RENDERED: JUNE 19, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-000440-WC

BETTY MASSEY — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-16-85160

PACCAR D/B/A DYNACRAFT;
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, GOODWINE, AND JONES, JUDGES.

GOODWINE, JUDGE: Betty Massey ("Massey") petitions for review of an opinion of the Workers' Compensation Board ("Board") affirming the administrative law judge's ("ALJ") retroactive application of the 2018 amendment to Kentucky Revised Statute ("KRS") 342.730(4). Massey argues retroactive

application of the amended version of KRS 342.730(4) violates the equal protection and contracts clauses of the Kentucky and United States Constitutions. After careful review of the record and applicable case law, we affirm.

On July 22, 2019, the ALJ awarded Massey temporary total disability ("TTD"), permanent partial disability ("PPD"), and medical benefits for a work-related injury sustained on March 15, 2016. The ALJ found that under KRS 342.730(4), all of Massey's "benefits shall terminate four years after the date of injury." Record ("R.") at 409.

On appeal to the Board, Massey argued "applying the newly enacted version of KRS 342.730(4) retroactively to her award of income benefits is unconstitutional." *Id.* The Board affirmed, holding under *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019), the amended version of KRS 342.730(4) applied retroactively and limited the duration of Massey's award of income benefits. The Board declined to address Massey's constitutional argument as it had no jurisdiction to rule on the constitutionality of a statute. *Blue Diamond Coal Co. v. Cornett*, 300 Ky. 647, 651, 189 S.W.2d 963, 965 (1945).

On appeal, Massey argues retroactive application of KRS 342.730(4) violates the equal protection and contracts clauses of the Kentucky and United States Constitutions. We note that the Supreme Court of Kentucky did not address the constitutionality of the amendment in *Holcim* as the argument was not properly

preserved, and the Attorney General of Kentucky "was not timely notified of a constitutional challenge pursuant to KRS 418.075." *Holcim*, 581 S.W.3d at 44.

Here, Massey's constitutionality argument is properly before us. She made the argument before the Board even though the Board lacked the authority to decide the issue. Massey's constitutionality argument would not be barred even if she had not made it below. *Scott v. AEP Kentucky Coals, LLC*, 196 S.W.3d 24, 26 (Ky. App. 2006). Her argument was properly preserved, and she notified the Attorney General of her constitutional challenge as required by KRS 418.075. Massey's appeal is properly before us, so we now turn to the merits of her argument.

The current version of KRS 342.730(4) provides:

> All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches the age of seventy (70), or four (4) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate as of the date upon which the employee would have reached age seventy (70) or four (4) years after the employee's date of injury or date of last exposure, whichever last occurs.

First, Massey argues the amended version of KRS 342.730(4) violates the equal protection clause of the Kentucky and United States Constitutions. However, Massey does not articulate how the statute results in disparate treatment of injured workers without reasonable justification. We will not attempt to

construct an argument for Massey, but the only conceivable disparate treatment under the statute is among older and younger injured workers. In *Parker v. Webster County Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759 (Ky. 2017), the Supreme Court of Kentucky held the 1996 version of KRS 342.730(4) violated the equal protection clause because it "treat[ed] injured older workers who qualify for normal old-age Social Security retirement benefits differently than it treat[ed] injured older workers who do not qualify." *Id.* at 768. The Court also addressed "the perceived discrimination between injured older workers and injured younger workers." *Id.* at 767. Applying the rational basis test, our Supreme Court held the statute's disparate treatment of older and younger injured workers did not violate the equal protection clause. The Court reasoned:

> [U]nder the statute, a worker who is injured more than 425 weeks (or 520 weeks under certain circumstances) before he or she reaches normal Social Security retirement age will receive all of the permanent partial disability income benefits to which he or she is entitled. A worker who is injured less than 425 weeks before he or she reaches normal Social Security retirement age will not receive all of the permanent partial disability income benefits to which he or she is entitled. The rational bases for treating younger and older workers differently is: (1) it prevents duplication of benefits; and (2) it results in savings for the workers' compensation system. Undoubtedly, both of these are rational bases for treating those who, based on their age, have qualified for normal Social Security retirement benefits differently from those who, based on their age, have yet to do so.

Id. at 768 (footnote omitted).

The amended version of the statute no longer treats older injured workers who qualify for Social Security retirement benefits differently than it treats those who do not qualify. However, there is a rational basis for treating older injured workers differently than younger injured workers. Although the provisions for duration of benefits differ between the 1996 and 2018 versions of KRS 342.730(4), both set limits on the duration of benefits for all injured workers. As in *Parker*, the statute prevents duplication of benefits and alleviates the financial burden on the workers' compensation system by limiting the duration of benefits for older injured workers. Massey does not argue that any other groups of injured workers are subject to disparate treatment under the statute. As such, we hold retroactive application of the amended version of KRS 342.730(4) does not violate the equal protection clause of the Kentucky and United States Constitutions.

Second, Massey argues retroactive application of KRS 342.730(4) limiting the duration of her income benefits violates the contracts clause of the Kentucky and United States Constitutions. Massey cites to *Maze v. Board of Directors for Commonwealth Postsecondary Education Prepaid Tuition Trust Fund*, 559 S.W.3d 354 (Ky. 2018), in support of her proposition that "[a]pplying legislative changes retroactively to a contract in derogation of a party's rights violates the contracts clause of the United States and Kentucky

Constitutions." Appellant's Brief at 3. We disagree with Massey that a properly applied *Maze* analysis supports her argument.[1]

Under *Maze*, we must apply the following three-step analysis to determine whether retroactive application of KRS 342.730(4) to Massey's award violates the contracts clause:

> (1) whether the legislation operates as a substantial impairment of a contractual relationship; (2) if so, then the inquiry turns to whether there is a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem; and (3) if, as in this case, the government is a party to the contract, we examine "whether that impairment is nonetheless permissible as a legitimate exercise of the state's sovereign powers," and we determine if the impairment is "upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption."

Maze, 559 S.W.3d at 369 (citation omitted).

The first step requires us to determine "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Id.* at 369-70 (citations omitted). Here, Massey points out that past versions of KRS 342.730(4) allowed a benefit recipient to receive benefits for life. Under the 1996

[1] Utilizing the *Maze* analysis, this Court previously held retroactive application of KRS 342.730(4) does not violate the contracts clause in two recent unpublished opinions: *Adams v. Excel Mining, LLC*, No. 2018-CA-000925-WC, 2020 WL 864129 (Ky. App. Feb. 21, 2020) (pending review by the Supreme Court of Kentucky); and *Helton v. TM Power Enterprises, Inc.*, No. 2019-CA-001757-WC, 2020 WL 2095875 (Ky. App. May 1, 2020).

version of the statute, Massey asserts she would have received an award of 425 weeks, or approximately eight years, of PPD benefits, but the current version limits the duration of her award to four years. As such, retroactive application of the amended version of KRS 342.730(4) substantially impairs Massey's rights.

The second step requires a "determination of whether the newly-imposed conditions that impair the contract can be justified by a significant and legitimate public purpose. Among the purposes that justify such impairment is legislation aimed at the remedying of a broad and general social or economic problem." *Id.* at 371 (citations omitted). The Supreme Court of Kentucky has found limiting the duration of benefits is justified by a legitimate public purpose. Limiting the duration of benefits solves two economic problems: "(1) it prevents duplication of benefits; and (2) it results in savings for the workers' compensation system." *Parker*, 529 S.W.3d at 768. This is evident because some version of limiting the duration of benefits has been in effect in Kentucky since the 1996 version of KRS 342.730(4).

The third step requires us to determine:

> whether the adjustment of "the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption." Analysis under this prong varies depending upon whether the State is a party to the contract. When the State itself is not a contracting party, "[a]s is customary in reviewing economic and social regulation, . . . courts properly defer

> to legislative judgment as to the necessity and reasonableness of a particular measure."

Maze, 559 S.W.3d at 372 (citations omitted). Here, the contract at issue is not between an individual and the state, but between an employee, an employer, and a workers' compensation insurance provider. As such, we defer to legislative judgment and presume the enactment of the amended version of the statute was necessary and reasonable to alleviate the financial burden on the workers' compensation system.

Based on this analysis, we hold retroactive application of KRS 342.730(4) is reasonable and appropriate. We reach the opposite holding of *Maze* for two key reasons: (1) there was no legitimate public purpose justifying the action and (2) the state was a party to the contracts at issue. *Id.* at 371-72. As previously discussed, limiting the duration of benefits has been a part of the workers' compensation system since 1996. *Parker* held the disparate treatment of older injured workers who qualified for Social Security benefits and those who did not qualify violated the equal protection clause. However, *Parker* approved of the age-based limitation on the duration of benefits. The Kentucky Legislature acted quickly to amend KRS 342.730(4) after *Parker* was rendered. Had it not acted, employees who had active workers' compensation claims between the rendering of *Parker* and the effective date of the 2018 amendment to the statute could have been entitled to some amount of benefits for life. This would have placed a large

financial burden on the workers' compensation system, employers, and insurers. *Holcim* held the Kentucky Legislature specifically intended the current version of KRS 342.730(4) to apply retroactively. *Holcim*, 581 S.W.3d 37. Thus, we hold retroactive application of the 2018 amendment to KRS 342.730(4) does not violate the contracts clause of the Kentucky and United States Constitutions.

For the foregoing reasons, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephanie N. Wolfinbarger
Louisville, Kentucky

BRIEF FOR APPELLEE PACCAR D/B/A DYNACRAFT:

Joel W. Aubrey
Joseph R. Baumann
Louisville, Kentucky