

**IN THE CIRCUIT COURT OF
THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY,
FLORIDA**

**ORANGE COUNTY PUBLIC SCHOOLS
and UNITED SELF INSURED SERVICES,
INC.,**

Appellants,

v.

WANDA ADAMS,

Appellee.

CASE NO.: 2011-CV-1

Lower Court Case No.: 2010-SC-5084

Appeal from the County Court,
for Orange County,
John E. Jordan, Judge.

Thomas A. Moore, Esquire,
for Appellants.

Bill McCabe, Esquire,
Thomas A. Vaughan, Esquire, and
Carrie Hixson, Esquire
for Appellee.

Before LAUTEN, MIHOK, THORPE, J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT'S ORDER

Appellants, Orange County Public Schools ("OCPS") and United Self Insured Services, Inc. ("USIS, INC.") timely appeal the trial court's order rendered on December 16, 2010 granting Appellee, Wanda Adams' ("Adams") motion to dismiss. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

Facts and Procedural History

Adams was employed by OCPS. On January 27, 2009, she filed a petition for worker's compensation benefits in the Office of the Judges of Compensations Claims-Orlando District ("JCC") for work related injuries incurred on October 14, 2008. On October 13, 2009, a hearing was held to address the petition before The Honorable Thomas W. Sculco, Judge with JCC. In the petition, Adams requested authorization for an alternative primary care provider for her injuries and an award of attorney's fees and costs. OCPS, as the self-insured employer, and USIS, INC., as the servicing agent, defended the petition arguing that an alternative primary care provider was previously authorized. Thus, Adams was precluded from obtaining authorization for a second alternate provider. OCPS and USIS, INC. also requested an award of costs pursuant to § 440.34(3), Florida Statutes, that provides a Judge of Compensation Claims with the authority to award to the prevailing party reasonable costs.

On October 28, 2009, Judge Sculco entered a Compensation Order that denied with prejudice Adams' petition and granted an award of costs to OCPS and USIS, INC. per § 440.34(3), Florida Statutes. Subsequently on December 17, 2009, in accordance with the award of costs, OCPS and USIS, INC. filed with the JCC the Self-Insured Employer/ Servicing Agent's ("E/SA") Verified Motion to Tax Costs against Adams that was heard before Judge Sculco on March 31, 2010. On April 13, 2010, Judge Sculco entered the Order on E/SA's Motion to Tax Costs ("JCC Costs Order") directing Adams to pay OCPS and USIS, INC. \$1,811.54 for reimbursement of its costs. The JCC Costs Order became final on May 10, 2010 and was not appealed.

On July 9, 2010, OCPS filed in this Circuit's county court a Statement of Claim seeking a judgment for enforcement and collection of the debt that to date had not been paid by Adams. Adams brought a motion to dismiss the Statement of Claim action for lack of subject matter jurisdiction that was heard before The Honorable John E. Jordan, County Court Judge, on December 2, 2010. Also, at the hearing, the Court was informed that Adams filed with the JCC a new petition for benefits on December 1, 2010 the day before the hearing. Upon hearing the motion to dismiss the Statement of Claim action, Judge Jordan entered an order on December 16, 2010 granting the motion to dismiss with prejudice finding that the county court did not have subject matter jurisdiction over the Statement of Claim action.

Accordingly, OCPS and USIS, INC. appeal the order dismissing the Statement of Claim arguing that the trial court erred, as a matter of law, when it dismissed with prejudice the Statement of Claim action for recovery of the debt owed of less than \$15,000.00. Conversely, Adams argues that the JCC has the sole jurisdiction under § 440.24(1), Florida Statutes, to enforce the award.

Also, both Appellants and Appellee have filed motions for appellate attorney's fees and costs. The statutory authority cited in Appellants' motion is § 440.34(3) and § 57.105, Florida Statutes. The statutory authority cited in Appellee's motion is § 440.34(5) Florida Statutes.

Standard of Review

When an appeal involves a purely legal matter such as whether a court has subject matter jurisdiction or the judicial interpretation of a statute, the standard of review is de

novo. *Armstrong v. Harris*, 773 So. 2d 7, 11 (Fla. 2000); *Jacobsen v. Ross Stores and Sedgwick Claims*, 882 So. 2d 431, 432 (Fla. 1st DCA 2004); and *Racetrac Petroleum, Inc. v. Delco Oil, Inc.*, 721 So. 2d 376, 377 (Fla. 5th DCA 1998). It is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1980) and *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Appellants' Argument Discussed

OCPS and USIS, INC. provide case law in support of their argument that subject matter jurisdiction exists in the county court to enforce the JCC's Order granting their Motion to Tax Costs. Among the cases cited by OCPS and USIS, INC., is *Orange County & Alternative Service, etc. v. New*, 39 So. 3d 423 (Fla. 5th DCA 2010), where, like in the instant case, the employee failed to pay costs awarded by the JCC to the employer Orange County as the prevailing party. But unlike the instant case, Orange County in the *New* case sought enforcement of the costs award in the form of a petition for rule nisi with the circuit court instead of a Statement of Claim with the county court. In *New*, the Fifth District Court of Appeal applied the plain meaning of § 440.24(1), Florida Statutes, and held that while the statute provides for an employee to recover costs from an employer via a petition for rule nisi in the circuit court, it does not provide for a reciprocal enforcement remedy in the circuit court for an employer seeking to recover costs from the employee. This dilemma arose because when § 440.24(1), Florida Statutes, was first enacted, only employees could recover costs. Subsequently in the 2003 legislative session, § 440.34(3), Florida Statutes, was amended to provide that any prevailing party could recover costs, but

the legislation failed to also amend § 440.24(1), Florida Statutes, to add in a provision for an enforcement remedy for employers.

Importantly, the Fifth District Court of Appeal also held in *New*, that an employer may enforce a JCC's costs award "in the appropriate court having jurisdiction over the amount in controversy, just as any other debt may be enforced in the appropriate court." *New* at 425. Following *New*, decisions were issued in cases from the First District Court of Appeal that adopted the holding in *New* finding that enforcement of a cost award as with any other debt may be enforced in the appropriate court having jurisdiction over the amount in controversy. *Brown v. Clay County Board of County Commissioners & Scibal Associates*, 43 So. 3d 782 (Fla. 1st DCA 2010) and *Lakeland Regional Medical Center & Commercial Risk Management, Inc. v. Weech*, 54 So. 3d 1005 (Fla. 1st DCA 2010).

This Court's Findings

This Court finds that the decision in *New* is binding, including the portion of the decision holding that an employer may enforce a JCC's costs award in the appropriate court having jurisdiction over the amount in controversy just as any other debt may be enforced. Thus, the trial court erred when it granted Adams' motion to dismiss with prejudice based upon lack of subject matter jurisdiction. Accordingly, OCPS and USIS, INC. may seek relief via the Statement of Claim action in the county court where subject matter jurisdiction exists pursuant to § 34.01(1)(c), Florida Statutes.

However, this Court notes that the court record is unclear as to whether all administrative remedies to enforce the JCC Costs Order through the JCC have been exhausted by OCPS and USIS, INC. When Adams filed the new petition for benefits with

the JCC on December 1, 2010, OCPS and USIS, INC. filed on December 7, 2010 a motion to dismiss/suspend benefits due under said claim, per § 440.24(4), Florida Statutes, in an effort to enforce and collect on the JCC Costs Order. Section 440.24(4), Florida Statutes (2010), provides “In any case wherein the employee fails to comply with any order of a judge of compensation claims within 10 days after such order becomes final, the judge of compensation claims may dismiss the claim or suspend payments due under said claim until the employee complies with such order...” On December 22, 2010, Adams filed with the JCC a response to OCPS and USIS, INC.’s motion to dismiss/suspend benefits. To date, there are no subsequent JCC documents in the court record dated after the filing of Adams’ response that address whether OCPS and USIS, INC.’s motion to dismiss/suspend benefits was ruled upon by the JCC or is still pending. Therefore, this Court suggests that all available adequate administrative remedies, if any, should be exhausted prior to the county court exercising its power of jurisdiction to enforce the JCC Costs Order. *State of Florida Department of General Services v. Biltmore Construction Company*, 413 So. 2d 803 (Fla. 1st DCA 1982).

Further, this Court finds that Appellants as the prevailing parties in this appeal, are entitled to an award of appellate costs pursuant to § 440.34(3), Florida Statutes, but is not entitled to an award of appellate attorney’s fees. While § 440.34(3), Florida Statutes, provides for an award of costs, it does not provide for an award attorney’s fees to an employer or carrier. Also, this Court does not find that an award of attorney’s fees is warranted in this case under § 57.105, Florida Statutes.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the trial court's "Order on Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction" entered on December 16, 2010 is **REVERSED**. Appellants' Motion for Appellate Attorney's Fees and Costs is **GRANTED** as to appellate costs and **DENIED** as to appellate attorney fees. Appellee's Motion for Attorney's Fees and Costs is **DENIED**. Accordingly, this case is **REMANDED** for further proceedings consistent with this Order.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 27th day of October, 2011.

/S/

FREDERICK J. LAUTEN
Circuit Court Judge

/S/

A. THOMAS MIHOK
Circuit Court Judge

/S/

JANET C. THORPE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished via U.S. mail to: **Thomas A. Moore, Esquire**, Moore, Peterson & Zeitler, P.A. P.O. Box 536636, Orlando, Florida 32853-6636; **Bill McCabe, Esquire**, Sheperd, McCabe & Cooley, 1450 SR 434 West, Suite 200, Longwood, Florida 32750; and **Thomas A. Vaughan, Esquire** and **Carrie Hixson, Esquire**, Vaughn Law Group, 121 South Orange Avenue, Suite 900, Orlando, Florida on this 28th day of October, 2011.

/S/

Judicial Assistant