

OPINION ANNOUNCING THE JUDGMENT OF THE COURT

MR. JUSTICE EAKIN

DECIDED: DECEMBER 28, 2007

John Gillette, a middle school teacher, was shot and killed by a student, Andrew Wurst, while chaperoning an eighth-grade dance. Wurst also shot another student, Jacob Tury, who survived without permanent injury. Appellant Utica National Insurance Group is the workers' compensation provider for General McLane School District, where the decedent worked and was killed. Utica paid fatal claim benefits to John Gillette's wife, Debbie Gillette ("Gillette").

Gillette, as executor of the decedent's estate, commenced a wrongful death action against Wurst and his parents. The Wrongful Death Statute states:

(a) General rule.--An action may be brought, under procedures prescribed by general rules, to recover damages for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another if no recovery for the same damages claimed in the wrongful death action was obtained by the injured individual during his lifetime and any prior actions for the same injuries are consolidated with the wrongful death claim so as to avoid a duplicate recovery.

(b) Beneficiaries.--...[T]he right of action created by this section shall exist only for the benefit of the spouse, children or parents of the deceased The damages recovered shall be distributed to the beneficiaries in the proportion they would take the personal estate of the decedent in the case of intestacy and without liability to creditors of the deceased person under the statutes of this Commonwealth.

42 Pa.C.S. § 8301(a)-(b) (emphasis added). Jacob Tury also brought an action against the Wursts, and the two cases were consolidated. Tury and Gillette agreed to settle their claims against the Wursts for the \$300,000 limit of the Wursts' homeowners' insurance policy; Gillette was to receive \$288,000, and Tury would receive the remainder.

If Pennsylvania's intestacy scheme was used to distribute the Gillettes' award, as prescribed by § 8301(b), the remainder of the \$288,000 award after payment of counsel

fees and costs would have provided Gillette with a spousal share of \$109,493.77; each of the decedent's three children would have received \$26,497.93.¹ However, under the proposed settlement agreement, Gillette waived her right to any share of the settlement funds, with the exception of \$12,000 for the decedent's funeral expenses; the remaining net funds were to be distributed among the three children. Daughter Abby Gillette was to receive \$146,987.55, and the couples' two sons each were to receive \$15,000. Although the complaint included claims for both wrongful death and survival, the parties did not apportion the settlement.

The parties petitioned the court for approval of the proposed settlement and distribution; the same day, appellant filed a petition to intervene, asserting it was entitled to subrogate Gillette's share of the settlement to recover the \$167,934 in fatal claim benefits it paid to her following her husband's death. Appellant cited § 671 of the Workers' Compensation Act, 77 P.S. § 1 et seq., in support of its claim. Section 671 states:

§ 671. Subrogation of employer to rights of employee against third persons; subrogation of employer or insurer to amount paid prior to award

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the

¹ Section 2102 of the Probate, Estates and Fiduciaries Code (PEF Code) states:

The intestate share of a decedent's surviving spouse is:

* * *

(3) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first \$30,000 plus one-half of the balance of the intestate estate.

20 Pa.C.S. § 2102(3). Section 2103 provides that if there is no surviving spouse or if there remains a balance to which the surviving spouse is not entitled, the balance shall pass to the decedent's issue, if any exist. Id., § 2103(1). Each of the decedent's issue shall take in equal shares. Id., § 2104.

employee, his personal representative, his estate or his dependents, against such third party to the extent of the compensation payable under this article by the employer

Id., § 671 (footnote omitted).

The trial court granted Utica's petition to intervene, but determined it was without jurisdiction to resolve the subrogation issue, citing Romine v. WCAB (CNF, Inc./The Potato Sack), 798 A.2d 852, 856-57 n.10 (Pa. Cmwlth. 2002) ("The Court of Common Pleas has no jurisdiction to adjudicate matters under the [Workers' Compensation] Act, including the issues of the application of any subrogation liens.") (citations omitted). Trial Court Opinion, 1/27/04, at 2. With regard to the petition to approve the wrongful death settlement, the court concluded, "[t]here is nothing in the law which precludes all of those entitled to recover under the Wrongful Death Statute from agreeing on a different manner of distribution." Id., at 3. The court approved the settlement, and Utica appealed.

Utica argued the distribution set forth in the Wrongful Death Statute is the exclusive means of distribution, citing Seymour v. Rossman, 297 A.2d 804 (Pa. 1972), which held the intestate distribution referred to in the Wrongful Death Statute is mandatory.² Utica asserted Gillette was compelled to take the first \$30,000 plus one-half of the balance, and

² In Seymour, the trial court initially approved a settlement and distribution that awarded the greater part of the third-party settlement proceeds to the decedent's surviving spouse and awarded the decedent's minor daughter from a prior marriage only a slight pay-out. Upon the daughter's objection, the trial court vacated its order approving the settlement and instead ordered a distribution in equal shares to each woman, as prescribed by the applicable provision of the intestacy law at that time. Id., at 806. The widow appealed, arguing the proceeds of a wrongful death action need not be distributed in strict compliance with the intestate distribution scheme. She asserted since the Statute was enacted to compensate each dependent relative for the loss they suffered due to the death, the parties should be permitted to fashion a distribution scheme to achieve that goal. On appeal, this Court rejected the widow's argument, finding "[t]he expression of intent of the legislature that distribution of the funds recovered under the Wrongful Death Act of 1855 be distributed in accordance with the manner provided for distribution in the event of intestacy is unmistakably clear." Id., at 808-09 (footnote omitted).

Utica should have been permitted to subrogation from that spousal share pursuant to § 671 of the Workers' Compensation Act. Utica argued that even if Gillette wished to accept an alternative distribution scheme, she was nevertheless precluded from structuring it in a way that defeated Utica's right of subrogation under § 671.

The Superior Court determined it was unnecessary to address the trial court's conclusion that it lacked jurisdiction to determine or enforce Utica's subrogation interest in order to settle Utica's claims. The court reasoned that although the right of subrogation created by § 671 of the Act is absolute and cannot be defeated by the parties' construction of a settlement, "this proposition assumes that the 'claimant' against whom the subrogation interest is asserted holds a current, legally enforceable interest in the proceeds of the 'third party recovery,' or, at least acceded to the recovery at some prior time and exercised dominion over it." Gillette v. Wurst, 869 A.2d 488, 495 (Pa. Super. 2005).

The court noted the plain language of § 6201 permits individuals who are "entitled to take by intestacy" to disclaim. Id., at 494. It contrasted this phrase with the language from § 8301(b) of the Wrongful Death Statute, which states an award under the Statute shall be distributed as it would be distributed "in the case of intestacy." Id. The court considered these two provisions and the broad nature of the right to disclaim granted by § 6201, and concluded nothing in Seymour, the Wrongful Death Statute, or the Workers' Compensation Act limits the broad right to disclaim granted by the disclaimer provision of the PEF Code.³

³ Section 6201 of the PEF Code allows an intestate beneficiary to disclaim an intestate share:

A person to whom an interest in property would have devolved by whatever means, including a beneficiary under a will, an appointee under the exercise of a power of appointment, a person entitled to take by intestacy, a joint tenant with right of survivorship, a donee of an inter vivos transfer, a donee under a third-party beneficiary contract (including beneficiaries of life insurance and annuity policies and pension, profit-sharing and other employee benefit plans), and a person entitled to a disclaimed interest, may
(continued...)

Id., at 493-94. “[S]ection 6201 casts a wide net, encompassing not merely the interest of ‘a person entitled to take by intestacy,’ but also the interest of anyone ‘to whom an interest in property would have devolved by whatever means.’” Id., at 494 (quoting 20 Pa.C.S. § 6201). The court determined § 671 of the Act and the cases interpreting it establish only that a “workers’ compensation claimant may not apportion his interest in a third party tort recovery to defeat a workers’ compensation subrogation interest. Should he attempt to do so, his apportionment will be deemed voidable to the extent that it operates to defeat a subrogation lien for benefits paid as compensation for the same underlying injury.” Id., at 496.

Having concluded Gillette rightfully disclaimed her interest in the settlement—and since a disclaimant is treated as having predeceased the decedent—the court determined Utica was not entitled to subrogate Gillette’s share of the recovery since she never had any interest in that recovery. Since Utica was only entitled to assert its subrogation lien against Gillette, and not against her children,⁴ the court affirmed the trial court’s order approving the proposed settlement and distribution. Id., at 494-95.

This Court granted allowance of appeal to consider whether a party claiming entitlement to payment under the Wrongful Death Statute may disclaim her share of those

(...continued)

disclaim it in whole or in part by a written disclaimer The right to disclaim shall exist notwithstanding any limitation on the interest in the nature of a spendthrift provision or similar restriction.

20 Pa.C.S. § 6201.

⁴ “[W]here a widow institutes a [workers’] compensation action[, 77 P.S. § 671,] and an increased award to her is generated by the presence or existence of children, the compensation carrier is not subrogated to the recovery received by the children in a wrongful death action.” Anderson v. Greenville, 273 A.2d 512, 515 (Pa. 1971).

proceeds once offered, when her disclaimer effectively negates the valid entitlement to subrogation of an insurance carrier. As this is a question of law, our scope of review is plenary, and our standard of review is de novo. Kopko v. Miller, 892 A.2d 766, 770 (Pa. 2006).

We initially address the trial court's jurisdiction. The trial court approved the proposed settlement, finding nothing in the Wrongful Death Statute prohibited the parties from agreeing on a distribution that differed from the intestate scheme set forth in § 8301(b) of the Statute, but noted its decision "is not intended to approve of the distribution for any purposes other than those attendant to the Wrongful Death Statute. The parties' settlement agreement does not apportion damages to a particular type of claim such as loss of consortium, and the Wrongful Death Statute does not authorize the [c]ourt to make an independent judgment in that regard." Trial Court Opinion, 1/27/04, at 3 (citing Thompson v. WCAB (USF&G Co.), 801 A.2d 635 (Pa. Cmwlth. 2002) (claimant cannot avoid employer's statutory subrogation lien by apportioning third-party award to pain and suffering rather than lost wages)).

There is no question Utica is entitled to subrogation under the plain language of the Act since this case clearly involves a compensable injury caused by the act of a third party. Under § 671, Utica "shall be subrogated to the right of the employe, his personal representative, his estate or his dependents, against such third party" for any workers' compensation benefits paid. 77 P.S. § 671. However, it is equally clear that the legislature intended for an award under the Wrongful Death Statute to be administered as it would be in the case of intestacy, and that the broad right to disclaim under the PEF Code allows "[a] person to whom an interest in property would have devolved by whatever means, including ... a person entitled to take by intestacy" to disclaim it. 20 Pa.C.S. § 6201.

The courts of common pleas lack jurisdiction to adjudicate Workers' Compensation claims including issues involving subrogation. Romine, at 856-57 n.10. However, the issue

here does not arise solely under the Workers' Compensation Act; rather, it demands consideration of the interplay between Utica's unquestioned right of subrogation under the Act, Gillette's right to a wrongful death award, and the intestacy laws. Therefore, this matter was properly filed before the trial court rather than an administrative law judge, who would not be in position to adjudicate the wrongful death issue. It is the existence of the valid subrogation claim, not jurisdiction to adjudicate it in the first place, that answers the issue.

The Workers' Compensation Act provides an absolute right of subrogation, and its purpose is threefold: it prevents double recovery by the claimant for the same injury, it ensures that an employer is not required to pay for the negligence of a third party, and it prevents a third party from escaping liability for his wrongful conduct. Brubacher Excavating, Inc. v. WCAB (Bridges), 835 A.2d 1273, 1277 (Pa. 2003) (citing Dale Mfg. Co. v. WCAB (Bressi), 421 A.2d 653, 654 (Pa. 1980)). In addition, the purpose of the Act as a whole is to benefit the workers of this Commonwealth; therefore, its provisions must be liberally construed to effectuate its humanitarian objectives, and borderline interpretations are construed in the injured party's favor. Harper & Collins v. WCAB (Brown), 672 A.2d 1319, 1321 (Pa. 1996).

The purpose of the Wrongful Death Statute is to compensate the decedent's relatives for their loss. Tulewicz v. Southeastern Pennsylvania Transportation Authority, 606 A.2d 427, 431 (Pa. 1999). The damages recovered are therefore not part of the decedent's estate; rather, they constitute compensation to the individual family members for their loss. Id., at 431 (citing Miller v. Preitz, 221 A.2d 320 (Pa. 1966), overruled on other grounds, Kassab v. Central Soya, 246 A.2d 848 (Pa. 1968)).

The right to disclaim under § 6201 of PEF Code is granted to any "person to whom an interest in property would have devolved by whatever means, including ... a person entitled to take by intestacy" 20 Pa.C.S. § 6201. The comment supplied by the

Pennsylvania Joint State Government Commission—which may be used in determining the intent of the General Assembly, see 1 Pa.C.S. § 1939; In re Martin’s Estate, 74 A.2d 120, 122 (Pa. 1950)—states one of the legislature’s goals in enacting the disclaimer provisions of the PEF Code was “to liberalize the property law requirements for disclaimer so that legitimate attempts to avoid taxes on unwanted gifts will not be frustrated by property law provisions that are stricter than those required for tax purposes.” 20 Pa.C.S. § 6201, Jt. St. Govt. Comm. Cmt. (1976). Thus, unlike the compensatory purposes of the Workers’ Compensation and Wrongful Death Statutes, the right to disclaim is most often used to avoid taxes or other claims on the recovery under another statute.

The matter is resolved by the plain language of § 671, which states that when the compensable injury is caused by a third party, an employer “shall be subrogated to the right of the employe [or] his representative ... against such third party.” 77 P.S. § 671 (emphasis added). Thus, the insurer, having paid Gillette, is not subrogated to the amount actually received by Gillette; rather, it is subrogated to the share that Gillette has the right to receive. Gillette properly requested payment from the third party, as she had a right to receive an award apportioned according to the intestate schedule. That right was effectively passed to Utica by virtue of its legitimate subrogation claim. The right to disclaim under the intestacy statutes and the right of subrogation under § 671 both exist here, but under the circumstances, Gillette cannot exercise the right to disclaim, since that which she seeks to disclaim is a right held not by her but by Utica.

Our conclusion in this regard comports with Seymour—just as a party may not apportion an award under the Wrongful Death Act in a way that defeats a workers’ compensation provider’s subrogation right under § 671, a plaintiff who has instituted an action under the Wrongful Death Statute may not then disclaim entitlement to the award and thereby defeat the right of subrogation under § 671. We conclude these statutes are

not irreconcilable since each may achieve its intended purpose under the above construction.

Disclaiming benefits to minimize or avoid taxes is clearly permitted by statute. Disclaiming to avoid subrogation to which a private party was statutorily entitled is not permitted. Accordingly, we reverse the Superior Court's decision, which affirmed the trial court's order approving the parties' proposed settlement and distribution. We remand this matter to the trial court for an order distributing the settlement proceeds in a manner consistent with this opinion.

Order reversed; case remanded. Jurisdiction relinquished.

Former Justice Newman did not participate in the decision of this case.

Mr. Justice Castille and Madame Justice Baldwin join the opinion.

Mr. Chief Justice Cappy files a concurring opinion.

Mr. Justice Baer files a dissenting opinion.

Mr. Justice Saylor dissents.