

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

June 30, 2000 Session

DAVID HICKMAN v. CONTINENTAL BAKING COMPANY

**Direct Appeal from the Chancery Court for Shelby County
No. 107936 T.D. Floyd Peete, Jr., Chancellor**

No. W1999-00520-WC-R3-CV - Mailed March 29, 2001; Filed June 5, 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 of findings of fact and conclusions of law. The trial court did not issue a final order in this case. We therefore remand with instructions for further proceedings and a final judgment.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right;
Appeal to Special Workers' Compensation Appeals Panel Dismissed;
Case Remanded to the Chancery Court of Shelby County with Instructions.**

DON R. ASH, Sp. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and JOHN K. BYERS, Sr. J., joined.

Karen R. Cicala, Memphis, Tennessee, for the defendant/appellant, Continental Baking Company.

Mark Ledbetter, Memphis, Tennessee, for the plaintiff/appellee, David Hickman.

MEMORANDUM OPINION

History

The plaintiff filed a workers' compensation complaint with the Chancery Court of Shelby County on July 25, 1996. On June 13, 1997, the defendant filed a motion for enforcement of subrogation lien and for credit on future liability. A hearing was held on October 3, 1997, with an order being signed on November 14, 1997. The order sets out the court's decision to deny the subrogation claim and reserve the issue of future liability with regard to future medical expenses. A non-suit was filed on January 20, 1998. Subsequently, a motion to set aside the non-suit was filed along with notice to the court the defendant did not receive the order dated November 14, 1997. On February 5, 1998,

the trial court entered a substituted order, setting aside the non-suit application, denying motion for enforcement of subrogation lien, which included a conclusion of law stating the defendant had not fully or partially paid and discharged its liability to the plaintiff, and reinstated the November 14, 1997, order. On February 20, 1998, the defendant filed a motion to reconsider the substituted order denying motion for enforcement of subrogation lien or in the alternative for an interlocutory appeal, as well as a request to file a counterclaim.

The record contains no proof that the court ever heard these motions; in the event they were heard, the court never issued a ruling.

The case was tried on July 12, 1999. At the conclusion of the trial, the court requested post-trial briefs. The briefs are absent from the court's records. Accordingly, a judgment was entered September 23, 1999, awarding the defendant a subrogation credit of \$7,041.45 pursuant Tennessee Code Annotated § 50-6-112 (c)(2) and (3). The court denied the defendant's additional subrogation lien. On October 22, 1999, the defendant timely filed a notice of appeal to this court. For the reasons discussed below, we dismiss the appeal and remand this case with instructions.

Facts

Before filing the worker's compensation claim the plaintiff filed a lawsuit against APV Baker, Inc. for the same injury. The lawsuit was settled on January 22, 1997, for \$552,000.00. On November 28, 1995, the plaintiff's attorney sent the defendant's adjuster a letter confirming recognition of the subrogation lien in the third party lawsuit and agreeing to protect the subrogation interest of the defendant. Neither the plaintiff nor his attorney complied with the defendant's demand to honor its subrogation lien.

It is undisputed that the plaintiff injured his back while in the course and scope of his employment. There was proof submitted that a number of doctors treated the plaintiff. In fact, Dr. Jones gave the plaintiff a permanent partial disability rating of eleven percent to the body as a whole. All the proof was submitted to the court at the hearing of July 12, 1999. A judgment was issued on September 23, 1999, in relationship to the hearing of July 12, 1999. The Order issued on September 23, 1999, only addresses the issue of subrogation. It does not address the issues of permanency of injury, future liability for medical expenses or attorney fees.

Discussion

_____The order entered by the court on September 23, 1999, is obviously not a final order. Further, the order does not address the permanency of an injury nor the vocational disability. Moreover, the Order does not address future medical benefits or attorney's fees. "[T]his Court does not have jurisdiction of any case, except those where it is provided to the contrary by statute, unless the judgment appealed from is final." Aetna Cas. & Sur. Co. v. Miller, 491 S.W.2d 85, 86 (Tenn. 1973). Because the September 23,

1999 order is not a final judgment, we are compelled to dismiss this appeal and remand this case to the trial court for determination of all of the issues presented in the pleadings. Id. at 87.

An additional concern for this Court is that the case was originally filed on July 25, 1996, but was not heard until almost three years later. Whether the weight of the delay falls upon the parties or the trial court is unclear.

Tennessee Supreme Court Rule 11(III)(c) addresses the issue of cases under advisement:

No case may be held under advisement in excess of sixty (60) days and no motion or other decision of the trial judge that delays the day of trial or final disposition of the court, shall be held under advisement for more than thirty (30) days absent the most compelling of reasons.

This Rule also allows that in the event a timely decision is not forthcoming that either party can file a motion to render decision and can be either filed with the presiding judge or the Circuit Justice. This motion should set out the facts in order to prove the failure to comply with this Rule.

The legislature has also addressed the issue of cases under advisement in Tennessee Code Annotated § 20-9-506. This statute states:

When any judge of any district tries a case without the intervention of a jury where the judge is required to reduce the judges finding of facts to writing or not, the judge will be required to render his decision and have judgment entered in the case within sixty (60) days from the completion of the trial.

This court understands well the huge amount of cases trial judges have to manage, and these statutes and court rules are discretionary, but we also realize they set a standard which a court should attempt to follow.

This case is remanded back to the trial court with instructions to issue findings of fact and conclusions of law addressing the issues of permanency, impairment rating, future medical benefits, attorney fees, and subrogation claims including any credits due to the defendant. When making a determination on future medical benefits, the recent case of Graves v. Cocke County, 25 TAM 28-1 (SC Knoxville, 6/30/00) is highly analogous to the case at bar and should provide guidance to the trial court on this issue. The Court in Graves held that the employer was not entitled to a credit for future medical benefits. In making this determination the Court believed that “[e]mployees should not be placed in the difficult position of not being able to spend their workers’ compensation

benefits for fear that some or all of those benefits may have been returned to the employer if needed medical treatment is sought.”

It is this Court’s desire this be accomplished pursuant to Tennessee Supreme Court Rule 11(III)(c). Costs are to be split between the parties.

DON R. ASH, SPECIAL JUDGE

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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 equally to the Appellant, Continental Baking Company and the Appellee, David Hickman, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM