

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:) In Proceedings
) Under Chapter 7
WILLIAM PATRICK JETTER and)
KATHY A. JETTER,) BK No. 92-30160
)
Debtors.)

OPINION

Robert C. Nelson of the law firm Nelson, Bement, Stubblefield and Rich (the law firm) represented William Jetter in a workers' compensation case which resulted in a decision favorable to William. William and his wife Kathy (the debtors) subsequently filed for relief under Chapter 7 of the Bankruptcy Code on February 11, 1992.¹ The law firm has now filed a motion requesting relief from the automatic stay, 11 U.S.C. § 362 (1992), so that it can proceed before the Illinois Industrial Commission to obtain approval of the attorney fees which accrued from its representation of William in the workers' compensation suit. According to Illinois law, the Illinois Industrial Commission not only approves all attorney fees, but also resolves any disputes surrounding the amount of attorney fees arising from an attorney's representation of a client in a workers' compensation case. Ill. Rev. Stat. ch. 48, ¶ 138.16a(C), (J) (1992). The law firm alleges that its representation of William was pursuant to a written contract of employment that created a valid lien against the proceeds the

¹The debtors have claimed as exempt the entire proceeds of the workers' compensation suit. On March 5, 1992, the trustee filed a no-asset report and statement of abandonment in this bankruptcy case.

debtors received from the workers' compensation suit. Illinois law generally allows attorneys to obtain liens for legal fees they incur, including liens on the proceeds of law suits for which they performed legal services. See Ill. Rev. Stat. ch. 13, ¶ 14 (1992) (statutory liens); Department of Pub. Works v. Exchange Nat'l Bank, 93 Ill.App.3d 390, 393-94, 417 N.E.2d 1045, 1048 (1981) (equitable liens); Upgrade Corp. v. Mich. Carton Co., 87 Ill.App.3d 662, 664-65, 410 N.E.2d 159, 161 (1980) (retaining liens).

The debtors object to the motion for relief from the stay on the grounds that the law firm has no lien on any of the workers' compensation proceeds.² For support, the debtors point to § 21 of the Illinois Workers' Compensation Act (the Act) which provides that "[n]o payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages." Ill. Rev. Stat. ch. 48, ¶ 138.21 (1992). The debtors contend that because the law firm has no lien on the proceeds from the suit, any fee otherwise owed to the law firm is an unsecured obligation of the debtors which is subject to discharge in bankruptcy. Therefore, according to the debtors, the Court should not grant the law firm relief from the stay to establish or pursue an unsecured dischargeable debt.

The issue before this Court is whether, under Illinois law, an attorney lien for fees incurred during the representation of a claimant in a workers' compensation suit may attach to the proceeds from that

²The trustee filed a response in which he stated he had no objection to the law firm's motion.

suit, assuming the lien in all other respects is valid. No reported decision from the Illinois Supreme Court speaks to this issue,³ and the only two Illinois appellate courts to have addressed the issue reached different results.⁴

In a 1921 case, Lasley v. Tazewell Coal Co., 223 Ill.App. 462, 128 N.E. 475 (1921), the Third District Appellate Court refused to enforce an attorney's alleged lien on his client's proceeds from a workers' compensation suit. The attorney sought the lien for fees which arose as a result of legal work he had undertaken on the workers' compensation case. The court concluded:

The language of [§ 21] is clear and conclusive. . . . There is nothing in the other sections of the [A]ct which in any way conflicts with [§ 21], and the purpose of the legislature

³The Illinois Supreme Court in Estate of Callahan, 144 Ill.2d 32, 42-43, 578 N.E.2d 985, 989 (1991) held that a judgment for attorney fees for legal services rendered in a personal injury suit could not be satisfied from a related workers' compensation award pursuant to § 21. Callahan, however, did not address the narrower issue before this Court, that is, whether an attorney lien for fees incurred from the performance of legal services in a workers' compensation suit could attach to the proceeds derived from that suit.

⁴The nature, extent, and validity of a lien are matters governed by state law. See In Re Woods Farmers Coop. Elevator Co., 946 F.2d 1411, 1413 (8th Cir. 1991); In Re Copper King Inn, Inc., 918 F.2d 1404, 1407 (9th Cir. 1990). When interpreting state law, a federal court must look to decisions by the highest state court, and "[i]n the absence of a definitive ruling by the highest state court, a federal court may consider 'analogous decisions, considered dicta, scholarly works, and any other reliable data tending convincingly to show how the highest court in the state would decide the issue at hand.'" Michelin Tires (Canada) Ltd. v. First Nat'l Bank of Boston, 666 F.2d 673, 682 (1st Cir. 1981) (quoting McKenna v. Ortho Pharmaceutical Corp., 622 F.2d 657, 663 (3rd Cir. 1980)). A federal court may also consider intermediate appellate court decisions of the state. See Western Casualty & Sur. Co. v. Southwestern Bell Tel. Co., 396 F.2d 351, 354 (8th Cir. 1968).

is evident; it undoubtedly intended that no lien of any kind should be allowed to intervene to prevent the work[er] from receiving the benefit of the monthly compensation awarded to him.

Lasley, 223 Ill.App. at 463, 128 N.E. 475; see also 4 Ill. Law & Practice, Attorneys and Counselors § 180, at 278 & n.97 (1971 & Supp. 1991) (In view of § 21, "an attorney is not entitled to a lien on an award made to his client under the Act.").

Sixty-six years later, the First District Appellate Court discussed a similar issue in Field v. Rollins, 156 Ill.App.3d 786, 510 N.E.2d 105 (1987). In Field, an attorney tried to compel payment of his attorney fees by garnishing the Second Injury Fund (the Fund) established by the Act. The attorney recovered an award for his client under the Act and part of the award was to be made from the Fund. When the attorney could not collect his entire attorney fees directly from his client, the attorney attempted to garnish the payments the client was receiving from the Fund. Field, 156 Ill.App.3d at 787-88, 510 N.E.2d at 106.

Although the court in Field recognized that § 21 prohibited all garnishments and liens against the proceeds of workers' compensation actions, Field, 156 Ill.App.3d at 788, 510 N.E.2d at 106, the court relied on another section of the Act, § 16a. Section 16a states that the amount of attorney fees awarded under the Act cannot exceed 20% of the amount of compensation recovered and paid. Ill. Rev. Stat. ch. 48, ¶ 138.16a(B) (1985). Moreover, subsection I of § 16a provides that "[a]ll attorneys' fees for representation of an employee or his dependents shall be only

recoverable from compensation actually paid to such employee or dependents." Ill. Rev. Stat. ch. 48, ¶ 138.16a(I) (1985). Based on § 16a, the Field court determined:

It is clear that attorney fees approved by the Industrial Commission rise to the same level as the award granted to the injured employee. Payment of attorney fees out of the Fund is entirely consistent with the language of the Act stating that the attorney fees "shall be only recoverable from the compensation actually paid to the employee."

Field, 156 Ill.App.3d at 789, 510 N.E.2d at 107 (quoting Ill. Rev. Stat. ch. 48, ¶ 138.16a(I) (1985)). The Field court concluded that "attorney fees are included in and should be paid from the same proceeds received by the injured employee." Id. Unfortunately, the Field court neither cited nor discussed the contrary opinion of Lasley.

In construing an Illinois statute, a court's primary concern is to give effect to the intent of the legislature. Estate of Callahan, 144 Ill.2d 32, 43, 578 N.E.2d 985, 989 (1991). "As a starting point, a court should look to the language of the statute." Id.

Upon a review of Illinois statutory and common law, this Court holds that a lien for attorney fees cannot attach to the proceeds from a workers' compensation suit. As indicated in Lasley, the unabashed language of § 21 states that no liens may attach to workers' compensation proceeds. No exceptions exist in § 21 for attorney liens, even attorney liens for fees incurred in the representation of a workers' compensation claimant. If the Illinois legislature intended to make such an exception, it could have explicitly done so.

This Court is unpersuaded by the contrary Field decision. Field

relies on § 16a for its holding. Section 16a, which addresses issues concerning attorney fees in workers' compensation cases, does not state that liens for attorney fees attach to the proceeds of workers' compensation cases. No provision in § 16a, including subsection I, mentions liens at all.

The court in Spinak, Levinson & Assoc. v. Indus. Comm'n, 209 Ill.App.3d 120, 568 N.E.2d 41 (Indus. Comm'n. Div. 1990) interpreted subsection I of § 16a differently than the court in Field. In Spinak, a law firm disputed the nominal amount of attorney fees awarded to it for its representation of a claimant in a workers' compensation case. The fee contract entered into between the attorney and the claimant conformed to the requirements of § 16a and provided that the fee was to be based on the claimant's award of compensation for permanent disability. Spinak, 209 Ill.App.3d at 125, 568 N.E.2d at 44. Notwithstanding the contract, however, the law firm argued that it was entitled to attorney fees for the legal services it rendered to secure the claimant's right to have his employer pay any future medical expenses the claimant might incur. Spinak, 209 Ill.App.3d at 125, 568 N.E.2d at 43.

The Spinak court disagreed. The court first noted that subsection I provides that "a fee is only recoverable from compensation 'actually paid' to the employee." Spinak, 209 Ill.App.3d at 125, 568 N.E.2d at 44 (quoting Ill. Rev. Stat. ch. 48, ¶ 138.16a(I) (1989)). The Spinak court pointed out that the contract had no provision regarding present or prospective medical benefits, and that this was "consistent with the concept that medical benefits are not considered to be 'compensation'

within the meaning of the Act." Spinak, 209 Ill.App.3d at 125-26, 568 N.E.2d at 44. The court stated further:

The Act, however, does speak specifically to fees for medical benefits. It prohibits the award of attorney fees for undisputed medical expenses. (Ill.Rev.Stat.1989, ch. 48, par. 138.16a(D) .) Since fees are permitted only if there is a dispute as to medical benefits which have already been incurred, it follows that the statute does not support a claim for fees because of the mere existence of a right to inchoate, future medical expenses which do not now and may never exist, the value of which is unknowable, and over which there may never be a dispute. Such a claim is inconsistent with the statute's overall concept of awarding fees for "compensation" which has been "actually paid."

Spinak, 209 Ill.App.3d at 126, 568 N.E.2d at 44. For these reasons, the court in Spinak held that there was no right under § 16a to attorney fees solely for the preservation of the claimant's right to future medical benefits. Id.

The Spinak court used subsection I to establish the base amount upon which an attorney may calculate his or her fees. In other words, according to Spinak, the fees must be determined by the amount of "compensation" the claimant is "actually paid." An attorney cannot calculate his or her fee percentage on any part of the workers' compensation award which is not defined as "compensation," i.e., undisputed medical benefits, or on any award not "actually paid," i.e., future medical benefits which are not known and may never exist. Although the issue of whether subsection I mandates that attorney fees be paid from the compensation the claimant is awarded was not before the Spinak court, Spinak does reveal that subsection I has an

alternative meaning to that set forth by Field.⁵

In light of the Field and Spinak courts' differing interpretations of the same statute, this Court is unwilling to compound the ambiguity by adding another interpretation of the same statute, namely, that the statute supports the attachment of an attorney lien to the compensation a claimant is awarded in a workers' compensation case. When, in the past, the Illinois legislature saw fit to permit attorneys liens for fees they incurred in their representation of clients, the legislature did so by explicit statutory language. See Ill. Rev. Stat. ch. 13, ¶ 14 (1992). As indicated earlier, if the Illinois legislature intended to permit the attachment of attorney liens to the proceeds from workers' compensation cases, it would have expressly done so. In fact, because § 21 entirely forbids liens of any kind, it is even more likely that the legislature, if it so intended, would have specifically provided for attorney liens in workers' compensation cases in order to establish a clear exception to § 21. Furthermore, a lien is a significant right and remedy, and this Court is reluctant to find such a right exists absent some clear indication from the legislature, aside from an ambiguous statute, that it intended to create such a right.

Because this Court holds that the law firm has no lien on the debtors' proceeds from the workers' compensation case, any debt owed by the debtors to the law firm for attorney fees is an unsecured

⁵This Court finds Spinak significant because it was decided by the Industrial Commission Division of the Illinois Appellate Court. That division decides all appeals involving proceedings to review orders of the Industrial Commission and, therefore, it has some expertise in interpreting the provisions of the Act. See Ill. Rev. Stat. ch. 110A, ¶ 22(g) (1992).

obligation subject to discharge.⁶ Consequently, no reason exists to grant the law firm relief from the stay to proceed before the Industrial Commission to establish the amount of fees owed by the debtors. The motion for relief from stay, filed by the law firm on April 1, 1992, is, therefore, denied.

See order entered this date.

_____/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: July 29, 1992

⁶The law firm has not filed a complaint contesting the dischargeability of the debt for attorney fees owed to it by the debtors. See 11 U.S.C. § 523 (1992); Fed. R. Bankr. P. 4007 (1992).