

RENDERED: JUNE 24, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000845-MR

BERNARD LEACHMAN, JR.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 01-CI-007164

GEICO INSURANCE CO. AND
J.D. RAINE, JR.

APPELLEES

OPINION AND ORDER
(1) REVERSING AND REMANDING
AND
(2) DENYING MOTION TO STRIKE

** ** * * *

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Bernard Leachman, Jr., appeals from the January 29, 2004, Order of the Jefferson Circuit Court denying his motion for attorney's fees. We reverse and remand.

Leachman was the attorney for Stephen Dunn, Sr., LaShonda Dunn and Shawn M. Dunn (collectively referred to as the Dunns) in an action against Jamel E. Coleman for injuries sustained in an automobile accident. Appellee, GEICO Insurance

Company (GEICO), intervened in the action and asserted its statutory right of subrogation for Basic Reparation Benefits (BRB) paid to its insureds, the Dunns.

Following a jury trial, judgment in the amount of \$10,791.27 was entered in favor of the Dunns. The judgment included \$4,916.27 for reimbursement to GEICO for BRB paid to the Dunns. Thereafter, Leachman filed a motion for attorney's fees pursuant to Kentucky Revised Statutes (KRS) 304.39-070(5). The circuit court denied the motion. This appeal follows.

Leachman contends that KRS 304.39-070(5) mandates that he is entitled to a reasonable attorney's fee as a matter of law.

KRS 304.39-070(5) states, in relevant part, as follows:

(5) An attorney representing a secured person in any action filed under KRS 304.39-060 shall be entitled to a reasonable attorneys' fee in the event that reparation benefits paid to said secured person by that secured person's reparation's obligor are reimbursed by any insurance carrier on behalf of a tortfeasor who is the defendant in any such action filed by the said secured person

KRS 304.30-070(5) clearly provides for a reasonable attorney's fee when the attorney for the secured person recovers reimbursement of BRB previously paid by the reparations obligor. Woodall v. Grange Mutual Casualty Co., 648 S.W.2d 871 (Ky.

1983). It is well-established, however, that before the attorney is entitled to the fee a benefit must have been conferred upon the reparation obligor. Baker v. Motorists Insurance Cos., 695 S.W.2d 415 (Ky. 1985). "Such a benefit results from establishing liability, from establishing the right to payment of disputed medical expenses or wages, or by other proof of benefit conferred." Id. at 417.

In the case sub judice, GEICO was reimbursed \$4,916.27 for BRB previously paid to the Dunns; however, GEICO contends that it received no benefit from the receipt of those funds. GEICO argues that it did not benefit from the \$4,916.27 BRB payment because Leachman rejected an offer to settle which allegedly included some \$8,649.00 in BRB.

We observe that the settlement offer was an offer to settle the entire case. Thus, any benefit claimed by GEICO is purely speculative. As the offer included settlement of all claims, GEICO could not have received the amount offered for BRB without the injured parties foregoing their right to seek a full recovery.¹

Pursuant to KRS 304.39-070(5), we are of the opinion that Leachman is entitled to a reasonable attorney's fee. Upon

¹ We also observe that the decision whether to settle the case was in the sole discretion of the Dunns, not Leachman as their attorney. We have been cited to no evidence in the record nor have there been any allegations that Leachman misrepresented the wishes of his clients regarding settlement.

remand, the circuit court is directed to award Leachman a reasonable fee.

Leachman also moved this Court to strike any reference to pretrial settlement negotiations from GEICO's brief. Leachman contends that allowing such reference would "chill litigating parties' desires and attempts to resolve litigation by pre-trial [sic] settlement." We disagree. We considered the offer to settle for the sole purpose of determining whether a benefit was conferred upon GEICO.

NOW THEREFORE BE IT ORDERED that the Motion to Strike is hereby DENIED.

For the foregoing reasons, the Order of the Jefferson Circuit Court is reversed and this cause remanded for proceedings consistent with this opinion, and the motion to strike is denied.

ALL CONCUR.

ENTERED: June 24, 2005

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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