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TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000793-WC

JEFFERY A. ROBERTS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-80340

LAURIE STICKLEN, INDIVIDUALLY AS SURVIVING
SPOUSE, AS ADMINISTRATRIX FOR THE ESTATE OF
JAMES STICKLEN, AND AS NATURAL GUARDIAN
OF THE MINOR CHILD ANDREW STICKLEN;
MARY STICKLEN AND EMILY STICKLEN, DEPENDENT
CHILDREN OF JAMES STICKLEN; THE CITY OF
ALEXANDRIA, KENTUCKY; HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: This appeal arises from a workers' compensation claim and payment of benefits following the unfortunate death of James Sticklen. Appellant, Jeffery Roberts, represented all five plaintiffs in the single workers' compensation claim. He asks us to reverse the decision of the Workers' Compensation Board (hereinafter "the Board") limiting his fee to \$12,000 pursuant to KRS¹ 342.320. However, we find no error in the Board's reading of relevant authority, including KRS 342.320, or in the resulting award of a single fee. Hence, we affirm.

Background

The facts of this case are not in dispute.² In 2011, James Sticklen was a police officer for the City of Alexandria when he collapsed while on duty. He later died of a pulmonary embolism. Sticklen's widow, Laurie, filed a workers' compensation claim on behalf of her husband's estate, herself, and her three children. The City of Alexandria initially contested Laurie's claim, but withdrew its opposition based upon the testimonies of three medical experts who all concluded that Sticklen's death was work related. The parties subsequently entered into an Agreement as to Compensation and Order Approving Settlement, which the Administrative Law Judge (ALJ) approved and entered on September 17, 2013. The settlement provided benefits for all five plaintiffs.

Following approval of the settlement, Roberts filed five motions seeking the ALJ's approval of attorney's fees totaling \$29,673.12 for his work on

¹ Kentucky Revised Statutes.

² The City of Alexandria states on appeal that it takes no position on the matter of Roberts' fee.

behalf of the beneficiaries.³ Roberts attached to each motion itemized documentation of his hourly work on each client's behalf. However, the ALJ's Order awarded Roberts \$12,000 for his work, and concluded that Roberts had "represented the multiple parties on one claim and henceforth his attorney fee is limited by KRS[]342.320(2) to the statutory maximum of \$12,000."

Roberts appealed to the Board which affirmed, noting that both the death benefit payable to Sticklen's estate and the benefits payable to his family resulted from a single incident, Sticklen's death. Hence, the Board concluded that the ALJ correctly limited Roberts' fee to a single statutory maximum fee of \$12,000. This appeal follows.

Standard of Review

The sole basis for Roberts' appeal is the Board's determination that the five awards Roberts sought and settled on behalf of Sticklen's family nevertheless arose under a single "original claim" for purposes of KRS 342.320's limitation of attorney's fees. Our role in reviewing this decision regarding attorney's fees is "to correct the Board only where ... the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross

³ This fee was divided as follows:

Estate of James Sticklen: \$8,295.82 (based on a total award of \$70,916.46).

Laurie Sticklen: \$8,349.29 (based on a total award of \$71,985.87).

Mary Sticklen: \$1,732.56 (based on a total award of \$8,662.80).

Emily Sticklen: \$4,662.17 (based on a total award of \$23,310.91).

Andrew Sticklen: \$6,633.28 (based on a total award of \$37,665.60).

injustice.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

Accordingly, we will affirm the Board’s decision absent such an error, oversight, or misconstruction of Kentucky’s Workers’ Compensation Act and other authority.

Analysis

KRS 342.320, which provides for the payment and limitation of attorney’s fees in workers’ compensation cases, reads, in pertinent part,

(2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:

(a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement; and

(b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.

(3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute....

KRS 342.320(2)-(3).

On appeal, Roberts argues that although his clients’ rights arose under a single workers’ compensation claim and due to a single event or injury – Sticklen’s death – the law required each plaintiff to provide proof of identity and

entitlement to death or survivor benefits. Thus, Roberts contends he is entitled to five fees on five distinct claims, and the Board erroneously ruled otherwise.

I. Meaning of “Original Claim”

This case and the issue of apparent first impression it presents can be reduced to a single question of what constitutes an “original claim” under KRS 342.320. Unfortunately, the statute does not define the term. The Board held that “‘original claim’ refers to all proceedings prior to the rendition of a decision or approval of a settlement agreement. Here, there was one decedent, and all benefits paid were derivative of his death.” Roberts first counters the Board’s reading of KRS 342.320 with this Court’s decision in *Lamb v. Fuller*, 32 S.W.3d 518 (Ky. App. 2000). From *Lamb*, Roberts gleans that “whether it is a single claim number or multiple claim numbers does not control whether there are separate fees in the claim.” He also proffers *Hammons v. Tremco, Inc.*, 887 S.W.2d 336 (Ky. 1994), in which the Supreme Court held that where an employee-claimant dies during the pendency of his workers’ compensation claim, the personal representative of his estate and each of his dependents must assert their rights within a certain time period under Kentucky Rules of Civil Procedure (CR) 25.01 and KRS 395.278.⁴ Roberts asserts that this effectively created five “original claims” in the present case.

⁴ KRS 395.278 reads, in its entirety, “[a]n application to revive an action in the name of the representative or successor of a plaintiff, or against the representative or successor of a defendant, shall be made within one (1) year after the death of a deceased party.”

The precedent Roberts cites is easily distinguished and falls short of providing meaningful authority for his argument. Our decision in *Lamb* pertained to a very different factual circumstance: provision for an attorney's decision to reopen multiple claims concerning multiple injuries with a single petition. In the simplest terms, *Lamb* concerned more than one injury and more than one "original claim." Hence, it does not inform our analysis of the present circumstances.

The Supreme Court's decision in *Hammons* is also distinguishable, as it merely addressed the proper procedure and time period for a third party's revival of an employee's claim when the claimant dies after initiation of his claim. While we acknowledge Roberts' broader point in citing *Hammons* – that procedural and statutory requirements such as CR 25.01 and KRS 395.278 effectively create distinct, even additional, work on behalf of each beneficiary – Sticklen died prior to initiation of his claim. Hence, the requirements for revival were irrelevant to his claim; and *Hammons* does not impact our analysis.

Rather, like the ALJ, we turn to the Supreme Court's decision in *Curry v. Toyota Motor Mfg. KY., Inc.*, 91 S.W.3d 557 (Ky. 2002), which explicitly supports the assertion that "original claim" means one claim and one work-related injury. In *Curry*, the claimant's attorney sought separate attorney's fees for his work in securing awards from two different defendants in relation to his client's single work-related injury. In rejecting the proposition that KRS 342.320 allowed multiple fees, the Supreme Court affirmed this Court's determination that the

attorney was entitled to only one maximum fee because the claimant “had only one claim for the effects of [one] work-related accident.” *Curry* at 559.

The analysis in *Curry* applies to the present case. Though the settlement of this case benefitted five plaintiffs, the settlement and the resulting benefits nonetheless stemmed from one claim for the effects of one work-related incident. Accordingly, just as an attorney may not multiply his maximum fee by the number of defendants paying on a single claim, it follows that he may not multiply his fee by the number of plaintiffs receiving payment on a single claim. The spirit and clear language of KRS 342.320, as well as applicable precedent, simply do not allow it. We therefore conclude that the ALJ and the Board properly limited Roberts’ fee to the statutory maximum of \$12,000.

II. Public Policy Considerations

We first join the ALJ in praising Roberts’ performance in securing a sizable award for his deserving clients. We have no doubt that he took up his clients’ causes with more in mind than the eventual collection of a comparatively sizeable fee; and he is to be commended for that.

We also acknowledge that while attorneys provide invaluable services to deserving clients, they are in business to make a living; and results such as the present one are reasonably seen as diminishing attorneys’ incentive to take even

meritorious cases involving multiple beneficiaries. For that reason, we ruefully arrive at this result, and we regret that the statute, as written, compels it.

We can only answer the aforementioned, very reasonable concern with the fundamental truth that, as a reviewing court, we must give effect to the laws as they are presently written; and we may not breathe into those laws that which the legislature has not expressly placed there. We are also bound by the holding in *Curry* unless and until our Supreme Court renders it obsolete or inapplicable. In the interim, we must agree with this ALJ's application of the law.

Conclusion

The plain language of KRS 342.320 limits an attorney's fee in asserting "one injury and one claim" to \$12,000. We therefore detect no error in the ALJ's or the Board's opinion to that effect. The Board's decision is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffery A. Roberts
Murray, Kentucky

BRIEF FOR APPELLEES:

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