

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**LANDON STERLING,
APPELLANT**

vs.

**MID AMERICA CAR, INC.,
RESPONDENT**

DOCKET NUMBER WD77809

DATE: December 23, 2014

Appeal from:

The Labor and Industrial Relations Commission

Appellate Judges:

Division Two: Joseph M. Ellis, P.J., Victor C. Howard, J. and Mark D. Pfeiffer, J.

Attorneys:

John McKay, for Appellant

Don A. Peterson, for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

LANDON STERLING, APPELLANT

v.

MID AMERICA CAR, INC., RESPONDENT

WD77809

Labor and Industrial Relations

Before Division Two Judges: Joseph M. Ellis, P.J., Victor C. Howard, J. and Mark D. Pfeiffer, J.

On May 12, 2011, Appellant Landon Sterling was working for Respondent Mid-America Car, Inc. ("Employer") when he burnt his right elbow on hot slag while welding. He informed Employer of the injury but was told to keep working. Five days later, Appellant was hospitalized for infection and had surgery on his elbow. Prior to Appellant's surgery, the hospital contacted Employer and requested payment for Appellant's medical treatment, but Employer refused the claim. As a result of his hospitalization and surgery, Appellant incurred \$38,462.07 in medical expenses. Appellant did not pay any of the medical bills related to the injury.

In December 2011, Appellant hired counsel ("Counsel") and filed a workers' compensation claim, which Employer denied. In February 2012, Counsel sent a formal settlement offer to Employer outlining Appellant's unpaid medical bills and Appellant's estimated workers' compensation benefits. On March 7, 2012, Employer sent Counsel a fax indicating it intended to pay Appellant's medical bills. Soon thereafter, Counsel sent Employer a letter indicating Counsel's belief that he was entitled to a 25% attorney's lien on "the proceeds" paid by Employer "for medical bills or for any items of compensation." By July 2012, Employer had negotiated with Appellant's medical providers and paid Appellant's \$38,462.07 in medical bills at the discounted rate of \$18,953.16. Employer paid the \$18,953.16 directly to the medical providers and agreed to hold Appellant harmless for any future medical bills related to the injury. Employer, however, did not accept Appellant's settlement offer or recognize Counsel's notification regarding the 25% attorney's lien.

In February 2014, a hearing was held before an administrative law judge ("ALJ") to determine Employer's liability and to determine issues pertaining to Counsel's attorney's lien. The ALJ subsequently awarded Appellant \$13,185.27 in compensation for 15% permanent partial disability to the right elbow, \$2,248.96 for temporary total disability, and \$1,674.32 for disfigurement. The ALJ also determined that Counsel was entitled to a 25% lien on the compensation awarded to Appellant. However, the ALJ specifically denied Counsel a 25% attorney's lien on the \$38,462.07 in medical bills. The

Commission adopted and affirmed the ALJ's award. Appellant now appeals from the Commission's award.

AFFIRMED

Division Two holds:

1. The Commission did not abuse its discretion in denying Counsel a 25% attorney's lien on Appellant's undiscounted medical bills. While the litigation undoubtedly led to Appellant securing payment of his medical bills from Employer, there is no evidence in the record detailing Counsel's specific efforts to recover payment from Employer for Appellant's medical bills. Thus, based upon the limited record before us and the amount of deference owed to the Commission, we cannot say that the denial of a 25% lien on the undiscounted medical bills amounted to an abuse of discretion.
2. The Commission did not erroneously consider evidence of Counsel's services pertaining to Appellant's medical expenses in determining whether Counsel was entitled to a 25% lien on the undiscounted medical bills because, under Missouri law, the ALJ and the Commission are instructed to consider all reasonable factors in setting a reasonable attorney's fee, including the nature, character and amount of services rendered, the amount in dispute, and the complexity of the case.
3. Appellant fails to cite to any legal authority in support of the proposition that an employer waives its right to direct payment of a claimant's medical treatment when it initially denies liability. Thus, while we agree that, by directly negotiating with and paying medical providers after initially denying liability, employers interfere with an attorney's ability to collect attorney's fees for the effort expended in recovering payment for their clients' medical expenses, there is no statute offended by or proscribing Employer's conduct. Accordingly, we cannot say that Employer waived its right to pay Appellant's medical bills prior to the award.
4. The Commission did not err in denying Counsel a 25% lien on the undiscounted medical bills because, despite the notification Counsel sent pursuant to § 484.140, Counsel's lien is still limited to the fee or lien as determined by the Commission.

Opinion by Joseph M. Ellis, Judge

Date: December 23, 2014

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