Circuit Court for Baltimore County
Case No. C-03-CV-19-001670

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0081

September Term, 2021

Charles D. Conley, et al.

v.

Trumbull Insurance Company
t/u/o and t/o/u Mars Super Markets, Inc.

Reed,
Ripken,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned)

JJ.

Opinion by Reed, J.

Filed: July 18, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case stems from an on-the-job injury in which Charles Conley ("Appellant-Employee") was injured due to the negligence of a third-party tortfeasor. The injury occurred while Appellant-Employee was working for Mars Supermarkets, Inc. ("Employer"). Following his injury, Appellant-Employee retained Matt M. Paavola and Theodore Ehudin (Appellant-Attorneys), principal owners of the Workers' Comp Law Firm, LLC and White Marsh Law, LLC (Appellant-Employee and Appellant-Attorneys, collectively, "Appellants"). Appellants filed a workers' compensation claim with Trumbull Insurance Company ("Appellee"), Employer's workers compensation carrier. Additionally, Appellants filed a "third-party claim" against an employee of Pepsi-Cola Bottling Company of La Crosse ("Third-Party"). While the third-party claim was pending, Appellants and Appellee reached an "Agreement of Final Compromise and Settlement," which concluded Appellants' claim against Appellee. Appellants subsequently settled their claim against Third Party.

Appellee then sought reimbursement from Appellants' third-party settlement pursuant to Appellee's right of subrogation under the Maryland Workers' Compensation Act ("MWCA"). However, Appellants refused to remit the proceeds of the third-party settlement because they believed Appellee had waived its right to subrogation by failing to preserve that right in the final settlement agreement between the parties.

Appellee responded with a complaint against Appellants to enforce the Appellee's subrogation right under the MWCA. Count 1 alleged that Appellee was entitled to "Statutory Subrogation," whereas Count 2 alleged "Unjust Enrichment" based on Appellants' refusal to remit the proceeds of the third-party claim to Appellees. On July 17,

2020, the Circuit Court of Baltimore County granted summary judgment in favor of Appellee, finding as a matter of law that Appellee's statutory lien survived the full and final settlement agreement. Appellants timely filed a notice of appeal.

In bringing this appeal, Appellants presents two (2) questions for appellate review:

I. Did the Circuit Court err in granting summary judgment of Appellee's statutory subrogation claim against Appellant, where Appellee did not expressly reserve their statutory subrogation interest in the full and final settlement agreement between the parties?

II. Did the Circuit Court err in granting summary judgment of Appellee's unjust enrichment claim on the grounds that Appellee had a statutory lien which Appellant failed to reimburse?

For the following reasons, we affirm the decision of the circuit court on both issues.

FACTUAL & PROCEDURAL BACKGROUND

This case stems from an on-the-job injury in which Appellant-Employee was injured due to the negligence of a third-party tortfeasor. The injury occurred while Appellant-Employee was working for Employer. In Appellants' claim, filed with the Workers' Compensation Commission, Appellants averred that Appellant-Employee was in a "food aisle waiting to pass a jack operator," when the machine "suddenly launched and crushed [his] foot." Additionally, Appellants filed a "third-party claim" against Third-Party, alleging that Third Party's negligence was the cause of Appellant-Employee's on-the-job injury. With the third-party claim still pending, Appellants' workers' compensation claim against Appellee was concluded by an "Agreement of Final Compromise and Settlement," signed by all parties and approved by the Maryland Workers' Compensation Commission. The monetary value of the settlement award was 37.5 weeks of payments of $160.00 – a

total of $6,300.00, minus attorneys' fees and expenses. The agreement contained the following provisions relevant to the present appeal:

> Irrespective of any and notwithstanding the divergent views held by the parties concerning the occurrence of the accidental personal injury or disablement, the nature and extent of disability resulting therefrom, the workers' compensation benefits allowable therefore, and all other benefits or rights that any of the parties to the claim might or could have in the premises, the said parties have reached an agreement providing, subject to the approval of the Commission, **for a final compromise and settlement of any and all claims which the Claimant or his or her personal representative or beneficiaries might now or could hereafter have under the provisions of the Workers' Compensation Law against the Employer and/or the Insurer**. (emphasis added).
>
> * * *
>
> The Claimant hereby accepts this Agreement and the aforesaid payment(s) in final compromise and settlement **of any and all claims which the Claimant, his or her personal representative**, dependents, spouse and children or any other parties who might become beneficiaries under the Workers' Compensation Law, **might now or could hereafter have under the provision of the said Law, arising out of the aforesaid injury or disablement or the disability resulting therefrom, and does hereby**, on behalf of himself or herself and all of said other parties, **release and forever discharge the Employer and Insurer**, their personal representative, heirs, successors and assigns, **from all other claims of whatsoever kind which might or could hereafter arise under the Law from the said injury, disablement or disability**. (emphasis added).
>
> * * *
>
> This Agreement of Final Compromise and Settlement does not settle any claim against or release the Subsequent Injury Fund for any liability occasioned on account of previous (before the date of accident in question) permanent impairment(s) and any such liability of the Subsequent Injury Fund is specifically reserved by the Claimant in accordance with Labor & Employment Article, Section 9,722.9-722.

With the workers' compensation claim against Appellee concluded, Appellants' third-party claim was settled, and Appellants received the settlement proceeds, minus

attorneys' fees and expenses. Appellants did not send any of the third-party settlement proceeds to Appellee because Appellant-Attorneys believed that Appellee had bargained away the right to be repaid from third-party proceeds. Specifically, Appellant believed that Appellee had waived their right to third-party proceeds by failing to reserve their statutory "carrier's lien" under the full and final settlement of Appellants' workers' compensation claim.

Appellee responded with a three-part complaint against Appellants to enforce the employer's subrogation right under the MWCA. Count 1 alleged that Appellee was entitled to "Statutory Subrogation," whereas Count 2 alleged "Unjust Enrichment" based on Appellants' refusal to remit the proceeds of the third-party claim to Appellee. Appellee argued that its silence did not amount to a waiver of their statutory lien on any of Appellants' recoveries from third-party tortfeasors.

All parties filed motions for summary judgment, which addressed whether an employer's statutory lien under the MWCA is waived unless it is expressly reserved in a full and final settlement agreement. On July 17, 2020, the Circuit Court granted summary judgment in favor of Appellee, finding as a matter of law that Appellee's statutory lien survived the full and final settlement agreement. The circuit court explained its reasoning as follows:

> I do find that . . . the Maryland law . . . does allow for an employer's insured's lien to be reimbursed upon the settlement of a claim against a tortfeasor.
>
> And now it might have been best practices for the insurance company to put language in the final compromise and settlement as to a known case or a claim, but it also might raise an issue with respect to [Appellant-Attorneys]

> that there certainly was knowledge of third-party action that was in existence and had not been resolved.
>
> So there is I guess an element of risk on both sides that an issue like this may come about. But, regardless, ***I don't think that the circumstances in this case, the final comprise and settlement, which I believe both sides agree is a contract that extinguishes what I see to be a statutory right that an employer/insurer has with respect to subrogation claims.***
>
> So, with that, I am going to grant the motion for summary judgment of the Plaintiffs in this case as to Count 1.

(emphasis added). Appellants timely filed notice of appeal.

STANDARD OF REVIEW

"Because the decision to grant summary judgment is purely legal, we review it *de novo*, determining for ourselves whether the record on summary judgment presented a genuine dispute of material fact, and if not, whether the moving party was entitled to summary judgment as a matter of law." *Dett v. State*, 161 Md. App. 429, 441 (2005), *aff'd*, 391 Md. 81 (2006) (citing *O'Connor v. Baltimore Co.*, 382 Md. 102, 110 (2004); *Hines v. French*, 157 Md. App. 536, 549–50 (2004)). "We review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Rossello v. Zurich Am. Ins. Co.*, 468 Md. 92, 103 (2020) (citing *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 67 (2006)).

When an appeal concerns the trial court's interpretation of a statute, we review the trial court's statutory interpretation *de novo*. *See Opert v. Crim. Injuries Comp. Bd.*, 403 Md. 587, 593 (2008). The Court of Appeals has explained the proper framework for approaching a question of statutory interpretation as follows:

> The overarching rule is that, in construing statutes, "our primary goal is

> always 'to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision ...'" *Barbre v. Pope*, 402 Md. 157, 172 (2007), citing *Dep't of Health v. Kelly*, 397 Md. 399, 419–20 (2007), and *Gen. Motors Corp. v. Seay*, 388 Md. 341, 352, 879 A.2d 1049, 1055 (2005). If the language is clear and unambiguous, we ordinarily "need not look beyond the statute's provisions and our analysis ends." *Barbre, supra*, 402 Md. at 173.
>
> If, upon this preliminary analysis, however, we conclude that "the language is subject to more than one interpretation, it is ambiguous, and we resolve that ambiguity by looking to the statute's legislative history, case law, and statutory purpose." *Barbre, supra*, 402 Md. at 173; *Patterson Park v. Teachers Union*, 399 Md. 174, 198 (2007). To the extent relevant, we look as well to "the statute's structure, including the title, and how the statute relates to other laws." *Stouffer v. Pearson*, 390 Md. 36, 46, 887 A.2d 623, 629 (2005). . . . Finally, to the extent possible, remedial statutes "are to be liberally construed to 'suppress the evil and advance the remedy.'" *Coburn v. Coburn*, 342 Md. 244, 256, 674 A.2d 951, 957 (1996); *Triggs v. State*, 382 Md. 27, 45 (2004). *See also Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 494 (1975).

Opert v. Crim. Injs. Comp. Bd., 403 Md. 587, 593–94 (2008).

DISCUSSION

I. Statutory Subrogation Claim

A. Parties' Contentions

Appellants contend that Appellee waived its statutory right of reimbursement from any third-party recovery by failing to expressly reserve their right to reimbursement in the full and final settlement between the parties. Appellants argue that an employer/insurer's "right to reimbursement under LE § 9-902 is waived as a matter of law" when a full and final settlement agreement fails to reserve the right of reimbursement. Appellants urge that although "Section 9-902 creates a duty to repay a workers' compensation insurer for benefits paid[;] it does not contain language that suggests a legislative will that this

obligation be afforded special protection." In response, Appellee contends that the circuit court correctly entered summary judgment in favor of their statutory lien claim because their lien on Appellants' third-party recovery was statutory and has not been waived.

B. Analysis

Md. Code Ann., Lab. & Empl. § 9-722 (West) (hereinafter Labor and Employment ("LE") § 9-722) provides the rule for settling claims under the MWCA:

MD Code, Labor and Employment, § 9-722
§ 9-722. Claim settlement

In general

(a) Subject to approval by the Commission under subsection (c) of this section, after a claim has been filed by a covered employee or the dependents of a covered employee, the covered employee or dependents may enter into an agreement for the final compromise and settlement of any current or future claim under this title with:

(1) the employer;
(2) the insurer of the employer;
(3) the Subsequent Injury Fund; or
(4) the Uninsured Employers' Fund.

Contents

(b) The final compromise and settlement agreement shall contain the terms and conditions that the Commission considers proper.

Approval

(c) A final compromise and settlement agreement may not take effect unless it has been approved by the Commission.

Effect

(d)(1) When approved by the Commission, a final compromise and settlement agreement is binding on all of the parties to the agreement.

(2) Unless the Commission orders otherwise, a final compromise and settlement agreement between a covered employee or the dependents of a covered employee and the employer or its insurer precludes the right of the covered employee or the dependents of the covered employee to proceed against the Subsequent Injury Fund on the claim.

Notably, LE § 9-722 does not specifically address the impact of a settlement on the employer/insurer's right to third-party reimbursement. Instead, Md. Code Ann., Lab. & Empl. § 9-902 (hereinafter LE § 9-902) provides the framework for handling post-settlement third-party workers' compensation claims under the MWCA. As Appellants correctly note, LE § 9-902 was amended on October 1, 2018, but the present case arose under the prior version of the statute (effective until September 30, 2018). In relevant part, the former version of LE § 9-902 states as follows:

MD Code, Labor and Employment, § 9-902

§ 9-902. Action against third party after award or payment of compensation

Action by self-insured employer, insurer, or fund

(a) If a claim is filed and compensation is awarded or paid under this title, a self-insured employer, an insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund may bring an action for damages against the third party who is liable for the injury or death of the covered employee.

* * *

Action by covered employee or dependents

(c) If the self-insured employer, insurer, Subsequent Injury Fund, or Uninsured Employers' Fund does not bring an action against the third party within 2 months after the Commission makes an award, the covered employee or, in case of death, the dependents of the covered employee may bring an action for damages against the third party.

* * *

Distribution of damages

(e) If the covered employee or the dependents of the covered employee recover damages, the covered employee or dependents:

(1) first, may deduct the costs and expenses of the covered employee or dependents for the action;

(2) next shall reimburse the self-insured employer, insurer, Subsequent Injury Fund, or Uninsured Employers' Fund for:

(i) the compensation already paid or awarded; and

(ii) any amounts paid for medical services, funeral expenses, or any other purpose under Subtitle 6 of this title; and

(3) finally, may keep the balance of the damages recovered.

Court costs and attorney's fees

(f) In an action brought by a covered employee or the dependents of the covered employee under subsection (c) of this section, the covered employee or the dependents of the covered employee, the self-insured employer, the insurer, the Subsequent Injury Fund, and the Uninsured Employers' Fund shall pay court costs and attorney's fees in the proportion that the amount received by each bears to the whole amount paid in settlement of any claim or satisfaction of any judgment obtained in the case.

(Effective: to September 30, 2018).

In the present case, the final settlement agreement between the parties did not expressly address the effect of the settlement on Appellee's statutory right of subrogation. However, Appellants note that when the final settlement agreement was submitted to the Workers' Compensation Commission for approval, it was accompanied by a "worksheet" which must be filed along with settlement agreements submitted to the Commission for approval. On that worksheet, Appellant-Employee checked "yes" in the box which asks if there are any third-party claims related to the workers' compensation case. Next to the box, Appellant-Employee wrote that the third-party claim was not yet resolved. Later in the worksheet, Appellant-Employee wrote "3rd party hasn't settled action or been[sic] resolved yet." The worksheet was not signed by Appellee, but Appellants assert that Appellee's counsel was "copied" on the filing of the worksheet with the Commission.

Appellants contend that, because the settlement agreement between the parties was silent with respect to third-party reimbursement, Appellee waived the right to third-party reimbursement by failing to expressly reserve it in the full and final settlement.

Accordingly, Appellants assert that the circuit court erred in granting summary judgment on Appellee's statutory subrogation claim.

Appellants argue that this case is purely a matter of contract law. Moreover, Appellants urge that the only case authority applicable to the present case is *In the Matter of Bernard L. Collins*, 468 Md. 672 (2020). That case, as here, involved the interpretation of a final settlement of a workers' compensation claim. Under the agreement in *Collins*, the employee ("Mr. Collins") agreed "on behalf of his 'dependents,' 'to release and forever discharge' [employer/insurer] 'from all other claims of whatsoever kind which might or could hereafter arise under the [Act] from [Mr. Collins'] disability.'" *Id.* at 690. Approximately two years later, the employee died from cardiac arrest, and his wife ("Mrs. Collins") filed a "Dependent's Claim for Death Benefits" with the Commission. Employer/insurer opposed Mrs. Collins' claim, arguing *inter alia* that the release provision in the final settlement agreement barred Mrs. Collins' from receiving death benefits under the MWCA. Conversely, Mrs. Collins argued that the release reflected "the parties' understanding and intent that Mrs. Collins's potential future death benefits claim was not being released, because the Release [was] 'completely devoid of language as to death claims.'" *Id.* Further, Mrs. Collins argued that the release provision in the settlement agreement could not bind non-parties to the agreement. After analyzing language and intent of the MWCA, the Court of Appeals held that "an employee lacks the power to release his or her dependents' independent claims for death benefits; and [] the Commission's approval of a settlement agreement that purports to release dependents' claims for death benefits does not render the release enforceable against a dependent who is not a party to

the agreement." The Court of Appeals reasoned that, although "the Legislature did not intend the Commission to be bound by the normal strictures of contract law when reviewing settlements," the statutory language at issue in *Collins* was nonetheless consistent with the "law of contracts by making approved settlements binding only on the parties to such settlements." *Id*. at 703. Moreover, the Court noted that its interpretation of the MWCA was consistent with the MWCA's "requirement that courts interpret the [MWCA] as broadly as possible in favor of claimants."

Appellants cite *Collins* for the proposition that the present case is purely a matter of contract law, but that proposition is not consistent with the language of *Collins*. Nonetheless, the contractual provisions in the present case do not help Appellants. The first release provision in the agreement states that the agreement is "for a final compromise and settlement of ***any and all claims*** which the ***Claimant*** or his or her personal representative or beneficiaries might now or could hereafter have under the provisions of the Workers' Compensation Law ***against the Employer and/or the Insurer***." (emphasis added). Likewise, the second release provision stated in relevant part as follows:

> The Claimant hereby accepts this Agreement and the aforesaid payment(s) in final compromise and settlement of **any and all claims** which **the Claimant**, his or her personal representative . . . might now or could hereafter have under the provision of the said Law, arising out of the aforesaid injury or disablement or the disability resulting therefrom, and does hereby . . . **release and forever discharge *the Employer and Insurer***, their personal representative, heirs, successors and assigns, from all other claims of whatsoever kind which might or could hereafter arise under the Law from the said injury, disablement or disability. **(E. 77)** (emphasis added).

Noticeably absent from the agreement is the relinquishment of any rights of the Appellee with respect to future claims under the MWCA. Appellee did not expressly waive or

relinquish any rights within the language of the agreement. However, Appellants do not argue that there was an express waiver in this case. Instead, Appellants argue that Appellee impliedly waived the right of reimbursement by reaching a final settlement of the workers' compensation claim.

This case presents an issue of first impression. We have found no Maryland workers' compensation case that has addressed whether an employer/insurer's subrogation interest may be extinguished by failing to reserve that interest in a final settlement agreement. However, the MWCA amendment history, along with the general provisions of the MWCA, indicates that prior to October 1, 2018, an employer/insurer's subrogation interest was not waivable by agreement.

The current version of the LE § 9-902 does acknowledge that an employer/insurer's statutory subrogation interest is waivable; but the version applicable to this case does not address whether an employer/insurer's subrogation interest is waivable.[1] This provides helpful insight into the operation of LE § 9-902 prior to the October 2018 amendment. Specifically, when considered along with the language of LE § 9-104, which states as follows:

> **§ 9-104. Agreements**
> **Exemption from duty; waiver of right**
>
> (a)(1) **Except as otherwise provided in this title**, a covered employee or an employer of a covered employee **may not by agreement**, rule, or regulation:

[1] In the October 2018 amendment of LE § 9-902, subsection (g) was added to the statute, which requires an employee who recovers from a third-party to reimburse the employer/insurer if the employer/insurer "has not waived third-party reimbursement." *Compare* LE § 9-902 (effective to Sept. 30, 2018); *with* LE § 9-902 (effective Oct. 1, 2018).

> (i) exempt the covered employee or the employer from a duty of the covered employee or the employer under this title; or
> (ii) **waive a right of the covered employee or the employer under this title.**
> (2) An agreement, rule, or regulation that violates paragraph (1) of this subsection is void to the extent of the violation.
> . . . .

Md. Code Ann., Lab. & Empl. § 9-104 (Emphasis added). Clearly, the Appellee's statutory subrogation interest was a "right of the employer" under the MWCA. Accordingly, prior to the October 1, 2018 amendment, Appellee's subrogation interest was not waivable pursuant to LE § 9-104. Surprisingly, this point was not raised by either party. Presumably, this point was not raised by Appellee because Appellee incorrectly cited to the new version of LE § 9-902, which provides that an employer's subrogation interest is waivable. Regardless, "a reviewing court may uphold the final judgment of a lower court on any ground adequately shown by the record." *Rush v. State*, 403 Md. 68, 103 (2008).

In this case, we affirm the decision of the circuit court on different grounds. Specifically, we hold that prior to the October 1, 2018 amendment of LE § 9-902, an employer's subrogation interest was not waivable by agreement pursuant to LE § 9-104.[2] Accordingly, Appellee did not waive its subrogation interest by failing to expressly reserve it in the final settlement agreement between the parties.

II. Unjust Enrichment Claim

Appellants' challenge to the circuit court's grant of summary judgment on

[2] It is worth noting that LE § 9-104 was not impacted by the October 1, 2018 amendment to the MWCA. Rather, the current version of LE § 9-104 was effective as of April 8, 2008.

Appellee's unjust enrichment claim was predicated on the assertion that Appellee waived its statutory right of subrogation. Accordingly, because we have held that Appellee did not waive the statutory right of subrogation, we affirm the circuit court's grant of summary judgment on Appellee's unjust enrichment claim.

CONCLUSION

We hold that Appellee did not waive its subrogation interest by failing to expressly reserve that interest in the final settlement agreement between the parties. Prior to the October 1, 2018 amendment of LE § 9-902, an employer's subrogation interest was not waivable by agreement pursuant to LE § 9-104. Additionally, because Appellants' challenge to the circuit court's grant of summary judgment on Appellee's unjust enrichment claim was predicated on the assertion that Appellee waived the statutory right of subrogation, we hold that the circuit court properly granted summary judgement on Appellee's unjust enrichment claim. Accordingly, we affirm the decision of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.