

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, JANUARY 2000 SESSION

SCOTTY BAILES BUILDER,) BLOUNT CHANCERY
)
Plaintiff/Appellee,)
)
vs.) Hon. Telford E. Forgety, Jr.
) Chancellor
)
)
ALLEN H. DAVIS,)
)
Defendant/Appellant) No. 03S01-9904-CH-00046
)

For the Appellant:

Ronald J. Zuker
Vaughan and Zuker
112 Durwood Drive
Knoxville, TN 37922

For the Appellee:

J. Eric Harrison
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M E M O R A N D U M O P I N I O N

Mailed: April 11, 2000
FILED: July,13 2000

Members of Panel:

William M. Barker, Justice
Houston M. Goddard, Special Judge
Howell N. Peoples, Special Judge

AFFIRMED.

GODDARD, Special Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(1) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The issue before us is whether the Plaintiff, Scotty Bailes doing business as Scotty Bailes Builder, and Defendant, Allen Davis, agreed for Mr. Davis to have workers' compensation coverage during the roofing job in question. We think they did not and thus affirm.

In November 1996, Mr. Davis, a subcontractor, heard that Mr. Bailes, a general contractor, needed a roofer. After meeting with Mr. Bailes, Mr. Davis prepared a proposal, and the parties met on November 13, 1996, although what occurred at this meeting is disputed by the parties.

Mr. Davis contends that he, along with two other men, met with Mr. Bailes, but Mr. Davis asserts that he was never asked to sign a form indicating that he did not desire workers' compensation coverage until after his injury. However, Mr. Bailes argues that Mr. Davis, a subcontractor, met with him and his assistant, and Mr. Davis verbally declined workers' compensation coverage for himself, although Mr. Bailes explained that he was required to obtain workers' compensation coverage for Mr. Davis's employees. Mr. Bailes insists that he repeatedly attempted to obtain from Mr. Davis the proper paperwork

indicating that Mr. Davis did not desire workers' compensation coverage, but each time Mr. Davis offered some excuse for why he had not returned the paperwork to Mr. Bailes.

On January 19, 1997 Mr. Davis was injured when he slipped and fell off the roof of the house he was roofing for Mr. Bailes, and now argues that Mr. Bailes is liable to him for benefits under the Tennessee Workers' Compensation Law.

Appellate review is "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2).

Under Tennessee Code Annotated § 50-6-113(a), a principal contractor is liable in workers' compensation benefits to the employees of their subcontractors if the employee at the time of the injury is under the control and management of the principal contractor. See Tenn. Code Ann. § 50-6-113(a). However, Tennessee Code Annotated § 50-6-113(e) provides that a subcontractor may elect to be covered under workers' compensation insurance by filing the appropriate written notice.

After reviewing the record, we conclude that the evidence clearly indicates that Mr. Davis elected not to have workers' compensation coverage. According Mr. Bailes and his assistant, Mr. Davis expressly rejected workers' compensation coverage, and Mr. Bailes repeatedly attempted to obtain the proper paperwork indicating Mr. Davis's rejection of workers' compensation

coverage.

Therefore, we conclude that the evidence does not preponderate against the Trial Court's denial of workers' compensation coverage.

The judgment of the Trial Court is affirmed. Costs of appeal are taxed to Mr. Davis.

Houston M. Goddard, Special Judge

CONCUR:

William M. Barker, Justice

Howell N. Peoples, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

SCOTTY BAILES BUILDER v. ALLEN H. DAVIS

**Chancery Court for Blount County
No. 97-017**

**No. E1999-01461-SC-WCM-CV
Filed: July 13, 2000**

JUDGMENT ORDER

This case is before the Court upon motion for review by Allen H. Davis pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 appears to the Court that the motion for review is not well-taken and should be denied; 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 are taxed to Allen H. Davis and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., Not Participating

