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2016 OK 89
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

SEP 13 2016

MICHAEL S. RICHIE
CLERK OF
THE APPELLATE COURTS

JONNIE YVONNE VASQUEZ,)
)
Plaintiff/Respondent,)
)
v.)
)
DILLARD'S, INC.,)
QUALIFIED EMPLOYER,)
)
Defendant/Petitioner.)

No. 114,810
For Official Publication

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WINCHESTER, J., with whom Taylor, J., joins, dissenting:

¶1 I respectfully dissent. The majority opinion emphasizes that statutory provisions are presumed constitutional, that the Court's function isn't to correct the Legislature, and that the Court should rule on the narrowest grounds possible. Unfortunately, the majority's result violates all three of these basic tenets. Neither the majority or concurring opinions, nor the Commission set forth or address the specific facts in this case, a simple undertaking which would allow the Court to make a narrow ruling that preserves the integrity of the Opt Out Act and avoids a resort back to the traditional system the Legislature sought to avoid.

¶2 At the heart of this case was whether Vasquez, the employee, should receive benefits for a preexisting condition. In September, 2014, Vasquez injured her shoulder/upper neck while at work for Dillard's. Dillard's provided coverage for most of her treatment under Dillard's Plan. Vasquez submitted a claim for an MRI in September, 2015. Dillard's sought the opinions of two

doctors to review Vasquez's medical files and they determined her injury was the result of a preexisting condition. Dillard's denied the claim under the Plan and informed Vasquez of her right to appeal, which she did. The appeal went before Dillard's Appeals Committee and an independent medical examination of her file was performed. That opinion also found Vasquez's claim should be denied as her injury was both a preexisting condition and a degenerative injury. Vasquez then appealed to the Workers' Compensation Commission. Rather than addressing the facts of the case, the Commission went straight to the heart of the Opt Out Act and ruled that it was facially unconstitutional. Dillard's appealed to this Court but the majority, like the Commission, skirted the facts in its mission to find the entire Opt Out Act an unconstitutional, special law.

¶3 I would not strike the Opt Out Act but, instead, I would require the Commission to determine whether, under the facts presented, the employee was denied benefits under the Dillard's plan that she otherwise would have received under the Administrative Workers' Compensation Act. If the employee would not have been entitled to benefits under either system, as urged by Dillard's, then this becomes a much more straightforward review of a denial of benefits. I have no trouble concluding that if specific sections of Dillard's plan do not meet the requirements of the Opt Out Act then those provisions should be brought in line with the Act, as should any other plan that fails to meet such standards. However, the majority fails to narrowly tailor its ruling and instead, with a broad

sweep of its brush, erases the entire Opt Out Act, leaving employees and their employers without a clear path to enforce their respective remedies or defenses.

¶14 The validity of Vasquez's claim was never entertained. Because the Administrative Workers' Compensation Act also prohibits recovery for preexisting and/or degenerative conditions, 85A O.S.2013 §§ 2(9)(b)(1), 2(9)(b)(6), 36, it appears that both Acts would have denied her claim. Instead of ruling on these narrow, factual grounds, the majority unnecessarily ventures into the constitutionality of the Opt Out Act and improperly strikes it down based upon hypothetical events.

¶15 As I have said in previous cases, legislation requires some compromise and with a system as complex and comprehensive as workers' compensation, this Court should adopt a more deferential, case-by-case approach. All new legislation needs fine-tuning, either by legislative amendment or court direction. Here, the Court has provided no guidance for employees, or their employers, as to where a cause of action should be pursued if the Opt Out Act ceases to exist. Further, other employers with plans under the Opt Out Act that have met or exceeded the Acts' terms will never get the opportunity to have the validity of their plans tested. I would remand the matter for determination on the factual issues before resorting to wiping out the Opt Out Act.