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Supreme Court overturns workers' comp ruling

By Jane Pribek

Special to Minnesota Lawyer

The Minnesota Supreme Court in a unanimous decision has held that the retirement presumption of Minnesota's workers' compensation statute applies unless an employee receiving benefits rebuts the presumption by a preponderance of the evidence, or proves knowing and intentional waiver by the employer.

The decision in *Frandsen v. Ford Motor Co.* published Aug. 10 overturns a ruling by the Workers' Compensation Court of Appeals, or WCCA, which erred when it held that the Ford Motor Co.'s failure to expressly reserve the retirement presumption in a stipulation constituted waiver of the presumption, because the record contained no evidence that Ford intended to continue paying the employee, George Frandsen, permanent total disability (PTD) benefits after he turned 67.

Ford had asserted before the WCCA that it was entitled to cease payment of PTD benefits when Frandsen turned 67 because § 176.101, subd. 4 states: "Permanent total disability shall cease at age 67 because the employee is presumed retired from the labor market. This presumption is rebuttable by the employee."

The April 2007 stipulation at issue reclassified the temporary total disability benefits Ford had previously paid Frandsen as PTD benefits. Ford had overpaid Frandsen because his compensation should have been reduced by the amount the Social Security Disability Insurance benefits he had received.

The stipulation set an anticipated sum of PTD, as well as the terms by which Ford's

overpayment would be recouped via offsets. The parties agreed to adjust that offset amount annually. Ford expressly reserved its right in the stipulation to bring subrogation and indemnity claims. But the stipulation did not mention the discontinuance of benefits or the statutory retirement presumption.

The WCCA ruled for Frandsen, but the



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justices reversed and remanded in a decision written by Justice G. Barry Anderson.

The decision

The WCCA had held that Ford failed to reserve in the stipulation the right to discontinue PTD benefits at age 67, and so waived that right, but the Supreme Court disagreed.

Anderson wrote: "According to its plain language, Minn. Stat. § 176.101, subd. 4, affords an employer the right to presume that an employee would have retired at age 67 and, correspondingly, to stop paying PTD benefits without taking any action prior to this cessation. Because an employer could invoke the presumption of retirement by simply not acting, an em-

ployee cannot rely solely on that same inaction to prove an intent to waive the retirement presumption ...

"To require an employer to expressly reserve the right to rely upon the retirement presumption improperly relieves the employee of his or her burden to either rebut the presumption by a preponderance of the evidence or to prove that the em-

ployer knowingly and intentionally waived the presumption."

The high court then determined that Ford's failure to expressly reserve the retirement presumption in the stipulation did not waive the presumption.

"After conducting our own review of the stipulation, we find no indication that Ford intended to waive the retirement presumption. The stipulation contains no durational language from which we can infer the length of time that Ford intended to pay PTD benefits to Frandsen. The lack of information about future benefits is unsurprising because the parties agree that this settlement was a 'to-date' stipulation intended to settle only those claims outstanding at the time of the agreement. ...

Workers

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“The stipulation did not foreclose future claims between the parties. In fact, the parties specifically agreed to review the amount of PTD compensation payable to Frandsen on an annual basis. Based on these facts, we conclude that the stipulation for settlement does not indicate that Ford intended to continue paying PTD benefits after Frandsen turned 67. Therefore, Frandsen failed to prove that Ford intended to waive the retirement presumption.”

The high court additionally found it significant that Frandsen’s counsel conceded at oral argument that there was no evidence of any discussion of the retirement presumption at the time of the stipulation, let alone an affirmative waiver by Ford.

“At the end of the day, the employee’s position is essentially that entering into a stipulation with the implied knowledge of the existence of the retirement presumption is enough to establish an employer waiver. We disagree.”

Counsel’s comments

Kathryn Hipp Carlson, who represented the Ford Motor Co., said, “The Workers’ Compensation Court of Appeals, in reviewing petitions to discontinue based upon the statutory retirement presumption, has been asking the wrong question. They’ve been asking whether or not the employer reserved the statutory right to discontinue permanent total disability benefits at age 67, but they should’ve been asking, ‘Was the statutory right to discontinue waived?’ So really what the Supreme Court did was correct the question to be asked.

“What it means for the parties is that the WCCA cannot find or imply an unanticipated intent or unanticipated effect of a to-date settlement agreement, and also that the employee must meet his burden of proof to rebut the retirement presumption or to show that a statutory defense was waived. The WCCA’s decision read into the settlement agreement something that neither party ever intended be there and also removed the employee’s evidentiary burdens.”

Carlson, of Hipp Carlson in Minneapolis, added, “This doesn’t in any way take away from an employee’s rights. An employee still has the right to petition for benefits beyond age 67. It just confirms that they have the burden of rebutting the retirement presumption. It also confirms that a statutory right cannot be waived merely by not expressly reserving it in a to-date settlement agreement.”

The Minnesota Association for Justice participated as *amicus* and was disappointed that Frandsen’s arguments did not carry the day with the high court, said Ray Peterson of McCoy, Peterson & Jorstad in Minneapolis. However, since the Minnesota Court of Appeals issued its opinion, the workers’ compensation bar has been drafting the appropriate language to protect their clients, employers and employees alike. “Now the only impact is, the defense won’t have to put that language in, according to the Supreme Court. So we’ll save a few trees.”

Jim S. Pikala represented *amicus curiae* the Minnesota Self-Insurers’ Association. He said the decision has implications beyond the parties involved in this case, “be-

cause there are probably hundreds if not thousands of settlement documents out there that could’ve been affected by the interpretation given by the lower court.”

Pikala, of Arthur, Chapman, Kettering, Smetak & Pikala in Minneapolis, said, “The fear was that if the lower court’s decision were affirmed, it could be used adversely against employers and insurers, exposing them to claims for benefits that, before the settlement agreement, did not exist, or the parties assumed did not exist.”

Another *amicus*, the Minnesota Defense Lawyers Association, was represented by Doug Brown of Brown & Carlson in Minneapolis. He said, “It’s a good decision, because it really helps both sides in terms of settlements and making sure everyone understands the terms of the settlement and what’s going to happen down the road. Because one of the things we were arguing was that if the defense has to reserve every statutory right and defense available, then petitioners should have to reserve every claim that’s available. I think the Supreme Court recognized the fact that just would not be a sustainable position.”

In terms of its fiscal impact, Brown said, “Without being able to invoke the statutory retirement presumption, the obligation to permanent total disability benefits could’ve been a lifetime liability. Businesses and insurers have to be quite pleased that this kind of unknown is now gone.”

Jim Schneider of Butts, Sandberg & Schneider in Forest Lake represented Frandsen. He did not return a call seeking comment. 