

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001009-WC

RES-CARE, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-70608

PERNICIA CARROL; HON. ROGER D.
RIGGS, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AND ORDER
DISMISSING APPEAL

** ** * * *

BEFORE: GARDNER, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Appellee, Pernicia Carrol, has filed a motion to dismiss this petition for review as interlocutory. Appellant did not respond to the motion. The Court has considered the motion and, being otherwise sufficiently advised, ORDERS the motion be GRANTED.

This petition for review is taken from an order entered by the Workers' Compensation Board on April 5, 1999, dismissing appellant's appeal of the Administrative Law Judge's award of temporary total disability benefits to appellee as interlocutory based upon Ramada Inn v. Thomas, Ky., 892 S.W.2d 593 (1995). That case clearly stands for the principle that an award of temporary total disability benefits is not a final and appealable

order. This Court is bound to follow an applicable precedent established by the Kentucky Supreme Court. SCR 1.030(8).

In this petition for review, appellant invites this Court to re-visit Ramada, as well as a previous decision from this Court, Transit Authority of River City v. Saling, Ky. App., 774 S.W.2d 468 (1989), by reviewing a question not addressed in the case law, i.e., "whether KRS 342.285 and related regulations, by eliminating appeals from interlocutory orders, unconstitutionally encroaches upon the inherent role of the judicial branch of government as established in the Kentucky and United States Constitutions." Appellant relies on Smothers v. Lewis, Ky., 672 S.W.2d 62 (1984), for its argument that the statute and regulations invade the province of the judiciary. We disagree. In Smothers, the Kentucky Supreme Court held unconstitutional a statute curtailing the power of an appellate court after the appellate court had obtained jurisdiction of a cause of action. This is not the case here. KRS 342.285 does not limit the authority of the appellate forum. Rather, it simply treats matters which are not a final adjudication of all rights of all parties as interlocutory and, consequently, not appealable, just like any other decision which does not adjudicate all rights of all parties. It is ORDERED that appeal No. 1999-CA-001009-WC be DISMISSED.

ALL CONCUR.

ENTERED: August 20, 1999

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEES:

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