

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

October 10, 2000 Session

WILLIAM R. CLARK v. WILLAMETTE INDUSTRIES, INC.

**Direct Appeal from the Chancery Court for Sullivan County
No. 28853(M) John S. Mclellan, III, Chancellor**

**No. E1999-02693-WC-R3-CV - Mailed - November 29, 2000
Filed: February 27, 2001**

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 to the Supreme Court of findings of fact and conclusions of law. The dispositive issue is whether the evidence preponderantly proved that the condition of the plaintiff's right knee was causally related to a fall he suffered in March 1997. The expert proof was divergent, and the plaintiff's credibility was remarked by the trial judge.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C.J. and JOHN K. BYERS, SR. J., joined.

Michael E. Large, Bristol Tennessee, for the appellant, William R. Clark.

Michael L. Forrester, Kingsport, Tennessee, for the appellee, Willamette Industries, Inc.

OPINION

This case presents a classic example of conflicting expert testimony and the duty and prerogative of the trial judge to determine whose testimony more nearly accords with the justice of the case agreeably to the workers' compensation laws of Tennessee.

The plaintiff alleges that he injured his right knee in a fall on March 5, 1997. The defendant admitted that the plaintiff suffered a fall as he described, but defended against the knee injury on the theory that the plaintiff's difficulty was attributable to a pre-existing degenerative condition, not causally related to his employment.

As the case progressed before trial, the plaintiff in apparent apprehension about the issue of causation, amended his complaint to allege that the condition of his knee was the result of a compensable, repetitive gradually occurring injury. The defendant responded to the amendment by a general denial, and a special plea of the statute of limitations alleging injury which occurred more than one year before suit was brought.

The plaintiff reported his fall promptly on the day it occurred to the occupational health nurse, Ms. Clary, who testified that the plaintiff's concern was about his right shoulder and thigh. According to Ms. Clary, he made no mention of his right knee, and she observed nothing about his gait to excite her attention.

The plaintiff specifically requested that he be treated by Dr. Dan Carroll. The defendant agreed, and the plaintiff was seen by Dr. Carroll on March 13, 1997, three days after he fell. He made no mention of the knee pain to Dr. Carroll (for that matter, he later testified that he did not know how he injured his right knee). He did not complain of knee pain until March 27, 1997, 22 days after he fell. But on March 27, 1997, Dr. Carroll referred the plaintiff to an orthopedic specialist, Dr. Daniel Klinar, who began treatment by way of arthroscopic surgery which is a means of "looking inside" the knee. Dr. Klinar advised the plaintiff that if a meniscus tear was responsible for his pain, arthroscopy would help him, but if the pain was caused by a degenerative condition, this procedure would be of little value as to lessening pain.

The arthroscopy was performed on July 25, 1997. Since the knee pain did not subside, Dr. Klinar attributed it to a degenerative condition, not causally related to his work. Two other experts examined the plaintiff, whose testimony will be discussed hereafter. After consideration of the proof, the trial court found ". . . from the medical evidence that Mr. Clark had a degenerative arthritic condition which causes most of his pain in his knee area . . .," and dismissed the complaint. The plaintiff appeals and presents for review the propriety of this holding. Our review is *de novo* on the record. We presume the correctness of the judgment unless it is contrary to the preponderance of the evidence. RULE 13(d) TENN.. R. APP. P.

The Medical Proof

_____ As we have seen, Dr. Klinar opined that an arthroscopic procedure would reliably reveal the nature of the plaintiff's knee problem, i.e., whether it was caused by trauma, or whether it was of a degenerative nature. The procedure resulted in a firm opinion by Dr. Klinar that the condition of the plaintiff's knee was caused by degeneration, and not by trauma, and he repeatedly advised the plaintiff of this fact. Dr. Klinar testified that the plaintiff's fall on March 5, 1997, did not cause, contribute to, nor exacerbate the meniscus tear in his knee.¹

¹ At one point in his testimony Dr. Klinar, in responding to a question on cross, said that the plaintiff "could have" torn his meniscus depending upon what happened to his knee during the fall. The plaintiff emphasizes the "could have" testimony as supportive of his theory of causation. But taken in context, we think, as the trial judge apparently did, that Dr. Klinar was simply conceding

The plaintiff was examined by Dr. William Kennedy, of his choosing, who testified that the knee problem was caused by trauma superimposed on a pre-existing degeneration.

Analysis

The trial judge minced no words in holding that the testimony of Dr. Klinar should be credited over that of Dr. Kennedy. This finding, clearly expressed, was within the accepted prerogative of the trial judge. *Orman v. William Sonoma, Inc.*, 803 S.W.2d 672 (Tenn. 1991).

We find nothing in the record to persuade us that this finding is incorrect. The issue of the credibility of the live witnesses, one of whom was the plaintiff, was of critical importance to the case. The trial judge clearly made a judgment about this issue, as was his prerogative, and his judgment must be given considerable deference. *See, Jones v. Hartford Accident & Indemnity Co.*, 811 S.W.2d 516 (Tenn. 1991).

Judgment is affirmed at the costs of the appellant.

WILLIAM H. INMAN, SENIOR JUDGE

the possibility of any reasonable hypothesis.

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ORDER

This case is before the Court upon motion for review 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 on appeal are taxed to the appellant.

IT IS SO ORDERED this ____ day of _____, 2001

PER CURIAM

Anderson, C.J. - Not participating.