

CERTIORARI

Journal of Consumer Advocacy

CONSUMER INFORMATION FOR THE CLIENTS AND FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

Page 23

Worker Roundup

Page 23

Beware Helicopter
Ambulance Trips

**Frasier, Frasier &
Hickman, LLP**
Attorneys at Law

1700 Southwest Boulevard
Tulsa, Oklahoma 74107
918-584-4724 or
1-800-522-4049

Internet site:
<http://www.frasierlaw.com>

E-mail Address:
frasier@tulsa.com

Thomas Dee Frasier
1924-2001

James E. Frasier

Steven R. Hickman

John W. Flippo

J.L. Franks

Frank W Frasier

George M. Miles

Kathryn H. Black

Maureen M. Johnson



● **CASE FILE**

SC Holds for Common Sense, After Nurse Fired for Having the Flu

Last year the Supreme Court of Oklahoma held that terminating an employee at a nursing home for missing work while he was infected with influenza violates the public policy of Oklahoma. The court rationalized that to hold otherwise “would exacerbate communicable disease and expose the most vulnerable people.”

could not prove he contracted the flu while on the job.

However, it did recognize that “a number of statutes, acts, and regulations of this State may well articulate a public policy of prohibiting a healthcare worker interacting with nursing home patients while having a communicable disease such as influenza.” One



The court did not find the nurse had a Workers' Compensation case because he could not prove he contracted the flu while on the job.

In this case, the employee – a nurse in a nursing home – followed the employer handbook procedures calling in to report the illness and advise that he was under doctor’s care. He even brought the doctor’s note to the employer when he came back. Instead, he learned that they had removed him from the nursing schedule. A few days later he learned he was fired.

The court did not find the nurse had a Workers’ Compensation case because he

such act is the Oklahoma Nursing Home Care Act, which requires that nursing homes have an infection control policy and provide a safe and sanitary environment for residents.

Finally, the court noted that “Oklahoma as well as federal law clearly shows that a nurse in a nursing center cannot be fired for not working with the flu.” With this decision, the Supreme Court allowed this person’s case to go forward to trial.

● CONSUMER

Beware of Unregulated Cost of Helicopter Ambulance Trips

There has been a recent court ruling that helicopter ambulances fall under the Airline Deregulation Act (ADA). Under the ADA, commercial air carriers can charge anything they want and there is no governmental restriction on pricing at either the state or federal level.

Typically, a helicopter ambulance is not called for by the injured person. Rather, it is called for by the investigating officer or the ambulance service. When the person is picked up, there is no discussion how much they are going to charge, unlike when you buy an airline ticket you know what you will be charged.



Recently, when a person was sued by the helicopter company for the bill, he argued that he neither called the company nor agreed with how much it was charging. The Court of Appeals said that these issues were irrelevant; the helicopter company could charge

whatever it wanted and the person was liable to pay it.

In our experience, a short helicopter ride is on the order of \$15,000; one from a rural area to a metropolitan area might run as much as \$85,000. Typically, health insurance carriers will not pay these bills and the charges fall back into the laps of the injured people.

A lesson from this is: Be wary of yourself or someone you know being transported by helicopter ambulance. No matter how much the four-wheeled ambulance charges, it is just a fraction of the helicopter ride.

● WORKER

Workers' Compensation Roundup

● The Legislature has passed a law that says if you miss two doctors' appointments on Workers' Compensation without good excuse, then they do not have to provide you any further medical treatment. The law also says that not having transportation is not a good excuse. The Oklahoma Supreme Court struck down this law. The medical still has to be provided, although, if there is a charge for a missed appointment, that could be charged back against a person who missed it.

● Another Workers' Compensation case relates to liability of the employer for an employee who is coming to work or leaving work. The new law is that if the person is hurt on property adjacent to the employer's property, then there is no compensation. However, the Supreme Court recently ruled that, because the employer owned the building, the staircase was not adjacent, but was the part of the employer's property and was therefore covered. This would apply in a parking lot situation where an employee parks in an employer-owned parking lot, rather than in some public parking or otherwise.

● The new hernia provision, like the old version, is for six



weeks of compensation only. However, if there are different hernias at different places, then the employee gets six weeks for each hernia, even if they result from the same accident.

The Oklahoma Worker's Compensation system continues to evolve. New laws have been passed and some struck down by the courts. Contact Frasier, Frasier & Hickman, LLP if you need assistance in navigating the new system.

PERB

● On behalf of the International Association of Fire Fighters representing firefighting personnel in McAlester, Frasier, Frasier & Hickman, LLP filed a lawsuit in District Court seeking an order for the city to go to arbitration on grievances. The Court held that it did not have jurisdiction to consider such a case; only the state Public Employees Relations Board – better known as PERB – could do so. The court of appeals reversed that ruling and said that the district court does have authority to order a party to arbitration of a grievance.

– J.L. Franks

For more than 20 years, this law firm has been warning its clients and friends to beware of the care – or lack thereof – administered in nursing homes. During this time, many stories have appeared in the Certiorari newsletter reporting cases in which Frasier, Frasier & Hickman, LLP has sued nursing homes across the state in cases involving fatally poor care, or none at all.

In short, unsafe levels of care at nursing homes across the nation are commonplace. Even though the nursing home industry is tightly regulated, in many states including Oklahoma, many of these facilities still provide unsafe care to patients.

Perhaps the most effective safeguard has been provided by the courts, and the right to sue, which have provided mistreated patients and bereaved surviving families the opportunity to financially punish nursing home operators in tragic cases of patient abuse or maltreatment.

But now the “business friendly” Trump Administration has proposed a change in the rules that allowed nursing home residents and their families the ability to bring suit in the courts in cases of substandard care. The Trump plan would require incoming nursing home residents and



“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”

–Franklin D. Roosevelt

January 20, 1937



their families to sign away their right to sue upon admission, and agree instead to resolve all disputes through private arbitration instead of through the courts.

This firm also has warned clients and friends about arbitration agreements being imposed more and more by banks and lenders that cause working people and families to sign away their rights to a trial. Take Justice Back, a campaign of the American Association of Justice, has decried arbitration agreements

forced on consumers. They have provided more information at the website www.takejusticeback.com/TheFinePrint.

The problem with such arbitration is that the providers market their services to the business – not the consumer – with a “wink and a nod” understanding that the arbitrator provided will protect their customer – the business. The consumer is getting anything but a fair shake.

We believe arbitration agreements foisted on nursing home patients and families is a terrible idea. While the Trump proposal may be “friendly” to business, it comes at the expense of real people – people who need help and care. Under this plan, unsafe care and wrongful nursing home deaths will increase.

Access to the courts is the most effective method of enforcing nursing home safety.

– Jim Frasier

● FAMILY

Relocation of Custodial Parent Allowed if in “Good Faith”

In a recent case, after a divorce the mother wanted to move out of state for a job. The court held that because neither parent had been designated as the “primary physical custodian” neither could follow the court procedure that allows for relocation.

The court went on to say that if the mother was the primary physical custodian, the burden would be on her to show that she wanted to move out of state in good faith. If she does so, the father can show that it is not in the best interest of the child.

In this particular case, the trial court had ruled that the mother was not in good faith. The Supreme Court of Oklahoma held that good faith is “an honest intention” to not take “any unconscientious advantage of

another”. The court held that having a job in another state is good faith, as both employment opportunities and financial considerations are legitimate reasons to support good faith. The court even held that pursuit of a love interest may be good faith.

The bottom line appears to be that, so long as the person’s primary purpose is not to deny the ex of a relationship with the children, then there is good faith to move out of state for family, love, education, or work and maintain child custody.

If you have questions regarding a relocation issue or any other family relations question, contact our office for advice.

– John Flippo

CERTIORARI

Journal of Consumer Advocacy

PRSR-STD
U.S. Postage
PAID
Tulsa, OK
Permit #2146

● WINTER 2017

Frasier, Frasier &
Hickman, LLP

1700 Southwest Blvd.
Tulsa, Oklahoma
74107

**RETURN SERVICE
REQUESTED**

certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ.

When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.



*Happy Holidays from
Frasier, Frasier &
Hickman, LLP*