

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

WORKERS' COMPENSATION COURT  
APPELLATE DIVISION

J LINE INC. )

)

VS. )

W.C.C. 2007-07441

)

ROSEMARIE SANTIAGO )

DECISION OF THE APPELLATE DIVISION ON MOTION OF J LINE, INC.  
TO DISMISS APPEAL OF ROSEMARIE SANTIAGO

OLSSON, J. This matter is presently before the Appellate Division on the motion filed by J Line, Inc. (hereinafter "J Line") through its insurer, Beacon Mutual Insurance Company (hereinafter "Beacon") to dismiss the claim of appeal filed by the employee, Rosemarie Santiago. After reviewing the memoranda submitted by the parties and evaluating their respective arguments, we grant the motion and hereby dismiss the employee's appeal for failure to comply with the outstanding decree as modified by the Rhode Island Supreme Court.

At the trial of this matter, the parties filed a lengthy stipulation of facts with accompanying exhibits. Rather than quote the entire stipulation, we will attempt to simply summarize the information which is relevant to the issue before the panel.

Ms. Santiago, a resident of Rhode Island, was employed by J Line as an interstate truck driver. On November 20, 2002, while driving one of J Line's trucks in the State of Georgia, she was involved in a collision with another truck and sustained an injury to her low back. The employee sought and was awarded workers' compensation benefits under the Rhode Island

Workers' Compensation Act. As a result of various proceedings before the Workers' Compensation Court in Rhode Island, Beacon has paid to, or on behalf of, the employee, weekly workers' compensation benefits, disfigurement benefits, medical bills, and hospital charges.

On or about June 8, 2004, Ms. Santiago, through an attorney in Georgia, filed a lawsuit in the United States District Court for the Northern District of Georgia, Rome Division, against the corporate owner and the individual operator of the other truck involved in the collision on November 20, 2002. Beacon was made aware of the lawsuit, but elected not to intervene. It did, however, notify the employee's attorney, through a series of letters, that it had a lien under Rhode Island law against any proceeds of the third party claim. On or about September 17, 2007, a settlement of the action filed in Georgia was approved by the United States District Court and the lawsuit was dismissed. The amount of the settlement was Seven Hundred Thousand and 00/100 (\$700,000.00) Dollars; Ms. Santiago received Three Hundred Thirty-one Thousand Six Hundred Eighty-five and 08/100 (\$331,685.08) Dollars. The employee's attorney in Georgia notified Beacon of the settlement and his opinion that Beacon's lien had been extinguished. The employee and her attorney refused to reimburse Beacon.

On November 30, 2007, Beacon filed a petition to determine a controversy, alleging that pursuant to R.I.G.L. § 28-35-58, it was entitled to reimbursement of compensation benefits paid to Ms. Santiago. After reviewing the stipulation of facts, exhibits, and extensive memoranda submitted by the parties, the trial judge granted Beacon's petition. In a decree entered on January 5, 2009, the trial judge ordered the employee to reimburse Beacon in the amount of Sixty-eight Thousand Nine Hundred Fifteen and 67/100 (\$68,915.67) Dollars. In accordance with R.I.G.L. § 28-35-58, the trial judge also found that Beacon was entitled to suspend the

payment of weekly benefits to Ms. Santiago for a period of Nine Hundred Ninety-four (994) weeks. On January 7, 2009, the employee filed a claim of appeal to the Appellate Division.

Shortly thereafter, the employee apparently filed a petition for writ of certiorari with the Rhode Island Supreme Court, seeking a stay of the January 5, 2009 decree pending the appeal.

On January 16, 2009, the Court entered the following order:

1. The petition for writ of certiorari is granted. The papers in the case shall however be retained in the Workers' Compensation Court pending the Appellate Division's issuance of a decision and decree on the employee's appeal.
2. Meanwhile, pursuant to petitioner's motion for stay, paragraphs 2 and 5 of the orders contained in the trial judge's decree, insofar as they authorize the employer's suspension of petitioner's weekly benefits, are stayed until further Order of this Court. The motion for stay is denied, however, as to that portion of the decree which requires the petitioner to reimburse the employer for past benefits.

On April 2, 2009, Beacon filed a motion to dismiss the employee's appeal pursuant to R.I.G.L. § 28-35-34 and Rule 4.3 of the Workers' Compensation Court Rules of Practice. In support of its motion, Beacon filed a memorandum of law with accompanying exhibits, as well as the affidavit of Mariela Lovegrove, a claims representative for Beacon, indicating that reimbursement was requested of Ms. Santiago's attorney in Rhode Island by a letter dated February 3, 2009, but Ms. Santiago has failed to make any payment to Beacon.

The employee filed an objection to the motion to dismiss, contending that the Appellate Division does not have sufficient evidence before it to make a finding of contempt or to make a decision whether her non-compliance with the order of the Supreme Court is due to her financial inability to pay. During oral arguments on the motion, the employee's attorney urged the panel to refer the matter back to the trial judge to conduct a hearing regarding the employee's ability to

pay. He indicated that the employee does not have sufficient funds to comply with the order of the Rhode Island Supreme Court.

Rhode Island General Laws § 28-35-33 provides that any decree entered by the Workers' Compensation Court shall take effect immediately upon entry and shall not be stayed pending appeal. In two (2) cases involving the predecessor to the current version of this statute, the Rhode Island Supreme Court concluded that application of the statute mandates dismissal of the appeal if the appealing party has not complied with the outstanding decree.

By force of the statute, compliance with the decree of the full commission is, in the absence of a stay, a condition precedent to the right to *prosecute* an appeal therefrom to this court.

If an appellant has reasons which lead him to believe that this court, in the special circumstances of his case, would stay the operation of the decree and if he files a motion therefor he should nevertheless comply with the decree until a stay is actually granted. Prudence requires such caution if he would avoid the hazard of a loss of the right to prosecute his appeal in the event that his motion for a stay was denied.

Girard v. U. S. Rubber Co., 84 R.I. 319, 322, 127 A.2d 242, 243 (1956). In Bishop, the Court, citing Girard, reiterated its holding that a motion to dismiss the appeal must be granted when the appealing party is in default for non-compliance with the terms of the outstanding decree.

Bishop v. Chauvin Spinning Co., 85 R.I. 255, 258, 129 A.2d 543, 544 (1957).

The decree of the trial judge in this matter on January 5, 2009 ordered the employee to reimburse Beacon the sum of Sixty-eight Thousand Nine Hundred Fifteen and 67/100 (\$68,915.67) Dollars. On January 16, 2009, the Rhode Island Supreme Court entered its order denying the employee's motion to stay this portion of the decree. Counsel for the employee has admitted that Ms. Santiago has not complied with the order of reimbursement. Rhode Island General Laws § 28-35-33 does not distinguish between an appeal to the Appellate Division and

an appeal to the Rhode Island Supreme Court. Nor does the statute make any exception when the obligation to pay is imposed upon the employee rather than the employer. In either case, the appellant must be in compliance with the outstanding decree as a condition precedent to prosecution of the appeal. Ms. Santiago is clearly in default for non-compliance with the terms of the trial decree and therefore is not in a position to seek affirmative relief through the appellate process.

Contrary to the employee's assertions, the issue of Ms. Santiago's financial ability to pay the amount due to Beacon is irrelevant to our ruling regarding the motion to dismiss her appeal. This is not a proceeding to enforce the terms of the trial decree, and we are not making a finding that the employee is in contempt. Ms. Santiago's ability to pay and her reasons for not complying with the decree of the trial judge and the order of the Rhode Island Supreme Court are not issues which are currently before this panel, and have no bearing on our decision on the motion to dismiss.

For the reasons stated above, the motion to dismiss the appeal of Rosemarie Santiago filed by J Line, Inc., by and through its insurer, Beacon Mutual Insurance Company, is granted. In accordance with our decision, we make the following findings:

1. That on January 5, 2009, a trial decree was entered which ordered the employee, Rosemarie Santiago, to reimburse Beacon Mutual Insurance Company the sum of Sixty-eight Thousand Nine Hundred Fifteen and 67/100 (\$68,915.67) Dollars.
2. That on January 7, 2009, the employee filed a claim of appeal to the Appellate Division.
3. That on January 16, 2009, an order of the Rhode Island Supreme Court entered which denied the employee's motion to stay that portion of the trial decree.

4. That to date, the employee has failed to comply with the terms of the trial decree and the order of the Rhode Island Supreme Court.

It is, therefore, ordered:

1. That the motion to dismiss the employee's claim of appeal is hereby granted.

An order containing the above findings and orders of the Appellate Division shall enter forthwith.

Hardman and Ferrieri, JJ. concur.

ENTER:

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Olsson, J.

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Hardman, J.

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Ferrieri, J.

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ORDER OF THE APPELLATE DIVISION ON MOTION OF J LINE, INC.  
TO DISMISS APPEAL OF ROSEMARIE SANTIAGO

This matter is before the Appellate Division on the motion of J Line, Inc. and its insurer Beacon Mutual Insurance Company to dismiss the claim of appeal filed by the employee, Rosemarie Santiago. After a hearing thereon and consideration thereof, the following findings of fact are made:

1. That on January 5, 2009, a trial decree was entered which ordered the employee, Rosemarie Santiago, to reimburse Beacon Mutual Insurance Company the sum of Sixty-eight Thousand Nine Hundred Fifteen and 67/100 (\$68,915.67) Dollars.
2. That on January 7, 2009, the employee filed a claim of appeal to the Appellate Division.
3. That on January 16, 2009, an order of the Rhode Island Supreme Court entered which denied the employee's motion to stay that portion of the trial decree.
4. That to date, the employee has failed to comply with the terms of the trial decree and the order of the Rhode Island Supreme Court.

It is, therefore, ordered:

1. That the motion to dismiss the employee's claim of appeal is hereby granted.

Entered as an Order of the Appellate Division of the Workers' Compensation Court this day of June, 2009.

BY ORDER:

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John A. Sabatini, Administrator

ENTER:

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Olsson, J.

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Hardman, J.

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Ferrieri, J.

I hereby certify that copies of the Decision and Order of the Appellate Division were mailed to Christine M. Curley, Esq., and John M. Harnett, Esq., on