

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

JERRY HARBISON v. BRAKEBILL NURSING HOME

**Chancery Court for Knox County
No. 140369-1**

FILED: NOVEMBER 9, 2000

No. E1999-01413-SC-WCM-CV

JUDGMENT ORDER

This case is before the Court upon motion for review filed by the plaintiff-appellant, Jerry Harbison, 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 will be paid by the plaintiff-appellant and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., not participating

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

JERRY HARBISON,)	
)	KNOX CHANCERY
Plaintiff/Appellant)	
)	NO. 03S01-9909-CH-00103
v.)	
)	
BRAKEBILL NURSING HOME,)	HON. JOHN F. WEAVER
)	CHANCELLOR
Defendant/Appellee)	

Filed: November 9, 2000

For the Appellant:

Glen B. Rutherford
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8th Floor
West Main Avenue
Knoxville, TN 37902

For the Appellee:

J. Michael Haynes
617 West Main Avenue
Knoxville, TN 37901-0869

MEMORANDUM OPINION

Members of Panel:

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED

BYERS, Senior 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)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court 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); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court granted the defendant's motion for summary judgment and dismissed the plaintiff's cause of action by reason of the statute of limitations: Tennessee Code Annotated § 50-6-203.

We affirm the judgment of the trial court.

FACTS

In January 1993, the decedent, the late wife of the plaintiff, was allegedly injured during the course and scope of her employment with the defendant. Later that year a workers' compensation action was filed and was then continued several times. In March 1996, the plaintiff's wife was killed in an auto accident; the suit against the defendant, her employer, was pending at that time.

Shortly after the decedent's death, her daughter (the plaintiff's step-daughter) qualified as administrator of the decedent's estate.

On May 2, 1997, the plaintiff filed a suggestion of death and motion for substitution in the workers' compensation suit.¹ The record contains no order

¹ The motion in the record does not show it was marked "filed" by the clerk.

making the substitution.

In December 1996, a wrongful death claim was filed by the decedent's heirs and settled, after which time the administrator daughter left town and failed to pursue the workers' compensation claim. Several times before the administrator daughter left, the attorney representing her and the plaintiff's attorney discussed the workers' compensation action, but no action was taken.

On October 10, 1997, the defendant filed a motion to dismiss the workers' compensation action, and the motion was granted without prejudice on December 4, 1997.

On February 9, 1998, the plaintiff filed a motion to remove the daughter as administrator and appoint him in her place. The plaintiff was so appointed on April 9, 1998. After being appointed administrator, the plaintiff filed the complaint at issue in this appeal in October of 1998; it was dismissed on a motion for summary judgment on June 14, 1999.

DISCUSSION

The plaintiff claims the chancellor erred in granting the motion for summary judgment filed by the defendant. The plaintiff's argument seems to focus on the fact that he followed the mandate of Rule 25 for substituting parties. However, the plaintiff failed to answer the motion for summary judgment or otherwise present any showing of compliance with the mandates of Rule 25.

The defendant filed a motion for summary judgment based upon the statute of limitations to which the defendant failed to respond. Tennessee Code Annotated § 50-6-203 limits the filing of the action to "within one year of the date of the last authorized treatment or the time the employer shall cease making such payments" The defendant filed supporting affidavits showing that the last date for filing the complaint within the statute of limitations was February 4, 1995.

A motion for summary judgment goes to the merits of the litigation and one faced with such a motion may neither ignore it nor treat it lightly. *Ferguson v.*

Tomerlin, 656 S.W.2d 378 (Tenn. Ct. App. 1983). The plaintiff filed no response to the motion for summary judgment, and nothing appears in the pleadings that would justify extension of the statute of limitations. The record shows on its face that the statute of limitations had run. The evidence does not preponderate against the chancellor's ruling in favor of the defendant on the motion for summary judgment.

For the reasons stated herein, we affirm the judgment of the trial court. The costs of the appeal are taxed to the plaintiff.

John K. Byers, Senior Judge

CONCUR:

William M. Barker, Justice

Howell N. Peoples, Special Judge