

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

April 28, 2000 Session

**BOBBY GATES vs. JACKSON APPLIANCE COMPANY**

**Direct Appeal from the Chancery Court for Madison County  
No. 54294 Honorable Joe C. Morris, Chancellor**

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**No. W1999-00743-SC-WCM-CV - Mailed March 21, 2001; Filed June 27, 2001**

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HENRY D. BELL, J., concurring in part and dissenting in part.

I concur as to the statute of limitations and permanency of leg injury issues. I dissent as to the permanency of depression issue for several reasons.

Mr. Gates' lawyer was unable to put the words "reasonable degree of medical certainty" in Dr. Nord's mouth as was successfully done by counsel in Kerr v. Magic Chef, 793 S.W.2D 927, 928-29 (Tenn. 1990). That case is pertinent to this case in that the opinion distinguished the Magic Chef medical testimony from conjectural testimony such as that in International Yarn v. Casson, 541 S.W.2D 150, 152 (Tenn. 1976), in which the doctor testified as to Casson's mental problems, that they "may be with her for the rest of her life, or they may not be depending on what the future holds." Similar testimony was held insufficient in Wade v. Aetna Casualty, 175 S.W.2d 215 (Tenn. 1987).

Dr. Nord was the treating physician for a number of months previous to Mr. Gates' final visit when he first complained that the pain "was interfering with his life and his family life." Thereupon, Dr. Nord testified, "[A]nd at that time we recommended a psychiatric consultation." Dr. Nord's final word on the subject was, "As long as he has continued pain and it interferes with his lifestyle, people will continue to have depression, usually requiring some type of treatment, whether it be medications or counseling." There is no evidence as to any psychiatric consultation or treatment of Mr. Gates' depression by medication, counseling or otherwise. Dr. Nord's recommendation of these measures is, it seems to me, inconsistent with an interpretation of his testimony that it was equivalent to an opinion that maximum recovery had occurred and that the depression is permanent to a reasonable degree of medical certainty.

I would remand to the trial court for appropriate proceedings.

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HENRY D. BELL, SPECIAL JUDGE