

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
September 19, 2003

TRACI L. NOLAN v. COVENANT HEALTH

**Direct Appeal from the Chancery Court for Loudon County
No. 9945 Frank V. Williams, III, Chancellor**

Filed November 17, 2003

E2003-00288-WC-R3-CV

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court found the plaintiff did not prove that she contracted Hepatitis C while in the course and scope of her employment. 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

JOHN K. BYERS, SR. J., delivered the opinion of the court, in which E.RILEY ANDERSON, J., and ROGER E. THAYER, SP. J., joined.

Joseph M. Ford, Loudon, Tennessee, for the appellant, Traci L. Nolan.

F. Michael Fitzpatrick, Knoxville, Tennessee, for the appellee, Covenant Health.

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 findings, 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 court in workers' compensation cases. *See Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The trial court found that the plaintiff did not establish that she contracted Hepatitis C

while in the course and scope of employment, and dismissed her claim. The plaintiff argues that she did in fact satisfy her burden of proof as to causation by eliminating all possible causes for contracting the disease other than an incident she was involved in while treating a patient at work.

Facts

The plaintiff, Traci Nolan is a 39 year-old female who was employed by defendant, Covenant Health, from September of 1997 until August of 2000. The plaintiff is a registered nurse and regularly worked from 8:00 to 5:00 seeing about 8 to 10 patients per day, and was also on-call a great deal of time, averaging around 50 hours per week. The plaintiff contends that she contracted Hepatitis C from exposure while in the course and scope of her employment with the employer.

On February 18, 1999, the plaintiff was attending to a patient, Ms. Bishop. The plaintiff was leaning over Ms. Bishop tending to a wound on Ms. Bishop's left breast when a boil on Ms. Bishop's face burst, spewing a blood and pus mixture onto the plaintiff's body and clothes. The plaintiff testified at trial that the patient's body fluids contacted her eyes (although the plaintiff was wearing glasses), mouth, nose, and psoriatic skin on her arm. In March of 2000, the plaintiff was pricked by a needle and was tested for exposure. Her results came back positive for Hepatitis C, but because of the incubation period, the Hepatitis C could not be the result of the needle prick in March of 2000.

The only exposure known to the plaintiff was that of the incident with Ms. Bishop, so the plaintiff filled out a report with the employer. The plaintiff also ruled out her sexual partners for 9 years prior to the incident, as none of them tested Hepatitis C positive. However, the employer emphasizes that the plaintiff was a cocaine user in the 1980's, has been married 5 times, one of her ex-husbands is a "street person," and one of her past sexual partners was an IV drug user. The employer also emphasizes that no known cases of Hepatitis C can be traced to exposure of fluids to the skin, and that the plaintiff's symptoms of fatigue and abdominal pain began prior to the incident with Ms. Bishop. The plaintiff currently works for House Call Home Health, and testified that she is able to perform this job because it is fewer hours and less stress.

Medical Evidence

The medical evidence came from three doctors, Drs. Anderson, Rose, and Mixon. The plaintiff went to see Dr. Mark Anderson on June 30, 2000. Dr. Anderson practices in the area of clinical trials for ribavirin and interferon treatments for Hepatitis C. The plaintiff testified that Dr. Anderson told her that she had contracted Hepatitis C sometime in the three years prior to her seeing him.

Dr. Richard Rose, III is an infectious disease specialist who has prior experience at the Center for Disease Control ("CDC"). Dr. Rose testified that it would be "possible" for the

plaintiff to have contracted the Hepatitis C by contact with a patient's bodily fluid to a psoriasis sore or scab, and that it was "possible" to contract the disease through contact with the eye or mouth, but also stated that "anything is possible." Dr. Rose also stated that this was only speculative. Dr. Rose stated that the plaintiff probably contracted the disease in the last ten years based on the level of inflammation from the plaintiff's liver biopsy. Dr. Rose also stated that there was a 50% chance that the plaintiff had contracted the disease in the last 5 years. Dr. Rose stated that the appropriate impairment rating for the plaintiff would be in the upper range of 14%. Dr. Rose testified that the most probable way of contracting the disease is from a direct needle stick, and that even a direct needle stick only yields a 1.8% chance of contracting the disease. Dr. Rose also testified that the best studies from the CDC show that no transmission has ever been documented from contact between bodily fluid and intact or non-intact skin.

Dr. William Mixon is the plaintiff's treating physician, and saw the plaintiff on February 9, 1999, nine days before the incident of exposure with Ms. Bishop. In his report, Dr. Mixon states that the plaintiff is feeling poorly. He also states that she is "having continuous fatigue...night sweats...and simply doesn't feel good." Dr. Rose testified that these symptoms were compatible with the Hepatitis C disease, and that they were most likely caused by the disease. The evidence also showed that the plaintiff was complaining of migratory abdominal pains in the right upper quadrant, which is the location of the liver, in February of 1998. Dr. Rose also testified that this was indicative of Hepatitis C.

Discussion

The trial judge in this case relied heavily on the testimony of Dr. Rose, and found that there was no competent testimony to refute Dr. Rose. We may, of course, make an independent assessment of the depositions because we are in as good a position as the trial judge to determine the credibility of the testimony. *Cooper v. INA*, 884 S.W.2d 446 (Tenn. 1994). However, unless there is something inherent in the depositions which undermines their reliability, we do not reach a conclusion different from the trial judge merely because we may do so.

The finding of the trial judge is influenced by the testimony of Dr. Rose that he can only speculate that Ms. Nolan contracted the disease from the exposure to the patient. Although absolute certainty is not required to prove causation, in all but the most obvious cases, such as the loss of a member, expert testimony is required to establish causation. *Thomas v. Aetna Life & Casualty Co.*, 812 S.W.2d 278 (Tenn. 1991). Although the trial judge notes that the workers' compensation laws are generally designed to construe the evidence in the favorable light toward the plaintiff, the trial judge found that the testimony was so uncertain and so tenuous with regard to causation that he could not find for the plaintiff, and we agree.

The finding of the trial judge is also influenced by the fact that Ms. Nolan was having symptoms that can occur with Hepatitis C prior to her exposure to the patient. The trial judge stated:

In other words, I take the doctor to be saying that these symptoms that he has had

described to him from Dr. Mixon's report back in early February of 1999, that he's saying that they could be symptoms of Hepatitis C and given—he goes on to say that given where she is today that he suspects that they were in fact, that they are in fact due to that, due to the fact that she was infected with Hepatitis C.

Because of the foregoing reasons, the trial judge was unwilling to find in favor of the plaintiff. From the record we find the trial judge did not abuse his discretion in making this ruling, and agree with his ruling.

The costs of this appeal are taxed to the Appellant.

JOHN K. BYERS, SENIOR JUDGE

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AT KNOXVILLE, TENNESSEE

TRACI L. NOLAN V. COVENANT HEALTH
Loudon County Chancery Court
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No. E2003- 00288-WC-R3-CV

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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

The costs on appeal are taxed to the appellant, Traci L. Nolan, for which execution may issue if necessary.