

STATE OF MICHIGAN
WORKERS' DISABILITY COMPENSATION APPEALS COMMISSION

CHARLES D. LISCHKGE,
PLAINTIFF,

V

DOCKET #22-0015

GENERAL MOTORS CORPORATION,
SELF INSURED,
DEFENDANT.

GLENN A. BOWERS,
PLAINTIFF,

V

DOCKET #22-0016

GENERAL MOTORS CORPORATION,
SELF INSURED,
DEFENDANT.

JANICE ROBBINS,
PLAINTIFF,

V

DOCKET #22-0017

GENERAL MOTORS CORPORATION,
SELF-INSURED,
DEFENDANT.

ANTHONY WINSTON,
PLAINTIFF,

V

DOCKET #22-0018

GENERAL MOTORS CORPORATION,
SELF-INSURED,
DEFENDANT.

APPEAL FROM MAGISTRATE HOUSEFIELD.

STEVEN J. POLLOK FOR PLAINTIFFS,
THOMAS RUTH FOR DEFENDANTS.

OPINION

ROYAL, CHAIRPERSON

These four consolidated cases came before the Workers' Disability Compensation Appeals Commission ("WDCAC")¹ on appeals from the four respective plaintiffs, Charles D. Lischke, Glenn A. Bowers, Janice Robbins, and Anthony Winston, from orders from Magistrate J. William Housefield on a single common issue – the right of their employer, defendant General Motors, LLC ("GM"), to consider their receipt of social security disability insurance benefits ("SSDIB") in coordinating their workers' compensation and disability pension benefits pursuant to MCL 418.354.² Each case was tried below on stipulated facts and submitted on briefs. Using identical legal reasoning, the magistrate held in each case that GM did not improperly coordinate the plaintiffs' benefits pursuant to a formula that considered SSDIB. The WDCAC consolidated the four cases in an order mailed September 11, 2024.

Background

The legislature enacted MCL 418.354 in 1981³, permitting employers to coordinate their workers' compensation liability with certain other employer-provided benefits, including pensions. In general, coordination is mandatory pursuant to the language of MCL 418.354(1): "Except as otherwise provided in this section, the employer's obligation to pay or cause to be paid weekly benefits other than specific loss benefits under section 361(2) and (3) shall be reduced by these amounts." (Emphasis added.) See also *Arbuckle v General Motors LLC*, 499 Mich 521, 526; 885 NW2d 232 (2016). However, MCL 418.354(14) gave employers discretion to exclude certain benefits from coordination: "Any disability pension plan entered into or renewed after March 31, 1982 may provide that the payments under that disability pension plan provided by the employer shall not be coordinated pursuant to this section." MCL 418.354(14).⁴ (Emphasis added.)

The parties in these consolidated matters all stipulated that initially, "[a]lthough allowed to do so by statute since 1981, GM did not coordinate workers' compensation benefits with other

¹ This matter is being decided by a two-member panel pursuant to Paragraph 4(b) of Executive Order 2019-13, which states that "[t]he Workers' Disability Compensation Appeals Commission shall act by the vote of two or more members."

² The magistrate's order in *Lischke* was mailed on October 24, 2022, as was the order in *Bowers*. The order in *Robbins* was mailed on October 10, 2022, and the order in *Winston* was mailed on November 9, 2022.

³ This amendment to the Worker's Disability Compensation Act did not become effective until March 31, 1982. 1981 PA 203.

⁴ "The word 'may' generally denotes a discretionary provision while the use of the word 'shall' suggests that the provision is mandatory." *Fink v City of Detroit*, 124 Mich App 44, 49; 333 NW2d 376 (1983).

employer-funded⁵ benefits for workers pursuant to the Collective Bargaining Agreement with the UAW.” (Joint Exhibit #1, paragraph 10.)⁶ However, the parties stipulated that this situation subsequently changed: “On January 1, 2010 the Defendant commenced coordination of benefits based on an amendment to the GM-UAW Collective Bargaining contract.” (*Id.*, paragraph 6.) This amendment was embodied in a letter agreement reached by the parties in 2009, a copy of which was admitted as Joint Exhibit #2 in each of the consolidated cases. That document reprinted a portion of the agreement entered into in 2007, which provided in pertinent part as follows:

. . . for employees who are injured and retire on or after October 1, 2007, workers compensation payments for such employees shall be reduced by disability retirement benefits payable under the Hourly-Rate Employees Pension Plan to the extent that the combined workers compensation payments, initial Social Security Disability Insurance Benefit amount, and the initial disability retirement benefit (per week) exceed the employee's gross Average Weekly Wage at the time of injury. In no event shall such reduction be greater than the disability retirement benefit payable. (Joint Exhibit #2.)⁷

The 2009 agreement further states that, “[a]s a result of the 2009 negotiations, the parties have agreed that the 2007 letter agreement, referenced above, will be amended such that, effective January 1, 2010, the provisions of the 2007 letter agreement will be applied to all retirees who retired prior to January 1, 2010, regardless of their date of retirement or injury.”⁸ This class of employees includes each of the plaintiffs in these matters.

The parties stipulated that each plaintiff was being voluntarily paid workers’ compensation benefits, and that each also received disability pension benefits. (Joint Exhibit #1, paragraphs 1 & 2.) GM began coordinating each plaintiff’s benefits as of January 1, 2010, utilizing the formula set forth in the 2009 letter agreement -- reducing each plaintiff’s workers’ compensation benefit by the amount by which the combined total of their workers’ compensation, SSDIB, and pension

⁵ Some of the stipulations erroneously refer to “employee-funded” rather than “employer-funded” benefits.

⁶ A stipulation as to the applicable facts was entered into evidence in each case as Joint Exhibit #1. Except for the benefit amounts, the stipulations are the same. As pointed out in note 3, *supra*, the coordination statute actually became effective in 1982.

⁷ The parties do not contest the right of GM and the UAW to amend the collective bargaining agreement as it applies to previously-retired employees like plaintiffs. See *Arbuckle*, 499 Mich at 542-543. As a result, that issue is not before us. MCL 418.861a(11).

⁸ The letter agreement further states that, for those employees who retire on or after January 1, 2010, workers’ compensation benefits “shall be reduced . . . by pension or retirement payments payable under the Hourly-Rate Employees Pension Plan.” (Joint Exhibit #2.) Accordingly, it would appear that the computational method called for with respect to those who retired before January 1, 2010, will not apply to those retiring on or after that date.

benefits exceeded their pre-injury average weekly wage, but not by more than the amount of the actual disability pension benefit. The parties stipulated that, if this formula was legal, GM had properly computed the amounts remaining payable. (*Id.*)

Plaintiffs now contend that any computation that takes into account an employee's receipt of SSDIB is precluded by the final sentence of MCL 418.354(11):

Disability insurance benefit payments under the social security act shall be considered to be payments from funds provided by the employer and to be primary payments on the employer's obligation under section 301(7) or (8), 351, or 835 as old-age benefit payments under the social security act are considered pursuant to this section. The coordination of social security disability benefits shall commence on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits shall not be coordinated. *However, social security disability insurance benefits shall only be so considered if section 224 of the social security act, 42 USC 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of worker's compensation benefits by the employee.* (Emphasis added.)

42 USC 424a continues to provide for a reduction of SSDIB for those also receiving workers' compensation benefits. *Kelley v General Motors, LLC*, 335 Mich App 349, 357; 966 NW2d 716, app dis 507 Mich 999; 961 NW2d 151 (2021). As a result, plaintiffs argue that their SSDIB benefits may not be "considered" in determining whether their workers' compensation benefits could be reduced.

Magistrate's Decision

The magistrate found that GM's use of a formula that considered SSDIB benefits in determining the amount of disability pension benefits to be coordinated did not violate MCL 418.354(11):

There is no evidence in the record that the Defendant ever "coordinated" as that term is used in Section 354 of the Act any Social Security Disability Benefits.

For that reason, the court finds that the Defendant's use of the SSDI benefit amount received by the Plaintiff in a formula negotiated by Plaintiff's union did not violate MCL 418.354(11). Nor was such use a violation of any provision of the Michigan Worker's Compensation Act. (Magistrate's opinion at 9.)

The magistrate further observed that, "If GM were only using SSDI be[nefits] to reduce Plaintiff's weekly Workers' Compensation rate (as opposed to it being only one ingredient in a formula) Plaintiff's argument would be valid." (Magistrate's opinion at 8.) Plaintiffs appeal.

Standard of Review

Findings of fact made by a magistrate are conclusive upon the WDCAC if supported by competent, material, and substantial evidence on the whole record. MCL 418.861a(3) and (4). We review the magistrate's conclusions of law de novo. *Abbey v Campbell, Wyant & Cannon Foundry (On Remand)*, 194 Mich App 341, 351; 486 NW2d 131 (1992). Matters of statutory construction constitute questions of law, subject to de novo review. *Maier v General Telephone Company of Michigan*, 247 Mich App 655, 659-660; 637 NW2d 263 (2001); *Shinholster v Annapolis Hospital*, 471 Mich 540, 548; 685 NW2d 275 (2004). We consider "only those specific findings of fact and conclusions of law that the parties have requested be reviewed." MCL 418.861a(11); *Cane v Michigan Beverage Company*, 240 Mich App 76, 80-81; 610 NW2d 269 (2000).

Preemption of State Law

The Supremacy Clause of the United States Constitution provides that federal law shall control over state law, stating:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. (U.S. Const., art. VI, cl. 2.)

"The underlying rationale of the pre-emption doctrine, as stated more than a century and a half ago, is that the Supremacy Clause invalidates state laws that 'interfere with or are contrary to, the laws of congress....' *Gibbons v. Ogden*, 9 Wheat. 1, 211, 6 L.Ed. 23 (1824)." *Chicago and North Western Transportation Company v Kalo Brick & Tile Company*, 450 US 311, 317; 101 S Ct 1124, 1130; 67 L Ed 2d 258 (1981).

More specific to this case, the Employee Retirement Income Security Act ("ERISA") provides that "the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title." 29 USC 1144(a). The United States Supreme Court further explained in *Ingersoll-Rand Company v McClendon*, 498 US 133, 139; 111 S Ct 478; 112 L Ed 2d 474 (1990), writing:

"A law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan." Under this "broad common-sense meaning," a state law may "relate to" a benefit plan, and thereby be pre-empted, even if the law is not specifically designed to affect such plans, or the effect is only indirect." (Citations omitted.)

Issues of preemption relative to the application of the Worker's Disability Compensation Act's coordination provision, MCL 418.354, have arisen prior to the cases involved in this matter. In *Scheuneman v General Motors Corporation (On Remand)*, 243 Mich App 210, 215-216; 622 NW2d 525 (2000), the Michigan Court of Appeals considered whether ERISA preempted the state statute reducing workers' compensation benefits by virtue of an injured employee's receipt of disability pension benefits, and held that it did not:

Applying these principles to the instant case leads us to the conclusion that § 354 is not preempted by the ERISA. First, § 354 does not alter the level of benefits that would be paid out under a given employee benefit plan from state to state. *Teper, supra* at 214. The coordination provisions in § 354 have no effect on the amount of benefits paid under the mutual pension. Rather, § 354 affects the amount of worker's compensation benefits paid to the employee. Second, plaintiff has not demonstrated that § 354 alters the terms of the pension plan. *Id.* Finally, plaintiff has not demonstrated that § 354 subjects the fiduciaries of the pension plan to claims other than those provided in the ERISA. *Id.*

Because § 354 does not affect the administration of the mutual pension plan, but only affects the amount of worker's compensation benefits paid, which is traditionally an area of state authority, we conclude that any effect of § 354 on the pension plan is too tenuous and remote to warrant preemption.

However, *Scheuneman* pre-dated the Letters of Agreement that altered the CBA in 2007 and again in 2009, the latter of which is at issue in the instant case. In a case that took into account those Letters of Agreement, *Arbuckle v General Motors LLC*, 499 Mich 521; 885 NW2d 232 (2016), the Court reached a different conclusion.

In *Arbuckle*, the Court pointed out that disputes regarding CBAs fall within the scope of the federal Labor Management Relations Act ("LMRA"), 29 USC 141, *et seq.* As a result, the Court held, "A threshold question is whether plaintiff's claim of entitlement to uncoordinated workers' compensation benefits is actually a claim under § 301 of the federal Labor Management Relations Act (LMRA) [29 USC 185] and is, therefore, preempted by federal law." *Arbuckle*, 499 Mich at 532. (Footnote omitted.) The Court explained:

Although this statute does not contain an express preemption clause, the United States Supreme Court has concluded that § 301 impliedly preempts certain state-law causes of action involving labor contracts. The Court has explained that

§ 301 is a potent source of federal labor law, for though state courts have concurrent jurisdiction over controversies involving collective-bargaining agreements, *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, [82 S.Ct. 519, 7 L.Ed.2d 483] (1962), state courts must apply federal law in deciding those claims, *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, [82 S.Ct. 571, 7 L.Ed.2d 593] (1962),

and indeed *any state-law cause of action for violation of collective-bargaining agreements is entirely displaced by federal law under § 301*, see *Avco Corp. v. Machinists*, 390 U.S. 557, [88 S.Ct. 1235, 20 L.Ed.2d 126] (1968). State law is thus “pre-empted” by § 301 in that only the federal law fashioned by the courts under § 301 governs the interpretation and application of collective-bargaining agreements. (*Arbuckle*, 499 Mich at 532-533; quoting *United Steelworkers of America v Rawson*, 495 US 362, 368, 110 S Ct 1904, 109 L Ed 2d 362 (1990); footnote omitted; emphasis added.)

As a result, only federal law may govern the interpretation and application of a CBA, and any state law attempting to do so is preempted.

The *Arbuckle* Court applied a two-part test previously set forth in *Mattis v Massman*, 355 F3d 902, 906 (CA 6, 2004), to determine whether Section 301 preemption applied:

The court first “examine[s] whether proof of the state law claim requires interpretation of collective bargaining agreement terms” and second, “ascertain[s] whether the right claimed by the plaintiff is created by the collective bargaining agreement or by state law.” If application of this test reveals a right that both arises from state law and does not require contract interpretation, then there is no preemption. However, “if a state-law claim fails *either* of these two requirements, it is preempted by § 301.” (*Arbuckle*, 499 Mich at 535; footnotes omitted; emphasis in the original.)

Applying this test, the Court held that the issue of whether GM could coordinate the workers’ compensation rights of previously-retired employees was preempted by § 301 of the LMRA, because that issue required interpretation of the CBA:

In order to determine whether defendant was authorized to coordinate plaintiff’s workers’ compensation benefits with his disability pension benefits, then, we must necessarily interpret the 1990 Letter of Agreement and the 1990 CBA as well as the parties’ subsequent agreements permitting benefit coordination, which were incorporated into the then-existing CBAs. Because resolution of the underlying coordination claim requires the interpretation of the terms of a collective-bargaining agreement, plaintiff’s claim fails the first prong of the Sixth Circuit’s preemption test. Plaintiff’s claim is, therefore, preempted by § 301. (*Id.* at 536.)

The same reasoning must apply here. While plaintiffs base their arguments on a state statute, specifically MCL 418.354(11), their arguments can only be resolved by interpreting the terms of letters of agreement incorporated into the CBA and the coordination formula contained therein. As a result, application of the concluding sentence of Section 354(11) is preempted.

Plaintiffs point out that the *Arbuckle* Court did not reach the issue of the propriety of the methodology for coordination of disability benefits contained in the 2009 letter of agreement, and argue that the issue therefore remains an open one:

Plaintiff also claimed that defendant's coordination-of-benefits formula illegally 'considered' plaintiff's SSDI benefits to reduce his workers' compensation benefits in violation of MCL 418.354(11) . . . We decline to consider this question because plaintiff failed to adequately brief and argue the issue in this Court, thereby abandoning it. *Mitcham v Detroit*, 355 Mich 182, 203, 94 NW2d 388 (1959). (*Arbuckle*, 499 Mich at 530, n 15.)

However, that issue *was* resolved by the Court of Appeals in *Kelley v General Motors, LLC*, 335 Mich App 349; 966 NW2d 716, app dis 507 Mich 999; 961 NW2d 151 (2021), a case which involved *the exact same issue* as do these consolidated cases.⁹

The *Kelley* Court wrote, "Plaintiff challenges the formula as unlawful under MCL 418.354(11); plaintiff argues that the formula improperly considers his SSDI benefits by combining them with other benefits to determine whether he has reached an average weekly wage cap." *Id.*, at 353. This is precisely the argument plaintiffs assert here. The *Kelley* Court held that this claim is preempted by federal law:

Plaintiff argues that one component of the benefit formula in the collective-bargaining agreement is made unlawful and thus unenforceable by virtue of a Michigan statute. That claim cannot be evaluated without considering the terms of the labor contract, and our resolution of the claim is therefore "inextricably intertwined with consideration of the terms of the labor contract" and preempted by federal law. Any contrary interpretation would undermine the rule under § 301 that CBAs be construed uniformly. Consequently, we must find that MCL 418.354(11) constitutes "[a] state rule that purports to define the meaning or scope of a term in a contract suit" and that it "therefore is pre-empted by federal labor law. . ." (*Kelley*, 335 Mich App at 366; citation omitted.)

The Court further held that preemption applied, "even though such a cause of action would exist under Michigan law in the absence of § 301." *Id.*, at 364-365. Because the instant cases also "cannot be evaluated without considering the terms of the labor contract," these matters cannot be decided by reference to state law, which is preempted. Instead, the *Kelley* Court turned to federal law to determine if plaintiffs were entitled to relief in these cases, and we must do the same.

⁹ In fact, the *Kelley* Court expressly wrote that an argument that the footnote reprinted above meant that this argument was still potentially tenable "ignores the Supreme Court's disposition of the 'threshold inquiry' in *Arbuckle*. . ." *Kelley*, 335 Mich App at 360.

The WDCAC finds that the Court of Appeals' decision in *Kelley*, which reached the precise issue raised by these consolidated cases, requires the conclusion we reach – that the language in MCL 418.354(11) at issue is preempted by federal law.¹⁰ We therefore affirm the order of the magistrate in each of the consolidated cases, although for different reasons than those set forth by the magistrate.¹¹

Evaluation of Plaintiff's Claim Under Federal Law

Because the application of state law, specifically the last sentence of MCL 354(11), is preempted by section 301(a) of the LMRA, plaintiffs' contentions in this matter can only be accepted if there is a basis in federal law for the relief they seek. We find that there is not.

In *Kelley*, the Court of Appeals noted that “[p]laintiff Kelley retired in 1992, during a time when the 1990 letter of agreement was in effect, prohibiting coordination of benefits.” *Kelley*, 335 Mich App 367. As a result, the Court held that the question of whether subsequent modifications to the CBA would allow coordination of benefits depended upon whether the benefits to be reduced were considered “vested.” Those benefits would only be insulated from subsequent reduction if they were. See also *Garbinski v General Motors LLC*, 521 Fed Appx 549, 550 (CA 6, 2013).

In determining that the benefits were *not* vested, the Court in *Kelley*, as did the *Arbuckle* Court, focused on language in each of the relevant agreements indicating that they would remain in effect “until termination or earlier amendment. . .” *Kelley*, 335 Mich App at 368. Because the right to disability pension benefits “was subject to an express durational limit,” the Court inferred an intention to leave the terms open to future modification and therefore concluded that the employee’s right to uncoordinated benefits was *not* vested. *Kelley, supra*, at 368, quoting *Arbuckle*, 499 Mich at 539.

The cases before us turn on the language of the very same agreements considered in *Kelley* and *Arbuckle*, and the same result is appropriate here. Because the agreements did not create a

¹⁰ While plaintiffs’ briefs acknowledge the decision of the Michigan Compensation Appellate Commission (“MCAC”) in *Kelley v General Motors, LLC*, 2018 Mich ACO #14, they fail to further acknowledge that the MCAC’s decision was subsequently affirmed on very different grounds by the Court of Appeals, our judicial superiors. Defendant has cited to both the MCAC and Court of Appeals opinions in *Kelley* solely in a footnote in its own briefs, with no discussion whatsoever as to how they might affect the instant matter. As a result, we cannot adopt the position advocated by any party in these consolidated matters. We are bound by published opinions of the Court of Appeals. *Straman v Lewis*, 220 Mich App 448, 451; 559 NW2d 405 (1996); *In the Matter of Hague*, 412 Mich 532, 552; 315 NW2d 524 (1982).

¹¹ While we affirm the magistrate on grounds not asserted by the parties, we note that plaintiffs have raised the issue of whether GM may consider their receipt of SSDIB in determining how much of their disability pension benefits are subject to coordination. As a result, the issue has been preserved, and we are not precluded by MCL 418.861a(11) from resolving it.

vested right, GM could amend the CBA to allow the coordination of plaintiff’s disability pension benefits. As a result, GM’s coordination of those benefits with plaintiffs’ workers’ compensation benefits did not violate the terms of the pension plan or MCL 418.354. The *Kelley* Court noted that “[t]he Court’s conclusion that General Motors’ actions did not violate MCL 418.354 necessarily flowed from its determination that Michigan law was preempted and therefore played no role in the case.” *Kelley*, 335 Mich App at 368, n 13.

That being so, the Court held that GM’s coordination mechanism – the same process involved in these cases - was entirely lawful, and it affirmed the MCAC’s decision to that effect although the MCAC had “reached that conclusion for the wrong reasons, by applying Michigan law.” The Court concluded, “Nevertheless, we affirm the judgment, because ‘[a]lthough the lower court’s decision was based on a different rationale, we will not reverse when the lower court reaches the correct result albeit for the wrong reason. . . .’ ” *Kelley*, 335 Mich App at 368-369. (Citation omitted.) We affirm for the same reason.

Conclusion

Application of the language plaintiffs rely on in MCL 418.354(11) is preempted by section 301(a) of the LMRA, because that application would involve interpretation of a CBA. Furthermore, federal law does not preclude coordination as implemented by defendant because plaintiffs’ right to unreduced benefits had not vested at the time the 2009 letter of agreement was entered into. As a result, we affirm the magistrate’s decision in each of these consolidated matters, although for different reasons than those set forth by the magistrate.

Commissioner McMillan concurs.

Daryl Royal

Chairperson

Duncan A. McMillan

Commissioner

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The WDCAC has considered the record and briefs filed by the parties and concludes that the magistrate’s orders in each of these consolidated cases should be affirmed. Therefore,

IT IS ORDERED that the magistrate’s order in each of these consolidated cases is AFFIRMED.

No appeals pend.

Daryl Royal

Chairperson

Duncan A. McMillan

Commissioner

² The magistrate’s order in *Lischke* was mailed on October 24, 2022, as was the order in *Bowers*. The order in *Robbins* was mailed on October 10, 2022, and the order in *Winston* was mailed on November 9, 2022.