Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 2, 2014

CLAIM NO. 200601247

FAMILY DOLLAR PETITIONER

VS. **APPEAL FROM HON. THOMAS POLITES, ADMINISTRATIVE LAW JUDGE**

MAMIE BAYTOS, widow of STEPHEN BAYTOS;
and HON. THOMAS POLITES,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Family Dollar appeals from the February 3, 2014 Opinion and Award of Hon. Thomas G. Polites, Administrative Law Judge ("ALJ") and from the June 19, 2012 Opinion and Order of Hon. Richard M. Joiner, ALJ. In this appeal, we are asked to determine whether an employee's settlement of his claim extinguishes his dependents' right to seek benefits pursuant to KRS 342.750(1), when the

employee later dies as a direct result of the work-related injury. Under the circumstances of this case, we conclude the settlement agreement bars the recovery of benefits pursuant to KRS 342.750(1).

Stephen Baytos sustained a torn thoracic aorta on February 9, 2006 while lifting heavy boxes at Family Dollar. He made a claim for workers' compensation benefits, which was resolved by a settlement approved on July 10, 2008. He was not represented by an attorney when he signed the settlement agreement, a fact he expressly acknowledged in the document. Mr. Baytos subsequently died on December 3, 2009 of an acute rupture of the thoracic aorta.

His widow, Mamie Baytos, filed a motion to reopen the claim in order to pursue benefits under KRS 342.750(1). The claim was bifurcated to first resolve the question of whether the settlement agreement barred the claim. ALJ Joiner concluded Mr. Baytos' waiver of his right to reopen did not preclude his widow from seeking benefits pursuant to KRS 342.750. The claim was later reassigned to ALJ Polites, who resolved the sole remaining contested issue: that Mr. Baytos' death was caused by his work-related injury. He awarded benefits pursuant to KRS 342.750(1).

On appeal, Family Dollar does not challenge the finding Mr. Baytos died as a direct result of his work-related injury. Instead, it argues Mrs. Baytos' claim for benefits is barred by the settlement agreement Mr. Baytos signed. That agreement contained the following pertinent language:

> (1)This settlement represents a compromised agreement of an adjudicated claim, wherein the Claimant, Steven Baytos, agrees to accept the total sum of $100,000.00, in consideration for a complete discharge with prejudice of any claim he may have now or in the future against the Employer, Family Dollar, third party administrator REM, or any of their successors in interest, as it related to a work injury of February 9, 2006, to the Claimant's heart, larynx, and eyes. All parties herein agree to settle this claim based upon a commutation the remaining weekly indemnity benefits to a lump sum of $85,740.82.
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> (2)The Claimant agrees to accept the additional sum of $12,000 in consideration for a full and final waiver of any and all rights to compensation for future medical expenses that may result from the work-related injury and $500 consideration for a full and final waiver of any and all rights to compensation for past medical expenses as a result from the work-related injury. Such waiver by the Claimant means that he forever waives any statutory or common law rights he may have now or in the future that would allow him to seek payment or reimbursement for medical expenses against Family Dollar, third party

> administrator REM, its workers' compensation insurer, or any of their successors in interest.
>
> (3)The Claimant further agrees to accept an additional sum of $1,500.00 in consideration for a full and final waiver of any and all rights he may have to reopen this claim under KRS 342.125, for any reason, including a change in condition.
>
> (4)…
>
> (5)The Claimant furthermore agrees to indemnify and hold harmless Family Dollar, third party administrator REM, or any of their successors in interest, with respect to any and all potential claims which may hereinafter arise as a result of the work-related injury.
>
> (6)… The Claimant further understands that this Agreement represents a complete dismissal with prejudice, and that he will be forever barred from seeking any medical, wage loss or vocational benefits for this claims [sic] as against Family Dollar, third party administrator REM, or any of their successors in interest. The Claimant further understands that he will be forever barred from reopening this claim for any increase in occupational disability.

The settlement agreement was approved, and the claim was dismissed with prejudice. Following Mr. Baytos' death, Mrs. Baytos sought benefits pursuant to KRS 342.750(1), which provides:

> If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the

> persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:
>
> > (1)(a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.

ALJ Joiner reasoned the right to benefits contained in KRS 342.750(1) belongs to the dependent. Though Mr. Baytos could waive his own right to reopen the claim, he had no authority to waive the rights of his dependents. Family Dollar argues Mrs. Baytos has no separate right of action under KRS 342.750 because her entitlement to benefits is derivative of her husband's claim. Because he settled his claim and expressly waived his right to reopen, no claim exists. It further emphasizes the public policy implications of allowing a settlement agreement to be set aside under these circumstances.

This matter appears to raise an issue of first impression in Kentucky. Our analysis must begin with the plain language of the statute, though it provides insufficient guidance in this case. KRS 342.750 simply states that the calculations contained in the provision shall be used when the work-related injury causes death.

It is silent as to whether a prior settlement agreement made during the worker's lifetime can bar recovery.

However, we bear in mind that the General Assembly intended the statute to "harmonize with related statutes." Jefferson County Bd. of Educ. v. Fell, 391 S.W.3d 713, 718 (Ky. 2012). The benefits set forth in both KRS 342.750 and KRS 342.730 are referred to as "income benefits." We also note KRS 342.750(6), which permits a lump sum death benefit to be paid to the claimant's estate "in addition to other benefits as provided by this chapter." KRS 342.750(1) contains no such language, instead referring to the award as "income benefits." For this reason, we are compelled to conclude the General Assembly intended KRS 342.730(1) and KRS 342.750(1) to be two alternate methods of calculating the same award of benefits, depending on whether the claimant died as a result of the injury. In this sense, the two provisions are mutually exclusive. To allow Mrs. Baytos' claim would be to frustrate this purpose, because it would effectively permit a claimant (or his dependents) to collect the same benefit – that is, income benefits - twice.

We also consider that Chapter 342 evinces a strong public policy favoring the prompt resolution of workers' compensation claims, with minimal litigation

expenses. Hitachi Automotive Products USA, Inc. v. Craig, 279 S.W.3d 123, 126 (Ky. 2008). Further, the Workers' Compensation Act encourages the settlement of claims. *See* Newberg v. Weaver, 866 S.W.2d 435, 438 (Ky. 1993). Public policy also favors the enforceability and acceptance of valid settlement agreements. In fact, "[t]he law is well established that an approved settlement agreement carries the force and effect of an award." *See* Bell v. Consol of Kentucky, Inc., 294 S.W.3d 459, 462 (Ky. App. 2009) *citing* Jude v. Cubbage, 251 S.W.2d 584, 586 (Ky. 1952). Thus, a claim, even one resolved by settlement agreement, may only be reopened pursuant to KRS 342.125. Furthermore, a claimant may validly waive his right to reopen. *See* Richey v. Perry Arnold, Inc., 391 S.W.3d 705, 710 (Ky. 2012). Here, Mr. Baytos was given specific consideration for the express waiver of his right to reopen.

This statutory analysis, however, does not satisfactorily resolve the issue presented by Mrs. Baytos' claim. Essentially admitting Mr. Baytos effectively waived his right to reopen the claim, it is her position that he was without authority to waive *her* right to reopen and pursue KRS 342.750(1) income benefits. This argument necessarily rests on the premise that her right to KRS 342.750(1) income benefits is wholly independent from Mr.

Baytos' right to benefits. We cannot agree. Any survivor's right to compensation under Chapter 342 is necessarily and inextricably linked to the worker's claim for compensation. Without Mr. Baytos' work-related injury, Mrs. Baytos would have no claim. Had Mr. Baytos not been eligible to be compensated for a work-related injury, Mrs. Baytos would likewise be ineligible. Her claim is derivative of his.

Given Kentucky's public policy encouraging the settlement of workers' compensation claims, and the derivative nature of survivor's benefits, we conclude an injured worker may compromise his or her surviving dependents' rights in a settlement agreement. In this case, we conclude Mr. Baytos effectively exercised this right and extinguished his survivor's right to compensation. Looking to the language contained in the settlement agreement, there is little doubt Mr. Baytos fully waived the right to reopen his claim, even in the event his condition worsened or "an increase in occupational disability." In addition to waiving any claim he may have in the future, the agreement references "any and all potential claims which may hereinafter arise as a result of the work-related injury." The waiver is not expressed in complicated legal terminology but in clear,

unambiguous terms. When read as a whole, the settlement agreement evinces the parties' intent to fully and finally settle Mr. Baytos' claim, even in the event his condition worsened. We believe the broad language of the agreement encompasses any claims relating to the worsening of an already grave injury, including claims brought by his survivors. Given that such occurrence was bargained for, it cannot therefore constitute a change of condition or mistake as contemplated by KRS 342.125.

We are sympathetic to Mrs. Baytos' position on appeal. Indeed, many states adhere to the policy that a settlement agreement cannot bind the worker's dependents in the event of his later death as a result of the work-related injury. *See generally* 100 CJS *Workers' Compensation* § 882. At least one Kentucky court has so opined, though in dicta. Brashear v. Old Straight Creek Coal Corp., 32 S.W.2d 717 (Ky. App. 1930) presented a similar factual situation, in which the claimant fully settled his claim during his life. After his subsequent death as a result of his injuries, his wife sought to reopen the claim. In directing the lower court, which had summarily dismissed the motion without a hearing, to consider the merits, the Court of Appeals stated, "If he acknowledged a final settlement, that would not prevent an

award to the widow, if, in truth and in fact, his death was brought about as the direct result of his injuries so received." Id. at 718. The Court offered no further explanation for the conclusion Mr. Brashear's final settlement would not bar his widow's claim for benefits, but seemed merely to be stating what was the majority rule at the time. Given the substantial development of the workers' compensation framework since Brashear was rendered, we do not find this single case to be particularly persuasive.

Rather, workers' compensation is a creature of statute and we are confined to the language contained in the Act. KRS Chapter 342 is silent as to the issue presented in this case. *C.f.* 820 ILCS 310/9 (West 1998)("The payment of compensation in lump sum to the employee in his lifetime upon order of the Commission, shall extinguish and bar all claims for compensation for death…"). Based on the language contained in the applicable statutes, we are compelled to the conclusion that a worker's full and final settlement of a claim, the valid waiver of his right to reopen for a worsening of condition, and the dismissal of his claim with prejudice effectively bars recovery for his subsequent death as a result of the work-related injury.

For the foregoing reasons, the February 3, 2014 Opinion and Award of Hon. Thomas G. Polites, Administrative Law Judge, and the June 19, 2012 Opinion and Order of Hon. Richard M. Joiner, Administrative Law Judge, are hereby **VACATED**. This matter is **REMANDED** to the ALJ with directions to dismiss the claim.

ALL CONCUR.

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