *Interpretation of ARSSPA and LHWCA*

The ARSSPA, codified at Ark. Code Ann. §§ 23-81-701 et seq., regulates the "transfer . . . of structured settlement payment rights" between a "Payee . . . an individual who is

receiving tax-free payments under a structured settlement and proposes to make a transfer of payment rights under the structured settlement" and a "Transferee . . . a party acquiring or proposing to acquire structured settlement payment rights through a transfer." Ark. Code Ann. § 23-81-702(8), (18)(A), and (21). The ARSSPA mandates certain findings by the court prior to approving the transfer of structured settlement payment rights in Ark. Code Ann. § 23-81-704:

> No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based on express findings by the court or responsible administrative authority that:
>
> (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
>
> (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and
>
> (3) The transfer does not contravene any applicable statute or the order of any court or other government authority.

Section 23-81-707(e) of the ARSSPA further supports § 23-81-704(3) in that the reviewing court must not approve a transfer that is in violation of any other law: "Nothing contained in this subchapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law. . . ."

In the definitions section of the LHWCA, 33 U.S.C. § 902, compensation is defined as follows: "'Compensation' means the money allowance payable to an employee or to his

dependents as provided for in this chapter. . . ." 33 U.S.C. § 902(12). Section 916 of the LHWCA declares: "No assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter, shall be valid. . . ."

"If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). Limited caselaw exists interpreting the anti-assignment provisions of section 916, and the cases that do exist vary widely.

Both MetLife and Roosevelt concede that 33 U.S.C. § 916 is relevant to this action but disagree as to its meaning. Roosevelt asserts that the case of *In Re Sloma*, 43 F.3d 637 (11th Cir. 1995) controls. We disagree.

In *Sloma*, debtor Lawrence William Sloma, received a structured settlement award under the LHWCA. The *Sloma* opinion notes that the insurance carrier purchased an annuity but does not indicate whether the purchase of the annuity was specifically enumerated in Sloma's settlement agreement. Sloma obtained a loan from the First Bank of Linden to purchase a business and executed an assignment of the annuity payments as collateral for the loan. The annuity obligor began making the payments directly to the bank. When Sloma's business failed, Sloma contacted the annuity obligor and instructed that all further payments should be sent to Sloma. Sloma defaulted on the loan. When the bank sued, Sloma filed for bankruptcy and claimed the payments were exempt pursuant to 33 U.S.C. § 916. A divided Eleventh Circuit held:

> The payments received by Sloma under the annuity contract were not *due and payable under the Act*; they were payments made to him by a third party, Manufacturers. . . .
>
> . . . .
>
> The purpose of the anti-assignability provisions of the Act to benefit an injured employee was served and ended once the amount of the award of $180,000.00 was paid to Sloma by the payment of $10,000.00 and the purchase, in his behalf, of an annuity for $170,000.00.

Id. at 640. The dissent relied on the decision in *In Re Delgado*, 967 F.2d 1466 (10th Cir.1992) and concluded that:

> Sloma's employer, however, and its carrier, National Union, had not made the full payment of the $180,000 because National Union owned the annuity policy. Sloma merely stood as an intended third party beneficiary of the annuity contract between National Union and Manufacturers. As a result, the $180,000 had not been *paid* (past tense) to Sloma. Sloma was simply entitled to the installments of the annuity contract, which National Union owned; thus, he was still in the process of receiving "compensation or benefits *due or payable*." Therefore, the compensation could not be assigned to the First Bank of Linden.
>
> In sum, I believe that the majority has incorrectly interpreted 33 U.S.C. § 916 as only invalidating assignments of compensation that has not been *paid* (past tense). Instead, the statute should be read in accordance with the Tenth Circuit's approach in *Delgado*. I also believe that even under the majority's interpretation of section 916, the facts of this case indicate that the compensation had not been *paid* (past tense), and therefore, the assignment was not valid.

Sloma, 43 F.3d at 642 (Hatchett, J., dissenting). The facts in *Sloma* do not correlate with the issues presented herein because Hill simply sought to sell his LHWCA payments for a reduced lump-sum payment.

Other jurisdictions have interpreted 33 U.S.C. § 916 differently. For example, the Pennsylvania Superior Court in *In re C. Duyer*, No. 149 WDA 2016, 2017 WL 384113, at *4 (Pa. Super. Ct. Jan. 27, 2017) interpreting section 916, held:

> While the LHWCA does not define "due" or "payable," we must construe the words according to their common and approved usage. *See Smith v. United States*, 508 U.S. 223, 228 (1993) (noting that "[w]hen a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning."); *Zimmerman v. Harrisburg Fudd I, L.P.*, 984 A.2d 497, 501 (Pa. Super. 2009) (stating that "[a]bsent a definition, statutes are presumed to employ words in their popular and plain everyday sense, and popular meanings of such words must prevail."). "Due" is defined as "[o]wing or payable." BLACK'S LAW DICTIONARY 538 (8th ed. 2004). "Payable is defined as "([o]f a sum of money or negotiable instrument) that is being paid." *Id.* at 1165. Accordingly, the LHWCA prohibits the assignment of any compensation or benefits owed or being paid pursuant to a claim under the LHWCA. See 33 U.S.C.A. § 916 (stating that "[n]o assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter . . . shall be valid. . . ."). Section 916 places no limitation on the type or method of compensation, whether by an annuity or structured settlement payment, that cannot be assigned. Moreover, the plain language of Section 916 does not suggest that the anti-assignment clause only applies to future payments. See *Bochetto*, 94 A.3d at 1050. In fact, the plain language of Section 916 applies to any benefits or compensation, either being paid or owed in the future. Accordingly, the LHWCA prohibits the assignment of any compensation or benefits owed or being paid pursuant to a claim under the LHWCA. See 33 U.S.C.A. § 916 (stating that "[n]o assignment, release, or commutation of compensation or benefits due or payable under this chapter, except as provided by this chapter . . . shall be valid. . . ."). Section 916 places no limitation on the type or method of compensation, whether by an annuity or structured settlement payment, that cannot be assigned. Moreover, the plain language of Section 916 does not suggest that the anti-assignment clause only applies to future payments. *See Bochetto*, 94 A.3d at 1050. In fact, the plain language of Section 916 applies to any benefits or compensation, either being paid or owed in the future.

(Alterations and ellipses in original). Most recently, the Texas Court of Appeals, San Antonio, considered the applicability of section 916 in *In re Great Plains Management Corp.*,

___ S.W.3d ___, 2022 WL 2960228 (Tex. App. 2022).[3] In *Great Plains*, the Texas Court of Appeals considered the findings in both *Sloma* and *Dwyer*, *supra*, and concluded:

> Neither *Sloma*, nor *Dwyer* are binding authority on this court; however, we agree with the sound reasoning of the *Dwyer* court's interpretation of section 916's prohibition on assignments. Therefore, we conclude section 916 of the LHWCA bars Dolphy-Budd from assigning her structured settlement payment rights. *See* 33 U.S.C. § 916. As a result, the transfer of her right to receive her 2025 lump sum payment to Great Plains contravenes a federal statute and the trial court improperly granted Great Plains's application for approval of the transfer under the 5SSPA.

Id. at *7.

We agree with the interpretations of 33 U.S.C.A § 916 set forth in *Dwyer* and *Great Plains* and, specifically, disapprove of the holding of *Sloma*. Furthermore, in the present case, the phrase "due or payable" as set forth in 33 U.S.C. § 916 can be defined by the terms of the LHWCA Settlement at issue. It is undisputed that Hill's structured settlement arose from a settlement of his claims pursuant to the LHWCA. As set forth in 33 U.S.C. § 902(12), the definition of compensation is not limited in scope but is "money allowance payable to an employee." The LHWCA Settlement Order discharged the liability of the employer and insurance carrier "in accordance with the terms" of the LHWCA Settlement. The LHWCA Settlement specifically provided that MetLife would be assigned CNA's "obligation to make the future payments" to Hill "which constitute damages on account of personal injuries arising from an occurrence within the meaning of Section 104(a)(1) of the Internal Revenue

[3]In MetLife's notice of supplemental authority, it directed this court to the *In re Great Plains* case, which we discovered on our own. Roosevelt's objection to this court's consideration of *In re Great Plains* or *In re Dwyer* is not well founded.

Code." Further, the LHWCA Settlement Order ordered the employer and the insurance carrier to pay all amounts due under the LHWCA Settlement, and the obligation under the LHWCA Settlement to make such periodic payments was unambiguously assigned to MetLife. Hill continued to receive periodic payments for his work-related injury from MetLife pursuant to the LHWCA Settlement throughout the proceedings below. As such, the payments received by Hill from MetLife constituted compensation "due or payable" under the LHWCA and section 916. Therefore, Hill's attempted transfer of his LHWCA settlement payments would contravene 33 U.S.C. § 916 as prohibited by Ark. Code Ann. §§ 23-81-704(3) and 28-81-707(e). Consequently, the circuit court's determination that the Transfer Agreement did "not contravene any applicable statute or the order of any court or other government authority" was clear error.

IV. *Conclusion*

Upon de novo review of the record, we hold that the circuit court erred as a matter of law in its interpretations of 33 U.S.C. § 916 and Ark. Code Ann. §§ 23-81-704(3) and 28-81-707(e). We hold that 33 U.S.C. § 916 prohibits the assignment or transfer of any benefits or compensation payable pursuant to the LHWCA, including those payable under a structured settlement annuity agreement because such compensation is "due or payable" under the LHWCA. We hold that Hill's attempted transfer of his structured settlement payments would contravene 33 U.S.C. § 916. Because Hill's attempted transfer of his structured settlement payments would violate section 916 of the LHWCA, the transfer is prohibited by the ARSSPA, Ark. Code Ann. §§ 23-81-704(3) and 28-81-707(e). Because we

hold that Hill's attempted transfer of his structured settlement payments contravene the ARSSPA, we need not address MetLife's additional arguments on appeal. We reverse the circuit court's approval of Hill's attempted transfer to Roosevelt and remand for further proceedings consistent with this opinion.

Reversed and remanded.

GRUBER and BARRETT, JJ., agree.

Wright, Lindsey & Jennings LLP, by: *David L. Jones*, for appellants.

Tinsley & Youngdahl, PLLC, by: *Jordan B. Tinsley*, for separate appellee Roosevelt Land Partners Corp.

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