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NO. COA01-500

NORTH CAROLINA COURT OF APPEALS

Filed: 5 February 2002

TANYA M. TISE, Executrix of the
Estate of Aaron G. Tise, Jr.
Plaintiff

v.

Forsyth County
No. 94 CVS 4289

YATES CONSTRUCTION
COMPANY, INC.,
Defendant

Appeal by unnamed interested party City of Winston-Salem from order entered 15 November 2000 by Judge Russell G. Walker, Jr. in Forsyth County Superior Court. Heard in the Court of Appeals 14 January 2002.

Metcalf & Beal, L.L.P., by W. Eugene Metcalf, for plaintiff- appellee.

Wilson & Iseman, L.L.P., by S. Ranchor Harris, III, for appellant City of Winston Salem.

BRYANT, Judge.

Decedent Aaron G. Tise, Jr., a twenty-four year veteran of the City of Winston-Salem Police Department, was killed in the line of duty when a suspect ran over him with a road grader owned by defendant Yates. Plaintiff Tanya M. Tise, decedent's widow and the executrix of his estate, filed suit against Yates for negligently failing to secure the construction site where the bulldozer was located. Before trial, Yates settled the lawsuit for \$500,000. Having paid \$172,572

in workers' compensation death benefits to the decedent's estate, the City placed a subrogation lien against plaintiff's recovery from Yates.

Pursuant to N.C.G.S. §97-10.2(j), plaintiff filed a motion for determination of the City's subrogation lien amount. A hearing was held on the motion on 30 October 2000 with the Honorable Russell G. Walker, Jr. presiding. In his order striking the subrogation lien, Judge Walker found as follows:

2. [Plaintiff] has received workers' compensation benefits from the City of Winston[-]Salem in the total amount of \$172,572. There are no additional or future workers' compensation benefits to be paid[.]

3. . . . [Plaintiff and Yates] have reached a settlement in the amount of \$500,000. Plaintiff's net recovery will be reduced by the legal expenses and costs associated with this action.

4. The present value of the economic loss sustained by the plaintiff is \$702,572. This does not include other damages which are provided under N.C.G.S. [§] 28A-18-2 [(1999)].

5. The Court, in its discretion, finds and concludes that the amount of the settlement obtained by the plaintiff is inadequate to compensate plaintiff for the loss sustained and to allow the City of Winston-Salem to recover the workers['] compensation lien for benefits paid in this case would be inequitable under the particular facts and circumstances of this case.

The City appealed from this order.

The relevant provision of the workers' compensation statute provides as follows:

[I]n the event that a settlement has been agreed upon by the employee and the third party, either party may apply . . . to determine the subrogation amount. . . . [T]he judge shall determine, in his discretion, the amount, if any, of the employer's lien, whether based on accrued or prospective workers' compensation benefits, and the amount of cost of the third-party litigation to be shared between the employee and employer. The judge shall consider the anticipated amount of prospective compensation the employer or workers' compensation carrier is likely to pay to the employee in the future, the net recovery to

plaintiff, the likelihood of the plaintiff prevailing at trial or on appeal, the need for finality in the litigation, and any other factors the court deems just and reasonable, in determining the appropriate amount of the employer's lien.

N.C.G.S. §97-10.2(j) (1999).

The City asserts that Judge Walker abused his discretion in setting aside the subrogation lien, in light of the evidence that Tise's family would recover in excess of \$1 million from various sources including decedent's pensions, life insurance policies, and state and federal death benefits. It claims the court had "no good reason" for striking the lien where the evidence shows plaintiff "will be adequately compensated" with the lien in place. The City notes it was not found to be at fault in decedent's death, arguing, "The spirit of [G.S. §97-10.2(j)] is to protect insurers or employers where the ultimate injury is caused by a third party[.]"

"[T]he superior court has discretionary authority, pursuant to [N.C.G.S. §] 97-10.2(j), to reduce or eliminate an employer's lien on the proceeds of an employee's settlement with a third party." *In re Biddix*, 138 N.C. App. 500, 503, 530 S.E.2d 70, 72 (citing *Wiggins v. Bushranger Fence Co.*, 126 N.C. App. 74, 483 S.E.2d 450, *disc. review denied*, 346 N.C. 556, 488 S.E.2d 825 (1997)), *disc. review denied*, ___ N.C. ___, 545 S.E.2d 418 (2000). This discretion is "not unbridled or unlimited. Rather, the trial court is to make a reasoned choice, a judicial value judgment, which is factually supported." *Allen v. Rupard*, 100 N.C. App. 490, 495, 397 S.E.2d 330, 333 (1990), *rev. allowed by* 328 N.C. 270, 400 S.E.2d 449 (1991). The court's order must contain "findings of fact and conclusions of law sufficient to provide for meaningful appellate review." *Id.* However, "there is no mathematical formula or list of factors for a trial court to employ when making disbursement decisions[.]" *Biddix*, 138 N.C. App. at 504, 530 S.E.2d at 72.

We believe the trial court made sufficient findings and conclusions to support its decision. As directed by statute, the court found the total amount of workers' compensation

benefits paid to plaintiff by the City, \$172,572, and found that no additional prospective compensation was forthcoming. The court found the present value of the economic loss arising from decedent's death as \$702,572, as calculated by plaintiff's economist, Dr. Finley Lee. Significantly, the court found this amount failed to account for other damages available to plaintiff under N.C.G.S. §28-18.2. Such damages include "compensation for pain and suffering of the decedent" and "[s]ociety, companionship, comfort, guidance, kindly offices and advice of the decedent[.]" N.C.G.S. §28A-18-2(b)(2), (4) (1999). The court set forth the settlement amount of \$500,000 but found that "[p]laintiff's net recovery will be reduced by the legal expenses and costs associated with this action." In light of these findings, the court concluded that the settlement was "inadequate to compensate plaintiff for the loss sustained" and that allowing the City to recover under its workers' compensation lien "would be inequitable under the particular facts and circumstances of this case." We cannot say these conclusions were manifestly unreasonable.

The City points to a document it presented to the trial court which purports to list additional proceeds plaintiff would receive from various sources for decedent's death. However, we are unpersuaded that this list invalidates the court's ruling. We note, for example, that the pension benefits cited by the City were presumably due to be paid without regard to this incident and are not in the nature of death benefits. Moreover, we find no authority requiring the trial court to enter findings of fact with regard to benefits accruing to plaintiff from decedent's life insurance policies, state and federal agencies, or other law enforcement organizations in determining the amount, if any, of the City's lien against plaintiff's settlement with Yates. Finally, while not conclusive on the issue before us, we note the City cites no case in which an appellate court of this state has overturned a trial court's discretionary reduction or elimination of

a subrogation lien under N.C.G.S. §97-10.2(j). However, there are several cases in which our appellate courts have affirmed a trial courts discretion in reducing or eliminating subrogation liens. *See Biddix*, 138 N.C. App. at 505, 530 S.E.2d at 72-73; *U.S. Fidelity and Guaranty Co. v. Johnson*, 128 N.C. App. 520, 522, 495 S.E.2d 388, 390 (1998); *Wiggins*, 126 N.C. App. at 77, 483 S.E.2d at 452; *Allen*, 100 N.C. App. at 494, 397 S.E.2d at 333.

Because the trial court made sufficient findings of fact and conclusions of law to support its decision, we affirm the order of the trial court.

Affirmed.

Judges WYNN and THOMAS concur.

Report per Rule 30(e).