

[J-46-2003]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

ASHLEY ROSSA, A MINOR,	:	No. 30 EAP 2002
	:	
Appellee	:	Appeal from the Order of the
	:	Commonwealth Court entered March 18,
v.	:	2002, at No. 28 C.D. 2001, reversing the
	:	Order of the Workers' Compensation
	:	Appeal Board entered December 14, 2000
	:	at No. A00-1355
WORKERS' COMPENSATION APPEAL	:	
BOARD (CITY OF PHILADELPHIA),	:	794 A.2d 919 (Pa. Cmwlth. 2002)
	:	
Appellant	:	ARGUED: April 9, 2003

OPINION

MR. JUSTICE LAMB

DECIDED: December 30, 2003

In this appeal we are asked to answer the following questions: does a Workers' Compensation Judge (WCJ) have the authority to determine paternity in a proceeding under the Workers' Compensation Act¹ (Act) and, if so, what evidentiary standard must be met in order to prove paternity?² For the reasons that follow, we hold that a WCJ does have the authority to determine paternity, not for all purposes, but for purposes of determining the eligibility of a child for benefits and that such eligibility must be established

¹ Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1-1041.1, 2501-2626. Until 1993, the Act was known as the "Workmen's Compensation Act." It was renamed the "Workers' Compensation Act" by Act 1993-44, Act of July 2, 1993, P.L. 190, commonly known as "Act 44".

² Allocatur was granted limited to the two questions as stated. Rossa ex rel. Rossa v. W.C.A.B. (City of Philadelphia), 807 A.2d 871 (Pa. 2002).

by a preponderance of the evidence. Because Appellee proved eligibility by a preponderance of the evidence and the Commonwealth Court granted the fatal claim petition on that basis, we affirm the order of the Commonwealth Court. We need not reach beyond the question of eligibility and, so, do not.

On December 13, 1990, Patricia Ann Rossa (Rossa), age nineteen, gave birth to Ashley Lauren Rossa (Claimant). On February 6, 1991, Daniel R. Boyle (Decedent), a twenty-one-year-old Philadelphia police officer, died as the result of a gunshot wound to the head, sustained in the course and scope of his employment. The issue of paternity arose in the context of a fatal claim petition filed on March 20, 1992 by Rossa, on behalf of Claimant, in which she claimed that Decedent was Claimant's father.³ The City of Philadelphia (Employer) denied that Claimant was Decedent's daughter and that she was eligible for fatal claim benefits.

On October 25, 1995, the WCJ placed the matter in indefinite postponement status to allow the parties the opportunity to file a paternity claim in the Philadelphia Court of Common Pleas. On August 5, 1999, Claimant's counsel requested that the case be removed from inactive status. Employer's counsel objected to the reactivation because no paternity order had been issued by the common pleas court. Nevertheless, a hearing was held on October 22, 1999.

On April 20, 2000, the WCJ issued findings of fact, conclusions of law, and an order directing Employer to pay death benefits to Claimant. After summarizing the testimony, the WCJ made the following finding of fact:

³ Section 307 of Act 44 identifies who is entitled to death benefits and in what amounts. Specifically, Section 307 provides that if there is no widow, compensation is to be paid to the decedent's child or children. Section 307 is reported in Sections 561, 562 and 542 of Title 77 of Purdon's Pennsylvania Statutes, 77 P.S. §§ 561, 562 and 542.

16. This WCJ . . . finds from the testimony of Patricia Rossa and the other fact witnesses who testified on her behalf, that Ashley L. Rossa is the daughter of Decedent, Daniel Boyle. This WCJ finds [Rossa's] testimony credible that during the period she and Decedent dated, they had sexual relations. This WCJ finds [Rossa's] testimony credible that she dated Decedent up until March 17, 1990. This WCJ finds [Rossa's] testimony credible and convincing that during the period she and Decedent were dating and engaging in sexual relations, [Rossa] did not date other men. This WCJ finds consistency in [Rossa's] testimony and the testimony of the fact witnesses on her behalf and the actions [Rossa] and the fact witnesses undertook in their belief that Decedent was the father in this matter, specifically [Rossa] contacting Decedent in April 1990 informing him of the pregnancy; [Rossa's stepfather] engaging in discussion with Decedent regarding support; [Rossa's mother]'s contacts with the Decedent during Ms. Rossa's pregnancy and the telephone contact with Decedent on the day of Ashley Rossa's birth, and [Rossa's] naming Decedent, upon Ashley Rossa's birth, on the Certificate of Birth, same Birth Certificate filed before Daniel Boyle's death.

Rossa ex rel. Rossa v. WCAB (City of Philadelphia), 794 A.2d 919, 920-21 (Pa. Cmwlth. 2002) (quoting April 20, 2000 Decision of WCJ at 7). "The WCJ rejected the testimony of Thomas Boyle, Sr., Decedent's father, to the extent it was inconsistent with the finding that Decedent was Claimant's father. Having so concluded, the WCJ granted the fatal claim petition." Id. at 921.

Employer filed a timely appeal to the Workers' Compensation Appeal Board (Board). On December 14, 2000, the Board vacated the WCJ's decision on grounds that "issues of paternity are beyond our scope . . . and thus, we would defer to the expertise of the courts of common pleas on these issues." Workers' Compensation Appeal Board slip op. at 4-5 (footnote and citations omitted).

The Commonwealth Court, by an opinion and order dated March 18, 2002, reversed. The Commonwealth Court believed that no Pennsylvania case had decided whether a worker's compensation fact-finder has the authority to determine paternity.

Appellate review in workers' compensation matters is limited to determining whether constitutional rights were violated, whether an error of law was committed, whether the practices and procedures of the Workers' Compensation Bureau were followed, and whether the findings of fact made by the WCJ and necessary to support its decision were supported by substantial evidence. 2 Pa.C.S. § 704; Gunter v. WCAB (City of Philadelphia), 825 A.2d 1236, 1238 (Pa. 2003). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Consolidated Edison Co. v. National Labor Relations Bd., 305 U.S. 197, 229 (1938); Bethenergy Mines v. WCAB (Skirpan), 612 A.2d 434, 436 (Pa. 1992). Because this appeal raises questions of law, our standard of review is plenary. Phillips v. A-Best Products Co., 665 A.2d 1167, 1170 (Pa. 1995).

The Act vests in the WCJ the responsibility of determining to whom compensation must be paid by the employer. 77 P.S. § 561(1). When the employee dies as a result of the accident at-work or other compensable injury and if the issue is disputed, the WCJ must decide from the evidence presented whether there is a surviving spouse and whether there are children⁴ and, if so, how many; whether, if there is neither surviving spouse nor children, there is a parent who was dependent on the employee at the time of the injury and, if so, whether the parent was totally dependent upon the deceased employee; if there

⁴ A child's right to receive workers' compensation arises from his or her status as a child of the employee, and actual dependency upon the deceased is not required. Mohan v. Publicker Indus., Inc., 198 A.2d 326 (Pa. Super. 1964). It is no longer relevant that a decedent was not married to the child's mother. Lehigh Found., Inc. v. WCAB, 395 A.2d 576 (Pa. Cmwlth. 1978). The fact that decedent fathered a child who is under 18 years of age, without more, makes the child eligible for benefits. Hoffer Transp. Co. v. WCAB, 443 A.2d 1381, 1383 (Pa. Cmwlth. 1982).

are none of the above, then whether there are brothers or sisters actually dependent upon the decedent and, if so, how many. 77 P.S. § 561(1).⁵

The question in this case, whether a worker's compensation fact-finder has the authority to determine parentage as an issue necessary to the claim, is rooted in the same question this Court decided unanimously in Cairgle v. American Radiator and Standard Sanitation Corp., 77 A.2d 439 (Pa. 1951). There, the WCJ was charged with deciding whether the claimant children were fathered by the decedent with his estranged wife. In Cairgle the issue of parentage was a necessary predicate to the disposition of a claim petition, even though it was contrary to the presumption (said at that time to be "still one of the strongest known to the law") of the legitimacy of a child born to an intact marriage. Cairgle, 77 A.2d at 442. There, as here, the material testimony was offered by the mother of the claimants. In Cairgle, however, the fact-finder found the mother's testimony incredible and did not award benefits to the claimants. In this case, the WCJ found the mother's testimony credible and did award benefits.

Returning to the scope of appellate review in the Administrative Agency Law,⁶ we note that the General Assembly identified express criteria for review of agency adjudications:

⁵ For instance, with respect to the disputed claim of a surviving spouse, WCJ's have determined that a common law marriage existed between a claimant and a decedent, Brandywine Paperboard Mills v. WCAB (Zittle), 751 A.2d 1205 (Pa. Cmwlth. 2000); that there was no common law marriage, Bowden v. WCAB, 376 A.2d 1033 (Pa. Cmwlth. 1971); and that a surviving spouse was involved in a meretricious relationship following a decedent's death, McCusker v. WCAB (Rushton Mining Co.), 603 A.2d 238 (Pa. Cmwlth. 1992). See also Bethenergy Mines, Inc. v. WCAB (Sadvary), 570 A.2d 84 (Pa. 1990) (holding that termination of benefits because of a meretricious relationship was discretionary), rev'g 543 A.2d 1268 (Pa. Cmwlth. 1988).

⁶ Act of April 28, 1978, P.L. 202, No. 53, as amended, 2 Pa.C.S. §§ 501-508, 701-704.

After hearing, the court shall affirm the adjudication unless it shall find that the adjudication is in violation of the constitutional rights of the appellant, or is not in accordance with law, or that the provisions of Subchapter A of Chapter 5 (relating to practice and procedure of Commonwealth agencies) have been violated in the proceedings before the agency, or that any finding of fact made by the agency and necessary to support its adjudication is not supported by substantial evidence.

2 Pa.C.S. § 704; see Leon E. Wintermyer, Inc. v. WCAB (Marlowe), 812 A.2d 478, 484-85 (Pa. 2002).

Given the familial relationships that the WCJ must often disentangle, determining the eligibility of a child is not an extraordinary task. It is a responsibility that the WCJ is well able to assume. Because the WCJ has the duty to determine who is to be compensated upon the death of an employee, the WCJ necessarily has the authority to determine paternity, for the purposes of the eligibility of a child. Nothing in the decision of eligibility violates Section 704; therefore, this Court has no grounds to reverse.

We now turn to the question of the appropriate standard of proof for deciding the issue of eligibility of a child in workers' compensation proceedings. It is clear that the general evidentiary burden on worker's compensation claimants, as it is traditionally formulated, is to prove the necessary factual elements of the claim by a preponderance of the evidence. Walker v. Harvey, 219 A.2d 466, 468 (Pa. Super. 1966); Schuch v. Harbison's Dairies, 29 A.2d 216, 218 (Pa. Super. 1942); Stauffer v. Susquehanna Collieries Co., 176 A. 740, 741 (Pa. Super. 1935). The Act as well as the regulations promulgated thereunder codify this standard. See, for example, Section 413 of the Act, 77 P.S. § 774(1), 34 Pa. Code § 131.49.

We asked the parties to consider the factors set forth in Minnich v. Rivera, 506 A.2d 879 (Pa. 1986), aff'd sub nom, Rivera v. Minnich, 483 U.S. 574 (1987), to assist us in determining whether constitutional concerns appurtenant to paternity required a higher evidentiary standard than other facts found by the WCJ. Employer contends that paternity

must be established by clear and convincing evidence. In Minnich, we held that the statutory preponderance of the evidence standard of proof for paternity did not violate constitutional principles and that "[i]t is within the province of the legislature to prescribe a standard of proof applicable to particular actions and proceedings so long as the standard announced meets minimum due process requirement." Id., 506 A.2d at 881. The United States Supreme Court affirmed, holding that the preponderance standard complies with the Due Process Clause of the Fourteenth Amendment. There is nothing in the Act or unique to worker's compensation law which commands imposing a more stringent standard of proof in WCJ proceedings.

Accordingly, we affirm the order of the Commonwealth Court and we remand the matter to the Bureau of Workers' Compensation for proceedings consistent with this opinion.

Mr. Justice Nigro files a dissenting opinion.

Madame Justice Newman files a dissenting opinion.