

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 2003 Session

**PATRICIA A. MAXWELL v. STATE FARM FIRE & CASUALTY
INSURANCE COMPANY**

**Direct Appeal from the Chancery Court for Rutherford County
No. 41851 Robert E. Corlew, III, Chancellor**

**No. M2002-02750-WC-R3-CV - Mailed - July 1, 2003
Filed - August 4, 2003**

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 appellant insists the trial court erred in summarily dismissing her claim upon the finding that she was not a covered employee. As discussed below, the panel has concluded the case should be remanded for a full trial on the merits.

**Tenn. Code Ann. § 50-6-225(e) (2002 Supp.) Appeal as of Right; Judgment of the Chancery
Court Vacated; Remanded**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

Wm. Kennerly Burger, Burger, Siskin, Scott, Goad & McFarlin, Murfreesboro, Tennessee, for the appellant, Patricia A. Maxwell

Roger W. Hudson, Murfree, Cope, Hudson & Scarlett, Murfreesboro, Tennessee, for the appellee, State Farm Fire & Casualty Insurance Company

MEMORANDUM OPINION

The claimant, Ms. Maxwell, initiated this civil action to recover workers' compensation benefits for injuries suffered by her in a fall from a ladder. The employer's insurer, State Farm, denied liability and moved for summary judgment, to which the claimant responded. After consideration of the contentions of the parties, the trial court found that there was no genuine issue of fact and dismissed the complaint, without addressing the legal issues involved. The claimant has appealed.

Ordinarily, the standard of review in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). However; when summary judgment has been granted in a workers' compensation case, review is governed by Tenn. R. Civ. P. 56, which requires the court to review the record without a presumption of correctness to determine whether the absence of genuine issues of material fact entitles the movant to judgment as a matter of law. The standard governing the assessment of evidence in the summary judgment context is well established. Courts must view the evidence in the light most favorable to the non-moving party and must also draw all reasonable inferences in favor of the non-moving party. Summary judgment should be granted only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. Goodloe v. State, 36 S.W.3d 62, 65 (Tenn. 2001) (citations omitted). Summary judgment is almost never an option in workers' compensation cases. Berry v. Consolidated Systems, Inc., 804 S.W.2d 445, 446 (Tenn. 1991).

The employer was the general or principal contractor on a house being built for its owners. The claimant was employed by the contractor as a subcontractor for the purpose of cleaning up in preparation for delivery of possession of the house to the owners for their occupancy. In the process, she fell from the ladder and was injured. Drawing all inferences in favor of the claimant, or the non-moving party, it further appears from the record that she was assured by the employer, both before and after the injury, that she was covered by the employer's workers' compensation insurance. The employer's insurer contends the claimant was not covered because she was an independent contractor.

An employer may accept coverage under the Workers' Compensation Act by agreement with its employees. Presley v. Bennett, 860 S.W.2d 857, 860 (Tenn. 1993). Moreover, principal - or general - contractors are liable in benefits for injuries to the employees of their subcontractors if the injury occurs on, in, or about the premises under the control and management of the principal contractor. Tenn. Code Ann. § 50-6-113. The rule applies even if the subcontractor is an independent contractor or an employer of less than five regular employees. Hudnall v. S. & W. Constr. Co. of Tenn., Inc., 60 Tenn. App. 743, 451 S.W.2d 858 (1969); Brown v. Canterbury Corp., 844 S.W.2d 134, 136 (Tenn. 1992).

Considering those principals, we cannot say that the facts and inferences to be drawn from those facts would permit a reasonable person to reach only one conclusion. Therefore, the order granting the defendant's motion for summary judgment is vacated and the case remanded to the Chancery Court for Rutherford County for proceedings consistent with this opinion. We express no opinion as to the ultimate result to be reached after remand. Costs are taxed to the parties equally.

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 parties equally, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM