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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001053-WC

CAROLYN HUDSON AND JERRY P. RHOADS — APPELLANTS

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-74616

HOPKINS COUNTY BOARD OF EDUCATION;
THOMAS A. NANNEY, ADMINISTRATIVE LAW JUDGE;
AND THE WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

KNOPF, JUDGE: Carolyn Hudson, a workers' compensation claimant, and Jerry Rhoads, Hudson's attorney, appeal from an April 3, 2000, opinion and order of the Workers' Compensation Board dismissing their petition for review of the attorney fee awarded Rhoads. Applying the fee-statute (KRS 342.320) as amended December 12, 1996, the Administrative Law Judge who heard Hudson's claim limited Rhoads's fee to $10,000.00. This is the fee the Board affirmed. Hudson and Rhoads maintain that the December 1996 amendments should not have been applied to this claim and that, under KRS 342.320 as it existed prior to those

amendments, Rhoads was entitled to a fee of about $14,500.00. For the following reasons, we affirm the Board's decision.

Hudson sustained the work-related injury underlying her claim in October 1996. She and Rhoads contend that the December 1996 amendments to the fee statute were not intended to apply retroactively, and thus that they do not apply to this claim for fees. During the pendency of this appeal, our Supreme Court rendered an opinion that refutes this contention. "KRS 342.0015 made it clear," the Supreme Court explained in Daub v. Baker Concrete, Ky., 25 S.W.3d 124 (2000),

> that the legislature intended for the changes in the procedure by which claims were decided to apply to all claims pending on or after December 12, 1996, without regard to the date upon which they arose. KRS 342.0015 also made it clear that the legislature considered the amendments to KRS 342.320 to be remedial. In view of the legislature's express declaration, we conclude that the amendments to KRS 342.320 apply to all claims pending on or after December 12, 1996.

Id. at 128. Furthermore, the Supreme Court continued, the amended statute necessarily implies that attorney-client employment contracts entered after December 12, 1996, are subject to the amended fee limits regardless of when the claim arose. *Id.* Rhoads undertook to represent Hudson's claim in January 1997. Under Daub v. Baker Concrete, then, the ALJ and the Board did not err by applying the $10,000.00 fee limit to this claim.

If the amended KRS 342.320 applies retroactively, Hudson and Rhoads next contend, then it violates sections 14 and 55 of our constitution. Again, however, Daub v. Baker Concrete is controlling. Daub expressly held that the retroactive

application of KRS 342.320 in circumstances closely analogous to these did not violate section 14 of our constitution.

> Having considered the [constitutional] arguments raised by the claimant and his attorney, we conclude that neither has demonstrated how he was harmed by the application of the amendments which are at issue. The attorney asserts that he had a vested right to be compensated at the rate on the date of injury, as provided in the 1994 Act; however, he does not explain how that right vested before December 12, 1996, when the representation was not undertaken until months later. Likewise, he does not explain how the amendment could impair a contract which did not exist until after the amendment was enacted.
>
> Any right which an attorney has to a fee accrues from the date upon which the worker and the attorney enter into a contract for the representation. It is undisputed that the attorney undertook the representation of the claimant in June, 1997, after the effective date of the 1996 amendments; therefore, no vested right was impaired by applying the limitations imposed by the 1996 amendments when determining the maximum attorney's fee. Although the 1996 amendments create two classes of attorneys who represent workers with regard to claims which arose before December 12, 1996, the classes are based on the date upon which the representation commenced, i.e., the date from which the attorney's right to a fee vested. Under those circumstances, we are not persuaded that applying the amendments to determine the maximum attorney's fee violated any constitutional right of this attorney.
>
> Claimant asserts that because he is required to pay his attorney's fee, he had a vested right to obtain the best representation he could in view of the amount of benefits which were at stake. He argues that although an award for total disability was at stake, the permissible attorney fee was only $ 2,000.00 at the arbitrator level. We note, however, that claimant does not explain how his right to competent representation was impaired by the $ 2,000.00 limitation or how the limitation deprived him of a remedy, particularly in view of the fact that he was able to obtain competent counsel

> and was awarded benefits for a total disability in an informal proceeding in which he submitted only a medical report and his affidavit as evidence. In return, he was required to pay a maximum attorney's fee which was substantially less than the maximum in effect on the date of injury. Under those circumstances, we are not persuaded that applying the amendments in order to determine the maximum attorney's fee violated any constitutional right of the claimant.

Id. at 129.

The Daub v. Baker Concrete opinion does not address the constitutionality of the contested fee limits under section 55 of our constitution, but it suggests, for the reasons just quoted, that relief is not available under that section either. Section 55 provides in part that, in cases of emergency, a legislative act may become effective in less than 90 days after the adjournment of the session in which it was passed, when,

> by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals, an act may become a law when approved by the governor, but the reasons for the emergency that justifies this action must be set out at length in the journal of each house.

The act amending attorney-fee limits was passed as emergency legislation during the first extraordinary session of the 1996 General Assembly. The modification of the attorney-fee statute, of course, was only a small part of that act (often referred to as House Bill 1), which sought to streamline claims procedures generally and to make the entire workers' compensation system more efficient. Focusing narrowly on the attorney-fee provisions, however, Hudson and Rhoads assert that the General Assembly failed adequately to justify its emergency treatment of

those particular amendments, and that thus those amendments were not eligible, under section 55, for expedited effectiveness. We disagree.

First, as did the appellants in Daub, Hudson and Rhoads have failed to indicate how they were injured by the alleged constitutional violation and thus have failed to establish a ground for relief. Moreover, our Supreme Court has observed that, with respect to determining whether a legislative emergency exists, the General Assembly's judgment

> must be accorded the same presumption of validity that it enjoys in other instances of constitutional inquiry. That is, if there is any rational basis for concluding that the circumstances cited as constituting an emergency justified more expeditious action than would ordinarily be true, the courts should not interfere with the legislative discretion.

American Insurance Association v. Geary, Ky., 635 S.W.2d 306, 307 (1982).

Section 90 of House Bill 1,[1] the emergency clause, provides as follows:

> The General Assembly finds and declares that workers who incur injuries covered by KRS Chapter 342 are not assured that prescribed benefits will be promptly delivered, mechanisms designed to establish the long-term solvency of the special fund have failed to reduce its unfunded liability, and many of the Commonwealth's employers are placed at a competitive disadvantage due to the cost of securing workers' compensation insurance coverage. These circumstances threaten the vitality of the Commonwealth's economy and the jobs and well-being of its workforce. Whereas it is in the interest of all citizens that the provisions of the Act shall be

[1] 1996 (1st Ex. Sess.), ch. 1, § 90.

> implemented as soon as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

We are persuaded that the cited circumstances adequately support the Generally Assembly's exercise of its discretion to declare emergency legislation in this instance, both with respect to its broad reform efforts in general and with respect to the attorney-fee modifications in particular. Given the precision with which the General Assembly addressed the fee provisions, it seems clear to us that it regarded those provisions as integral aspects of the overall reform. Expeditious passage into law of the overall reform being justified, the like passage of this integral part of the reform was justified too. The December 12, 1996, amendments of KRS 342.320, therefore, were not violative of section 55 of our constitution. For this and the above reasons, we affirm the April 3, 2000, opinion and order of the Workers' Compensation Board.

TACKETT, JUDGE, CONCURS.

BARBER, JUDGE, DISSENTS.

BRIEF FOR APPELLANTS:

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No brief was filed for the appellees.