

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E209797

RICHARD ANGELL,
EMPLOYEE

CLAIMANT

COOPER TIRE & RUBBER COMPANY,
EMPLOYER

RESPONDENT

SEDGWICK JAMES OF ARKANSAS,
INSURANCE CARRIER

RESPONDENT

OPINION FILED MARCH 28, 2006

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by the HONORABLE CAROLYN WHITEFIELD,
Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE WILLIAM G. BULLOCK,
Attorney at Law, Texarkana, Arkansas.

OPINION AND ORDER

In the above-styled matter, the Arkansas Court of Appeals has affirmed the Full Commission in part and has reversed and remanded in part. *Angell v. Cooper Tire & Rubber Co.*, CA04-359 (Sept. 28, 2005). The Court of Appeals has determined, "substantial evidence supports the Commission's decision that appellee was not in contempt for failure to pay medical bills. However, the Commission's decision did not address whether appellee was in contempt for failure to pay the attorney's fees or penalties due. As

the Commission made no finding in that regard, we must reverse and remand for the Commission to do so." After additional *de novo* review, the Full Commission finds that the respondent is not in contempt for failure to pay an attorney's fee or statutory penalty.

I. HISTORY

The parties stipulated that the claimant sustained "multiple injuries" on June 8, 1992, and that the respondent paid temporary total disability compensation through May 31, 1993. The parties stipulated that the respondent paid a 23% impairment rating to the left lower extremity.

In a pre-hearing order filed in July 1997, the parties stipulated that the respondent controverted all additional benefits. An administrative law judge (ALJ) filed an opinion on October 29, 1997. The ALJ found, among other things, "Respondents are responsible for continued reasonably necessary medical and related treatment provided by Dr. William S. Bundrick as well as any legitimate referrals made by Dr. Bundrick." The ALJ awarded the claimant's attorney a fee for legal services pursuant to Ark. Code Ann. §11-9-715.

The parties stipulated that neither party appealed the administrative law judge's October 1997 opinion.

A pre-hearing order was filed in December 1999. The claimant contended, among other things, that the respondent had failed to comply with the administrative law judge's October 1997 order relative to medical treatment provided by Dr. Bundrick. A hearing was scheduled on several issues, including "penalty pursuant to Ark. Code Ann. §11-9-802(d) and (e)"; "contempt for failure to comply with prior order pursuant to Ark. Code Ann. §11-9-706(b); and unpaid medical bills[.]"

An administrative law judge filed an opinion on May 19, 2000. The ALJ found, among other things:

8. Respondent has controverted the payment of all medical benefits in this claim subsequent to February 10, 1998.

9. Respondent has wilfully (sic) and intentionally failed to pay for the incurred medical treatment received by the claimant under the care of Dr. Bundrick subsequent to the medical service of February 10, 1998, and as such a thirty-six percent (36%) penalty is payable to the claimant on said incurred unpaid bills pursuant to Ark. Code Ann. §11-9-802(d) and (e).

10. Respondent has refused to comply with the October 29, 1997, final order of the administrative law judge and is in contempt of the Commission.

The administrative law judge awarded "maximum attorney fees" to the claimant's attorney pursuant to Ark. Code Ann. §11-9-715. The ALJ also found the respondent in contempt of the Commission and ordered the respondent to pay a \$10,000 fine.

The respondent appealed to the Full Commission, which filed an opinion on October 13, 2000. The Full Commission determined, in pertinent part:

We affirm the finding that the respondent has willfully and intentionally failed to pay for medical treatment received by the claimant from Dr. Bundrick, and that the respondents must pay a 36% penalty on incurred unpaid bills pursuant to Ark. Code Ann. §11-9-802(d) and (e). We affirm the finding that the respondent has refused to comply with the administrative law judge's October 29, 1997 order, and that the respondent is therefore in contempt of the Commission. However, we suspend payment of the fine imposed by the administrative law judge, contingent on the respondent's compliance with past and prospective Commission orders in this matter. The Full Commission thus affirms, as modified, the decision of the administrative law judge.

For prevailing in part on appeal, the Full Commission awarded the claimant "an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. §11-9-715 (Repl. 1996)."

The respondent appealed to the Arkansas Court of Appeals.

The Court of Appeals affirmed the Full Commission in an opinion filed October 24, 2001. *Cooper Tire & Rubber Co. v. Angell*, 75 Ark. App. 325, 58 S.W.3d 396 (2001). The Court held in part:

The ALJ found that a bill for reasonable and necessary medical treatment provided by Dr. Bundrick on December 6, 1999, had not been paid. Further the ALJ found that appellant had not paid for prescription medication provided by Dr. Bundrick. We hold that there is substantial evidence to support the Commission's imposition of a 36% penalty upon appellant.

Last, appellant argues that the \$10,000 fine imposed is excessive and violates the Due Process Clause of the Arkansas Constitution as well as the United States Constitution Amendment 14, § 1, specifically that the fine violates the prohibition against the deprivation of property without due process, and equal protection. We do not reach the merits of appellant's argument as the Commission suspended and held in abeyance the fine, conditioned on appellant's future compliance with its past and prospective orders. A suspension of a punishment for contempt is in effect a complete remission. [Citation omitted.] This renders the issue moot....

A pre-hearing order was filed on June 12, 2002. A hearing was scheduled on "the issue of contempt (A.C.A. §11-9-706); enforcement of prior Order/Ruling; penalty 36% (A.C.A. §11-9-802(e); and attorney fees[.]"

The record contains an Answer To Respondent's First Set Of Interrogatories To Claimant, signed by the claimant on June 28, 2002. The claimant stated on Page Four of the Answer, "There have been no unpaid medical providers since the date of the opinion of May 19, 2000. However, the claimant had not been reimbursed or provided with prescription drugs as provided previously by letter dated March 4, 2002. These have now been paid."

A hearing was held on July 19, 2002, and the administrative law judge filed an opinion on October 17, 2002. The ALJ found, among other things:

11. The respondent has failed to comply with the prior rulings of the Arkansas Workers' Compensation Commission and the Arkansas Court of Appeals, in that respondent has failed to pay attorney's fees and medical bills, as directed in the October 29, 1997, final order of the administrative law judge; respondent has failed to pay medical bills and attorney's fees and penalty on all the unpaid incurred bills per the May 19, 2000, Opinion and Order of the administrative law judge, the October 13, 2000, opinion of the Full Commission and the October 24, 2001, decision of the Arkansas Court of Appeals.

12. The respondent has failed and refused to comply with the October 13, 2000, opinion of the Full Commission, which was affirmed by the Arkansas Court of Appeals, and is in contempt of the Commission.

The administrative law judge again directed the respondent to pay a \$10,000 fine pursuant to Ark. Code Ann. §11-9-706(b); the respondent appealed to the Full Commission.

In an opinion filed November 25, 2003, the Full Commission reversed the opinion of the administrative law judge. The Full Commission determined:

Based on our review of the voluminous record before us, the Full Commission is unable to find any contemptuous behavior on the respondent's part. The claimant at hearing was unsure which medical bills had allegedly not been paid. Mr. Norton on the other hand credibly testified that the respondent had paid everything it knew had been ordered or referred by Dr. Bundrick, and which bills had actually been submitted by the claimant.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove the respondent was in contempt of the Commission. We therefore reverse the Administrative Law Judge's finding of contempt and the imposition of a \$10,000 fine pursuant to Ark. Code Ann. §11-9-706. We reiterate that the respondent must continue to provide reasonably necessary medical treatment pursuant to the Administrative Law Judge's October 29, 1997 opinion, including treatment and referrals from Dr. Bundrick. The respondent is not liable for any treatment from Dr. Sharma, nor is the respondent responsible for any treatment from Dr. Otero or Wadley Regional Medical Center. The claim for contempt is otherwise denied and dismissed.

The claimant appealed to the Arkansas Court of Appeals. The Court of Appeals has affirmed the Full Commission in part and has reversed in part and remanded. *Angell v. Cooper Tire & Rubber Co.*, CA 04-359 (Sept. 28, 2005). The Court held, "substantial evidence supports the Commission's decision that appellee was not in contempt for failure to pay medical bills. However, the Commission's decision did not address whether appellee was in contempt for failure to pay the attorney's fees or penalties due. As the Commission made no finding in that regard, we must reverse and remand for the Commission to do so."

II. ADJUDICATION

Civil contempt protects the right of private parties by compelling compliance with orders of the court made for the benefit of private parties. *Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 156 S.W.3d 228 (2004).

In the present matter, the Full Commission finds that the respondent is not in contempt for failure to pay attorney's fees or penalties. The claimant sustained a compensable injury on June 8, 1992. The respondent provided medical treatment, and the parties stipulated that the respondent provided temporary total disability compensation

and an anatomical impairment rating. The respondent controverted additional benefits no later than July 1997. In an opinion filed in October 1997, an administrative law judge awarded reasonably necessary medical treatment as provided by Dr. Bundrick. In an opinion filed in October 2000, the Full Commission affirmed an administrative law judge's determination that the respondent owed a penalty for failure to pay for Dr. Bundrick's treatment, and that the respondent was in contempt of the Commission. The Full Commission suspended payment of a fine pursuant to the contempt, and the Court of Appeals affirmed the Full Commission.

Another pre-hearing order was filed on June 12, 2002. A hearing was scheduled on "the issue of contempt (A.C.A. §11-9-706); enforcement of prior Order/Ruling; penalty 36% (A.C.A. §11-9-802(e); and attorney fees[.]" However, Respondent's Exhibit 6 indicates that checks were issued on June 13, 2002; these monies were paid for the penalty previously assessed by administrative law judge. Because civil contempt is designed to coerce compliance with the court's order, the civil contemnor may free itself by complying with the order. *Omni Holding & Dev. Corp., Id.*

Moreover, the claimant's Answer in response to discovery indicated that there were no unpaid medical providers since entry of the administrative law judge's May 19, 2000 opinion. Nor does the record indicate that the respondent has failed to pay any of the fees for legal services assessed by the administrative law judges or Full Commission.

Pursuant to the remand of the Court of Appeals, and based on our *de novo* review of the entire record, the Full Commission finds that the respondent is not in contempt for failure to pay the statutory penalty or attorney's fees. This claim is therefore denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Special Commissioner Kenneth Olsen Dissents.