

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT
APPELLATE DIVISION

A & H DUFFY POLISHING)
FINISHING CO., INC.)

VS.)

W.C.C. 03-08384

J & E HOME PRODUCTS d/b/a)
ANNE AT HOME)

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division pursuant to an order directed to the parties to appear and show cause why the two (2) pending appeals should not be summarily decided on the grounds that they are premature because the orders appealed from are interlocutory in nature. After considering the arguments of the parties, both written and oral, we conclude that cause has not been shown and dismiss the appeals as premature.

The underlying petition in this matter is a petition for apportionment pursuant to R.I.G.L. § 28-34-8, which allows contribution from previous employers in certain circumstances when an employee is disabled due to an occupational disease. The petitioner in this matter, A & H Duffy Polishing Finishing Company (hereinafter "A & H"), paid their employee for a period of time pursuant to a Memorandum of Agreement which accepted liability for his disability resulting from bilateral carpal tunnel syndrome. A & H filed the present petition against the respondent, as well as two (2) other petitions against two (2) other companies, alleging that the employee's

“injury” was an occupational disease, and therefore, their liability should be apportioned with these prior employers.

The respondent in this matter, J & E Home Products (hereinafter “J & E”), was insured for workers’ compensation purposes by three (3) different insurers during the years that the injured employee worked for the company – Shelby Mutual Insurance Company (“Shelby”), Travelers Insurance Company (“Travelers”), and Hartford Insurance Company (“Hartford”). Although the petition named only J & E Home Products as the respondent, attorneys entered their appearances on behalf of each of the three (3) insurers. Hartford was the insurer for J & E at the time the injured employee stopped working for that company. Prior to the pretrial conference regarding the three (3) petitions, the attorneys representing Travelers and Shelby filed motions to withdraw their appearances, which the trial judge granted. The petitioner, A & H, and counsel for Hartford filed claims of appeal from the trial judge’s orders granting these motions.

Section 28-35-28(a) of the Rhode Island General Laws provides that “any person aggrieved by the entry of a decree” (emphasis added) by a trial judge may file a claim of appeal with the Appellate Division. A “decree” contains the findings of fact and orders of the trial judge which address the merits of the controversy presented by the petition. In contrast, an order which only resolves some intervening matter relating to the actual controversy is considered interlocutory in nature. To allow the appeal of interlocutory or interim orders would result in chaos and disruption of the smooth flow of litigation.

In the present matter, the trial judge’s orders allowing the two (2) attorneys to withdraw are clearly interlocutory. The orders did not address the merits of the petition in any way or

contain a final resolution of any of the issues presented by the petition. The petition was filed against J & E and did not name any individual insurers as respondents.

Without commenting on the merits of the appellants' arguments regarding potential liability of these prior insurers or the trial judge's reasons for granting the motions to withdraw, we dismiss the appeals, without prejudice, as premature on the basis that the orders appealed from were interlocutory in nature. The matter will be referred back to the trial judge for further proceedings.

In accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, an order, a copy of which is enclosed, shall be entered on

Sowa and Connor, JJ. concur.

ENTER:

Olsson, J.

Sowa, J.

Connor, J.

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ORDER OF THE APPELLATE DIVISION

This cause came on to be heard upon appeals filed by the petitioner and the respondent, as represented by Hartford Insurance Company, from orders of the trial judge entered on June 18, 2004 allowing attorneys representing two (2) other insurers of the respondent to withdraw their appearances. Upon consideration thereof, the following findings of fact are made:

1. That the orders of the trial judge entered on June 18, 2004 are interlocutory in nature.
2. That the appeals of the petitioner and the respondent filed on June 25, 2004 are, therefore, premature.

It is, therefore, ordered:

1. That the appeals of the petitioner and the respondent filed on June 25, 2004 are dismissed without prejudice.
2. That the matter is remanded to the trial judge for further proceedings.

Entered as the order of this Court this day of

BY ORDER:

John A. Sabatini, Acting Administrator

ENTER:

Olsson, J.

Sowa, J.

Connor, J.

I hereby certify that copies were mailed to Christopher A. Fiore, Esq., Christine M. Harding, Esq., Gerard S. Lobosco, Esq., and George E. Furtado, Esq., on
