

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
(January 27, 2000 Session)

PENNY PITT PHILLIPS, ET AL. v. ROBINSON & BELEW, INC., ET AL.

**Direct Appeal from the Chancery Court for Weakley County
No. 15,754 William Michael Maloan, Chancellor**

No. W1999-02211-WC-R3-CV- Mailed May 25, 2000; Filed July 13, 2000

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. §50-6-225 (e)(3) for hearing and reporting of findings of fact and conclusions of law. The defendant-employer and its insurance company appeal the judgment of the Weakley Chancery Court insisting that the trial judge erred in commuting the death benefits payable to Donald Leon Pitt, a minor, to a lump sum. As discussed below, the panel has concluded that the part of the trial court's judgment that ordered the award be commuted should be reversed.

Tenn. Code Ann. § 50-6-225 (e) (1999) Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

WEATHERFORD, SR. J., delivered the opinion of the court, in which HOLDER, J., and TOMLIN, Sp. J. joined.

Jeffrey L. Lay, Dyersburg, Tennessee, for the appellants, Robinson & Belew and Pennsylvania Millers Mutual Ins. Co.

John M. Miles, Union City, Tennessee for appellee, Penny Pitt Phillips

MEMORANDUM OPINION

The plaintiff, Penny Pitt Phillips, for and on behalf of Donald Leon Pitt and Jana Pitt, the surviving children of Kevin Pitt, initiated this action for workers' compensation benefits arising from the death of Kevin Pitt. It was stipulated at trial that this was a compensable claim. After a trial, the trial court, in addition to accrued workers' compensation benefits, ordered that plaintiff, Donald Leon Pitt, recover additional workers' compensation benefits from May 1, 1998 until he attained 22 years of age, a period of 283 weeks and 3 days at the rate of \$218.85 per week. The trial court ordered that the benefits which totaled \$62,028.33 should be commuted and paid to Penny Pitt Phillips, the legal guardian of Donald Leon Pitt, a minor, in one lump sum. The trial court found

that if Donald Leon Pitt should at any time cease to attend a recognized educational institution from the date of his 18th birthday until he reaches 22 years of age, he and/or his legal guardian shall repay to defendants, the unaccrued death benefits payable from the date he ceased to attend the recognized educational institution until the date he reaches 22 years of age.

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

Kevin Pitt, deceased, died as a result of an accidental injury he sustained while working in the course and scope of his employment with defendant, Robinson and Belew, Inc. At the time of his death, Kevin Pitt was divorced. He left surviving children, Jana Pitt and Donald Leon Pitt. Jana Pitt was more than 18 years of age at the time of her father's death. Donald Leon Pitt was born October 6, 1981, making him less than 18 years of age at the time of his father's death. Donald Leon Pitt currently attends Greenfield High School. This case was submitted to the trial court for a determination of the dependency status of Jana Pitt and Donald Leon Pitt, and for an adjudication of the nature and extent of any workers' compensation death benefits to which they were entitled. The trial court found that Donald Leon Pitt was prima facie dependent, pursuant to Tenn. Code Ann. §50-6-210 (b) and awarded to him death benefits based upon fifty percent (50%) of Kevin Pitt's average weekly wage until he reaches 22 years of age, for so long as he attends a recognized educational institution.

Plaintiffs made an oral motion in opening statement, asking the Court to commute the death benefits which might be payable to Donald Leon Pitt and pay all of these benefits in a lump sum.

At the conclusion of the proof, the trial court in making its ruling stated: "The Court is going to grant the plaintiffs' motion to lump sum Donald's awarded benefits to age 22. The Court finds that the lump sum would be in the best interest of the recipient, and, that he and his mother can wisely manage these funds. Penny Phillips has testified that the lump sum would enable her to pay Donald's college expenses as they come due in a better fashion than to receive them on a weekly basis."

Ms. Penny Pitt Phillips testified that she felt a lump sum payment would help because they would put the money into a trust and draw interest. She noted that weekly payments would have to build up in order to come up with tuition money. Donald Leon Pitt did not testify as to whether commutation of his death benefits would be in his best interest, or whether he had the ability to wisely manage or control a commuted award.

The record is silent concerning the amount of any accrued benefits that have been paid on behalf of Donald Leon Pitt. The record is also silent concerning the amounts needed for tuition.

The mere fact that a recipient of workers' compensation benefits can wisely manage a commuted award and might be able to earn interest on a commuted amount if it is invested prudently

is insufficient to support commutation. *Fowler v. Consolidated Aluminum Corp.*, 665 S.W.2d 713 (Tenn. 1984).

Commutation of an award should not be ordered perfunctorily without careful inquiry by the trial judge as to all the facts and circumstances. *Perdue v. Green Branch Min. Co., Inc.*, 837 S.W.2d 56 (Tenn. 1992).

Donald Leon Pitt attained the age of 18 on October 6, 1999 and was attending a recognized educational institution. The trial court's order would require that the commuted award be paid directly to him. To be entitled to the award of workers' compensation benefits, he must be attending a recognized educational institution which would entitle him to these benefits until twenty-two (22) years of age. Tenn. Code Ann. §5-6-210(e)(2).

As previously stated, the record does not disclose the amount of any accrued benefits that have been paid on behalf of Donald Leon Pitt, nor does the record reveal the amounts needed for tuition if he attends college as he has planned.

What is missing from the record is sufficient evidence to support a determination that commutation under these circumstances is in the recipient's best interest.

For the reasons stated herein, we reverse that part of the Chancellor's judgment that commutes the death benefits to Donald Leon Pitt to a lump sum. This cause is remanded to the trial court for further proceedings consistent with this opinion.

The costs of this appeal are taxed against the plaintiffs/appellees.

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

PENNY PITT PHILLIPS, et al. v. ROBINSON & BELEW, INC., et al.

**Chancery Court for Weakley County
No. 15,754**

No. W1999-02211-WC-R3-CV - Filed July 13, 2000

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 appears 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 on appeal are taxed to the Plaintiffs/Appellees, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM