

1978

Kennecott Copper Corporation v. The Industrial Commission of Utah and Bill Bilanzich : Plaintiff's Brief

Utah Supreme Court

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Recommended Citation

Brief of Appellant, *Kennecott Copper Corp. v. Industrial Comm. Of Utah*, No. 15939 (Utah Supreme Court, 1978).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

KENNECOTT COPPER CORPORATION,)
Utah Copper Division,)
)
Plaintiff,)
)
v.)
)
THE INDUSTRIAL COMMISSION OF)
UTAH and BILL BILANZICH,)
)
Defendants.)

CASE NO. 15939

PLAINTIFF'S BRIEF

ORIGINAL PROCEEDING TO REVIEW AN AWARD
OF THE INDUSTRIAL COMMISSION OF UTAH

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FILED

OCT 6 1978

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IN THE SUPREME COURT
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KENNECOTT COPPER CORPORATION,)
Utah Copper Division,)

Plaintiff,)

v.)

THE INDUSTRIAL COMMISSION OF)
UTAH and BILL BILANZICH,)

Defendant.)

PLAINTIFF'S BRIEF

Case No. 15939

* * * * *

I. STATEMENT OF NATURE OF CASE

This is an original proceeding before the Supreme Court of Utah for the purpose of having the lawfulness of an Order, dated May 5, 1978, and finalized on June 19, 1978, by the Industrial Commission of Utah in proceedings entitled Bill Bilanzich, Applicant, v. Kennecott Copper Corporation, Utah Copper Division, Defendant, File No. 2U5-6114, inquired into and determined as provided by §35-1-83, Utah Code Annotated, 1953, as amended.

II. DISPOSITION BY

THE INDUSTRIAL COMMISSION OF UTAH

On May 5, 1978, the Industrial Commission of Utah, through its Administrative Law Judge Richard G. Sumsion, in Claim No. 2U5-6114, issued Findings of Fact and Conclusions of Law and Order in favor of Applicant Bill Bilanzich and against Defendant Kennecott Copper Corporation. Kennecott on May 12, 1978, filed with the Commission a Motion for Review of the said May 5, 1978 Order. The motion for review was denied by Denial

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of Motion for Review, entered by the Industrial Commission of Utah on June 19, 1978. Plaintiff thereupon filed this action with the Supreme Court of Utah on July 11, 1978.

III. RELIEF SOUGHT ON REVIEW

Plaintiff, Kennecott Copper Corporation, upon this review seeks to have the Order issued by the Industrial Commission on May 5, 1978, and finalized on June 19, 1978, set aside in its entirety.

IV. STATEMENT OF FACTS

The essential facts pertinent to this controversy are not in dispute and may be summarized as follows:

Applicant Bill Bilanzich filed his claim for compensation with the Commission on May 18, 1977, alleging that he had sustained a wrist injury by accident in the course of his employment with Kennecott Copper Corporation on or about May 20, 1974. However, testimony entered at the hearing with respect to the alleged injury clearly indicated--and the Administrative Law Judge so found (R. 97)--that the Applicant's alleged incident occurred prior to March 8, 1974, and that his claim for compensation, therefore, clearly was not filed within three years from the date of the alleged injury. The Administrative Law Judge also found, as contended by Plaintiff Kennecott Copper Corporation, that no compensation benefits of any kind by way of temporary total disability benefits, temporary partial disability benefits or permanent partial disability benefits were paid by plaintiff to Mr. Bilanzich. The administrative Law Judge found further (R. 98) --and the evidence so showed--that Applicant Bilanzich did not report his alleged incident and injury until September 23, 1974 when he appeared at the Company's Bingham

Dispensary and received treatment for his alleged wrist injury from Dr. John A. Gubler, a physician retained by the plaintiff Kennecott Copper Corporation to handle and treat both industrial and non-industrial injuries and illnesses of Kennecott employees working at its Bingham Mine operations. The Administrative Law Judge then found as a matter of Law that the medical treatment rendered to the Applicant by Dr. Gubler on September 23, 1974, constituted the "payment of compensation" under the provisions of §35-1-99, Utah Code Annotated, of the Utah Workmen's Compensation Act, so that the claim filed by the Applicant on May 18, 1977 was filed within three years from the "date of the last payment of compensation" thus satisfying the requirements of §35-1-99, Utah Code Annotated, (R. 99). Plaintiff filed a Motion for Review on May 12, 1978 (R. 102) asserting that §35-1-99, Utah Code Annotated, as construed by the Utah Supreme Court in Gardner v. Industrial Commission, 30 Utah 2d 377, 517 P.2d 1329 (Dec. 1973) clearly excludes the rendering of medical treatment as "payment of compensation" within the language and intent of §35-1-99 (R. 104). The Industrial Commission on June 19, 1978, rejected plaintiff's assertions, issued its Denial of Motion for Review and affirmed the Order of the Administrative Law Judge. (R. 107) Plaintiff filed this action on July 11, 1978, requesting the Supreme Court of Utah to set aside the Order of May 12, 1978, as finalized by the Denial of Motion for Review issued on June 19, 1978 (R. 110).

V. STATEMENT OF POINTS

POINT I

THE RENDERING OF MEDICAL TREATMENT
IS NOT "PAYMENT OF COMPENSATION"
WITHIN THE LANGUAGE AND INTENT
OF §35-1-99, UTAH CODE ANNOTATED,
AS CONSTRUED BY PRIOR DECISIONS
OF THE SUPREME COURT OF UTAH.

VI. ARGUMENT

POINT I

THE RENDERING OF MEDICAL TREATMENT
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AS CONSTRUED BY PRIOR DECISIONS
OF THE SUPREME COURT OF UTAH.

The sole issue before the Court in this case is one of Law, i.e., whether or not under the Limitation of Action provisions of §35-1-99, U.C.A., 1953, as amended, the rendering of medical treatment is to be considered "payment of compensation" so as to extend for Mr. Bilanzich the time for filing his claim for workmen's compensation benefits with the Industrial Commission.

Section 35-1-99 reads in its entirety as follows:

When an employee claiming to have suffered an injury in the service of his employer fails to give notice to his employer of the time and place where the accident and injury occurred, and of the nature of the same, within forty-eight hours, when possible, or fails to report for medical treatment within said time, the compensation provided for herein shall be reduced fifteen per cent; provided, that knowledge of such injury obtained from any source on the part of such employer, his managing agent, superintendent, foreman or other person in authority, or knowledge of any assertion by the injured sufficient to afford an opportunity to the employer to make an investigation into the facts and to provide medical treatment shall be equivalent to such notice; and no defect or inaccuracy therein shall sub-

ject the claimant to such reduction, if there was no intention to mislead or prejudice the employer in making his defense, and the employer was not, in fact, so misled or prejudiced thereby. If no notice of the accident and injury is given to the employer within one year from the date of the accident, the right to compensation shall be wholly barred. If no claim for compensation is filed with the Industrial Commission within three years from the date of the accident or the date of the last payment of compensation, the right to compensation shall be wholly barred. (Emphasis Supplied).

In his findings, the Administrative Law Judge asserted that compensation includes the payment of medical expenses and, as a conclusion of law, held as follows: "It is the opinion of the Administrative Law Judge that the rendition of medical treatment by the Company retained physician whose services are paid for by the Company, constitutes the payment of compensation under the Workmen's Compensation Act, and serves to extend the time within which a claim can be filed, so that the claim filed by the Applicant on May 18, 1977, was filed within three years from the date the last compensation was paid, thus satisfying the requirement of §35-1-99." (R. 99). It is the position of plaintiff, Kennecott Copper Corporation, that medical treatment and expenses are considered separate and apart from "compensation" under the Utah Workmen's Compensation Act as construed by prior decisions of this Court, and that the rendering of medical treatment is excluded from consideration as "payment of compensation" within the Limitation of Action provisions of §35-1-99, U.C.A., 1953, as amended. In Gardner v. Industrial Commission, 30 Utah 2d 377, 517 P.2d 1329 (Dec. 28, 1973), a workmen's compensation case involving the same controlling statute as here, i.e., §35-1-99, and involving cir-

cumstances almost identical to those existing herein, the Industrial Commission argued, as here, that the statute mentioned starts to run from the date of the last medical treatment, rather than from the date of the injury or the date of payment of compensation benefits. This Court, in a unanimous decision, held that there was no basis for such a construction of §35-1-99, and that under that Section, the time to file a claim starts to run either from the date of accident or the date of last compensation, and not from the date of last treatment. It is significant to note that the Court in rejecting the Commission's argument that medical treatment may be construed as payment of compensation under §35-1-99, stated that: "the plain and clear language of the statute" excludes medical treatment from consideration as payment of compensation and leaves "the matter of changing the language to the legislature if it chooses to liberalize, clarify or otherwise rewrite it." (30 Utah 2d at 378).

Additional evidence that medical treatment is not "payment of compensation" within the language and intent of the Utah Workers Compensation Act is found in the language of Section 35-1-81, Utah Code relating to medical expenses which reads as follows: "In addition to the compensation provided for in this title the employer or the insurance carrier shall also be required to pay such reasonable sum for medical, nurse and hospital services and for medicines, and provide such artificial means and appliances as may be necessary to treat the patient as in the judgement of the Industrial Commission may be just" (Emphasis supplied)

Such language clearly distinguishes between the payment of compensation on the one hand and the payment for the various types of medical expenses on the other. Such a distinction was recognized

by this Court in Kennecott Copper Corporation vs. Anderson, 30 Utah 2nd 102, 514 P. 2(d) 217 (September, 1973) in which it was held that limitation provisions applicable to compensation payments could not be expanded to include medical and hospital expenses. Pertinent hereto is the following language of the Court:

"It is often said that it should be assumed that all of the words used in a statute were used advisedly and were intended to be given meaning and effect." (citing Gord v. Salt Lake City, 20 Utah 2nd 138, 434 P. 2 (d) 449) and further:

"For the same reasons, the omissions should likewise be taken note of and given effect." ¹

Finally, it is significant that the Court in that decision (30 Utah 2nd at 104) as in the Gardner case ² and the Nielsen case ³, pointed out that "the question of any desired clarification may well commend itself to the attention of the legislature." To date, the Utah Legislature has not, expressly or by implication, made any changes in the Limitation of Action provisions of §35-1-99. We submit, therefore, that both the language and the intent of the limitation of action requirements of §35-1-99, Utah Code Annotated, 1953, as amended, remain as construed by the Utah Supreme Court in Gardner v. Industrial Commission, and that the claim for compensation benefits of Applicant Bill Bilanzich in this controversy is barred by §35-1-99, because it was not filed within three years from the date of the accident or the date of the last payment of compensation as required by the statute.

1. 30 Utah 2nd at 105, citing Estate of Barnett, 97 Cal. App. 138, 275 P. 453.
2. 517 P. 2nd at 378.
3. United States Smelting, Refining and Mining Co. v. Nielsen, 19 Utah 2nd 239, 441 P. 2d 162, 164.

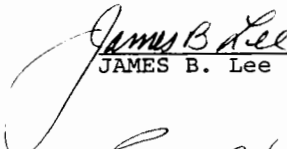
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VII. CONCLUSION

Applicant's alleged wrist injury occurred prior to March 8, 1974; his claim for compensation benefits was not filed with the Industrial Commission until May 18, 1977, more than three years after his injury and more than three years after the last payment of compensation. His claim for compensation, therefore, is barred by the Limitation of Action provisions of §35-1-99, Utah Code Annotated, 1953, as amended, as interpreted and construed by the decisions of the Utah Supreme Court referred to hereinabove. We submit, therefore, that the Order heretofore entered by the Industrial Commission on May 5, 1978, and finalized on June 19, 1978, was contrary to law and properly should be set aside.

RESPECTFULLY submitted, this 6th day of OCTOBER, 1978.


JAMES B. Lee


ERIE V. BOORMAN

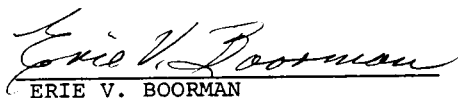
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CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true
and correct copy of the foregoing Plaintiff's Brief in Case
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