

Cite as 2010 Ark. App. 840

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-124

AMERICAN STATES INSURANCE
CO.

APPELLANT

V.

CHAD T. WILLIAMS

APPELLEE

Opinion Delivered December 15, 2010APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT [NO. CV-2003-
1620(V)]HONORABLE J. MICHAEL
FITZHUGH, JUDGE

REMANDED FOR CLARIFICATION

JOHN MAUZY PITTMAN, Judge

This is an appeal from the trial court's dismissal of appellant-insurer's claim to a lien on the proceeds of a workers' compensation claimant's tort settlement on the ground that the settlement did not make the claimant whole. Appellant argues, *inter alia*, that the trial court erred in finding that the appellee-claimant was not made whole because it employed the wrong equation in its calculations. We remand for the trial court to clarify its order.

The essential facts are undisputed. Appellee Chad Williams was injured in a work-related traffic accident in 2000. Appellant American States Insurance Co. paid appellee workers' compensation benefits in the amount of \$71,899.59. Appellee sued the tortfeasor responsible for the accident, and appellant intervened in the suit to assert its lien rights pursuant to Ark. Code Ann. § 11-9-410 (Repl. 2002). Appellee settled with the tortfeasor for

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\$675,000. Appellant's claim to a lien on these proceeds was denied because the trial court found that the settlement had not made Williams whole.

Arkansas Code Annotated section 23-89-207(a) (Repl. 2004) establishes an insurer's right to reimbursement when a recipient of insurance benefits also recovers in a tort settlement for injury, granting the insurer paying the benefits a right of reimbursement and credit out of the tort settlement. The right to reimbursement under this statute is subject to the "made whole doctrine." *Ryder v. State Farm*, 371 Ark. 508, 268 S.W.3d 298 (2007). Therefore, an insurer is not entitled to enforce its contractual right of subrogation until the insured has been fully compensated, or "made whole," for his total loss and has in fact received an amount in excess of the total of his loss; the measure of reimbursement is the amount by which the sum received by the insured from the third party, together with the insurance proceeds, exceeds the loss sustained and the expense incurred by the insured in realizing on his claim. *Shelter Mutual Insurance Co. v. Bough*, 310 Ark. 21, 834 S.W.2d 637 (1992).

Appellant's argument that the trial court employed the wrong formula is based on the following portion of the trial court's order:

The law is clear that "the precise measure of reimbursement is the amount by which the sum received by the insured from the [third party], together with the insurance proceeds exceeds the loss sustained and the expense incurred by the insured in realizing on his claim." *Logan County v. McDonald*, 90 Ark. App. 409, [420,] 206 S.W.3d 258[, 265–66] (2005).

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Disregarding any future medical expenses and related damages, after deducting [appellee's] costs and attorney's fees and adding the benefits paid by [appellant-insurer], the amount *does not exceed* the total *amount settled upon*.

The Court finds that Plaintiff has not been made whole by the settlement. [Appellant's] claim is denied.

(Emphasis added.)

It can be readily seen that the second quoted paragraph directly contradicts the formula that was correctly stated in the immediately preceding paragraph. Generally, a presumption of regularity attaches to judgments of courts of general jurisdiction, so that the court is presumed to have made findings that support its conclusions. However, this presumption applies only in the absence of any showing to the contrary. *See, e.g., Hollingsworth v. McAndrew*, 79 Ark. 185, 193 (1906); *see also First National Bank v. Higginbotham Funeral Service, Inc.*, 36 Ark. App. 65, 73–74, 818 S.W.2d 583, 588 (1991) (Cracraft, C.J., dissenting). Given the contradictory paragraphs, we are unable to tell how the trial court calculated damages. Consequently, we remand for the trial court to clarify its order so that we may address the merits of appellant's arguments. *See Glover v. Woodhaven Homes, Inc.*, 346 Ark. 397, 57 S.W.3d 211 (2001).

Remanded for clarification.

GLADWIN and KINARD, JJ., agree.