

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

Supreme Court of Kentucky **FINAL**

2006-SC-0433-WC

DATE 4-12-07 EJA:Graw:HP.C.

MITCHELL CHILDERS

APPELLANT

V. APPEAL FROM COURT OF APPEALS  
2005-CA-1959-WC  
WORKERS' COMPENSATION NO. 00-90263

ADELPHIA COMMUNICATIONS;  
HON. SHEILA C. LOWTHER,  
CHIEF ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

An Administrative Law Judge (ALJ) determined that the claimant agreed to waive any right to reopen his claim and overruled his subsequent motion to reopen.

Convinced that substantial evidence supported the decision, the Workers' Compensation Board affirmed. The Court of Appeals affirmed on that issue but vacated and remanded for further consideration on other grounds. Having concluded that the ALJ's interpretation of the agreement was reasonable and consistent with Huff Contracting v. Sark, 12 S.W.3d 704 (Ky. App. 2000), we affirm.

The claimant worked for the defendant-employer as a cable television lineman. On February 2, 2000, he slipped and fell while carrying a 60-pound extension ladder, injuring his neck, left shoulder, and spine. After conservative treatment failed, he was

referred to Dr. Tibbs, who diagnosed a cervical disc herniation at C6-7, congenital cervical stenosis, lumbar/thoracic sprain/strain, and left shoulder sprain/strain. Dr. Tibbs performed an anterior cervical discectomy and fusion. On June 28, 2000, he assigned a permanent impairment rating of 10%, attributing 50% to the injury and 50% to "pre-existing conditions." On July 5, 2000, the claimant returned to work without restrictions, earning the same or a greater wage.

Acting pro-se, the claimant negotiated settlement terms with an adjuster for the employer's insurance carrier in March, 2001. The carrier's legal counsel completed an Office of Workers' Claims Form 110-I to memorialize the terms, which the claimant and the adjuster signed. The "MEDICAL INFORMATION" section of the completed form indicated that the employer had paid \$34,559.68 in medical expenses; that none remained contested or unpaid; and that Dr. Tibbs had assigned a 5% impairment rating. The "BENEFIT AND SETTLEMENT INFORMATION" section listed the amount of temporary total disability (TTD) benefits that the employer had paid. It also stated that the settlement amount was \$40,000.00; that the percent of permanent disability was 5%; that the settlement amount included a waiver of past and future medical expenses; and that the amount for waiver or buyout was \$37,527.07. However, the "OTHER INFORMATION" section stated as follows:

Claimant herein agrees to accept a total amount of \$40,000.00, payable in a lump sum, in consideration for a complete dismissal of this claim with prejudice, including but not limited to, a waiver or buyout of future medical expenses. All parties to this agreement herein agree to settle this claim based upon a 5% permanent partial impairment. . . . The weekly income benefit of \$7.16 commutes to a present value lump sum of \$2,472.93. Claimant herein agrees to accept an additional lump sum of \$37,527.07 in consideration for a full and final waiver of any and all rights to compensation for future medical expenses that may result from the work-related injuries that are the subject of this claim. All parties to

this agreement understand that a dismissal with prejudice means a full and final waiver of: past and future income benefits; future medical expenses; any past medical expenses that are outstanding; past and future vocational benefits; past and future rehabilitation benefits; all other compensation benefits; and, including but not limited to, a full and final waiver of any right to reopen this claim for any reason whatsoever. Claimant states herein that he has read and understands the terms of this agreement; that he is aware of his right to have said agreement reviewed by counsel of his choice; that he understands that he will not be entitled to payment of any future medical expenses by the employer and/or its insurance carrier; and that he settles this claim on the basis that this agreement serves his best interests. This agreement is approved in its entirety.

An ALJ approved the agreement on March 20, 2001.

In August, 2001, the claimant sustained a second work-related injury and quit working. He filed a claim for the second injury, alleging both a new injury to his low back and a re-injury to his neck and left arm. He also filed a motion to reopen the settled claim, asserting that the settlement agreement should be set aside for two reasons: 1.) that he received no separate consideration for waiving his right to reopen; and 2.) that the 5% impairment rating was the product of mutual mistake or constructive fraud. As grounds for reopening, the motion asserted that the claimant's impairment had increased since the settlement and that his present inability to work entitled him to an automatic adjustment of his income benefit under KRS 342.730(1)(c)3.

Pointing to the "explicit language in the settlement agreement" and to the consideration paid for the waiver, the ALJ overruled the motion to reopen without addressing the second argument. The Board and the Court of Appeals affirmed the ALJ's construction of the agreement; however, the court vacated the decision and remanded to the ALJ to consider whether the agreement should be set aside on the basis of mutual mistake/constructive fraud. Because the employer has not appealed,

the sole matter at issue is whether the contract contained an enforceable waiver of the right to reopen.

The claimant asserts that Huff Contracting v. Sark, supra, requires explicit consideration for a waiver of the right to reopen. He argues that the settlement allocated the entire \$40,000.00 to income benefits for a 5% impairment rating and to a waiver of his right to future medical benefits, leaving nothing for a waiver of his right to reopen. Therefore, the Court of Appeals erred in concluding that he received sufficient consideration for the waiver.

An agreement to settle a workers' compensation claim is a contract between the parties. Whittaker v. Pollard, 25 S.W.3d 466, 469 (Ky. 2000). Questions regarding the construction or interpretation of a contract are legal in nature as are questions regarding the existence of ambiguity in a contract. 3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metropolitan Sewer District, 174 S.W.3d 440 (Ky. 2005). An ambiguous contract is one that is capable of multiple, reasonable interpretations. Central Bank & Trust Co. v. Kincaid, 617 S.W.2d 32, 33 (Ky. 1981). Only the four corners of a contract may be considered if its terms are not ambiguous. Hoheimer v. Hoheimer, 30 S.W.3d 176, 178 (Ky. 2000). The primary rule for construing an ambiguous or inconsistent contract is to discern the parties' intent from the entire document and to reconcile inconsistent terms where possible. Black Star Coal Corp. v. Napier, 303 Ky. 778, 199 S.W.2d 449 (1947); Bullock v. Young, 252 Ky. 640, 67 S.W.2d 941 (1933). The court may also consider relevant extrinsic evidence such as the situation of the parties, the purpose of the agreement, and the circumstances under which it was executed. Frear v. P.T.A. Industries, Inc., 103 S.W.3d 99, 107 (Ky. 2003). As a last resort, when other rules of construction fail to establish the parties' intent, a

contract is construed more strongly against the party that drafted it. Elliott v. Pikeville National Bank & Trust Co., 278 Ky. 325, 128 S.W.2d 756, 760 (1939).

Huff Contracting v. Sark, supra, concerned an agreement, drafted by the employer's counsel, in which the worker received "[a] lump sum settlement of 3%, discounted at 6%, Total to be paid by the employer is \$2,685.20." The agreement noted the amounts of TTD and medical benefits that the employer had paid and indicated that the settlement was "inclusive of all attorney fees and also includes all future medical expenses beyond that already paid . . . ." Sometime thereafter, the worker moved to set aside the agreement or, in the alternative, to reopen based on mistake or constructive fraud, stating that it had not been his intent to waive his right to future medical expenses. The court determined that the purported waiver was invalid because no substantial evidence in the record indicated that it was supported by consideration. The decision did not address whether specific consideration must be allocated to each type benefit that is waived because only a waiver of future medical expenses was at issue. It stands for the principle that a waiver of future rights must be supported by consideration in addition to that provided for income benefits.

The agreement at issue allocated no consideration specifically to the waiver of the right to reopen. But, unlike the situation in Huff Contracting v. Sark, supra, the claimant received substantial consideration in addition to the amount for income benefits. Although the agreement indicated that \$37,527.07 was consideration for a waiver of future medical benefits, no contemporaneous evidence indicated that the cervical injury was expected to require future surgery or other expensive medical care. Moreover, the agreement provided that the claimant accepted \$40,000.00 "in consideration for a complete dismissal of this claim with prejudice, including but not

limited to, a waiver or buyout of future medical expenses." It also explained that "a dismissal with prejudice means a full and final waiver of: past and future income benefits; future medical expenses; any past medical expenses that are outstanding; past and future vocational benefits; past and future rehabilitation benefits; all other compensation benefits; and, including but not limited to, a full and final waiver of any right to reopen this claim for any reason whatsoever." Under the circumstances, the ALJ concluded reasonably that the parties clearly intended for the \$37,527.07 not specifically allocated to the 5% impairment to be consideration for the waiver of future medical benefits as well as the other types of benefits that were listed, including the right to reopen for any reason.

The decision of the Court of Appeals is affirmed.

All concur.

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