

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 22, 2012 Session

MICHAEL DRAINE v. S & ME, INC. ET AL.

**Appeal from the Circuit Court for Sullivan County
No. C39104 E. G. Moody, Judge**

**No. E2012-00384-WC-R3-WC-MAILED-DECEMBER 19, 2012
FILED-JANUARY 22, 2013**

In this workers' compensation case, a Hawkins County employee sustained a compensable injury in September 2000. His claim was settled in July 2003. The settlement, which was approved by the Department of Labor and Workforce Development, provided that the employer would continue to provide medical care for the injury in accordance with the workers' compensation law. In 2009, the employee and his employer's insurer entered into an agreement closing future medical benefits in exchange for a lump sum payment, subject to approval by Medicare. This settlement closing future medical benefits was approved by the Circuit Court for Knox County by agreement of the parties. Medicare declined to approve the proposed agreement and suggested an alternate, much larger, lump sum payment. The employee filed a petition in the Circuit Court for Sullivan County to enforce the settlement agreement as amended by Medicare. The employer and insurer moved to dismiss, based on improper venue. That motion was denied. After a series of non-evidentiary hearings, the trial court ordered the employer's insurer to make a lump sum payment in excess of \$500,000. The employer and insurer have appealed, contending that the trial court erred by denying their motion to dismiss, and by ordering the \$500,000 payment. Pursuant to Tennessee Supreme Court Rule 51, the appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law. We conclude that the trial court erred by denying the motion to dismiss, and therefore reverse.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Trial
Court Reversed**

J. S. "STEVE" DANIEL, SP. J., delivered the opinion of the Court, in which GARY R. WADE, C.J., and E. RILEY ANDERSON, SP. J., joined.

Timothy W. Conner and Meredith B. Weaver, Knoxville, Tennessee, for the appellants, S & ME, Inc. and Ohio Casualty Insurance Company.

Tony Seaton and Robert Bates, Johnson City, Tennessee, for the appellee, Michael Draine.

MEMORANDUM OPINION

Factual and Procedural Background

Michael Draine (“Employee”) injured his back on September 7, 2000 when he tripped and fell down some steps. It was undisputed that the injury was compensable and the parties negotiated a settlement agreement based upon 63.5% permanent partial disability. The settlement provided that his employer, S & ME, Inc. (“Employer”) would continue to provide medical treatment for the injury. Employee resided in Hawkins County and was represented by counsel at the time of this settlement. The settlement agreement was approved by the Department of Labor and Workforce Development on July 17, 2003 at its Kingsport, Tennessee office.

In 2009, Liberty Mutual Insurance (“Insurer”), Employer’s workers’ compensation insurer, approached Employee about the possibility of an agreement in which Employee would waive his right to future medical benefits in exchange for a lump sum payment. The unrepresented Employee eventually reached such an agreement with Insurer. The terms of the agreement provided that Insurer would make various payments totaling \$80,709.45 to Employee in exchange for a release of all future claims for medical treatment. The agreement stated that a request for approval had been sent to the Centers for Medicare & Medicaid Services (“CMS”) and that the agreement was contingent upon approval by CMS. The parties filed a joint petition in the Circuit Court for Knox County, and the court approved the settlement agreement on June 3, 2009. On December 29, 2009, CMS advised the parties that the agreement was not approved. In its letter disapproving the agreement, CMS stated that payment of \$554,243.53 was “necessary to protect Medicare’s interest.”

Insurer initiated negotiations with CMS on the subject. By March 2011, there was still no agreement between Insurer and CMS, and Employee filed this action in the Circuit Court for Sullivan County to enforce the 2009 settlement that had been reached and approved in the Knox County Circuit Court, as amended by CMS. Employer and Insurer responded by filing a motion to dismiss, contending that Knox County, rather than Sullivan County, was the proper venue for the action. Employee did not file a written response to that motion. However, shortly thereafter, he filed a motion for summary judgment in the Sullivan County Circuit Court alleging that there were no material facts in dispute and that he was entitled to a payment of \$554,243.53 in accordance with the initial order of the Knox County Circuit Court and the letter of CMS. The motion was supported by an affidavit of Employee. Employer and Insurer then filed a motion in the Knox County Circuit Court, seeking to set

aside the 2009 settlement agreement based upon the failure of a condition precedent, i.e., approval by CMS.

At a hearing held on June 10, 2011, the Sullivan County Circuit Court denied Employer's and Insurer's motion to dismiss, stating:

[The] motion to dismiss is denied for the reasons stated in [Employee's] response to the motion and also on the basis that [Employee] was unrepresented at the time. I don't think a pro se plaintiff has the ability to understand the consequences of waiving venue.

A hearing was subsequently held in Knox County on the motion to set aside the 2009 order approving the settlement. Citing the pending matter in Sullivan County, the Knox County Circuit Court denied the motion and directed that the matter be sent to Sullivan County. After various hearings, none of which involved the taking of evidence, the Sullivan County Circuit Court entered an order directing Insurer to pay \$500,825.05 into an account to be administered by Employee, and an additional \$72,186.60 to Employee's attorneys for attorney's fees. Employer and Insurer have appealed from that judgment.

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 898 (Tenn. 2009). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Analysis

Our courts have repeatedly held that venue may be waived in workers' compensation actions. See, e.g., Corby v. Matthews, 541 S.W.2d 789, 791 (Tenn. 1976); Gould, Inc., Century Elec. Div. v. Barnes, 498 S.W.2d 623, 624-25 (Tenn. 1973); Downey v. Griffin Indus., No. E2009-00313-WC-R3-WC, 2010 WL 1509342, at *6 (Tenn. Workers' Comp. Panel Apr. 15, 2010). The joint petition filed by the parties and the order of the Knox County Circuit Court approving the 2009 agreement both stated, "All parties expressly waive venue and submit to the jurisdiction of this Court for purposes of this cause of action." Employee signed both of these documents. He also appeared in person in Knox County at the time the settlement was approved.

In Gould, our supreme court also held that a suit to modify a judgment in a workers' compensation action "must be filed in the same court which heard the original compensation suit." 498 S.W.2d at 625. More recently, in Freeman v. Marco Transp. Co., 27 S.W.3d 909, 912 (Tenn. 2000), the court held that a petition for reconsideration under Tennessee Code Annotated section 50-6-241 must be brought in the same court that initially entered the judgment or approved the settlement. Employee's complaint in this case sought to modify the Knox County Circuit Court judgment by incorporating the terms contained in CMS's letter disapproving the settlement and to enforce the judgment as modified. Requiring such an action as this to be filed in the court where the original judgment was entered is consistent with Gould and Freeman.

The original settlement of the workers' compensation claim in 2003 was approved by a workers' compensation specialist in accordance with Tennessee Code Annotated section 50-6-206(c)(1) (2008). This administrative judgment is entitled to the same standing as a trial court decision under the provisions of Tennessee Code Annotated section 50-6-206(c)(2). However, such an approval does not create a basis of jurisdiction for the Sullivan County Circuit Court to consider an issue associated with the administrative settlement of Employee's claim for compensation.

The trial court's statement that unrepresented employees as a group are unable to understand the consequences of waiving venue is not supported by any authority and does not provide a basis for disregarding the venue provision of the Knox County judgment. Further, there is no evidence in the record that Employee, as an individual, was not capable of understanding the agreement. To the contrary, Employee's affidavit, submitted in support of his motion for summary judgment, demonstrates a reasonable understanding of the terms of the settlement and does not make, or even suggest, that he had any misunderstanding or qualms about conducting the approval in Knox County. Further, at the hearing on Employer's and Insurer's motion to dismiss, counsel for Insurer responded to an inquiry from the trial court concerning the choice of Knox County by stating, "Typically we do [settlements] in Knox County when the party is unrepresented. It's lower fees for our client, and also we can go Monday through Friday and just walk down to circuit court chambers and find a judge to hear it and approve it." That explanation was plausible and was also unrefuted.

Based upon the foregoing considerations, we conclude that the trial court erred by denying Employer's and Insurer's motion to dismiss. It is, therefore, unnecessary to consider the remaining issues raised in this appeal.

Conclusion

The judgment of the trial court is reversed. The Sullivan County complaint is

dismissed, without prejudice to Employee's right to seek relief in the appropriate court in Knox County. Costs are taxed to Michael Draine, for which execution may issue if necessary.

J. S. "STEVE" DANIEL, SP. J.

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JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs of this appeal are taxed to Michael Draine, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM