

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

February 28, 2002 Session

DALE PARISH v. MASSMAN CONSTRUCTION CO., ET AL.

**Direct Appeal from the Circuit Court for Shelby County
No. CT-006289-00 Robert A. Lanier, Judge**

No. W2001-01678-SC-WCM-CV - Mailed April 12, 2002; Filed August 1, 2002

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 employee-appellant insists the trial court erred in finding (1) the employee's employment was not principally located in Tennessee, (2) the contract of hire was not made in Tennessee, and (3) the defendants waived their right to assert Tennessee does not have jurisdiction over the claim. As discussed below, the panel has concluded the judgment should be affirmed.

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

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which L. T. LAFFERTY, SR. J., and JANICE M. HOLDER, J., joined.

Lawrence W. White and R. Scott Vincent, Memphis, Tennessee, for the appellant, Dale Parish

Sarahannah L. McMurtry, Brentwood, Tennessee, for the appellees, Massman Construction Co. and St. Paul Fire & Marine Insurance Company

MEMORANDUM OPINION

The employee or claimant, Dale Parish, is a Tennessee resident who was injured while working in Arkansas for a foreign construction company, Massman Construction Company. The proof is that a small part of the construction project on which the claimant was working was to be performed in Tennessee, but that the work was principally located in Arkansas, where the injury occurred.

The claimant, who lives in Memphis, had first learned of an opening for a welder on the

project by his local union. Two weeks later he met with the project manager at the project trailer in Arkansas, where he sought employment as a supervisor. Instead, the project manager offered the claimant a position as a welder, subject to being cleared for such work by the union and producing evidence of his ability to weld. The claimant accepted a job as a welder at the time, subject to approval by his local union in Memphis. Upon being cleared by the local in Memphis, the claimant reported to work in Arkansas with a written referral from the union and began working as a welder.

He was injured.

The claimant initiated this civil action to recover Tennessee workers' compensation benefits for his injuries. After a trial on the merits, the trial court dismissed the complaint because the Tennessee Workers' Compensation Law is generally inapplicable where the injury occurs in another state, and because the facts of this case do not bring it within any known exception to that rule.

Appellate review of findings of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). This tribunal is not bound by the trial court's findings but instead conducts an independent examination of the record to determine where the preponderance lies. Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Conclusions of law are subject to de novo review on appeal without any presumption of correctness. Ivey v. Trans Global Gas & Oil, 3 S.W.3d 441, 446 (Tenn. 1999).

A worker who is injured outside the territorial limits of Tennessee is covered under the Act if, and only if, he would have been covered if the injury had occurred within the state and (1) the employment was principally localized within Tennessee or (2) the contract of hire was made in Tennessee. Tenn. Code Ann. § 50-6-115 (1999); Matthews v. St. Paul P & L Insurance, 845 S.W.2d 737 (Tenn. 1992).

An exception to this rule may exist, however, in cases where the involvement of Tennessee is very substantial, despite the fact that the contract and the injury were elsewhere. To come within the exception - or third category of extraterritorial coverage - it must be shown that Tennessee has a legitimate interest in the controversy and there is a substantial connection between Tennessee and the particular employer-employee relationship. Bryant v. Seward, 490 S.W.2d 497 (Tenn. 1973). Ordinarily, though, if an injury occurs in another state, benefits under the Tennessee Act are not recoverable unless it can be shown that the contract of hire was made in Tennessee. Perkins v. BE & K, Inc., 802 S.W.2d 215, 216 (Tenn. 1990).

The appellant first contends his employment was principally localized in Tennessee because the facts are similar to those in Bryant v. Seward. In that case, both the employer and the employee resided in Tennessee, the premises of the employer were situated on the state line, and the work of the employee was done with the boundaries of both states. It was held that Tennessee had sufficient connection with and interest in a particular employer-employee relationship to apply its workers' compensation law. The only connections between the present case and Tennessee are (1) the

employee lives in Tennessee and (2) he heard about the job opening while at home. Those facts are insufficient, as the trial court held, to allow recovery under Tennessee law. See Ray v. Aetna Casualty and Surety Co., 517 S.W.2d 194, 197 (Tenn. 1974).

The appellant next contends the employment contract was made in Tennessee because the claimant could not work unless his agreement was cleared by his union in Tennessee. While it is undisputed that such clearance was necessary and that he learned what his hourly wage would be while in Tennessee, the trial court found, based also on undisputed proof, that the contract was not completed until the claimant arrived at the job site, submitted his papers and showed the employer he could weld satisfactorily. We conclude, from those undisputed facts, that the trial court did not err in holding that the contract therefore was made in Arkansas. We agree with the employer that the claimant's entitlement to benefits is under Arkansas law.

The appellant finally contends the employer is estopped from denying coverage under the law of this state, because a representative told him he could apply for such coverage. In our opinion, the argument is without merit.

For those reasons, the judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant.

JOE C. LOSER, JR.

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

DALE PARISH v. MASSMAN CONSTRUCTION COMPANY, ET AL.

No. W2001-01678-SC-WCM-CV - Filed August 1, 2002

ORDER

This case is before the Court upon the motion for review filed by Dale Parish, 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 Dale Parish, for which execution may issue if necessary.

PER CURIAM