IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 28, 2002 Session

BARBARA A. WILLOUGHBY and VANESSA WILLOUGHBY v. FEDERATED MUTUAL INSURANCE COMPANY

Direct Appeal from the Chancery Court for Campbell County
No. 14,994 Billy Joe White, Chancellor

Filed June 20, 2002

No. E2001-01260-WC-R3-CV

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 plaintiffs appeal the trial judge's decision that they failed to carry their burden of proof with respect to the decedent's heart attack being an injury by accident arising out of and in the course of his employment for the company insured by the defendant. We affirm the judgment of the trial court.

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

BYERS, SR. J., delivered the opinion of the court, in which BARKER, J., and PEOPLES, SP. J., joined.

David H. Dunaway, LaFollette, Tennessee, for the appellants, Barbara A. Willoughby and Vanessa Willoughby.

D. Brett Burrow and Gordon C. Aulgur, Nashville, Tennessee, for the appellee, Federated Mutual Insurance Company.

MEMORANDUM OPINION

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).

Facts

The decedent was fifty-seven years of age at the time of his death. He was driving a "demonstrator" vehicle provided by his employer, an automobile dealership, when he suddenly sustained a heart attack, lost control of his vehicle, was involved in a collision and died. His young daughter was in the car with him at the time of the accident.

The plaintiffs allege that at the time of the accident, the decedent was en route to work while driving a vehicle owned, controlled, and supplied by his employer. As such, the plaintiffs contend that the decedent sustained a heart attack as a result of work activities arising out of and in the course of his employment. The plaintiffs further allege that in the month leading up to the decedent's heart attack, the decedent was subject to an unusual amount of stress from his job, such stress being the precipitating factor that caused the heart attack.

Testimony at trial showed that the decedent's daughter was in the car with him at the time of the accident and that he was taking her to school when the accident occurred. Testimony also showed that he was wearing a tee shirt, slacks, and "house shoes" at the time.

Several of the decedent's co-workers as well as his widow testified that it was routine for him to take his daughter to school before coming in to work and that occasionally he would take her to school and then go back home before going in to work. Testimony also showed that the decedent always dressed "professionally" for work and that he would "never" have gone to the dealership for work dressed in a tee shirt and house shoes, although he could and often would sell cars at any time of day or night in any location.

The decedent's co-workers also testified at trial about the nature of their business and the month leading up to the accident. According to testimony, the salesman at the dealership worked on a commission basis with additional bonus incentives for certain numbers of cars sold. January was normally a slow month for car sales, but that particular January the dealership enjoyed its best January sales in a long time. Specifically, testimony showed that the decedent himself had had better January sales than usual.

The decedent was a smoker. Testimony showed that he smoked anywhere from a pack to two and a half packs a day. Testimony also showed that the decedent drank beer daily, and possibly drank as much as a six-pack a day. He had experienced chest pains in the mid-1990's and his widow and co-workers testified that he frequently complained of heartburn and indigestion and carried a bottle of liquid antacid with him wherever he went.

Medical Evidence

The medical evidence for the purpose of the issues raised in this case was presented by: the

deposition of Dr. James Farris, a specialist in internal medicine; and the deposition and live testimony of Dr. C. M. Salekin, a specialist in occupational medicine.

Dr. Farris testified about the decedent's personality as someone who tried to excel in the context of his job as a salesman. Dr. Farris did not examine the decedent (indeed, no doctor who testified in the trial *had* examined him,) but reviewing the decedent's medical history and records led Dr. Farris to believe that stress was a contributing factor to his heart attack. Other risk factors included the decedent's male gender, the fact that he was a smoker, his family history, and elevated cholesterol. Dr. Farris also testified that if the employment stress was present as described in the history upon which he relied, then that stress would have been a precipitating factor of the decedent's heart attack and would have added to all the other risk factors.

Dr. Salekin testified that it was his opinion within a reasonable degree of medical certainty that the activity of the decedent's work during the month before his death brought about or contributed to his death. Dr. Salekin further testified that the decedent was subject to unusual stress induced by incentive, the incentive to sell automobiles, and that this unusual level of stress in the month leading up to his death was the precipitating factor of his heart attack and ultimately his death.

Discussion

Although we are required to weigh the evidence in a case in depth to determine where the preponderance of the evidence lies, we are required to make such evaluation within the confines of established rules in evaluating the propriety of the judgment of the trial court.

In order to be eligible for workers' compensation benefits, an employee must suffer "an injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102(a)(5). The phrase "arising out of" refers to causation. The causation requirement is satisfied if the injury has a rational, causal connection to the work. *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) (citations omitted); *Fink v. Caudle*, 856 S.W.2d 952 (Tenn. 1993).

The plaintiffs in this case argue that the decedent David Willoughby was on his way to work the morning of his death in an automobile furnished by his employer. It has been held in Tennessee that if an employer furnishes transportation to the employee as an incident of the employment contract and the employee is killed or injured on the way to or from work, that such injury or death does arise out of and in the course of employment. *Eslinger v. F. & B. Construction Co.*, 618 S.W.2d 742 (Tenn. 1981); *Pool v. Metric Constructors, Inc.*, 681 S.W.2d 543 (Tenn. 1984); *W.C. Sharp Drug Stores v. Hansard*, 176 Tenn. 595, 144 S.W.2d 779 (1940).

It seems clear to us from the evidence introduced at trial, however, that David Willoughby was not actually on his way to work when this accident occurred. He had his daughter in the car with him and was clearly on his way to drop her off at school, as was his normal routine. Furthermore, as his co-workers and friends testified, the clothes he was wearing were not the clothes he would

have worn to work that day. It can be inferred from those clothes that he intended to return home to change before actually going in to work. With these intervening trips, it cannot be inferred from the evidence that David Willoughby was on his way to work when he suffered his heart attack

The court recognizes the plaintiffs' argument that Mr. Willoughby was known to sell automobiles at all times of day and in all manners of place and attire, but this does not mean that he was "in the course of his employment" for the purposes of workers' compensation every hour of every day of the year.

The plaintiffs' claim also fails on the grounds that it was a compensable heart attack claim.

In Tennessee it has been held that a heart attack is compensable, as an accidental injury, if it can be shown by competent evidence that the attack was precipitated by physical exertion or stress at work. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523 (Tenn. 1991); *Bacon v. Sevier County*, 808 S.W.2d 46 (Tenn. 1991); *Hodge v. Diamond Container General Inc.*, 759 S.W.2d 659 (Tenn. 1988); *Kingsport Press, Incorporated v. Van Huss*, 547 S.W.2d 572 (Tenn. 1977). The key, it has been held, to the recovery or denial of benefits is whether the heart attack is precipitated by the physical activity and exertion of the employee's work. *Wingert v. Government of Sumner County*, 908 S.W.2d 921 (Tenn. 1995); *Shelby Mut. Ins. Co. v. Dudley*, 574 S.W.2d 43 (Tenn. 1978). Physical exertion as a precipitating factor was not present in this case, as Mr. Willoughby was merely driving his daughter to work on a Monday morning, having not worked since the previous Saturday evening.

A heart attack may also be compensable as an injury by accident, however, if it is shown to have been precipitated by a specific event which caused acute emotional stress, as opposed to everyday stress and strain. *Krick v. City of Lawrenceburg*, 945 S.W.2d 709 (Tenn. 1997); *Black v. State*, 721 S.W.2d 801 (Tenn. 1986); *Cabe v. Union Carbide Corp.*, 644 S.W.2d 397 (Tenn. 1983).

The testimony in this case showed that the stress experienced by Mr. Willoughby in the weeks leading up to his heart attack was ordinary stress brought on by the nature of his occupation. The record is devoid of any specific acute or sudden, stressful event that could have precipitated his heart attack. There was no climactic event or series of events of an unusual or abnormal nature that would permit the plaintiffs to recover.

The medical testimony in this case showed that the general, everyday stress of Mr. Willoughby's job was likely a factor in his heart attack when coupled with all of his other risk factors. This type of stress, however, is not stress that is compensable as a precipitating factor for a heart attack claim. Absent an unusual stressful event, something more than a month that is expected to be slow for car sales and turns out to be a successful month, this is not a compensable claim.

The plaintiffs also argue on appeal that the defendant is precluded from contesting the compensability of this claim because it failed to file a Notice of Controversy after making payments

to the plaintiff that the plaintiffs contend were for death benefits. It seems clear to the court that the money given to the plaintiffs immediately after Mr. Willoughby's death was a gift given as a gesture of kindness and was in no way intended to serve as payment of workers' compensation benefits. This claim is without merit.

The trial judge ruled that the plaintiffs had failed to carry their burden of proof. We cannot say that the evidence preponderates against the finding of the trial judge and we affirm the judgment. The cost of this appeal is taxed to the plaintiff.

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JOHN K. BYERS, SENIOR JUDGE

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JUDGMENT ORDER

This case is before the Court upon the motion for review filed by the appellants, Barbara A. Willoughby and Vanessa Willoughby, 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to the appellants, Barbara A. Willoughby and Vanessa Willoughby, and their surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Barker, J., not participating