IN THE COURT OF APPEALS OF IOWA

FILED
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DIANA L. JOHNSON, PAUL V. JOHNSON and DIANA L. JOHNSON as next friend of EDWARD NEWMAN, LYNDA NEWMAN, JEFF JOHNSON and MICHAEL JOHNSON,

Plaintiffs-Appellants,

vs

HARLAN COMMUNITY SCHOOL DISTRICT,

Defendant-Appellee,

WEST DES MOINES SCHOOL DISTRICT and EMPLOYERS MUTUAL INSURANCE COMPANIES,

Intervenors-Appellees.

Filed March 9, 1988

7-366
87-341

Appeal from the Iowa District Court for Shelby County (No. 15767), Keith E Burgett, Judge.

The plaintiff appeals an order of the district court which allowed the intervenor a right to indemnity under Iowa Code section 85.22(1) from the proceeds of a recovery from a negligent third party for expenditures the intervenor made to furnish medical care for the plaintiff pursuant to section 85.27. **REVERSED.**

Jim Lawyer of Lawyer, Lawyer, Dutton & Drake of West Des Moines and James R. Van Dyke of Van Dyke & Werden, P.C., Carroll, for plaintiffs-appellants.

Larry D. Spaulding and Sheila K. Tipton of Bradshaw, Fowler, Proctor & Fairgrave, Des Moines, for intervenors-appellees.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

In this appeal we must determine whether an employer or insurer has a right to indemnity for medical benefits paid under the Iowa Workers' Compensation statute when there is a third-party recovery. Central to this determination is the question of whether medical benefits paid under Iowa Code section 85.27 are compensation as that term is used in Iowa Code section 85.22. We conclude they are not and reverse.

The plaintiff, Diana Johnson, is an employee of the West Des Moines School District. She was injured at the Harlan Community School while in the course of her employment. The intervenors, her employer and its insurer Employers Mutual Insurance Companies, paid her weekly benefits and medical expenses. Johnson then brought a negligence action against the Harlan Community School District. She recovered $80,250 after a jury trial.

Her employer and its insurer intervened and filed a notice of lien for its right to indemnity under Iowa Code section 85.22(1). They sought indemnity for the weekly benefits and medical expenses. The parties agreed the intervenors should be reimbursed for the weekly benefits but disputed the medical benefits claim. The trial court found the intervenors were entitled to reimbursement for the medical benefits furnished. Johnson appeals this decision.

Iowa Code section 85.22 provides in pertinent part:

> When an employee receives an injury . . . for which compensation is payable under this chapter . . . which injury is caused under circumstances creating a legal liability against some third person, . . . the employee may take proceedings against the employer for compensation and the employee . . . may also maintain an action against such third party for damages . . . . [In such case,] the following rights and duties shall ensue:
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> 1. If compensation is paid the employee . . . under this chapter, the employee by whom same was paid, or the employer's insurer which paid it, shall be indemnified out of the recovery to the extent of the payment so made, with legal interest, except for such attorney fees as may be allowed . . . and shall have a lien on the claim for

such recovery and the judgment thereon for the compensation for which the employer or insurer is liable.

Iowa Code section 85.27 provides in pertinent part:

The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

The resolution of this issue requires interpretation of relevant sections of the act. The general principles that guide our analysis are well-established. The ultimate goal is to determine and effectuate the intent of the legislature. Beier Glass Co. v. Brundige, 329 N.W.2d 280, 283 (Iowa 1983); Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530, 532 (Iowa 1981). We look to the object to be accomplished, the mischief to be remedied, or the purpose to be served, and place on the statute a reasonable or liberal construction which will best effect, rather than defeat, the legislature's purpose. Beier, 329 N.W.2d at 283. Peffers v. City of Des Moines, 299 N.W.2d 675, 678 (Iowa 1980). We avoid strained impractical or absurd results in favor of a sensible, logical construction. Iowa Beef Processors, Inc., 312 N.W.2d at 532. All parts of the statute must be considered together, without attributing undue importance to any single or isolated portion. Beier, 329 N.W.2d at 283. Where identical language is used several places in a statute, the word is given the same meaning. Id. at 286. The spirit of the statute must be considered along with its words, Hansen v. State, 298 N.W.2d 263, 265 (Iowa 1980), and the manifest intent of the legislature will prevail over the literal import of the words used. Beier, 329 N.W.2d at 283; Iowa Beef Processors, Inc., 312 N.W.2d at 533. The policy of the court is to liberally construe the workers' compensation statute in favor of the worker. Beier, 329 N.W.2d at 283.

Plaintiff contends that section 85.22 limits recovery by the employer or insurer to compensation paid the employee in the form of weekly payments and does not include recovery for medical benefits furnished to the employee. The employer and insurer argue that the term "compensation" is not used consistently in the statute and is meant to include all types of benefits, unless otherwise restricted.

There is ample support in the workers' compensation statute for the proposition that "compensation" includes weekly benefits and not medical benefits. See, e.g., Iowa Code § 85.36 (1985) ("the basis of compensation shall be the weekly earnings of the injured employee at the time of the injury"); Iowa Code § 85.30 (1985) ("compensation payments shall be made each week"); Iowa Code § 85.45 (1985) (future payments of compensation may be commuted to a present worth lump sum); but see Youngs v. Clinton Foods Inc., 188 F.Supp. 15, 17 (S.D. Iowa 1960) ("compensation" includes medical benefits). These Code sections clearly do not include medical benefits.

In Beier Glass Co. v. Brundige, 329 N.W.2d 280 (Iowa 1983), the supreme court noted that the legislature differentiated between the terms "compensation" and "benefits" in the statute's statute of limitation provisions. "Benefits" has been held to include medical payments. Powell v. Bestwall Gypsum Co., 255 Iowa 937, 942, 124 N.W.2d 448, 451 (1963). Powell also held "weekly compensation" did not include medical benefits. Id. Medical benefits were held not to be "weekly benefits." Id. In Beier, the supreme court then determined that "compensation" only meant "weekly benefits" in the statute of limitations provision. Beier, 329 N.W.2d at 285.

These Code sections and the supreme court's interpretations of the terms indicate to us that the legislature did not intend the term "compensation" to include medical benefits. We also conclude that allowance of a potential double recovery is justified since the employer has control over what medical services,

and their attendant costs, will be provided There is also the problem of how to allocate a judgment when the jury has not awarded damages in excess of the employer's medical services outlay

For these reasons we hold that "compensation" does not include medical benefits and an employer or insurer is not entitled to be indemnified under Iowa Code section 85 22 for medical benefits provided pursuant to Iowa Code section 85 27

The judgment of the district court is reversed

REVERSED

Schlegel, J concurs, Sackett, J dissents

SACKETT, J. *(dissenting)*

I respectfully dissent.

I believe the federal district court correctly decided that section 85.22 permits reimbursement of the employer or its insurer for medical expenses paid in behalf of the employee in Youngs v. Clinton Foods, Inc., 188 F.Supp. 15, 20 (S D. Iowa 1960). The majority's narrow interpretation of the term "compensation" ignores the broader use of the word in other sections of the statute Id.; see, e.g., §§85.2, .3, .16, .23, .29, .30, .38(1), .54, .55 (1985).

The majority's decision is also inconsistent with the plain purpose of section 85 22 to prevent double recovery by the injured worker. Liberty Mut. Ins. Co. v Winter, 385 N.W.2d 529, 532 (Iowa 1986).

I would hold that an employer or insurer is entitled to reimbursement under Iowa Code section 85.22 for medical benefits paid under section 85.27. I would affirm the district court.