

**IN THE HOOPA VALLEY TRIBAL COURT OF APPEALS
HOOPA VALLEY TRIBE
HOOPA, CALIFORNIA**

Antoinette Denise Cooper, Plaintiff and Respondent,
v.
Hoopa Valley Tribal Council, Defendant and Appellant.

No. C-03-65/AA-06-001/A-07-001 (December 20, 2007)

SYLLABUS*

Arbitrator ruled that the death benefit to the surviving child of a volunteer tribal firefighter killed in the line of duty could be based on the imputed income of a tribal employee. Tribal Court, sitting in its appellate capacity, reversed and remanded to the arbitrator for further proceedings. Court of Appeals holds that the Tribe's worker's compensation statute only allows death benefits to be based on actual earnings; therefore the benefit payable to the surviving dependants of a volunteer is necessarily zero. Tribal Court order reversed and remanded with direction to dismiss the complaint with prejudice.

Before: Lisa Brodoff, Chief Justice; Matthew Fletcher, Justice; Suzanne Ojibway Townsend, Justice.

Appearances: Grett Hurley and Pat MacAleer for Appellant Hoopa Valley Tribal Council; Mark Malachowski for Respondent Antoinette Denise Cooper.

OPINION

Fletcher, J.:

I. Procedural History

The Hoopa Valley Tribe (Tribe or Appellant) appeals final judgment of \$54,073.76 awarded under Title 46 fatality income benefits to be paid to dependent minor Antoinette Cooper (Respondent) for the accidental death of her father Paul Garcia-Cooper (Decedent).

* The syllabus is not a part of the Court's Opinion. The syllabus is a summary of the Opinion prepared by the publishers of this Reporter only for the convenience of the reader. Therefore, the syllabus should not be cited in whole or part as legal authority. Only the Opinion, which follows the syllabus, may be cited as legal authority.

On February 14, 2000, Garcia-Cooper walked on after suffering injuries while working for the Tribe as a volunteer firefighter. The Tribe paid his medical and funeral expenses but denied death benefits, claiming that fatality income benefits were not payable to volunteer firefighters, only to paid employees. Respondent sought to appeal this initial denial to the Hoopa Valley Tribal Court (Tribal Court) on February 10, 2003. The Tribal Court dismissed Respondent's complaint on February 18, 2003 and required that she exhaust the administrative appeals process before seeking judicial review.

During the administrative appeals process, Respondent brought a second complaint to Tribal Court on July 1, 2003, after the third party administrator failed to provide a written determination for denial of benefits as required by Title 46. Respondent argued that this omission barred her from further pursuing her administrative appeal. On August 18, 2003, the Tribe filed a motion to dismiss, which was denied by Tribal Court on October 23, 2003. The third party administrator finally provided written notice of benefits denial on August 25, 2003. Respondent filed an application for an adjudication conference to present her claim before an arbitrator on September 10, 2003. Both Respondent and the Tribe agreed to present their cases to Jon Lyons ("arbitrator") on October 1, 2003.

On June 7, 2004, the arbitrator appointed Mallica Cooper as guardian ad litem and Trustee of the minor Respondent. The arbitrator sought mechanisms to determine earned annual income under the statute for an uncompensated tribal volunteer, and asked Respondent and the Tribe to submit additional evidence and alternative salary ranges for his consideration.

On December 9, 2004, the arbitrator awarded Respondent the statutory maximum of \$95,000, to be paid at \$224.00 per week. The Tribe appealed the arbitrator's decision to the Hoopa Valley Tribal Court, Appellate Division ("Appellate Division"). On April 26, 2005, the Appellate Division reversed and remanded back to the arbitrator for a new determination of statutory annual earnings using specific factors to better determine Decedent's earning capacity. On appeal of the April 26, 2005 decision to this Court, we remanded the matter back to the arbitrator for further proceedings, including a mandate to take evidence to "establish what the decedent would have earned from any Hoopa Valley Tribal Council employment had he not died (earning capacity on the date of death)." *Cooper v. Hoopa Valley Tribal Council*, 7 NICS App. 42 (Hoopa Valley Tribal Ct. App. 2005).

The arbitrator held a hearing on January 24, 2006 to consider evidence regarding Decedent's earning capacity. Only the Tribe attended the hearing and presented evidence. On April 28, 2006, the arbitrator ordered a death benefit of \$54,073.76, which was determined by extrapolating an entry firefighter salary amount to Decedent and applying the statutory calculation. The Tribe appealed this decision. The Tribal Court Appellate Division reversed and remanded back to the arbitrator yet again to hold further proceedings on March 9, 2007. The Tribe appealed this decision on March 29, 2007.

II. Facts

Decedent was a volunteer Tribal firefighter killed in the line of duty. The Decedent was killed in a motor vehicle accident on February 14, 2000, en route to an emergency call. It is not disputed that Decedent was a tribal volunteer eligible to receive worker's compensation benefits under H.V.T. Resolution No. 93-78 and Ordinance No. 2-97, Title 46. In fact, Decedent did receive both medical benefits and burial benefits under the provisions of the Tribe's Worker's Compensation Ordinance. Decedent's estate has not however, received any annual earnings benefits under the Ordinance. Thus, the question before this Court is whether annual earnings benefits are due to unpaid tribal volunteers under the Tribe's Worker's Compensation Ordinance, and if so, how the benefits should be calculated. This question is one of first impression for this court.

III. Discussion

A. Limited Waiver of Tribal Sovereign Immunity

As other courts in other contexts have recognized, *e.g. Shermoen v. United States*, 982 F.2d 1312, 1318 (9th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993), we recognize that the Hoopa Valley Tribe is immune from suit absent its consent. *See Rowland v. Hoopa Valley Tribe*, 2 NICS Rptr. 185, 186-88 (Hoopa Valley Court of Appeals 1992); *see also* 1 H.V.T.C. § 1.1.04(e). The Tribe's consent to suit "may not be implied, but must be expressed unequivocally." *Rowland*, 2 NICS Rptr. at 187 (citations omitted).

The Tribe concedes a limited statutory waiver of sovereign immunity under 46 H.V.T.C. § 9, which provides as follows:

A. When an injury causes death within five years from the date of the injury, the Employer will be liable for compensation to the dependents of the injured Employee as provided for in this section....

B. The death benefit will be four times the annual earnings from the Hoopa Valley Tribal Council, not to exceed the following maximums:

* * *

3. Minor Child or Children Only: \$95,000.00....

We hold that a limited waiver of the Tribe's sovereign immunity has thus been unequivocally expressed in the language of Title 46. This limited waiver permits appellate judicial review and designates statutory maximums for monetary damages. 46 H.V.T.C. § 5

(Q)(1); 46 H.V.T.C. § 9. Under this provision, the Tribe accepts liability for compensable workers compensation claims, up to the statutory maximum of \$95,000 under 46 H.V.T.C. § 9.¹

B. Plain Language of the Statute

Under 46 H.V.T.C § 4(A), the Tribal Council's policy is "to self fund the Tribe's worker's compensation liabilities and to administer the program in accordance with accepted Tribal law, unless amended by Tribal resolution." It is undisputed that the Hoopa Valley Tribe brought tribal volunteers under the umbrella of the worker's compensation ordinance pursuant to H.V.T. Resolution No. 93-78 ("Resolution No. 93-78"), which provides in relevant part:

all volunteer workers for the Hoopa Valley Tribe need to be covered by Worker's Compensation Insurance so that the drug and alcohol ordinance can be applied across the board...."

* * *

"all present and future volunteer workers for all entities of the Hoopa Valley Tribe shall be covered through Worker's Compensation Insurance."

* * *

As a tribal volunteer, the Decedent was thus covered by the Tribe's worker's compensation ordinance. The question is what benefits (including a death benefit) under the ordinance the Decedent, an unpaid volunteer, is entitled to receive.

The Tribe's worker's compensation ordinance requires that death benefits be determined from actual annual earnings paid by the Tribe. The relevant Hoopa law, 46 H.V.T.C. § 9 (A)-(D), describes Fatality Income Benefits under the Tribal WC program. According to the statute, these death benefits must be determined as "four times the annual earnings from the Hoopa Valley Tribal Council" not to exceed \$95,000. 46 H.V.T.C. § 9 (B).

We hold that under the plain language of 46 H.V.T.C. Section 9(B), Decedent is precluded from receiving § 9(B) benefits because the Decedent had no actual annual earnings as a volunteer firefighter. Four times the annual earnings of a volunteer who has no earnings is \$0 benefit under the clear statutory language. Accordingly, the arbitrator's death benefit determination of \$54,073.76 is impermissible

¹ In this instant appeal, Respondent raises for the first time arguments that the Tribe's immunity serves to violate her substantive due process rights, if any, and her rights to petition to the government for redress, if any. *See* Response to Hoopa Valley Tribe's Opening Brief at 9-13. We find no reason to address these arguments, which were never before raised in the long history of this litigation.

The Respondent argues that the Hoopa legislature derived their worker's compensation ordinance from California law and that we should therefore apply California common law to resolve this question. *See* Response to Hoopa Valley Tribe's Opening Brief at 23-28.² We see no reason to look to the common law of another jurisdiction when the plain language of relevant statute provides an answer to the question.

This Court has no option but to reverse the decision of the Appellate Division. This Court notes that the decision it reaches here may seem inequitable, given that the result denies significant benefits to the child of a volunteer firefighter who lost his life in service to the Tribe. Nevertheless, the policy of the Tribe is clearly set forth in the ordinances this Court interpreted, and this Court has no authority to override or re-interpret the policy the Tribe has chosen.

The Decision of the Appellate Division is reversed and remanded with direction to enter judgment in favor of the Tribe and dismiss the complaint with prejudice.

² At this point, we wish to note the Tribe's responses to this line of argumentation gives us pause. *See* Hoopa Valley Tribe's Reply Brief at 12 (citing *Genusa v. Pointe Coupee Volunteer Fire District*, 644 So. 2d 851, 852 (La. App. 1994); *Hix v. Jenkins*, 118 N.C. App. 103, 104 (1995); *Dyess v. Meagher County*, 315 Mont. 35, 40 (2003); *Wolf v. Workers Compensation Appeals Board of Berks County*, 705 A.2d 483, 486 (Pa. Commw. Ct. 1997); *Community Action Program of Evansville v. Veeck*, 756 N.E.2d 1079, 1082 (Ill. App. 2001)). The Tribe cites these cases in support of the general proposition that a volunteer is ineligible for worker's compensation benefits unless a statute specifies a wage rate. None of these cases holds any such thing. We do not sanction the Tribe's attorneys here because the line of argument is inapposite to our holding, but we strongly caution the Tribe's attorneys that future misconduct will be dealt with appropriately.