

IN THE COURT OF APPEALS OF IOWA

No. 9-059 / 08-1264
Filed March 26, 2009

DIANE WILSON,
Plaintiff-Appellee,

vs.

ISLE OF CAPRI CASINO,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Charles H. Pelton,
Judge.

Defendant appeals from the district court's ruling denying its motion to
stay enforcement of a workers' compensation judgment in plaintiff's favor
pending judicial review. **REVERSED.**

Benjamin J. Patterson and Cameron A. Davidson of Lane & Waterman,
L.L.P., Davenport, for appellant.

Paul Salabert, Jr. of Hopkins & Huebner, P.C., Davenport, for appellee.

Considered by Sackett, C.J., and Vogel and Potterfield, JJ.

SACKETT, C.J.

Defendant, Isle of Capri Casino, appeals the district court ruling denying its motion to stay enforcement of a workers' compensation judgment in favor of plaintiff, Diane Wilson, pending judicial review. The district court determined the casino failed to meet its burden to establish the prerequisites for a stay. We reverse and remand.

BACKGROUND. Wilson is employed as a housekeeper at the Isle of Capri Casino. On January 4, 2005, Wilson fell on ice and was injured when she was taking trash out to the casino's trash compactor. She sought workers' compensation benefits and the casino denied the claim alleging that the Iowa Workers' Compensation Commission lacked jurisdiction because the claim was governed by the Federal Jones Act. Following an arbitration hearing, a deputy commissioner found that it had jurisdiction and awarded Wilson benefits. This decision was adopted and affirmed by the commission on appeal on March 20, 2008. The casino filed a petition for judicial review of the decision and a motion to stay enforcement of the decision pending judicial review. The district court heard oral arguments on the motion to stay and thereafter ruled that it was not warranted. The casino appeals this decision.

STANDARD OF REVIEW. The filing of a petition for judicial review does not automatically stay enforcement of a workers' compensation judgment. Iowa Code § 17A.19(5)(a) (2007). After filing a petition for judicial review, a party may

file an application for a stay with the district court. *Id.* § 86.26 (2005); *Grinnell College v. Osborn*, 751 N.W.2d 396, 401 (Iowa 2008). Our review of the district court's decision on whether to grant a stay pending judicial review is for abuse of discretion. *Grinnell College*, 751 N.W.2d at 398; *Glowacki v. State Bd. of Med. Exam'rs*, 501 N.W.2d 539, 541 (Iowa 1993). "That discretion is not unbounded, however. Reversal may be warranted where discretionary action regarding a stay 'is capriciously exercised or abused.'" *First Midwest Corp. v. Corporate Fin. Assocs.*, 663 N.W.2d 888, 891 (Iowa 2003) (quoting *Chrysler Credit Corp. v. Rosenberger*, 512 N.W.2d 303, 305 (Iowa 1994)). An abuse of discretion may be shown when it is exercised on untenable grounds or was clearly erroneous. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000).

ANALYSIS. The court is to consider and balance the following four factors in deciding whether a stay is warranted:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

Iowa Code § 17A.19(5)(c) (2007); *Snap-On Tools Corp. v. Schadendorf*, 757 N.W.2d 339, 342 (Iowa 2008). The applicant "has the burden to establish the prerequisites for a stay and must submit evidence to the district court concerning all relevant statutory factors at a hearing." *Grinnell College*, 751 N.W.2d at 403. The applicant need not show that it will eventually prevail in judicial review, but the court will consider the extent or range of the likelihood of success. *Id.* at 402.

Proof of one factor can excuse another that is lacking and ultimately, the stay can be granted when the balance of hardships weigh in favor of the applicant. *Id.*

The casino urges the first factor, the extent to which it is likely to prevail, weighs strongly in its favor. It claims the Iowa Workers' Compensation Commission has no jurisdiction to award benefits under *Harvey's Casino v. Isenhour*, 724 N.W.2d 705, 707-09 (Iowa 2006).

Iowa law provides that if an injured worker is covered by a federal compensation statute, Iowa's workers' compensation laws do not apply. Iowa Code § 85.1(6) (2005). Under the federal Jones Act,

A seaman injured in the course of employment . . . may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

46 U.S.C. § 30104 (2005). *Harvey's Casino v. Isenhour*, 724 N.W.2d 705, 707 (Iowa 2006), considered whether employees of riverboat casinos were "seamen" under this statute. It noted seaman status is acquired if (1) the employee's duties contribute to the vessel's function or mission, and (2) the employee has a substantial connection to a vessel in navigation, both in terms of its duration and nature. *Harvey's Casino*, 724 N.W.2d at 707 (citing *Chandris, Inc. v. Latsis*, 515 U.S. 347, 368, 115 S. Ct. 2172, 2190, 132 L. Ed. 2d 314, 337 (1995)). In analyzing whether the riverboat was a "vessel" it determined that the federal statutory definition

"requires only that a watercraft be 'used or *capable of being used*, as a means of transportation on water' to qualify as a vessel. It does not require that a watercraft be used primarily for that purpose."

Id. at 708 (quoting *Stewart v. Dutra Constr. Co.*, 543 U.S. 481, 495, 125 S. Ct. 1118, 1128, 160 L. Ed. 2d 932, 946 (2005), quoting 1 U.S.C. § 3) (emphasis supplied). It concluded the riverboat at issue indeed was a vessel because it was “not disputed that the riverboats were capable of, and did, ply the waters of the Missouri River approximately 200 hours per year as required by Iowa’s gaming laws.” *Id.* at 708.¹

Isle of Capri claims the commissioner, in determining it had jurisdiction, and the district court in issuing the stay, misapplied the law by distinguishing its ship from the riverboat casinos involved in *Harvey’s Casino v. Isenhour*. The deputy commissioner found, and the district court agreed, that the Isle of Capri was different than the riverboats in *Harvey’s Casino* because

it did not sail upon the river at all, as Iowa law had changed prior to the date of injury and casino boats were no longer required to actually sail. The boat was in fact moored to the dock permanently, although it did float on water.

On this basis, the agency determined the Isle of Capri was not a vessel and therefore the Iowa Workers’ Compensation Commission had jurisdiction over Wilson’s claim. The casino points out two flaws in this analysis. First, federal law does not require a riverboat casino to actually sail to be a “vessel” under the Jones Act but only requires the ship be capable of transporting on water. See *Harvey’s Casino*, 724 N.W.2d at 708; 1 U.S.C. § 3 (2005). Second, there is no

¹ At the time of the claimants’ injuries in *Harvey’s Casino v. Isenhour*, 724 N.W.2d at 708, Iowa law required riverboat casinos to sail two hundred hours per year. See Iowa Admin. Code r. 491-5.6 (2001). At the time of Wilson’s injury, riverboat casinos were no longer required to sail at all. See 2004 Iowa Acts ch. 1136, §99F.7(1A)(a); Iowa Code § 99F.7(2)(a) (2005); Iowa Admin Code r. 491-5.6(1)(c) (2005) (authorizing gaming floors to be on “moored barges”).

evidence in the record showing that the Isle of Capri was permanently moored to the dock at the time of Wilson's injury.

In evaluating the applicable case law and the record, we find merit in the casino's concerns. As outlined above federal law only requires a ship to be capable of sailing for the Jones Act to apply. See 1 U.S.C. § 3 (2005); *Stewart v. Dutra Constr. Co.*, 543 U.S. at 495, 125 S. Ct. at 1128, 160 L. Ed. 2d at 946. It is true that Iowa laws governing riverboat gambling were amended in 2004 to allow gambling boats to operate as "a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise." See 2004 Iowa Acts ch. 1136, §99F.7(1A)(a); Iowa Code § 99F.7(2)(a) (2005). However, the record is clear that at the time of Wilson's accident, in January 2005, the Isle of Capri was still capable of sailing. At that time it still had a captain and marine crew on staff and was still under the jurisdiction of the Coast Guard. The casino did not become reclassified as a permanently moored vessel until November 2005. In light of these facts and the case law, we find under the first factor, the casino has a high likelihood of prevailing on judicial review.

The casino claims it has also shown the second factor, irreparable injury, because it is unlikely it will be able to recover the award from Wilson if a stay is not granted and the casino succeeds after judicial review because Wilson admitted she lived paycheck-to-paycheck. The casino argues under the third factor, the extent Wilson might be harmed by the stay, is minimal because the delay in payment will only last until judicial review is complete. Lastly, under the

final factor, it claims it is in the public interest to stay the judgment because the award of benefits to Wilson was improper initially.

The district court balanced each of the factors and found the casino failed to meet its burden. We disagree. The casino has a strong likelihood of prevailing in judicial review, and while this factor is not dispositive, the remaining factors weigh in favor of issuing the stay. The fact that Wilson lives paycheck-to-paycheck does suggest that the casino could have difficulty retrieving the award from Wilson if it ultimately prevails. Under the third factor, we do not find evidence that Wilson will be substantially harmed if a stay is issued. The commissioner found that Wilson only had a permanent partial impairment rating of five percent and has no work restrictions. At the time of the workers' compensation hearing, Wilson continued to be employed at the casino and had not suffered any loss of earnings from the injury. Finally, we do not find the public's interest in the prompt and efficient determination and award of benefits to injured workers justifies denial of the stay. See *Grinnell College*, 751 N.W.2d at 400 (providing that the Workers' Compensation Act was designed to provide a prompt and efficient benefit scheme). Although issuing the award payment would serve the interest in providing prompt workers' compensation payments, it would also prove inefficient if the commissioner's determination of benefits was incorrect.

We therefore conclude the balance of the factors weighs in favor of the casino and it was an abuse of discretion to deny its motion to stay enforcement of the workers' compensation judgment pending judicial review. We reverse the

district court's ruling and remand for the court to issue a stay of the judgment pending judicial review.

REVERSED.