

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

MOTOR CONTROL SPECIALITIES, INC., AND  
THE OHIO CASUALTY INSURANCE COMPANY,

Appellants

v.

LABOR AND INDUSTRIAL RELATIONS COMMISSION,  
STATE OF MISSOURI; STEPHEN M. PETELIK,

Respondents

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DOCKET NUMBER **WD71586**

DATE: November 9, 2010

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Appeal From:

Circuit Court of Cole County, MO  
The Honorable Richard G. Callahan, Judge

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Appellate Judges:

Division Three  
Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

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Attorneys:

Kevin McFarland Leahy, St. Louis, MO

Counsel for Appellants

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Attorneys:

James R. Layton, Jefferson City, MO

Counsel for Respondents, Labor &  
Industrial Relations and State of MO.

Roger G. Brown, Jefferson City, MO  
Ellen E. Morgan, Ballwin, MO  
Jason R. McClitis, Jefferson City, MO

Counsel for Respondent, Petelik  
Co-Counsel for Respondent, Petelik  
Co-Counsel for Respondent, Petelik

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

MOTOR CONTROL SPECIALITIES, INC., AND THE OHIO  
CASUALTY INSURANCE COMPANY, Appellants, v.  
LABOR AND INDUSTRIAL RELATIONS COMMISSION, STATE  
OF MISSOURI; STEPHEN M. PETELIK, Respondents.

WD71586

Cole County

Before Division Three Judges: Victor C. Howard, P.J., Thomas H. Newton and Gary D. Witt, JJ.

Motor Control and its insurer for workers' compensation claims, Ohio Casualty Insurance Company (Appellants), filed a petition for declaratory judgment. They sought to invalidate a regulation that precludes the Commission from reviewing certain temporary or partial workers' compensation awards issued by an administrative law judge. The petition also sought a stay against the enforcement of a temporary or partial award issued to Petelik. The trial court dismissed the petition. Petelik filed a request for attorney fees, which the trial court denied. Both parties appealed. On appeal, we reversed the dismissal of the declaratory judgment and mooted Petelik's appeal based on our disposition. On remand, the trial court declared that the regulation was valid and granted Petelik's attorney fees. Appellants appeal, raising fourteen points.

**AFFIRMED. MOTION FOR ATTORNEY FEES ON APPEAL IS GRANTED AND  
REMANDED FOR DETERMINATION.**

**Division Three Holds:**

In the first three points, Appellants argue that the trial court erred in denying the declaratory judgment because regulation 8 CSR 20-3.040 is invalid in that it conflicts with certain statutory provisions, was promulgated without authority, and violates due process of law. A regulation is invalid if it conflicts with statutes or constitutional provisions. Regulation 8 CSR 20-3.040 is not invalid because it is consistent with the statutory scheme, was promulgated with authority, and does not violate due process of law.

In the remaining eleven points, Appellants argue that the trial court erred either in awarding attorney fees or in the amount it awarded for attorney fees. A trial court's award of attorney fees, if supported by substantial and competent evidence, will be upheld unless the trial court lacked authority to award the fees or abused its discretion in the amount it awarded. Contrary to Appellants' arguments, the trial court had authority to award attorney fees and did not err in the amount of the award.

First, this court's mandate did not preclude the trial court from reconsidering attorney fees on remand because we did not address the issue in the mandate or in the opinion. Second, the trial court awarded Petelik's attorney fees based on a recognized exception to the general rule that all litigants pay their own attorney fees; an exception that Petelik pleaded and supported with evidence. Third, the record supports the amount awarded and the trial court consequently did not abuse its discretion.

Therefore, we affirm the trial court's declaratory judgment ruling the regulation was valid and its grant of Petelik's attorney fees. Petelik requests attorney fees and costs on appeal. We grant his request on the same basis as the trial court's award of attorney fees and remand to the trial court to determine the amount.

**Opinion by Thomas H. Newton, Judge**

November 9, 2010

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