

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-001352-MR

JAMES FRED JENKINS

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT  
HONORABLE RON JOHNSON, JUDGE  
ACTION NO. 97-CI-00897

B & S TRUCKING

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BARBER, GUIDUGLI AND HUDDLESTON, JUDGES.

GUIDUGLI, JUDGE. Fred James Jenkins (Jenkins) appeals an order of the Harlan Circuit Court which dismissed his claim against B & S Trucking, finding that it lacked jurisdiction because Jenkins' exclusive remedy was found within the Kentucky Workers' Compensation Act. We agree, hence we affirm.

Jenkins filed a civil claim against B & S Trucking in the Harlan Circuit Court on December 17, 1997. In his complaint, Jenkins set forth, in part, the following allegations:

4. All the Parties here are subject to and are governed by the Kentucky Department of Mines and Minerals regulations; the Kentucky OSHA regulations; and the

Federal Mine and Safety Health Inspection regulations pursuant to any and all coal mining operations.

5. The Defendant operated a coal trucking operation in Harlan County Kentucky where the above named Plaintiff was employed, in a negligent, careless, and reckless manner in which the standards relative to dust control were violated. These violations were known, or through the exercise of ordinary mining expertise should have been known to the Defendant over a period of time.

6. The Plaintiff alleges that the Defendant operated its coal trucking operation with disregard to the Plaintiff's health, safety and welfare. The Defendant did in fact subject the Plaintiff to recognized hazards which caused or likely cause death or serious physical harm to said Plaintiff.

7. The Plaintiff has contracted the disease of Coal Workers Pneumoconiosis, as evidenced by x-ray readings. As a result of recently enacted Workers' Compensation Act that was signed by Governor Paul Patton into Law on December 12, 1996, and the Administrative Regulations promulgated thereunder by Hon. Walter Turner, Commissioner of the Department of Workers' Claims, the above named Plaintiff has no remedy pursuant to the Workers' Compensation Laws of the Commonwealth of Kentucky. Therefore, the provisions of KRS 342 do not constitute an exclusive remedy because under KRS 342 as it now operates, there is no remedy to the above named Plaintiff.

8. The Plaintiff's contraction of the disease of Coal Workers' Pneumoconiosis has left him in a state which due to his severity of the nature of the disease as being diagnosed by qualified physicians as being Category 2/2 by the x-ray interpretation that he is now totally and occupationally disabled.

9. The Plaintiff, alleges and reiterates that as a result of the negligent, wanton, careless, and intentional acts of the Defendant, he has contracted the disease of Coal Workers' Pneumoconiosis, and as a result he has suffered an injury and request damages for the following;

- a. Any medical expenses relative to the disease he is likely to incur; and
- b. Impairment of the ability to earn wages; and
- c. Pain and suffering, including mental anguish; and
- d. For an award of punitive damages

While this case was pending, Jenkins filed an application for resolution of an occupational disease with the

Department of Workers' Claim on August 4, 1998. The application alleged contraction of "Tier II" occupational disease as the result of "long years of exposure to coal/rock dust in and around the underground coal mines." The workers' compensation case was assigned to an arbitrator who determined that Jenkins had not "contracted a compensable pneumoconiosis and is not entitled to benefits pursuant to KRS 342.732." Appellant requested a hearing before an Administrative Law Judge (ALJ). Upon review, the ALJ denied Jenkins' claim on March 19, 1999, and ordered his claim be dismissed after making the following findings and conclusions:

1. The facts as stipulated.

2. Plaintiff has failed to sustain the burden of proving to the satisfaction of the trier of fact that he has the disease of coal workers pneumoconiosis or that he is entitled to benefits pursuant to KRS 342.732. Both Drs. Broudy and Lieber read Plaintiff's x-rays, including the one upon which Plaintiff bases his claim, as showing no signs of coal workers pneumoconiosis. The clinical findings and opinions of Dr. Lieber, pursuant to KRS 342.315, must be afforded presumptive weight and the burden to overcome his findings and opinions rest on the Plaintiff. Dr. Lieber is a board certified radiologist and a certified B-reader. Nothing has been offered which will overcome the presumptive weight to be afforded his opinion.

Jenkins did not file a request for reconsideration, nor did he appeal the ALJ's opinion. Thereafter, on March 17, 2000, B & S Trucking moved the circuit court to dismiss Jenkins' complaint. After each party filed memoranda in support of its position, the circuit court held a hearing on the matter on April 2, 2000. After hearing legal arguments of the parties, the circuit court entered an oral order dismissing the complaint. On

May 1, 2000, the court entered its written order finding that based upon Shamrock Coal Co., Inc. v. Miracle, Ky., 5 S.W.3d 130 (1999), the "court [had] no subject matter jurisdiction over this case as exclusive jurisdiction lies with the Workers' Compensation Board." This appeal followed.

In Shamrock, Id., former employees of the coal company brought a civil action against their employer in circuit court, seeking damages for their occupational diseases (coal workers' pneumoconiosis). Shamrock, the employer, sought a writ of prohibition asserting lack of subject matter jurisdiction, CR 12.01(a), and failure to state a claim upon which relief can be granted, CR 12.01(f). Judge Miracle had held that the exclusive liability provision of KRS 342.732 was unconstitutional because it denied the plaintiffs their "jural right" to a remedy in violation of the Kentucky Constitution. In reversing the circuit court (and Court of Appeals which had affirmed) and granting the writ of prohibition, our Supreme Court stated, in part:

In the case at bar, the plaintiffs brought suit under the Workers' Compensation Act. Therefore, Shamrock, on the face of the complaint, was entitled to the protection of the exclusive liability provision. Consequently, the Leslie Circuit Court has no subject matter jurisdiction over this case and the writ is appropriate. See Corns v. Transportation Cabinet, Ky., 814 S.W.2d 574, 578 (1991).

...

This Court specifically upheld the constitutionality of the presumptive acceptance provision of the Workers' Compensation Act in Wells v. Jefferson County, Ky., 255 S.W.2d 462 (1953). See also, Mullins v. Manning Coal Corporation, Ky., 938 S.W.2d 260 (1997), cert. denied, 521

U.S. 1119, 117 S.Ct. 2511, 138 L.Ed.2d 1014 (1997). We find nothing raised herein which compels us to revisit the issue and, therefore, we reaffirm our decision in Wells upholding the constitutionality of the Workers' Compensation Act and the presumptive acceptance provision contained therein.

...

Shamrock's exclusive liability to plaintiffs is clearly governed by KRS 342.690(1): "[T]he liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee...." There is no other remedy available. There was no common law cause of action for non-disabling category one pneumoconiosis in existence at the time of the adoption of the present Constitution; therefore, the jural rights doctrine is inapplicable. Regardless, the fact that a remedy for a work-related injury is unavailable under the Workers' Compensation Act does not authorize bringing a civil action for damages in circuit court. Davis [v. Solomor] 276 S.W.2d [614] at 676 [1955]. Therefore, as the Workers' Compensation Act confers exclusive liability to participating employers for all matters falling within its purview, no trial court has subject matter jurisdiction over such a matter. The proper venue for a matter falling within the purview of the Workers' Compensation Act lies solely with the Workers' Compensation Board.

Shamrock, supra, at 133, 134.

In view of the clear language of Shamrock and this Court's duty to follow precedence as set forth by our Supreme Court (SCR 1.030(8)(a)), we are bound to affirm the decision of the Harlan Circuit Court. Despite Jenkins' arguments to the contrary, it would appear that his remedy lies with the Kentucky Legislature which enacted the 1996 amendments to the Workers' Compensation Act which he finds so repugnant.

Having thoroughly reviewed this matter and based upon KRS 342.690(1), and Supreme Court precedence as set forth in Shamrock, supra, and the recently decided case of Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88 (2000), we affirm the order entered by the Harlan Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald C. Cox  
Harlan, KY

BRIEF FOR APPELLEE:

J. Gregory Allen  
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