REL: September 27, 2019

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2019

2180621

Lillie Billingsley

v.

City of Gadsden

Appeal from Etowah Circuit Court
(CV-10-900283)

PER CURIAM.

This is the third in a series of appeals arising from an action brought by Lillie Billingsley ("the employee") in the Etowah Circuit Court seeking an award of benefits under the Alabama Workers' Compensation Act, § 25-5-1 et seq., Ala. Code

1975 ("the Act"), from her employer, the City of Gadsden ("the employer"), stemming from a work-related August 2008 automobile collision. See Billingsley v. City of Gadsden, 189 So. 3d 738 (Ala. Civ. App. 2015) ("Billingsley I"), and City of Gadsden v. Billingsley, [Ms. 2170873, December 21, 2018] ___ So. 3d ___ (Ala. Civ. App. 2018) ("Billingsley II").

To briefly summarize the pertinent procedural history, in Billingsley I this court affirmed the trial court's judgment to the extent that that court had concluded that the employee had suffered a compensable injury under the Act only to her left shoulder, but this court reversed that judgment to the extent that the trial court had awarded benefits under the Act based upon a 25% physical impairment to that shoulder (i.e., not a scheduled member under the Act), and we remanded the cause with instructions to the trial court "to determine the extent, if any, to which the employee's left-shoulder injury ha[d] affected her ability to earn income and to award the employee benefits in accordance with that determination." Billingsley I, 189 So. 3d at 746.

Notwithstanding the limited nature of this court's remand instructions, the trial court, after nearly three years had

elapsed since our decision in Billingsley I, entered a judgment in May 2018 purporting to find the employee 100% disabled as a result of injuries to "'her left shoulder, neck, [and] lower back' and ... 'psychological problems caused by the August 11, 2008,' collision." Billingsley II, ___ So. 3d at ___. After the employer appealed from that judgment, this court reversed, directing the trial court, "based upon the existing record in the case, ... to make findings of fact and state conclusions of law, in conformity with Ala. Code 1975, § 25-5-88, and our mandate in the first appeal, regarding the employee's loss of ability to earn, if any, that has resulted solely from her left-shoulder injury." Id. at ___.

On remand from this court, the trial court held a status conference at which counsel for the parties appeared. It appears from the record that, at that conference, counsel for the employee acknowledged in open court that the employee had died in January 2019 from causes unrelated to her work-related accident in 2008, and counsel for the employee subsequently filed a "suggestion of death" on February 27, 2019, confirming the fact of the employee's death in January 2019. The employer moved to dismiss the employee's claim on the basis

that her right to receive benefits under the Act had terminated upon her death, and the trial court, treating the motion as having alternatively sought a summary judgment, granted that motion and entered a judgment in favor of the employer on March 18, 2019. Counsel for the employee then filed a postjudgment motion requesting that the trial court specify whether the March 18, 2019, judgment was a judgment of dismissal or a summary judgment, after which the trial court entered an order denying the postjudgment motion but specifying that the action had been dismissed with prejudice because, in that court's view, "a workers' compensation claim cannot survive the death of an employee unless it is a claim for death benefits related to the employment," citing Ex parte Thompson Tractor Co., 227 So. 3d 1234 (Ala. Civ. App. 2017). Counsel for the employee filed, on April 30, 2019, a notice of appeal from the judgment in the employer's favor naming the employee as the sole appellant.

In his appellate brief, counsel for the employee asserts that the trial court's judgment is contrary to the terms of the Act and amounts to an unconstitutional abridgement of the right of access to the courts under Section 13 of the Alabama

Constitution of 1901. Counsel for the employer contends that the trial court's judgment is consistent with Ex parte Thompson Tractor and that any claim that a surviving spouse or dependents of the employee might bring is separate and distinct from the claim brought by the employee. We do not reach the merits of those arguments, however, because we lack appellate jurisdiction.

In McRae v. Johnson, 845 So. 2d 784 (Ala. 2002), an attorney who had appeared in a civil action on behalf of a party who had died in November 2000 filed, ostensibly on behalf of that deceased party, a notice of appeal in January 2002 from an order vacating a judgment previously entered in that action. That appeal was dismissed ex mero motu by our supreme court as a nullity on the basis that "the appellant was deceased when the notice of appeal was filed" and thus that the notice had "fail[ed] to invoke the appellate jurisdiction of [that court]." McRae, 845 So. 2d at 785. Our supreme court reasoned in that case that, generally speaking, "'"an attorney's authority to act on behalf of a client ceases on the death of that client,"'" id. (quoting Estate of Jones v. State Farm Mut. Auto. Ins. Co., 829 So. 2d 170, 171 (Ala.

Civ. App. 2002), quoting in turn Brown v. Wheeler, 437 So. 2d 521, 523 (Ala. 1983) (overruled on other grounds by Hayes v. Brookwood Hosp., 572 So. 2d 1251 (Ala. 1990))), and opined that the filing of a notice of appeal by a deceased person was "'not just "a mere irregularity, but a complete and radical defect."'" McRae, 845 So. 2d at 785 (quoting Brantley v. Fallston Gen. Hosp., Inc., 333 Md. 507, 511, 636 A.2d 444, 446 (1994), quoting in turn Owings v. Owings, 3 G. & J. 1, 4 (Md. 1830)).

Here, as was true in McRae, counsel for the employee may not properly question the correctness of the trial court's judgment of dismissal that was entered after the death of the employee, which death terminated counsel's authority to act on behalf of the employee. See Estate of Bell v. Bell, 598 So. 2d 917, 918 (Ala. Civ. App. 1991). Thus, the notice of appeal filed by counsel for the employee on April 30, 2019, is a nullity and will not support appellate review of the trial court's judgment of dismissal. McRae, 845 So. 2d at 785.

The appeal is dismissed.

APPEAL DISMISSED.

All the judges concur.