[J-4-2004]
IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

VITAC CORPORATION	:	No. 38 WAP 2003
	:	
	:	Appeal from the Order of the
v.	:	Commonwealth Court entered February 4,
	:	2003 at No. 1342CD2002, affirming in part
	:	and reversing in part the Order of the
WORKERS' COMPENSATION APPEAL	:	Workers' Compensation Appeal Board
BOARD (ROZANC)	:	entered April 30, 2002 at No. A00-2806.
	:	
	:	
	:	
APPEAL OF: SHEILA ROZANC	:	ARGUED: March 1, 2004

DISSENTING OPINION

MR. JUSTICE CASTILLE **DECIDED: JULY 22, 2004**

Because I believe that the plain and unambiguous language of Section 440(a) of the Workers' Compensation Act (the "Act") mandates a finding contrary to that of the Majority in this case, I respectfully dissent.

Section 440(a) provides that in a contested case where the workers' compensation claimant ultimately prevails in whole or in part, and the employer lacked a "reasonable basis" for the contest, certain enumerated costs shall be awarded to the successful claimant in addition to the compensation award. 77 P.S. § 996(a). Those costs expressly include "costs incurred for attorney's fee, witnesses, necessary medical examination, and the value of unreimbursed lost time to attend the proceedings." Id. The statute says nothing about compensating paraprofessional expenses which may have been incurred by the claimant's attorney.

The most basic tenet of statutory construction is that a court must effectuate the intent of the General Assembly. 1 Pa.C.S. § 1921(a); In re Canvass of Absentee Ballots of November 4, 2003 General Election, 843 A.2d 1223, 1230 (Pa. 2004); Hannaberry HVAC v. Workers' Compensation Appeal Board (Snyder, Jr.), 834 A.2d 524, 531 (Pa. 2003). The plain language of a statute is usually the best indication of legislative intent. Commonwealth v. Gilmour Manufacturing Co., 822 A.2d 676, 679 (Pa. 2003). In addition, when a court is called upon to construe statutory language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage. ..." Id. (*quoting* 1 Pa.C.S. § 1903). Further, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b); see also Canvass of Absentee Ballots, 843 A.2d at 1230 (*citing* Scheipe v. Orlando, 739 A.2d 475, 478 (Pa. 1999)). Courts may resort to other considerations such as a statute's perceived purpose to divine legislative intent only when the words of the statute are not explicit. 1 Pa.C.S. § 1921(b). Thus, this Court has consistently held that the rules of statutory construction are to be utilized only where the statute contains an ambiguity. Canvass of Absentee Ballots, 843 A.2d at 1230 (*citing* O'Rourke v. Commonwealth, Dept. of Corrections, 778 A.2d 1194, 1201 (Pa. 2001)); see also Ramich v. Workers' Compensation Appeal Bd. (Schatz Electric, Inc.), 770 A.2d 318 (Pa. 2001); Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 664 A.2d 84, 87 (Pa. 1995).

Although the Majority identifies no ambiguity in the statute, it resorts to considerations other than the plain language of the provision in order to "interpret" the simple term "attorney's fee" as if it encompassed **both** attorneys' fees and paraprofessional fees, even though the latter is neither mentioned nor authorized. The Majority notes that in arriving at this extra-textual interpretation, it proceeds upon an "assumption" (accepted by the U.S. Supreme Court in Missouri v. Jenkins, 491 U.S. 274, 109 S.Ct. 2463 (1989)),

which construed similar language in a federal fee-shifting provision) "that the general use of the term 'attorney's fees' in a fee-shifting statute functions as an umbrella capturing a range of costs expended and services performed in producing attorney work product." Slip op. at 6.[1] There is no basis in the work product of our General Assembly for believing that it legislated upon this "umbrella" assumption. This statute sets forth very specific categories of recoverable costs, and that list does not include the costs which attorneys incur in employing paraprofessionals. The existence and role of paraprofessionals is not mysterious or arcane. When drafting this legislation, the General Assembly no doubt was well aware that lawyers and firms commonly employ paralegals and law clerks to perform certain tasks, and it could have included the costs of those services in its list of recoverable costs. It did not, and I think it unwise for this Court to step in and rewrite the legislation based upon policy concerns (whether sound or unsound), which our General Assembly was in a better, and more appropriate, position to evaluate and balance. The plain language of Section 440(a) does not support the Majority's expansive interpretation.

In my view, the cost to law firms of employing paraprofessionals is a cost of doing business just as the cost of employing secretaries, messengers, receptionists, janitors and other non-lawyer employees is a part of a law firm's business costs. Law firms are free to, and in fact regularly do, factor these business costs into their attorneys' hourly rates. An attorney's fee that factors in the cost of the services of paraprofessionals is recoverable

[1] While this Court may look to decisions of the U.S. Supreme Court for guidance or persuasive legal support for novel propositions of state law facing this Court, we are not bound by those federal opinions, and we certainly should not follow them when they are clearly erroneous. The Majority's quotation from Missouri v. Jenkins contains the *reductio ad absurdum* which makes clear the error in the analysis: the Jenkins Court, by some inexplicable leap of logic, would deem a janitor's salary to constitute a compensable attorney's fee. I would not rely upon the logic of Jenkins in interpreting this workers' compensation statute.

under Section 440(a); however, the separate "fees" generated by those paraprofessionals cannot be the subject of a compensatory award under the plain language of Section 440(a), as they were not authorized by our General Assembly.

If this appeal presented a common law question of policy falling within the bailiwick of the judiciary, I might be inclined to join the Majority Opinion. If this Court were a legislative body engaged in debate as to the best or fairest method of compensating the prevailing party in this sort of litigation, I might be able to agree with the proposed legislation. But this Court's role is a limited one: we are left to interpret the legislation as it is enacted and it plainly does not authorize an award of fees for paraprofessional services. Accordingly, because I would affirm the decision of the Commonwealth Court finding that a worker's compensation claimant cannot recover fees generated by paraprofessionals, I respectfully dissent.