COURT OF APPEALS
DECISION
DATED AND RELEASED

October 8, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-3011

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

FROEDTERT MEMORIAL LUTHERAN HOSPITAL, INC.,

Plaintiff,

v.

PEDRO L. CRUZ,

Defendant-Third Party Plaintiff-Respondent,

EMPLOYERS INSURANCE OF WAUSAU,

Third Party Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County: WILLIAM D. GARDNER, Judge. *Reversed and cause remanded with directions*.

Before Fine, Schudson and Curley, JJ.

PER CURIAM. Employers Insurance of Wausau, the worker's compensation insurer for Castalloy, Pedro Cruz's former employer, appeals from an order denying its summary judgment motion and purporting to "reform" a compromise agreement entered into earlier between Cruz and

Employers. As a result, Employers was ordered to pay an additional $21,234.75 to Cruz for hospital care and treatment provided by Froedtert Memorial Lutheran Hospital. Because the exclusive remedy provision of the Wisconsin Worker's Compensation Act gives the trial court jurisdiction only to review decisions of the Commission and then under very limited circumstances, we reverse.

I. BACKGROUND.

In May 1989, Cruz was injured while working for Castalloy. In May 1991, he received care and treatment for his work-related injury at Froedtert. For his approximate eight-day stay in May of 1991 he was charged $21,234.75, and billed by Froedtert in October of 1991.

In July 1993, after having made application to Employers for the payment of a variety of bills associated with his injury, Cruz, with the aid of legal counsel, and Employers entered into a compromise agreement, as defined in § 102.16(1), STATS., requiring Employers to pay a settlement of $85,699.54 to Cruz. Pursuant to the worker's compensation law, the parties' compromise agreement was presented to the Department of Industry, Labor, and Human Relations, which approved the agreement. No specific mention was made of the Froedtert bill in the compromise agreement, but the Administrative Law Judge noted that the compromise agreement was "a settlement of all issues, with the exception of future medical expenses which shall be held open until July 1, 2001." Cruz failed to make any payment on the bill and Froedtert brought this collection action.

Cruz, without requesting any relief from either the Department of Industry, Labor, and Human Relations, or the Labor and Industry Review Commission, brought Employers directly into this circuit court case on a third-party complaint, claiming he was entitled to payment from the insurance company. Employers brought a summary judgment motion asserting that, among other things, the suit should be dismissed because of the exclusivity provision of the Worker's Compensation Act. Cruz, while defending against both Froedtert's and Employers' summary judgment motions, nonetheless adopted Froedtert's rationale in opposing Employers' motion.

One of Froedtert's arguments in opposition to Employers' summary judgment motion was the assertion that there was a mutual mistake by Employers and Cruz when they entered the compromise agreement and thus, the case was not ripe for summary judgment. Froedtert also argued that the circuit court and DILHR had concurrent jurisdiction over the matter.

Following a hearing where the trial court granted Froedtert's summary judgment motion, the trial court rendered a written decision denying Employers' summary judgment motion and determined that, as a matter of law, on equitable grounds, it was appropriate for the trial court to reform the compromise agreement based upon the equitable doctrine of mutual mistake. The trial court then ordered Employers to pay an additional $21,234.75 to Cruz. This appeal follows.

II. ANALYSIS.

When this court is called upon to review the grant of a summary judgment motion, we are governed by the standards articulated in § 802.08(2), STATS. ***Maynard v. Port Publications, Inc.***, 98 Wis.2d 555, 558, 297 N.W.2d 500, 502 (1980). Further, we are required to apply the standards set forth in the statute just as the trial court applied those standards. ***Wright v. Hasley***, 86 Wis.2d 572, 579, 273 N.W.2d 319, 322-23 (1979). Our review is *de novo*. ***Green Spring Farms v. Kersten***, 136 Wis.2d 304, 316, 401 N.W.2d 816, 820 (1987).

In denying Employers' motion, the trial court stated that it would decline Employers' invitation to enter summary judgment in its favor and that it would reform the compromise agreement based upon the equitable doctrine of mutual mistake. The trial court's decision is devoid of any findings concerning Employers' first argument that the court did not have jurisdiction over the dispute because of the exclusivity provisions of the Worker's Compensation Act. In fact, the issue of jurisdiction was never mentioned in the trial court's written decision. The trial court simply proceeded to find that there was mutual mistake in the compromise agreement entered into two years previously and "reformed" the contract.

Although the trial court's decision is silent on the issue of jurisdiction, a review of the transcript of the summary judgment motion does shed some light on the trial court's thoughts. Evidence that the trial court did not believe that the Worker's Compensation Act was all encompassing can be read from the following exchange:

> [EMPLOYERS' ATTORNEY]: Mr. Cruz's suit against [Employers] is barred by the exclusive remedy provision filed in Section 102.03 sub.1 of the Wisconsin Statutes. The right to recovery under Chapter 102 of Wisconsin Statutes is the employee's exclusive remedy for work injuries.
>
> [THE COURT]: I would agree if we're talking about a negligence case.

The submitted affidavits and arguments of counsel at the summary judgment hearing revealed that neither Cruz nor Employers was aware of the outstanding bill, although there is evidence that Cruz's former attorney was notified of its existence. Also uncovered during the summary judgment arguments was the fact that Cruz was not sued by Froedtert for the hospital bill until after the Worker's Compensation Act's one-year period for modifying compromise agreements had expired, pursuant to § 102.16, STATS.[1]

Cruz now argues that the Worker's Compensation Act provides an exclusive remedy and method of obtaining judicial review against employers for tort claims only and, since reformation is an equitable action, the circuit court had jurisdiction to reform the compromise agreement.

Unfortunately for Cruz, however, it is only through the tort law principles that have been supplanted by the Worker's Compensation Act that he has any legal right to seek medical expenses from his former employer and its

[1] Section 102.16(1), STATS., provides in relevant part: "Every compromise of any claim for compensation may be reviewed and set aside, modified or confirmed by the department within one year from the date the compromise is filed with the department."

worker's compensation carrier. *See, e.g.*, ***Anderson v. Miller Scrap Iron Co***., 169 Wis. 106, 110, 170 N.W. 275, 276 (1919). Prior to the passage of the Worker's Compensation Act, an employee could recover payment of his work-related medical bills only if he proved employer negligence. "The purpose of Workers' Compensation Act is `to provide financial and *medical benefits* to the victim of "work-connected" injuries and their families regardless of fault, and to allocate financial burden to the most appropriate source—the employer, and, ultimately, the consumer of the product.'" ***Klein Indus. Salvage v. DILHR***, 80 Wis.2d 457, 462, 259 N.W.2d 124, 126 (1977) (emphasis added). Thus, the payment sought by Cruz has as its origin tort law which has been transformed by the Worker's Compensation Act.

Having this analysis in mind, it would appear the trial court determined that it now had jurisdiction because Cruz was foreclosed from seeking relief under the Worker's Compensation Act. Stated differently, the trial judge took the position that trial courts could hear a cause of action grounded in equity once there was no remedy available under Chapter 102.

Hence, in deciding this case, we must determine whether the circuit court was jurisdictionally foreclosed from modifying the compromise agreement after the one-year window permitting modification had expired. The standard of review when faced with a claim dealing with the exclusive remedy provisions of the Worker's Compensation Act is a question of law which we review *de novo*. *See* ***Schenkoski v. LIRC***, No. 96-0051, slip op. at 3 (Wis. Ct. App. June 18, 1996) (ordered published July 29, 1996).

Our analysis will start with the Worker's Compensation Act, found in Chapter 102, STATS. As was argued by Employers, in the absence of the compromise agreement, the question of whether Cruz could seek redress in the circuit court would be a simple one. Section 102.16(1), STATS., provides: "Any controversy concerning compensation ... shall be submitted to the department in the manner and with the effect provided in this chapter." Had Cruz not entered into a compromise agreement, he would have been obligated to first seek relief from the department.

Here, Cruz availed himself of the Worker's Compensation Act and entered into a compromise agreement. What, then, is the statutory scheme once the one-year modification period for compromise agreements expires?

We recently concluded that DILHR and LIRC did not have jurisdiction to review a compromise agreement outside the one-year time limit in § 102.16(1), STATS. *See* ***Schenkoski***, No. 96-0051, slip op. at 7. Similarly, in this case we conclude the trial court lacked jurisdiction to reform the compromise agreement because the Wisconsin Worker's Compensation Act only gives the trial court jurisdiction to review decisions of the Commission.

Embodied in the LIRC's own rules, found in the Wisconsin Administrative Code, is the provision that compromise settlements of worker's compensation claims are solely within the jurisdiction of the worker's compensation division. *See* WIS. ADM. CODE § LIRC 305. Compromise agreements, as utilized in Chapter 102, are subject to rules different from other claims made under the Worker's Compensation Act. *See* § 102.16(1), STATS. As a result, a compromise agreement used in a worker's compensation setting is a creature of statute. The nature of these compromise agreements has been oft discussed:

> The public policy, as expressed in the statute, is to permit compromise between employers and employees where liability is disputed. No third-party claimant against an employee should be permitted to interfere with a compromise agreement between an employee and an employer. Otherwise, the parties could be forced to litigate the matter before DILHR when neither of them wants to risk an all-or-nothing contest.

La Crosse Lutheran Hosp. v. Oldenburg, 73 Wis.2d 71, 74-75, 241 N.W.2d 875, 877 (1976). Further, "[a] compromise furthers the purpose of the statute by enabling an injured employee to negotiate a settlement and bypass the costs and uncertainty of litigation." ***Pigeon v. DILHR***, 109 Wis.2d 519, 525, 326 N.W.2d 752, 756 (1982).

Additionally, another statute found in Chapter 102 is also illuminating in determining whether the circuit court retains jurisdiction after the one-year modification period lapses under § 102.16(1). Section 102.23(1)(a), STATS., provides that:

> The order or award granting or denying compensation, either interlocutory or final, whether judgment has been rendered on it or not, is subject to review only as provided in this section and not under ch. 227 or s. 801.02. Within 30 days ... any party aggrieved thereby may by serving a complaint ... commence, in circuit court, an action against the commission for the review of the order or award, in which action the adverse party shall also be made a defendant.

When determining the effect of this statutory language, "[w]e are ... guided by [a] well-established principle[] of statutory construction ... that the enumeration of specific alternatives in a statute is evidence of legislative intent that any alternative not specifically enumerated is to be excluded." ***C.A.K. v. State***, 154 Wis.2d 612, 621, 453 N.W.2d 897, 901 (1990). Thus, the clear wording and intent of the statute permits judicial review of compromise agreements under only very limited circumstances.

Finally, this court has also discussed the inability of the circuit court to exercise its powers in equity when an administrative agency's jurisdiction was in question:

> [The Appellant's] contention is that where full relief from the agency (DILHR) either cannot be obtained or is questionable, then he may seek the desired relief from the circuit court, and the circuit court, for reasons of equity, properly has jurisdiction....
>
> We are not swayed by [this] argument.

Bachand v. Connecticut General Life Ins. Co., 101 Wis.2d 617, 628, 305 N.W.2d 149, 154 (Ct. App. 1981) (discussing Wisconsin Fair Employment Act). The same principle applies here; permitting the circuit court to maintain actions emanating out of compromise agreements without an underlying determination by the agency is contrary to the wording of the statutes and adverse to the legislative intent. Extrapolating from the language found in § 102.16, a claim is barred if it is based on a compromise agreement and the one-year window has expired.

In sum, all controversies concerning compensation between employer and employee are subject to the Worker's Compensation Act. Judicial review is allowed under very limited circumstances and then only by filing suit naming DILHR. Here, the parties entered into an approved compromise agreement and the one-year period had expired. The Worker's Compensation Act provides a comprehensive statutory remedy which is exclusive. The circuit court has no jurisdiction over this matter.

Because we determine that the trial court had no jurisdiction to reform the compromise agreement and that it should have granted Employers' summary judgment motion, we need not address the other issues. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed).

Accordingly, we reverse and remand the matter to the trial court for entry of summary judgment consistent with this opinion.

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.