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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ZURICH AMERICAN INSURANCE)
COMPANY,)
)
Appellant/Cross-Appellee,)
)
v.)
)
DESIREE SAMSON and DSK GROUP)
INC. II,)
)
Appellees/Cross-Appellants.)
_____)

Case No. 2D19-4789

Opinion filed May 28, 2021.

Appeal from the Circuit Court for
Hillsborough County; Gregory P. Holder,
Judge.

Samuel B. Spinner and Hinda Klein of
Conroy Simberg, Hollywood, for
Appellant/Cross-Appellee.

Daniel W. McKnight of William H.
McKnight, Esquire, P.A., Tampa, for
Appellee/Cross-Appellant Desiree
Samson.

No appearance for Appellee DSK Group
Inc. II.

SILBERMAN, Judge.

This appeal and cross-appeal arise from an order granting sanctions in a rule nisi proceeding to enforce a final order in a workers' compensation case. In the direct appeal, we conclude that the circuit court had the jurisdiction and authority to award a monetary remedy based on Zurich American Insurance Company's failure to provide orthopedic treatment to Desiree Samson. However, the amount of the award, \$15,000, is not supported by the evidence. On cross-appeal, we conclude without further discussion that the circuit court did not err in rejecting Samson's request for a full compensatory disgorgement of profits.

In October 2018, Samson injured his neck and shoulder when he fell into a trench while working construction. Samson filed a petition for workers' compensation benefits on June 27, 2019. On July 23, Zurich filed a response asserting that it was arranging for orthopedic treatment. And on August 22, the Judge of Compensation Claims (JCC) entered an order requiring Zurich "to authorize and provide" orthopedic treatment.

Samson was turned away from the orthopedist's office for two different appointments in the following months, and he filed his petition for rule nisi in the circuit court on October 28, 2019. He requested that Zurich be found in civil contempt and that the court impose a compensatory disgorgement of profits of \$3.75 million, a fine of \$37,000 (one percent of the profits), or a stop-work order. At the November 5 hearing on Samson's petition, Zurich asserted that it had already coordinated Samson's treatment by scheduling an appointment on December 2.

Without objection by the parties, the court did not take testimony at the hearing but considered record evidence including: (1) the petition for rule nisi, (2) the

response, (3) the insurance adjuster's affidavit, (4) Samson's affidavit, and (5) the various attachments to these documents. The court entered an order finding that Zurich had deliberately delayed and withheld necessary orthopedic treatment in a manner that offended the court's judicial conscience. The court determined that it was unnecessary to impose a disgorgement of profits, daily fine, or stop-work order to coerce future compliance but instead ordered Zurich to provide treatment at the upcoming December 2, 2019, appointment. As for a remedy, the court concluded that Samson's request for a \$3.75 million disgorgement of profits or a \$37,000 fine was excessive. Instead, the court ruled that "the parties may be restored to their respective positions with a fine of \$15,000" to be paid to Samson.

On appeal, Zurich argues that the circuit court erred by imposing a \$15,000 fine because the court's rule nisi jurisdiction was limited to determining whether Zurich violated a valid workers' compensation order and, if so, enforcing that order.¹ Samson argues that the \$15,000 was a partial disgorgement of profits that was properly imposed as a compensatory sanction under the court's inherent civil contempt powers.

"[Florida's] workers' compensation system provides employees limited medical and wage loss benefits, without regard to fault, for losses resulting from workplace injuries in exchange for the employee relinquishing his or her right to seek certain common law remedies from the employer for those injuries under certain circumstances." Jones v. Martin Elecs., Inc., 932 So. 2d 1100, 1104 (Fla. 2006). The JCC presides over workers' compensation proceedings and has the power to issue

¹Zurich also argues that the circuit court erred by failing to hold an evidentiary hearing and that the evidence does not support the court's finding of an intentional violation of the order. We reject both arguments without further comment.

subpoenas; administer oaths; compel witness attendance, testimony, and discovery; examine witnesses; and otherwise "do all things conformable to law which may be necessary to enable the judge effectively to discharge the duties of her or his office." § 440.33(1), Fla. Stat. (2018).

The Worker's Compensation Law provides the JCC several methods of ensuring compliance with its orders, including the "striking of claims, petitions, defenses, or pleadings; imposition of costs or attorney's fees; or such other sanctions as the judge may deem appropriate." Fla. Admin. Code R. 60Q-6.125(1) (2018). The JCC also has the power to certify to the circuit court the facts regarding a person's noncompliance with its orders and other misconduct so that the court can initiate civil contempt proceedings. § 440.33(2).

However, the JCC may only use these measures to ensure compliance with its interlocutory orders. See King v. Parker Hannifin Corp., 17 So. 3d 785, 787 (Fla. 2d DCA 2009); De La Pena v. Sunshine Bouquet Co., 870 So. 2d 880, 881 (Fla. 3d DCA 2004). In the event of an employer or carrier's willful noncompliance with a JCC's final order, section 440.24(4) authorizes the JCC to strike its defenses to the petition for benefits. See Stahl v. Hialeah Hosp., 100 So. 3d 723, 724 (Fla. 1st DCA 2012); Jones v. Royalty Foods, Inc., 82 So. 3d 1162, 1164 (Fla. 1st DCA 2012). But the JCC does not have jurisdiction to enforce its final orders because the circuit court has sole jurisdiction over enforcement proceedings under section 440.24(1). See King, 17 So. 3d at 787; Mabire v. St. Paul Guardian Ins. Co., 946 So. 2d 40, 42 (Fla. 1st DCA 2006); Frank v. Crawford & Co., 670 So. 2d 117, 118 (Fla. 4th DCA 1996); Metro. Dade County v. Rolle, 661 So. 2d 124, 127 (Fla. 1st DCA 1995).

Section 440.24(1) provides for enforcement of final orders² of the JCC via petition for rule nisi in the circuit court as follows:

In case of default by the employer or carrier in the payment of compensation due under any compensation order of a judge of compensation claims or other failure by the employer or carrier to comply with such order within 10 days after the order becomes final, any circuit court of this state within the jurisdiction of which the employer or carrier resides or transacts business shall, upon application by the department or any beneficiary under such order, have jurisdiction to issue a rule nisi directing such employer or carrier to show cause why a writ of execution, or such other process as may be necessary to enforce the terms of such order, shall not be issued, and, unless such cause is shown, the court shall have jurisdiction to issue a writ of execution or such other process or final order as may be necessary to enforce the terms of such order of the judge of compensation claims.

(Emphasis added.)

When considering a rule nisi petition, the circuit court's inquiry is limited to determining "whether there is a valid workers' compensation order in effect and whether there was a default of that order." Staffing Concepts Int'l, Inc. v. Paul, 704 So. 2d 691, 692 (Fla. 3d DCA 1997). The court may not review the merits of an order entered by the JCC in the underlying proceedings. Gruber v. Caremark, Inc., 853 So. 2d 540, 542 (Fla. 5th DCA 2003); Staffing Concepts, 704 So. 2d at 692. When enforcement issues require findings of fact, the court may conduct an evidentiary hearing and make factual findings. Rolle, 661 So. 2d at 127. But the court may not remand the matter to the JCC for evidentiary findings because the court has sole enforcement jurisdiction. Id.

²The JCC's order requiring Zurich to authorize and provide for orthopedic treatment to Samson is a final order. See King, 17 So. 3d at 787.

Zurich argues that the circuit court erred by imposing a fine against it because the court's rule nisi jurisdiction was limited to determining whether Zurich violated a valid workers' compensation order and, if so, enforcing that order. However, section 440.24(1) "gives the circuit court wide latitude in the enforcement of compensation orders by allowing it 'to issue a writ of execution or such other process or final order as may be necessary to enforce' the order." Maranje v. Brinks of Fla., Inc., 610 So. 2d 1293, 1294 (Fla. 3d DCA 1992) (quoting § 440.24(1)). If it is not possible to retroactively provide the benefit that was denied, the court may fashion a monetary remedy equivalent to the lost benefit. See id. at 1295 (holding that an employee deprived of a home was entitled to the monetary value of that home for the amount of time it was not provided); Alvarez v. Kendall Assocs., 590 So. 2d 518, 520 (Fla. 3d DCA 1991) (holding that the trial court had the authority to enforce an order requiring the provision of nursing care by awarding payment for the value of the benefits). The purpose of such a remedy is to make the person whole. Maranje, 610 So. 2d at 1295.

Thus, the circuit court had jurisdiction under section 440.24(1) to award Samson a monetary remedy based on his lost benefits. However, the court's imposition of a \$15,000 "fine" cannot be justified as a compensatory remedy even though the court stated that the award would restore the parties "to their respective positions." There is simply no evidence suggesting that Samson was deprived of anywhere near \$15,000 by Zurich's delaying and withholding Samson's medical treatment. As a result, the evidence was insufficient to support the award of a \$15,000 remedy under section 440.24.

Samson argues that the \$15,000 "fine" was a partial disgorgement of profits imposed as a compensatory sanction for civil contempt. It does not appear from the circuit court's findings that it intended to impose sanctions for civil contempt. Indeed, the court appeared to reject a contempt finding by stating that it was unnecessary to impose a disgorgement of profits, daily fine, or stop-work order to coerce future compliance. However, if the circuit court intended to impose sanctions in an effort to hold Zurich in civil contempt, it did not properly do so.

The circuit court has inherent authority to enforce a judgment by use of its contempt powers. Parisi v. Broward County, 769 So. 2d 359, 363 (Fla. 2000). Contempt sanctions are broadly categorized as either civil or criminal. Id. The purpose of criminal contempt is generally to punish, while civil contempt is generally remedial in nature and for the complainant's benefit. Id. at 364.

Due to their nature, the imposition of sanctions for criminal contempt requires affording the contemnor the same constitutional due process rights as a criminal defendant. Id. Because civil contempt sanctions are generally not considered to be punitive and are generally avoidable, civil contempt may be imposed after simply providing notice and the opportunity to be heard. Id. at 365.

Civil contempt sanctions may be compensatory or coercive. Id. at 363. Compensatory civil contempt sanctions must be based on evidence of the actual loss suffered by the injured party. Id. at 366. In the case of coercive civil contempt sanctions, the order of contempt must contain a purge provision. Id. at 365. Coercive contempt sanctions also require the circuit court to determine whether the contemnor has the ability to purge. Id. Thus, "any 'flat, unconditional fine' is considered a criminal

sanction because it does not afford the opportunity to purge the contempt through compliance." Id. (quoting Int'l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 829 (1994)).

In this case, there is no evidence of an actual loss suffered by Samson. Rather, the \$15,000 sanction was a flat, unconditional fine with no opportunity to purge prior to its imposition. Thus, the court's imposition of a fine cannot be upheld as a compensatory or coercive civil contempt sanction. See Ash v. Champion, 247 So. 3d 581, 582-83 (Fla. 1st DCA) (holding that a \$100,000 penalty was not a valid coercive civil contempt sanction because it contained no purge provision and was not a compensatory award because there was no evidence as to the amount of any loss), reh'g denied, clarification granted, 248 So. 3d 1274 (Fla. 1st DCA 2018).

In conclusion, while the circuit court had the jurisdiction and authority to award a monetary remedy under section 440.24(1), the amount of the award is not supported by the evidence. Thus, on direct appeal we affirm in part, reverse in part, and remand with directions for the court to reconsider the proper award. On cross-appeal, we affirm the court's rejection of Samson's request for a full compensatory disgorgement of profits.

Affirmed in part, reversed in part, and remanded on direct appeal; affirmed on cross-appeal.

ATKINSON and SMITH, JJ., Concur.