IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
July 26, 2001 Session

ELVIS WAYNE IVEY v. LONG HOLLOW LEASING, INC., ET AL.

Direct Appeal from the Criminal Court for Macon County
No. 97-82 J. O. Bond, Judge

No. M2000-02112-WC-R3-CV - Mailed - August 15, 2001
Filed - September 17, 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. In this appeal, the defendant-employer contends the trial court abused its discretion by (1) awarding the plaintiff-employee a default judgment after the defendant failed to obey an order compelling discovery, and by (2) denying its motion for a new trial. As discussed below, the panel has concluded the judgment should be affirmed.

Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Criminal Court Affirmed.

JOE C. LOSER, JR. SP. J., delivered the opinion of the court, in which FRANK F DROWOTA, J., and HAMILTON V. GAYDEN, JR., SP. J., joined.

Larry L. Crain, Brentwood, Tennessee, for the appellants, Long Hollow Leasing, Company, Inc., et al.

William Joseph Butler and Frank D. Farrar, Lafayette, Tennessee, for the appellee, Elvis Wayne Ivey.

MEMORANDUM OPINION

This is an action against Long Hollow Leasing, Inc.(LHL), Service Contract Carrier, Inc. (SCC) and J. D. Powell for the recovery of workers' compensation benefits. In his complaint, the employee or claimant, Ivey, named all three defendants, alternatively, as his employer and averred his injuries arose out of and in the course of his employment. The complaint was accompanied by a set of interrogatories when served on Powell on June 11, 1997, on SCC on June 24, 1997, and on LHL on April 14, 1988. An answer was filed on behalf of one of the defendants on June 9, 1998, but the

answer did not identify which defendant was answering. They denied all material averments of the complaint, but they raised no affirmative defense.

When the interrogatories were not timely answered, the plaintiff moved for and obtained on December 7, 1998 an order compelling answers and ordering the lawyer who signed the answer, Paul Julius Walwyn, to inform the plaintiff's counsel which defendant he represented, within thirty days. Mr. Walwyn did not respond within the time allowed. On June 15, 1999, the plaintiff made application to the trial court for sanctions against Mr. Walwyn and the three defendants. After a hearing, the trial court awarded the plaintiff a default judgment against all three defendants and a judgment for $500.00 against Mr. Walwyn. A hearing was scheduled for March 29, 2000, to ascertain the extent of the plaintiff's entitlement to benefits. The order was filed on November 9, 1999.

On December 22, 1999, Tripp Steven Fried, Esquire, entered his appearance on behalf of the defendants. On January 24, 2000, the defendants filed a motion to postpone the trial, motion to amend its answer and an amended answer. The motions were denied. Benefits were awarded following trial of all issues on May 29, 2000. The defendants moved for relief per Tenn. R. Civ. P. 59, which motion was denied by the trial court as being without merit.

Tenn. R. Civ. P. 37.02 provides in pertinent part as follows:

> 37.02 Failure to Comply with Order. If a deponent; a party; an officer, director, or managing agent of a party; or, a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 37.01 or Rule 35, or if a party fails to obey an order entered under Rule 26.06, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

The trial courts of Tennessee must and do have the discretion to impose sanctions in order to penalize those who fail to comply with the rules and, further, to deter others from flouting or disregarding discovery orders. Holt v. Webster, 638 S.W.2d 391, 394 (Tenn. Ct. App. 1982). On appeal, the exercise of discretion by a trial court in imposing sanctions will not be disturbed without an affirmative showing of abuse. Brooks v. United Uniform Co., 682 S.W.2d 913, 915 (Tenn. 1984). The granting or refusal of a new trial rests largely in the discretion of the trial judge. Esstman v. Boyd, 605 S.W.2d 237, 240 (Tenn. Ct. App. 1979); Seay v. City of Knoxville, 654 S.W.2d 397, 400 (Tenn. Ct. App. 1983).

The appellants argue they should not be deprived of their day in court because of the neglect

of counsel. The record does not support that argument. In fact, the record suggests the defendants were attempting to conceal the identity of the true employer and deprive the claimant of his opportunity to recover the benefits provided to him by law, by delaying his day in court. From our independent examination of the record, we find no affirmative showing that the trial court abused its discretion by imposing the sanction of default judgment, by refusing to allow relief under Rule 59, or otherwise.

The judgment of the trial court is therefore affirmed. Costs are taxed to the defendants-appellants and their surety.

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JOE C. LOSER, JR.

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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 will be paid by the defendants/appellants and their surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM