IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
December 17, 2003 Session

Brian Durant v. Saturn Corporation

A Direct Appeal from the Chancery Court of Williamson County
No. 27700 The Honorable Chancellor Russ Heldman

No. M2003-00566-WC-R3-CV - Mailed - February 26, 2004
Filed - April 30, 2004

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) to hear and report to the Supreme Court Findings of Fact and Conclusions of Law. Employee brought this action to recover workers' compensation benefits for injuries he sustained in an automobile accident on employer's premises after leaving the plant, but before arriving at the control gate to the Saturn complex. The trial court held that the injuries did not arise out of the employment and granted Saturn's Rule 41 motion to dismiss. We reverse the trial court and hold that the premises rule announced in *Lollar v. Wal-Mart Stores, Inc.*, includes roads provided by the employer inside the access gate to the employer's industrial complex. We further hold that the injury arose out of the employment. We remand the case to the trial court for further proceedings consistent with our holdings.

Tenn. Code Ann. Section 50-6-225(e) (1999); Appeal as of Right: Judgment of the Circuit Court is reversed and case is remanded.

JOHN A. TURNBULL, Sp. J., delivered the opinion of the court in which FRANK DROWOTA C.J., and HOWELL N. PEOPLES, SP. J., joined.

Larry R. Williams and A. Allen Smith, III, Nashville, Tennessee, for Appellant, Brian Durant.

Thomas H. Peebles, IV, Tennessee, for Appellee, Saturn Corporation.

Opinion

This case requires us to interpret the "premises rule" laid down in *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989) as extended by the Supreme Court in *Copeland v. Leaf, Inc.*, 829 S.W.2d 140 (Tenn. 1992). To be compensable under our workers' compensation statute, an injury must be one "arising out of and in the course of employment." T.C.A. 50-6-102(a)(5) (1991). In *Lollar*, the Supreme Court examined the substantial body of case law governing workers' compensation liability when an employee is injured en route to or from work, and concluded that the previous set of guidelines as set down in *Woods v. Warren*, 548 S.W.2d 651 (Tenn. 1977) "had not proved workable" and had resulted in inequities. *Lollar* at p. 150. The court re-evaluated its previous adherence to the "unique minority rule" and instead adopted a premises liability standard employed by nearly all jurisdictions, see 1 Larson *Workmen's Compensation Law* 15.11 (1994). The Supreme Court held "that a worker who is on the employer's premises coming to or going from the actual work place is acting in the course of employment [and] that if the employer has provided a parking area for its employees, that parking area is part of the employer's premises regardless of whether the lot is also available to customers or the general public." 767 S.W.2d at 150. In *Copeland*, the Supreme Court extended the holding in *Lollar* and held "that employees who must cross a public way that bisects an employer's premises and who are injured on that public way while traveling a direct route between an employer's plant facility and parking lot are entitled to workers' compensation benefits." *Copeland*, 829 S.W.2d, at 144. The court in *Copeland* pointed out that the employer was responsible for creating the necessity for the employee to encounter the particular hazards of the trip between a non-contiguous parking lot and the working plant itself. Accordingly, the Supreme Court felt that an extension of the "premises rule" announced in *Lollar* was warranted. *Id*.

Facts and Procedural Background

Saturn maintains an industrial complex in Maury County where the corporation assembles Saturn motor vehicles. Saturn built and maintains roads in the complex leading from the entrance gate to the work plant. Saturn had posted a thirty-five mile speed limit on Ephlin Parkway as a safety regulation.

On December 5, 2000, at approximately 2:00 a.m., Brian Durant was leaving work from the power train plant, one of three main plant locations in the Saturn complex. Although Saturn had constructed other roads over which Durant could have traveled to reach the main Saturn gate and the public highway (U.S. 31), he chose to go his normal shortest route along Ephlin Parkway, one of the main traffic arteries within the complex. Durant, who had worked at Saturn for more than eight years, was traveling at what he

described as the normal speed for traffic over the four lane paved road. He described the normal flow of traffic as exceeding the posted speed regulation by fifteen to twenty-five miles per hour (50 to 60 m.p.h.). Durant indicated there were two cars ahead of him, one of which was in the same lane ahead of Durant's Corvette. He testified he was not catching up to either vehicle, but was maintaining his distance. Just after passing Brown Hall Street, another street in the Saturn complex, and after negotiating a gentle curve, Durant lost traction, spun almost 180 degrees and left the road, flipping three times, and jumping a six foot ditch. Although Durant acknowledged that his speed was a contributing factor in his crash, he initially reported his accident as "due to road and weather conditions [with] no guardrail at point of steep embankment." He further indicated that previous experience had shown the pavement to be slippery and that "geese were all over the place." Durant had never been issued a citation for speeding and indicated Saturn did not attempt to enforce the posted speed limit. In fact, Durant testified he had, on one or two occasions, attempted to drive the 35 m.p.h. speed limit, but that during the attempts he had two or three "near misses" because the normal flow of traffic so far exceeded that posted speed limit. Durant opined that it was sad, but it was impossible to follow the 35 m.p.h. speed limit. Saturn's counsel conceded "It's on Saturn's premises. Saturn doesn't have the power to cite people. They have to discipline them when they're found speeding. . . It's basically a safety regulation."

At the close of plaintiff's proof, the defendant employer made an oral *Tennessee Rules of Civil Procedure* rule 41.02(2) motion to dismiss. For the purpose of the motion, Saturn admitted there was proof the plaintiff was on the Saturn premises leaving work and therefore in the course of employment. Instead, Saturn insisted that plaintiff had failed to prove any cause for his accident other than speeding. Saturn insisted that since Durant's speeding was the only cause Durant could point to as a specific cause of the accident, there was no relationship between the work and the accident . There was no rational connection between the accident and Durant's work duties. Accordingly, Saturn argued Durant's injuries did not arise out of his employment. In argument, plaintiff's attorney acknowledged that speeding was a significant contributing factor in causing the accident.

The trial judge granted Saturn's motion to dismiss holding:

> The Court is of the opinion that the motion should be sustained, and that with all due respect, under the law that plaintiff has not shown a right to relief in this case. The Court first finds that even though it's not advanced, the Court relies upon the evidence in the statements of counsel for the plaintiff and does find that the evidence amounts to willful

misconduct as that term is defined by law. The speeding which was a substantial factor in leading to the injury was done intentionally. It was a wrongful act. It was a purposeful violation of what was communicated to the worker by the employer in this case, and under all the circumstances, the Court considers that there is an element of perverseness in doing that. Now, the Court does not need to make its finding based upon that. The Court does find the evidence is insufficient to sustain a finding that the injury arose out of this workers' employment, and that is the prong of the definition the Court is focused on. The Court also finds that the actions of Mr. Durant, with all due respect to Mr. Durant, did involve, quote, an added element of peril, quote closed, if it's necessary for the Court to do that. [emphasis added].

Scope of Review/Grant of Motion to Dismiss

A non-jury case may be dismissed at the close of plaintiff's proof if the facts which have been presented by plaintiff show no right to relief under the law. *Tennessee Rules of Civil Procedure* 41.02(2). The trial judge must impartially weigh and evaluate the evidence and determine the facts in the same manner as required if the judge were making findings of fact at the conclusion of all the evidence. *See*, *City of Columbia v. C.F.W. Const. Co.*, 557 S.W.2d 734 (Tenn. 1977); *Adkins v. Kirkpatrick*, 823 S.W.2d 547 (Tenn. Ct. App. 1991). The trial judge must then apply the law to the facts found, and, if the plaintiff's case has not been made out by a preponderance of the evidence the trial judge may, at that time, render judgment against the plaintiff. *See Columbia*, 557 S.W.2d at 740 and *Adkins* 823 S.W.2d 547.

Since, on motion to dismiss at the close of plaintiff's proof, the trial judge is to weigh the evidence, the trial court's factual findings are subject to our *de novo* review upon the record. As mandated by *Tennessee Rules of Appellate Procedure* 13[d], there is a presumption that those findings of fact are correct, and we must honor that presumption of correctness unless the evidence preponderates to the contrary. *Union Carbide Corp. v. Huddleston*, 854 S.W.2d 87, 91 (Tenn. 1993). When a trial judge has seen and heard a witness's testimony, we give considerable deference to the trial court's finding of credibility and the weight to be given that testimony. *Townsend v. State*, 826 S.W.2d 434, 437 (Tenn. 1992). We must then determine whether those facts make out a prima facie case of liability, a question of law which the appellate court decides anew without any presumption as to the correctness of the trial court's conclusion. See *McCormick v. Aabakus, Inc.*, 101 S.W.3d 60, 62 (Tenn.Workers' Comp. Panel 2000).

The Premises Rule/In The Course of Employment

To be compensable, a workers' compensation injury must arise out of and occur in the course of employment. Tenn. Code Ann. Section 50-6-102(12); *Howard v. Cornerstone Med. Associates*, 54 S.W.3d 238, 240 (Tenn. 2000). The phrases "arising out of" and "in the course of" are not synonymous. "Arising out of" refers to the cause or origin of the injury, while "in the course of" refers to the time, place and circumstances of the injury. *Hill v. Eagle Bend Mfg. Inc.*, 942 S.W.2d 483, 487 (Tenn. 1997).

The general rule is that an employee is not acting within the course of employment when the employee is going to or coming from work. This general rule was premised on interpretation of the requirement that an injury must occur in the course of employment, e.g., "the employee was not to be considered in the course of his employment until he has actually arrived at his place of employment ready to begin his activities in the employer's work." *Smith v. Carmel Mfg. Co.*, 241 S.W.2d 771, 775 (Tenn. 1951). *See*, *Lollar v. Wal-Mart*, 767 S.W.2d 143, 144 (Tenn. 1989). In *Lollar*, the Supreme Court recognized that the "course of employment" includes not only the time for which the employee is actually paid, but also a reasonable time during which the employee is necessarily on the employer's premises while passing to or from the place where the work is actually done. *Lollar*, 767 S.W.2d at 150. Thus, the "premises rule" was adopted:

> We hold today that a worker who is on employer's premises coming to or going from the actual work place is acting in the course of employment. We further hold that if the employer has provided a parking area for its employees, that parking area is part of the employer's premises regardless of whether the lot is also available to customers or to the general public.

Id.

In cases applying the "premises rule" since 1989 the Supreme Court has not emphasized the "in the course of employment" prong of the compensability test. Instead, the Court has used the language of compensability or entitlement to workers' compensation benefits. For example, the Court in *Copeland v. Leaf, Inc.*, 829 S.W.2d 140 (Tenn. 1992) extended the premises rule to allow recovery when an employee is injured in crossing a public street while traveling a direct route between the employer's work facilities and parking lot. The Court held:

> Therefore, we hold that employees who must cross a public way that bisects an employer's premises and who are injured on that public way while traveling a direct route between an

> employer's plant facility and parking lot, are entitled to workers' compensation benefits. Because such travel was necessary by the plaintiff here, her injury on the public way is compensable.

Copeland, 829 S.W.2d at 144. [emphasis added].

In *McCurry v. Container Corp. of America*, 982 S.W.2d 841 (Tenn. 1998) the Supreme Court refused to extend the premises rule to include an injury suffered by an employee eighty feet outside the "work complex." "Once the employee has exited the parking area and begins traveling on personal time, away from the employer's premises, he is no longer in the course of employment." 982 S.W.2d 845. The *McCann* court declined "to adopt a liability rule that is based upon arbitrary measurements of time and distance from the performance of work," e.g., the "so close by rule."

In the instant case, Saturn conceded at trial and concedes on appeal that Durant's injury occurred on Saturn's premises, and therefore occurred in the course of employment. We find this concession to have been correctly analyzed. In footnote 1, the Court, in *Copeland*, stated: "The term 'premises' includes the entire area devoted by the employer to the industry with which the employee is associated. 1 Larson, *Workmen's Compensation Law*, 15.41 (1990)," *Copeland*, 829 S.W.2d at 141. By way of further definition, the Court, in *Copeland*, noted: "Professor Larson points out in his treatise that: 'One category in which compensation is almost always awarded is that in which the employee traveling along or across a public road between two portions of his employer's premises, whether going and coming, or pursuing his active duties. 1 Larson, *Workmen's Compensation Law*, 15.41(a) (1990)." In *Lollar*, when the premises rule was adopted, the Court agreed with the New Mexico Supreme Court that " 'course of employment' includes not only the time for which the employee is actually paid, but also a reasonable time during which the employee is necessarily on the employer's premises while passing to or from the place where the work is actually done. *Dupper v. Liberty Mutual Ins. Co.*, 105 N.W. 503, 734 P.2d 743 (1987)." *Lollar*, 967 S.W.2d 143, 150.

With the advent of the large industrial complex, with multiple plant sites within the complex, the work premises has enlarged. The premises includes public roads within the industrial complex over which the employee must travel passing to or from the actual workplace. Here, Saturn had constructed entrance gates to its complex. It constructed, maintained, and controlled the roads leading from the gates to the various work plants within its industrial or work complex. The road on which Brian Durant was traveling home from work is on Saturn's premises. Thus, Durant was in the course of his employment when his accidental injury occurred as he left work.

The Premises Rule/Arising Out of The Employment

The trial court held that Durant's injury did not arise out of his employment. The facts contained in the record do not support that legal conclusion.

As we have observed, in order for an injury to be compensable, it must arise out of the employment. "Arising out of" refers to cause or origin. *See* Howard v. Cornerstone Medical Associates, P.C., 54 S.W.3d 238, 240 (Tenn. 2001). Not every injury which occurs in the course of the employment is compensable; it is only compensable if it also arises out of the employment. Every reasonable doubt as to whether such an injury arises out of the employment should be resolved in favor of the employee. *See* McCormick v. Aabakus, Inc., 101 S.W.3d 60, 62 (Tenn. Workers' Comp. Panel 2000)

It is obvious that travel in a motor vehicle entails risks and hazards. Those risks and hazards arise from, among other things, weather conditions, road construction, maintenance of roads, and negligence of drivers. Likewise, injuries which occur in the actual workplace arise from, among other things, work conditions, unsafe machines and the negligence of the employee or a fellow employee. Prior to the enactment of our workers' compensation laws, injuries caused by the negligence of an employee or his fellow servant were not compensable. Neither were injuries compensable which occurred due to unsafe workplace or conditions if the employee "assumed the risk" of such injury. The passage of the Workers' Compensation Act required "every employer and employee... to pay and accept compensation for personal injury or death by accident arising out of and in the course of employment without regard to fault as a cause of the injury or death." Tenn. Code. Ann. 50-6-103(a) [emphasis added]. In exchange, workers' compensation benefits under the act became the workers' exclusive remedy, and tort suits could no longer be maintained by covered employees against the employer. Tenn. Code Ann. 50-6-108.

Principles of causation which are applicable in tort or fault suits are not helpful in determining whether an injury arises out of the employment. *See* McCann v. Hackett, 19 S.W.3d 218, 222 (Tenn. 2000), Jordon v. United Methodist Urban Ministries, Inc., 740 S.W.2d 411 (Tenn. 1987);. Thus, the Supreme Court in McCann declined to adopt the "reasonably foreseeable" standard because 'foreseeability' is typically a tort law concept; and concepts of proximate cause or forseeability as utilized in the law of torts do not necessarily govern coverage under workers' compensation statutes. McCann, 19 S.W.3d at 222.

When the Supreme Court adopted the premises rule in Lollar , the court did not "reexamine or otherwise question exception [c] of Woods v. Warren, allowing recovery

when "the risks of travel are directly incident to the employment itself." 767 S.W.2d 143, 144 *n.2*. In *McCann*, the Supreme Court adopted the majority rule regarding traveling employees and held:

> A traveling employee is generally considered to be in the course of his or her employment continuously during the duration of the entire trip, except when there is a distinct departure on a personal errand. Thus, under the rule we today adopt, the injury or death of a traveling employee occurring while reasonably engaged in a reasonable recreational or social activity arises out of and in the course of employment. [emphasis added].

McCann, 195 S.W.3d at 221, 222.

The *McCann* Court observed in a footnote:

> Obviously, if an employee was working at an actual job site at the time of his or her injury or death, the question of whether the injury or death "arose out of and in the course of employment" would be elementary. It is for this reason that "traveling employee cases typically involve injury or death occurring at a place other than at the actual job site.

Id at 220.

Durant was not a "traveling employee." Since he was on the premises, he is to be considered working at an actual job site. The trial court's reasoning that Durant's injury did not arise out of the employment was based on the employee's fault, i.e., speeding, as the cause of his injury. An employee's own negligence is one of the risks of injury every employee encounters. One of the purposes of the Workers' Compensation Act was to remove employee fault as a defense unless the fault amounted to employee misconduct under Tennessee Code Annotated Section 50-6-110. Accordingly, the statute mandates that the term arising out of the employment be analyzed "without regard to fault as a cause." Tennessee Code Annotated Section 50-6-102(a). *See McCormick v. Aabakus, Inc.*, 101 S.W.3d 60, 63 (Tenn. Workers' Comp. Panel 2000).

The risks incident to employment encountered by Durant which may have had a rational connection to his injuries include his own negligence in speeding, a slippery road surface, lack of a guardrail, or the employer's failure to adequately enforce the speed limit. Accordingly, the injury arises out of the employment.

Willful Misconduct

Even if an injury arises out of and in the course of the employment, as it does in this case, there remains the question of whether Durant's speeding amounts to willful misconduct under Tennessee Code Annotated Section 50-16-110(a). Although the trial court did not base the dismissal of Durant's case on willful misconduct, language used by the trial judge indicated an inclination to do so. Our decision will require a remand, and in further proceedings, the trial court may face the issue of willful misconduct. Therefore, we elect to discuss the issue for guidance on remand.

Tennessee Code Annotated Section 50-6-110 provides:

> [a] No compensation shall be allowed for an injury or death due to the employee's willful misconduct or intentional self-inflicted injury, or due to intoxication or illegal drugs, or willful failure or refusal to use a safety appliance or perform a duty required by law.
>
> [b] If the employer defends on the ground that the injury arose in any or all of the above stated ways, the burden of proof shall be on the employer to establish such defense.

Consequently, the defenses listed in Section 50-6-110(a) are affirmative defenses. *See* Rule 8.03, Tenn. R. Civ. P.

Three elements must be shown to establish the defense of willful misconduct for purposes of the statute "[1] an intention to do the act, [2] purposeful violation of orders, and [3] an element of perverseness." *Wright v. Gunter Nash. Min. Const. Co.*, 614 S.W.2d at 798 (stating, "in defining the term 'willful' this court has limited its scope to the most extreme situations, and has for all practical purposes limited its application to willful disobedience of known and understood prohibitions."). *See Nance v. State Industries, Inc.*, 33 S.W.3d 222, 226-27 (Tenn. 2000). In *Nance*, the Court held that to establish the defense of willful failure or refusal to use a safety appliance, the employer must prove that:

> 1. at the time of the injury the employer had in effect a policy requiring the employee's use of a particular safety appliance;
> 2. the employer carried out strict, continuous and bona fide enforcement of the policy;
>
> 3. the employee had actual knowledge of the policy, including a knowledge of the danger involved in its violation, through training provided by the employer; and
>
> 4. the employee willfully and intentionally failed or refused to follow the established policy requiring use of the safety appliance.

Id at 226.

The case at hand does not involve a willful failure or refusal to use a safety appliance, but the court's reasoning in applying these four elements is instructive. Saturn's counsel at trial conceded that the speed limit of 35 m.p.h. was "basically a safety regulation" and that Saturn did not "have the power to cite people. They have to discipline them when they're found speeding." If Saturn is to be successful in its defense, it must show that Saturn carried out a strict, continuous and bona fide enforcement of the speed regulation. Also, in considering whether Durant's action was willful, the trial court must determine whether there is a plausible explanation for the employee's failure to comply with the speed regulation. If there is such a plausible explanation for the failure, the conduct cannot be found to have included "an element of perverseness" and consequently cannot be found to have been "willful." *See* Nance, 33 S.W.3d at 227. [1]

Even in those instances when an employee has violated a government posted speed limit, the court has held that speeding does not amount to willful misconduct *per se*. *See Loy v. North Bro.*, 787 S.W.2d 916 (Tenn. 1990) and cases cited therein. Negligence, thoughtlessness, inadvertence, recklessness, or even gross negligence are insufficient to establish willfulness. *See Wheeler v. Glenn Falls Ins. Co.*, 513 S.W.2d 179 (Tenn. 1974). Driving over the speed limit would establish negligence, and in some instances, recklessness (as in a school zone), but is difficult to imagine an instance when it would rise to the level of willfulness under this statute.

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[1] The concise Oxford Dictionary defines "perverse" as deliberately or stubbornly departing from what is reasonable or required.

Propriety of Granting a Motion to Dismiss in a Workers' Compensation Case

It has been stated that summary judgment is almost never an option in a workers' compensation case. *Berry v. Consolidated Systems, Inc.*, 804 S.W.2d 445 (Tenn. 1991). Likewise, an involuntary dismissal at the close of plaintiff's proof in a workers' compensation case is rarely appropriate. *See Cunningham v. Shelton Security Service, Inc.*, 46 S.W.3d 131 (Tenn. 2001). A workers' compensation case is to be expedited and given priority on the trial docket. Tenn. Code Ann. Section 50-6-225(f). It is important that benefits which are due and owing be received by the injured employee without delay. If a summary judgment or motion to dismiss is improvidently granted by the trial court, then without a complete record the only option an appellate court has is to remand for further proceedings. The delay can be economically devastating to an injured employee. If, on the other hand, the trial court hears all the evidence and renders a judgment of no compensation, in that event, the trial court should also make alternate findings on all determinative issues. If the trial court has erred, the appellate court can then consider the alternate findings and many times may bring the matter to a conclusion by entering a judgment without remanding. Time and expense will be reduced on all parties, the purpose of the workers' compensation act will be met, and judicial economy will be achieved. Because no alternative findings were made in this case, we have no choice but to order a remand.

Conclusion

In conclusion, we hold that roads provided by an employer inside its work complex are a part of the "premises" and accordingly that an employee injury which occurs while traveling to or from a work plant within the work complex occurs in the course of the employment. We further hold that the negligence of an employee is one of the risks of employment encountered by any worker. One of the purposes of The Workers' Compensation Act is to remove employee fault as a defense, unless the fault amounts to employee misconduct. "Arising out of the employment" must be analyzed "without regard to fault as a cause." We accordingly hold that the plaintiff's injury arose out of the employment. We reverse the trial court and remand the case to the trial court for further proceedings consistent herewith. Costs are taxed to the employer.

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John A. Turnbull, Sp. Judge

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BRIAN DURANT v. SATURN CORPORATION

Chancery Court for Williamson County
No. 27700

No. M2003-00566-SC-WCM-CV - Filed - April 30, 2004

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by the Saturn Corporation, 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 appellant, Saturn Corporation, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Drowota, C.J., not participating