Kentucky Supreme Court
Cases of Note
September-October, 2018

Note: To open hyperlink, take one of the following steps:
1. Hold down the control ("Ctrl") key and click on the link.
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Note: No Court in October

ARBITRATION

Geoffrey T. Grimes v. GHSW Enterprises, LLC
2018-SC-00027-1 September 27, 2018

Opinion of the Court by Justice Venters. All sitting; all concur. GSHW and Grimes entered into an employment agreement which included a non-compete provision and an arbitration clause. The agreement also provided that in the event of a dispute, GSHW could seek pre-arbitration judicial remedies such as injunctive relief. The agreement made no express provision for such remedies for Grimes. Grimes left his employment and went to work for a competitor and filed a complaint in circuit court alleging breach of contract and various other claims. GSHW responded with a cross-motion to compel arbitration. The trial court declared the arbitration clause invalid and unenforceable for lack of mutuality because it allowed GSHW but not Grimes to have injunctive remedies. The Court of Appeals granted relief to GHWS compelling arbitration. On discretionary review, the Supreme Court affirmed, holding: (1) parties to an arbitration agreement may seek pre-arbitration injunctive relief in the absence of affirmative language expressly limiting that right. Even though the agreement did not expressly afford that option to Grimes, no lack of mutuality occurred because Grimes had that right anyway; (2) as a matter of first impression, the Court adopted Restatement (Second) of Contracts § 79 (1979): "If the requirement of consideration is met, there is no additional requirement of ... 'mutuality of obligation,'" thereby adopting the majority rule and abolishing the mutuality of obligation requirement in Kentucky, as for example identical rights to seek arbitration; (3) here, the employment agreement was supported by adequate consideration sufficient to meet the consideration element so as to bind Grimes to the agreement; and (4) the arbitration agreement was not unconscionable.

Northern Kentucky Area Development District v. Danielle Snyder
2017-SC-000277-DG September 27, 2018

Opinion of the Court by Chief Justice Minton. Minton, C.J.; Cunningham, Hughes, Keller, Venters, and Wright, JJ., sitting. All concur. VanMeter, J., not sitting. The Court found that KRS 336.700(2) prevents the Northern Kentucky Area Development District from enforcing an arbitration clause contained in an employment contract, specifically, because the District conditioned the employment of Danielle Snyder on her agreement to the clause. Because KRS 336.700(2) prohibits the exact action that the District took, the Court voided the arbitration agreement as ultra vires. Finally, the Court concluded that the Federal Arbitration Act did not preempt KRS 336.700(2), as KRS 336.700(2) does not 2 discriminate against arbitration agreements in any way, but rather the conditioning of employment on agreement to them.

WORKERS COMPENSATION

Active Care Chiropractic, Inc. v. Katherine Rudd, et al.

2017-SC-000377-WC September 27, 2018

Opinion of the Court by Justice VanMeter. All sitting. Cunningham, Hughes, Keller, VanMeter, Venters, and Wright, JJ., concur. Minton, C.J., dissented with opinion. The sole issue in dispute is the correct multiplier to be applied to Katherine Rudd's workers' compensation benefits. Active Care Chiropractic, Inc. employed Rudd part-time. While taking out the trash one day at work, Rudd slipped and fell, injuring her shoulder. After three shoulder surgeries, she returned to work. About a year after her return to work, Rudd voluntarily retired, for reasons not solely related to the work-related injury. The Administrative Law Judge determined that Rudd qualified for the two-multiplier under the plain wording of KRS 342.730(1)(c)2 and because Rudd's cessation from work was not due to intentional or reckless misconduct, per this Court's holding in Livingood v. Transfreight, LLC, 467 S.W.3d 249 (Ky. 2015). The Workers' Compensation Board affirmed. On appeal, the Supreme Court likewise affirmed, concluding that under the plain language of KRS 342.730(1)(c)2, voluntary retirement and removal from the workforce for reasons not related to the workplace injury qualifies as "cessation of . . . employment . . for any reason" and affords the application of the two-multiplier to benefits received. In so ruling, the Court emphasized its duty to accord to words of a statute their literal meaning and not 6 breathe into the statute that which the Legislature has not put there. Further, the Court held that pursuant to Livingood, the only purported restriction on application of the two-multiplier is an employee's intentional or reckless misconduct, which was nonexistent in this case. Thus, no exception to the unambiguous language of KRS 342.730(1)(c)2 precludes Rudd's recovery of the two-multiplier.