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inadequate protection of a putative father's opportunity interest in the adoption statutes.

Because Dakota has admitted to withholding the child's birth date from Jeremiah, I believe that the only remaining factual issue is whether Jeremiah otherwise knew of the child's birth. Because the court did not correctly decide the due process issue, I believe on remand it must make this finding. I would hold that if the court finds that Jeremiah could not have filed the postbirth notice of objection because of Dakota's deceptions, it cannot constitutionally apply the adoption statutes to bar his claims that he is the child's father and that his consent to the adoption is required. Other courts have reached similar conclusions.[32] Because I reach this conclusion, it is unnecessary to consider whether the statutes would also violate Jeremiah's equal protection rights if applied to bar his claims.

STEPHAN, J., joins in this concurrence.

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[32] See, *In re M.N.M.*, 605 A.2d 921 (D.C. 1992); *Petition of Doe*, 159 Ill. 2d 347, 638 N.E.2d 181, 202 Ill. Dec. 535 (1994); *Doe v. Queen*, 347 S.C. 4, 552 S.E.2d 761 (2001); *In re Adoption of Baby Boy Doe*, 717 P.2d 686 (Utah 1986).

ELAINE VANKIRK, APPELLANT, V. CENTRAL COMMUNITY COLLEGE AND NEBRASKA COMMUNITY COLLEGE TRUST, INC., APPELLEES.

826 N.W.2d 277

Filed February 15, 2013. No. S-12-591.

1. **Workers' Compensation: Appeal and Error.** A judgment, order, or award of the Workers' Compensation Court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.
2. ____: ____. Regarding questions of law, an appellate court in workers' compensation cases is obligated to make its own decisions.

3. **Workers' Compensation: Penalties and Forfeitures.** Neb. Rev. Stat. § 48-125 (Cum. Supp. 2012) does not authorize an award of a waiting-time penalty when an employer is delinquent in paying medical expenses.

Appeal from the Workers' Compensation Court: JOHN R. HOFFERT, Judge. Affirmed.

Rolf Edward Shasteen, of Shasteen, Miner, Scholz & Morris, P.C., L.L.C., for appellant.

Brenda S. Spilker and Christopher M. Reid, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for appellees.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and CASSEL, JJ.

STEPHAN, J.

Elaine VanKirk incurred medical expenses as a result of an injury sustained in the course and scope of her employment with Central Community College. The Workers' Compensation Court ordered Central Community College and Nebraska Community College Trust, Inc. (collectively the College), to pay the expenses. The College complied by making payments directly to VanKirk's health care providers within 30 days of the court's order. VanKirk then sought a waiting-time penalty, attorney fees, and interest pursuant to Neb. Rev. Stat. § 48-125 (Cum. Supp. 2012), contending she was not personally reimbursed for the medical expenses within 30 days. The Workers' Compensation Court denied relief, and VanKirk filed a timely appeal. We find no error and affirm the judgment of the compensation court.

BACKGROUND

On April 29, 2010, VanKirk inhaled fumes from a mixture of chlorine and toilet bowl cleaner during the course and scope of her employment. She subsequently developed a severe cough and shortness of breath and sought workers' compensation benefits.

In an award entered on December 15, 2011, the compensation court determined that VanKirk suffered an acute and temporary insult to her lungs when she was exposed to and

inhaled the fumes. The court awarded temporary total disability benefits of $81.85 for five-sevenths of a week of disability. The court also awarded medical expenses. In doing so, it referred to an exhibit which listed the medical expenses VanKirk incurred, the amount paid by VanKirk, and the amount due each provider. The court stated:

> The Court has carefully reviewed [the exhibit] and finds that the [College] ought to pay said outstanding charges. To the extent that [VanKirk] has paid any of these costs herself, she ought to be reimbursed as her interests appear. The fee schedule audit submitted by the [College] is to be applied.

The exhibit indicated that VanKirk had paid $13,449.18 in medical expenses for treatment related to her injury.

Within 30 days of the award, the College's counsel sent letters to the medical providers listed on the exhibit, notifying them that they would receive payment pursuant to the fee schedule audit and that they should reimburse VanKirk for the amount she had paid for her treatment. A copy of the court's award was enclosed. The letters advised the providers that they were not entitled to charge or collect more than the amount provided on the fee schedule. The College also made payments to the providers within 30 days of the award.

On February 13, 2012, VanKirk filed a motion seeking payment to her of $13,449.18, a 50-percent waiting-time penalty, attorney fees, and interest. She argued that the December 15, 2011, order required the College to pay $13,449.18 directly to her in order to make her whole for payments she had previously made to health care providers. She alleged she was entitled to a waiting-time penalty, attorney fees, and interest, because she did not receive the $13,449.18 within 30 days of the court's order. The College argued it had complied with the court's order by paying the medical providers within 30 days of the court's order. It contended the providers were then responsible for reimbursing VanKirk for any amounts she paid in excess of the fee schedule.

The court noted that both interpretations of its order were reasonable and "respectfully decline[d] the parties' invitation to state with more specificity what it meant to convey" in the

order, citing this court's recent decision in *Pearson v. Archer-Daniels-Midland Milling Co*.[1] The court reasoned, "The decree has become final and pursuant to the holding in Pearson, *supra*, what was meant is to be determined solely from the four corners of the decree itself and not by any post-mortem analysis." The court ultimately overruled VanKirk's motion, finding that because the evidence established that the College paid the medical providers within 30 days and that VanKirk had been or was going to be reimbursed for any medical expenses she personally paid, the "four corners of the decree" had been met. VanKirk appeals.

ASSIGNMENTS OF ERROR

VanKirk assigns as error the Workers' Compensation Court's (1) finding that the College had timely paid the medical expenses as ordered in the award of December 15, 2011, and (2) failing to award VanKirk a waiting-time penalty, attorney fees, and interest.

STANDARD OF REVIEW

[1] A judgment, order, or award of the Workers' Compensation Court may be modified, reversed, or set aside only upon the grounds that (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award.[2]

[2] Regarding questions of law, an appellate court in workers' compensation cases is obligated to make its own decisions.[3]

ANALYSIS

VanKirk relies on § 48-125 as authority for her claimed entitlement to a waiting-time penalty, attorney fees, and

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[1] *Pearson v. Archer-Daniels-Midland Milling Co*., 282 Neb. 400, 803 N.W.2d 489 (2011).

[2] *Id*.

[3] *Becerra v. United Parcel Service*, 284 Neb. 414, 822 N.W.2d 327 (2012); *Mueller v. Lincoln Public Schools*, 282 Neb. 25, 803 N.W.2d 408 (2011).

interest as a result of the manner in which the College satisfied its liability for medical expenses. Because each item is governed by a distinct provision of the statute, we address each separately.

WAITING-TIME PENALTY

An injured worker's entitlement to a waiting-time penalty is governed by § 48-125(1), which provides in pertinent part:

> (1)(a) Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.
>
> (b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the Nebraska Workers' Compensation Court . . . .

VanKirk's claim for a waiting-time penalty is based entirely upon her contention that the College did not make timely payments of medical expenses as ordered by the court. However, in *Bituminous Casualty Corp. v. Deyle*,[4] we held that § 48-125(1) does not authorize a waiting-time penalty for an employer's delinquent payments of medical expenses. At the time of our decision in *Deyle*, the statute provided in part:

> "Except as hereinafter provided, all amounts of compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death; *Provided*, fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability. Whenever the employer refuses payment, or when the employer

[4] *Bituminous Casualty Corp. v. Deyle*, 234 Neb. 537, 451 N.W.2d 910 (1990).

> neglects to pay compensation for thirty days after injury, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award."[5]

We held that the term "'compensation'" as used in the statute included "periodic disability or indemnity benefits payable on account of the employee's work-related injury or death."[6] We reasoned that because medical expenses are not paid "'periodically'" in the same manner as wages, "'compensation'" did not include medical expenses which the compensation court orders an employer to pay.[7]

VanKirk argues that *Bituminous Casualty. Corp*. does not preclude her claim because § 48-125 was amended in 1999, after that decision was made by this court.[8] However, we have considered the amended statute in later cases and have not found that the amendments authorized a waiting-time penalty for delinquent payments of medical expenses, as sought in the present case.

In *Hollandsworth v. Nebraska Partners*,[9] we noted that the amendments to § 48-125 "clearly state[d] that the waiting-period penalty applies to payments made after 30 days from the entry of a final order, award, or judgment of the compensation court."[10] We held in that case that a court-approved lump-sum settlement is subject to a waiting-time penalty, reasoning that § 48-125 "does not limit the application of a penalty to periodic payments only."[11] In addition, we noted that other provisions of the Nebraska Workers' Compensation Act permit

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[5] *Id*. at 551-52, 451 N.W.2d at 919, quoting Neb. Rev. Stat. § 48-125 (Reissue 1988).

[6] *Id*. at 553, 451 N.W.2d at 920.

[7] *Id*.

[8] See 1999 Neb. Laws, L.B. 216, § 6.

[9] *Hollandsworth v. Nebraska Partners*, 260 Neb. 756, 619 N.W.2d 579 (2000).

[10] *Id*. at 760, 619 N.W.2d at 582.

[11] *Id*. at 759, 619 N.W.2d at 582.

commutation of periodic payments to one or more lump-sum payments, "thus bringing a lump-sum payment under the scope of § 48-125."[12] *Hollandsworth* did not hold or suggest that a waiting-time penalty is required for delinquent payments of medical expenses.

We again considered the 1999 amendments to § 48-125 in *Lagemann v. Nebraska Methodist Hospital*,[13] in which we noted that the amendments effectively codified our holding in *Leitz v. Roberts Dairy*.[14] In *Leitz*, we held that the 30-day statutory time limit for paying compensation benefits, which triggers the imposition of waiting-time penalties, does not begin to run until after a final adjudication. Neither *Lagemann* nor *Leitz* holds or suggests that the 1999 amendments to § 48-125 authorized the imposition of a waiting-time penalty for an employer's delinquent payments of medical expenses.

Our holding in *Bituminous Casualty Corp.* was applied by the Nebraska Court of Appeals in a case decided after the 1999 amendments to § 48-125. In *Bronzynski v. Model Electric*,[15] the Court of Appeals concluded that § 48-125 does not authorize a waiting-time penalty for delinquent payments of medical expenses because such expenses do not constitute compensation within the meaning of the statute. The court stated that it was "apparent that a 50-percent waiting-time penalty cannot be awarded on the basis of an award of delinquent medical payments; a waiting-time penalty is available only on awards of delinquent payments of disability or indemnity benefits, not on awards of 'medical payments.'"[16]

[3] We agree with the reasoning and holding of *Bronzynski*, and reaffirm our holding in *Bituminous Casualty. Corp.* that § 48-125 does not authorize an award of a waiting-time penalty when an employer is delinquent in paying medical expenses.

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[12] *Id.* at 760, 619 N.W.2d at 582.

[13] *Lagemann v. Nebraska Methodist Hosp.*, 277 Neb. 335, 762 N.W.2d 51 (2009).

[14] *Leitz v. Roberts Dairy*, 239 Neb. 907, 479 N.W.2d 464 (1992).

[15] *Bronzynski v. Model Electric*, 14 Neb. App. 355, 707 N.W.2d 46 (2005).

[16] *Id.* at 371, 707 N.W.2d at 60.

As we observed in *Bituminous Casualty Corp.*, it is solely the province of the Legislature to decide whether a waiting-time penalty should apply to delinquent payments of medical expenses. To date, it has not taken such action.

Because § 48-125 did not apply to VanKirk's request for a waiting-time penalty as a matter of law, the compensation court did not err in overruling her motion for a waiting-time penalty.

Attorney Fees

An injured worker's entitlement to attorney fees is governed by § 48-125(2)(a), which provides in part:

> Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the compensation court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award.

The plain language of this statute allows an award of attorney fees if the employer is delinquent in paying medical expenses. Accordingly, we must determine whether the compensation court erred in concluding that the medical expenses at issue here were timely paid as directed in its award.

In making this determination, it is helpful to review the provisions of Neb. Rev. Stat. § 48-120 (Cum. Supp. 2012), which govern an employer's liability for an employee's medical expenses resulting from an industrial accident. Section 48-120(1)(a) provides that an "employer is liable for all reasonable medical, surgical, and hospital services."[17] Subsection 48-120(1)(b) requires the compensation court to establish a schedule of fees for the services itemized in § 48-120(1)(a).[18] And § 48-120(1)(e) provides:

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[17] See *Pearson v. Archer-Daniels-Midland Milling Co.*, *supra* note 1.

[18] *Id.*

> The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of (i) the fee established by the compensation court for any such service . . . .

Finally, § 48-120(8) provides:

> The compensation court shall order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such supplier or payor may be made or become a party to any action before the compensation court.

It is undisputed in this case that the College paid the amounts provided by the fee schedule to the providers of medical services within 30 days of the award. It is likewise undisputed that VanKirk had previously paid some of those same providers before they received payment from the College and that she was eventually reimbursed by the providers, although some of the reimbursements were not made within 30 days of the award. VanKirk contends that based on § 48-120(8), the College was required "to reimburse [her] for the payments she had made, and not simply pay the fee schedule amount to the providers and leave it to them to reimburse [her] the full amount she had paid them."[19]

But the language of the award does not specifically require the procedure VanKirk proposes. The award states that VanKirk "ought to be reimbursed" for payments she had made to the medical providers listed on the exhibit, but it does not indicate which entity should make such reimbursement. We are not persuaded that § 48-120(8) can be read to require an employer to directly reimburse an injured worker for medical expenses he or she has paid prior to the entry of an award by the court. Although § 48-120(8) authorizes the compensation court to order an employer to make "reimbursement to anyone who has made any payment to the supplier for

[19] Brief for appellant at 7.

services provided in this section," it also provides that "[n]o such . . . payor may be made or become a party to any action before the compensation court." Because the injured worker is a party to the case, we read the term "payor" as used in § 48-120(8) as limited to third-party payors, such as health insurance carriers.

In *Pearson*,[20] we stated that "§ 48-120(8) mentions third parties only insofar as it gives the compensation court the power to order a third party to be reimbursed if it pays a provider or supplier." In the present case, there is no issue involving a third-party payor. Accordingly, we conclude that the College fully and timely complied with the award by paying the scheduled fee amounts to the medical providers within 30 days of the award. We have stated that "the purpose behind § 48-120(1)(e) is to prohibit a supplier or provider from charging more than the fee schedule permits."[21] Thus, upon receipt of payment from an employer, a supplier or provider of services becomes obligated to reimburse an employee any amounts he or she has previously paid. And that is what occurred in this case. Although the reimbursements were not completed within 30 days of the award, we do not find that the College is subject to liability for attorney fees. The College's payments to the medical providers were made within the 30-day period. At that point, reimbursement of payments made by VanKirk was the responsibility of the providers, and any delay is not chargeable to the College.

Interest

Section 48-125(3) provides for an assessment of interest "[w]hen an attorney's fee is allowed pursuant to this section . . . ." Because VanKirk was not entitled to attorney fees, she was not entitled to an award of interest.

CONCLUSION

For the reasons discussed, we conclude that the compensation court did not err in overruling VanKirk's motion for a

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[20] *Pearson v. Archer-Daniels-Midland Milling Co.*, *supra* note 1, 282 Neb. at 410, 803 N.W.2d at 496.

[21] *Id.* at 409, 803 N.W.2d at 496.

waiting-time penalty, attorney fees, and interest pursuant to § 48-125. We therefore affirm the judgment of the compensation court.

AFFIRMED.

MILLER-LERMAN, J., participating on briefs.