

**IN THE
MISSOURI COURT OF APPEALS
EASTERN DISTRICT**

SHARON WILCUT,)
Appellant)
v.) Appeal No. ED88247
)
INNOVATIVE WAREHOUSING)
Respondent.)

**APPEAL FROM
LABOR AND INDUSTRIAL RELATIONS COMMISSION
OF
JEFFERSON CITY, MISSOURI
INJURY NO.: 00-041020**

APPELLANT'S BRIEF

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**IN THE
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FLOYD WILCUT,)
Appellant)
v.) Appeal No. ED88247
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**APPEAL FROM
LABOR AND INDUSTRIAL RELATIONS COMMISSION
OF
JEFFERSON CITY, MISSOURI
INJURY NO.: 00-041020**

BRIEF OF APPELLANT FLOYD WILCUT

JURISDICTIONAL STATEMENT

This appeal involves the Labor and Industrial Relations Commission Final Award Denying Compensation. The appeal is allowed pursuant to Section 287.495 of the Missouri Revised Statutes. It does not involve the validity of a treaty or statute of the United States, or construction of the revenue laws of the State of Missouri.

STATEMENT OF FACTS

FACTS

The first witness to testify on behalf of the employee was Austin Giffin, a minister in the Jehovah Witness (Tr. 11). Mr. Giffin has been an elder in that sect since 1956 (Tr. 12). They believe in prayer or spiritual means to get better after an injury or disease, and part of their religious belief is to refrain from accepting blood transfusions (Tr. 13). The use of blood transfusions is sinful, and thought as the same as committing fornication or adultery in God's eyes. (Tr. 14).

Mr. Giffin testified that disobeying God can affect one's ability to get prayers answered, and the taking of blood transfusions would hinder the ability of God to answer the prayers due to the disobedience or sin associated with the taking of blood transfusions. (Tr. 15, 16).

Mr. Giffin testified that the Wilcut's were in good standing in his congregation. (Tr. 16).

The next witness to testify was Bryan Keith Wilcut, the son of the Appellant and the dependent, Sharon Wilcut. He testified that his mother was a practicing Jehovah Witness and that his father refused blood transfusions based upon his religious belief as a Jehovah Witness. (Tr. 20, 21).

Bryan went on to testify that the Vice President for the employer, Walt Bruns, had spoken with him, and at no time did he object to the refusal of his father to receive blood

transfusions. In addition, in dealing with a representative from Kemper Insurance Company, there was no objection to the decision not to take blood transfusions. (Tr. 21, 22).

The next person to testify on behalf of the employee was Kevin Wilcut. Kevin is also the son of the Appellant and the dependent, Sharon Wilcut. He said that his father refused the blood transfusions based upon his religious belief as a Jehovah Witness. (Tr. 26, 27).

In Kevin's talking with the owner or owners of the company, at no time did they ever make any objections to the father's decision to refuse blood transfusions. He went on to testify that he thought it was reasonable for his father to refuse blood transfusions because it is what the Bible says. (Tr. 31).

The next person to testify on behalf of the Appellant was his widow, Sharon Wilcut, the dependent. (Tr. 33). She indicated that she became a Jehovah Witness in September 1980, and that her husband joined the congregation about 1986. (Tr. 35). They shared their beliefs and doctrines pursuant to the precepts of the Jehovah Witnesses, and she believed that through prayer and spiritual means her husband could get better after his injury. (Tr. 36). Mrs. Wilcut went on to testify that it was a sin to accept a blood transfusion, and she believes to take the blood transfusion would have interfered with prayer. (Tr. 38).

At no time did anyone from the company or representative of the insurance company object to the treatment by prayer or other spiritual means, including the refusal of blood transfusions. (Tr. 39, 40).

The next witness to testify on behalf of the employee was Dr. C.W. Chastain, and his testimony was admitted by way of deposition. According to the doctor's review of the records, the employee was ejected from a cab during a vehicular accident and wound up face-down in a pasture. (Tr. 430). Dr. Chastain indicated that it was his position that the truck accident was a substantial factor in causing the employee's death, and "but for" the truck accident, the employee would not have died. (Tr. 436,437).

Dr. Chastain went on to opine that it would be speculation to prove one way or the other as to whether the employee would have survived with blood transfusions. (Tr. 437). Dr. Chastain stated that the employee's injuries were severe and that he thought he had lost a dangerous amount of blood from the accident. (Tr. 465).

POINTS RELIED ON

I

THE INDUSTRIAL COMMISSION ERRED WHEN IT NARROWLY CONSTRUCTED §287.140.9 OF THE MISSOURI REVISED STATUTES BY CONCLUDING THAT THE APPELLANT’S REFUSAL TO ACCEPT BLOOD TRANSFUSIONS WAS NOT A SPIRITUAL MEANS TO TREAT HIS INJURIES.

Martin v. Industrial Accident Commission, 147 Cal. App. 2d, 137 (1957)

Walter Nashert & Sons v. McCann and State Industrial Court, 460 P.2d 942, 943 (1969)

Schuster v. State Director of Employment Security, 972 S.W.2d 377, 384 (Mo.App.E.D. 1998)

Wolfgeher v. Wagner Cartage Service, Inc., 646 S.W.2d 781, 783 (Mo. 1983)

Kelley v. Sohio Chemical Co., 392 S.W.2d 255, 259 (Mo. 1965)

Orr v. City of Springfield, 118 S.W.3d 215, 217 (Mo.App.S.D. 203)

Bunker v. Rural Elec. Co-op., 46 S.W.3d 641, 649 (Mo.App.W.D. 2001)

II

THE INDUSTRIAL COMMISSION ERRED IN VIOLATING ARTICLE I §VII OF THE MISSOURI STATE CONSTITUTION BY DISCRIMINATING AGAINST THE APPELLANT BY CLAIMING THAT THE APPELLANT’S REFUSAL TO ACCEPT BLOOD TRANSFUSIONS WAS NOT A SPIRITUAL

MEANS OF TREATMENT PURSUANT TO §287.140.9 OF THE MISSOURI REVISED STATUTES, AND THAT IT WAS MERELY A “RELIGIOUS EDICT”.

Waites v. Waites, 567 S.W.2d 326, 327 (Mo.banc 1978)

Missouri Constitution, Article I, Section VII

ARGUMENT

In general, a judgment should be reversed only if the reviewing court is left with a firm belief that the judgment was wrong. In the interest of T.G., 965 S.W.2d 326 (Mo.App.E.D. 1998). Conflicting evidence is to be viewed in the light most favorable to the trial court’s judgment. A.S.W., 137 S.W.3d 448 (Mo.banc 2004).

Nevertheless, the Missouri Workers’ Compensation Act is to have all doubts resolved in favor of the employee and “shall be liberally construed with the view to the public welfare . . . and has been held to mean that a doubt as to the right of compensation shall be resolved in the favor of the employee”. Orr v. City of Springfield, 118 S.W.3d 215, 217 (Mo.App.S.D.203), Bunker v. Rural Elec. Co-op., 46 S.W.3d 641, 649 (Mo.App.W.D. 2001).

POINT I.

THE INDUSTRIAL COMMISSION ERRED WHEN IT NARROWLY CONSTRUCTED §287.140.9 OF THE MISSOURI REVISED STATUTES BY

CONCLUDING THAT THE APPELLANT’S REFUSAL TO ACCEPT BLOOD TRANSFUSIONS WAS NOT A SPIRITUAL MEANS TO TREAT HIS INJURIES.

The Labor and Industrial Relations Commission followed the argument of my opponent as it relates to their interpretation of the Missouri Workers’ Compensation Act. The Commission relies upon Martin v. Industrial Accident Commission, 147 Cal. App. 2d, 137 (1957), where the California Second District Court of Appeals was charged with interpreting a section of the state’s workers’ compensations statute that is virtually identical to §287.140.5. The Missouri statute states as follows: No compensation is payable in case of the death of an employee when his death is caused, or when and so far as his disability is caused, continued, or aggravated, by an unreasonable refusal to submit to medical treatment, or to any surgical treatment, if the risk of the treatment is, in the opinion on of the Commission, based upon expert medical or surgical advise, inconsiderable in view of the seriousness of the injury. Please note that the California Second District Court of Appeals did not have to consider a section similar to §287.140.9, because California law does not have such a section. These two sections in Missouri need to be reconciled. My opponent also previously favorably cited an Oklahoma case, Walter Nashert & Sons v. McCann and State Industrial Court, 460 P. 2d 942, 943 (1969), where the Supreme Court of Oklahoma opined that “injured workmen’s’ compensation claimant may practice his religious beliefs by refusing medical treatment,

but he will not be permitted to impose unreasonable additional financial burdens upon his employer in practicing his beliefs”.

It should also be noted that the California and Oklahoma cases had not been interpreted in the context of the liberal construction of the Missouri Workers’ Compensation Act. As it is well understood, prior to the change in law, the liberal construction of the Missouri Act allows for as many employees as reasonably possible be covered by the Missouri Workers’ Compensation Act. Schuster v. State Director of Employment Security, 972 S.W. 2d 377, 384 (Mo. App.E.D. 1998). In addition, in a workers’ compensation case, all doubts are to be resolved in favor of the employee. Wolfgeher v. Wagner Cartage Service, Inc., 646 S.W.2d 781, 783 (Mo. 1983). Any doubt as to the right of an employee to compensation should be resolved in favor of the injured employee. Kelley v. Sohio Chemical Co., 392 S.W.2d 255, 259 (Mo. 1965) (noting that the provision of § 287.800 providing that the Workers’ Compensation Act “shall be liberally construed with a view to the public welfare’ . . . has been held to mean that a doubt as to the right of compensation should be resolved in favor of the employee”, Orr v. City of Springfield, 118 S.W.3d 215, 217 (Mo.App.S.D. 2003); Bunker v. Rural Elec. Co-op., 46 S.W.3d 641, 649 (Mo.App.W.D. 2001). A liberal construction of the Missouri Workers’ Compensation Act leads to a conclusion that any doubt on this case should be resolved in favor of the Appellant.

In light of the liberal construction of the Act, one must interpret §287.140.9 as it applies to the Act generally, and to §287.140.5. The Labor and Industrial Relations Commission has attempted to make a fine religious distinction by stating that “employees refusal to receive blood transfusions was not for the purpose of treating his injuries; it was for the purpose of complying with the religious edict so he could remain free of sin”. The record reflects that it was believed by the dependent that prayers for her husband would be hindered if blood transfusions were accepted. In fact, on Page Three of its Final Award Denying Compensation, among the relevant facts in its determination, the Labor and Industrial Relations Commission found the following facts: “the spiritual risk of transfusions from the perspective of a Jehovah’s Witness was the commission of a capital sin, which would hinder prayer and could prevent enjoyment of everlasting life”. The issue of prayer or other spiritual means as contained in §287.140.9 of the Missouri Revised Statute and the refusal of blood transfusions cannot be dissected so narrowly in light of the liberal construction of the Workers’ Compensation Act. In other words, it was part and parcel of a believing Jehovah Witness that they could not expect an answer to their prayer for healing if they are to take a blood transfusion. In this particular case, the religious belief and the refusal to take blood transfusions was fully integrated into the religious practice or means in which to receive healing. The Appellant’s refusal to accept blood transfusions should be considered a dynamic of prayer or other spiritual means because it was an important aspect associated with his prayer for healing.

My opponent in his brief before the Labor and Industrial Relations Commission argued the fundamental unfairness associated with the employer/insurer being responsible for workers' compensation benefits when the employee, through his own free act and volition, refused blood transfusions. The Missouri State Legislature gave the employer the final word on controlling the medical situation as it relates to §287.140.9. The employee has a right to seek his healing or treatment through prayer or other spiritual means “. . .**if the employer does not object to the treatment**”. (emphasis mine) In light of this provision, the employer had every right to object to the Appellant's religious practice, and thus exculpate itself from its further obligation of the Missouri Workers' Compensation Act to pay benefits to his dependent. In light of this section, it is not unfair for the burden to shift to the employer/insurer because they waived their opportunity to object to the spiritual means sought by the Appellant.

In summary, the liberal construction of the Missouri Workers' Compensation Act and §287.140.9 leads to a different interpretation of the Missouri Workers' Compensation Act than the California Workers' Compensation Act on the basis of religious refusal to accept reasonable medical care.

POINT II.

THE INDUSTRIAL COMMISSION ERRED IN VIOLATING ARTICLE I §VII OF THE MISSOURI STATE CONSTITUTION BY DISCRIMINATING AGAINST THE APPELLANT BY CLAIMING THAT THE APPELLANT'S

REFUSAL TO ACCEPT BLOOD TRANSFUSIONS WAS NOT A SPIRITUAL MEANS OF TREATMENT PURSUANT TO §287.140.9 OF THE MISSOURI REVISED STATUTES, AND THAT IT WAS A “RELIGIOUS EDICT”.

In addition to the liberal construction of the Missouri Workers’ Compensation Act, one must consider the Missouri State Constitution. Article I §VII of the Missouri State Constitution states as follows: That no money shall ever be taken from the public treasury, directly or indirectly in aid of any church, sect or denomination of religion or in aid of any priest, preacher, minister or teacher thereof as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed or religion, or any form of religious faith or worship. (emphasis mine)

In the instant cause, the effect of the decision of the Final Award of the Labor and Industrial Relations Commission was to deny a Jehovah’s Witness of his benefits under the Missouri Workers’ Compensation Act, where another religious minority may very well fit within the Commission’s narrow definition, and thus create a situation where the law as applied by the Commission is unconstitutional. One could see where a Christian Scientist going to a Healing Center to receive spiritual healing rather than medical care would come well within the narrow definition as applied by the Labor and Industrial Relations Commission. The state bar against discrimination in its Constitution prohibits such a narrow definition as applied. Religious groups, be they Jehovah Witness, or be

they Catholic, Methodist, Baptist, or other, cannot be discriminated against under the Missouri Constitution.

In the case of Waites v. Waites, 567 S.W.2d, 326, 327 (Mo.banc 1978), the Court held that any suggestion that state judicial officer was favoring or tending to favor one religious persuasion over another in child custody dispute would be intolerable; judges should not even give appearances such preference or favor. In the instance case, the Labor and Industrial Relations Commission acts as state judicial officer, and its actions have resulted in one religious sect being favored over another religious sect. The effect of the application of §287.140.9 by the Industrial Commission has caused discrimination against this Jehovah Witness.

To support the argument as it relates to the Missouri State Constitution, it is relevant to note the dissenting opinion from the Labor and Industrial Relations Commission Final Award Denying Compensation, wherein Commissioner Hickey interprets the word “voluntary” from §287.140.5 to mean “proceeding from the will; produce in or about an act of ones own choice” Webster’s Third New International Dictionary 2564 (3d ed. 1971). When it comes to religious belief, things are not so clearly “voluntary”, as religious belief goes to the very heart of who you are. Our religious beliefs define who we are and our view of the world, and they are not merely a practical decision such as where or what to eat for a meal. To parse §287.140.9 in such a narrow

way, ignores the integrated belief which make up a religious sect, such as the Jehovah Witness.

In summary, the application of §287.140.9 by the Labor and Industrial Relations Commission has discriminated against the Appellant by applying such a narrow definition of “prayer or other spiritual means” as a means of spiritual healing. In addition, this particular constitutional application of Article 1 Section VII, along with the liberal application of the Missouri Workers’ Compensation Act, compels one to find the dependent entitled to death benefits under the Missouri Workers’ Compensation Act.

CONCLUSION

In summary, the liberal construction of the Missouri Workers' Compensation Act and §287.140.9 leads to a different interpretation of the Missouri Workers' Compensation Act than the California Workers' Compensation Act, and that the dependent should receive her benefits pursuant to state law.

Furthermore, the application of §287.140.9 by the Labor and Industrial Relations Commission has constitutionally discriminated against the Appellant by applying such a narrow definition of "prayer or other spiritual means" as a means of spiritual healing. The application of Article 1 Section VII, of the Missouri Constitution along with the liberal interpretation of the Missouri Workers' Compensation Act in effect at the time of the injury, compels one to find the widow entitled to death benefits under the Missouri Workers' Compensation Act.

Respectfully submitted,

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CERTIFICATE FOR COMPLIANCE

Pursuant to Rule 84.06 (c), the undersigned certifies that the foregoing Brief of Appellant Floyd Wilcut complies with the limitations contained in Rule 84.06(b), as modified by Eastern District Special Rule 360, and contains 269 lines, exclusive of Table of Contents, Table of Authorities, cover page, this certificate, certificate of service, and signature block.

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CERTIFICATE OF SERVICE

The undersigned, attorney for Appellant, certifies that two copies of the foregoing Brief of Appellant Floyd Wilcut have been mailed to George Floros, Attorney for Respondent, 515 Olive St., Ste. 1100, St. Louis, Missouri by placing in a sealed envelope, addressed as aforesaid, and with the proper postage affixed, and depositing with the proper postage affixed, and depositing with the United States mail at Farmington, Missouri on this _____ day of October, 2006.

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