

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
AUGUST 2, 2004 SESSION

**EDUCATORS CREDIT UNION and CUMIS INSURANCE SOCIETY v.
CHRISTINE GENTRY and DANA GENTRY**

**Direct Appeal from the Chancery Court of Cheatham County
No. 11448, Hon. Leonard W. Martin, Chancellor**

**No. M2003-02865-WC-R3-CV - Mailed: February 7, 2005
Filed - March 9, 2005**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for reporting of findings of fact and conclusions of law. The trial court, in determining whether death benefits for a widow having no dependent children could be commuted to a lump sum payment, held that commutation of periodic payments is not appropriate in the case of a sole surviving spouse due to limitations placed on death benefits under Tenn. Code Ann. § 50-6-210(e)(4) and (8). The widow contends the trial court erred in denying lump sum commutation in that Tenn. Code Ann. § 50-6-229(a) allows lump sum commutation of workers' compensation and that the Tennessee Supreme Court has previously awarded a lump sum payment of death benefits to a surviving spouse. This Panel, finding that Tenn. Code Ann. §§ 50-6-210 and 50-6-229 should be read *in pari materia*, concludes that the judgment of the trial court should be affirmed.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal of Right; Judgment of the Chancery Court Affirmed.

SCOTT, SR. J., delivered the opinion of the court, in which DROWOTA, C.J. and STAFFORD, SP. J. joined.

R. Eric Thornton, Ramsey, Thornton & Barrett, Dickson, TN, for the appellant, Christine Gentry.

Michael W. Jones, Wimberly Lawson Seale Wright & Daves, Nashville, TN, for the appellees, Educators Credit Union and CUMIS Insurance Society.

MEMORANDUM OPINION

The facts in this case are undisputed. Eddie Anthony Gentry died in a car accident which occurred while he was within the course and scope of his employment with Educators Credit Union. He is survived by his spouse, Christine Gentry, and a daughter, Dana Gentry. Educators Credit Union and CUMIS Insurance Society (collectively “Employer”) filed a complaint to determine the respective rights and responsibilities of the parties under the Tennessee Workers’ Compensation law. The trial court held that pursuant to Tenn. Code Ann. § 50-6-210, Mrs. Gentry was solely entitled to the workers’ compensation benefits resulting from the death of Eddie Anthony Gentry. The court further held Dana Gentry was not entitled to such benefits because she was not dependent upon the deceased at the time of his death.

Subsequently, Mrs. Gentry filed a motion with the trial court to commute the biweekly payments of the death benefits into one lump sum payment. The parties stipulated that Mrs. Gentry, a bank vice president, is capable of wisely managing and controlling a lump sum commutation and that she did not need periodic payments as a substitute for wages. Although recognizing its discretion to order commutation of death benefits, the trial court denied Mrs. Gentry’s motion, holding that lump sum commutation is not appropriate in the case of a sole surviving spouse due to the possibility of the occurrence of one of the contingencies set forth at Tenn. Code Ann. § 50-6-210(e)(4) and (8) ¹ which, upon occurrence, terminate entitlement to the benefits before they are paid in full. This appeal followed.

In workers’ compensation cases, review of the trial court’s findings of fact is *de novo*, accompanied by a presumption of correctness unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Where questions of law are involved, appellate review is *de novo* with no presumption of correctness given to the lower court’s judgment. Leab v. S & H Mining Co., 76 S.W.3d 344, 348 (Tenn. 2002). The issue on appeal is whether the trial court erred in holding as a matter of law, death benefits payable to a sole surviving spouse cannot be commuted from periodic payments to a lump sum payment.

Appellant maintains that she is entitled to a lump sum payment pursuant to Tenn. Code Ann. § 50-6-229(a), which provides in pertinent part:

The amounts of compensation payable periodically hereunder may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court. . . . In making such commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. . . . In determining whether to commute an award, the trial court shall

¹ “Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate. . . .” Tenn. Code Ann. § 50-6-210(e)(4). “If compensation is being paid under this chapter to any dependent, such compensation shall cease, upon the death or marriage of such dependent, unless otherwise provided herein.” Tenn. Code Ann. § 50-6-210(e)(8).

consider whether the commutation will be in the best interest of the employee, and such court shall also consider the ability of the employee to wisely manage and control the commuted award irrespective of whether there exist special needs.

Furthermore, Appellant asks this Panel to reverse the trial court's decision to deny her a lump sum payment, citing Jones v. General Accident Ins. Co. of America, 856 S.W.2d 133 (Tenn. 1993), in support of her argument. In Jones, the trial court found the widower of a deceased worker to be the sole dependent and entitled to workers' compensation benefits, but denied the widower a lump sum payment of the death benefits on the grounds that the "Workers' Compensation Law contemplated such payments to dependents to be made as customarily made to the decedent." Id. at 134. On appeal, the Supreme Court held that death benefits can be commuted to a lump sum because Section 50-6-229 allowing commutation of workers' compensation benefits does not exclude from its scope death benefits to dependents, citing Clayton v. Cookeville Energy, Inc., 824 S.W.2d 167 (Tenn. 1992), and Perdue v. Green Branch Mining Co. Inc., 837 S.W.2d 56 (Tenn. 1992), where the court awarded a lump sum benefit to a widow. Jones, 856 S.W.2d at 136. Nevertheless, the Jones court denied the widower a lump sum on the grounds that he failed to establish, as required by Section 50-6-229(a), that commutation was in his best interests or that he was capable of wisely managing and controlling the award. Id. Mrs. Gentry argues that she qualifies for lump sum commutation because she has established that she is capable of managing and controlling a lump sum payment and that a lump sum payment is in her best interests. See Ponder v. Manchester Housing Auth., 870 S.W.2d 282, 285 (Tenn. 1994) (finding that commutation was in the best interests of a widow who did not need periodic payments as a substitute for her husband's wages).

However, we find this case distinguishable from Jones. Jones dealt with a broader question of whether death benefits awarded pursuant to Section 50-6-210 *can* be commuted to a lump sum in accordance with Section 50-6-229(a), a section dealing with commutation in general. In contrast, the present case raises an issue of first impression: whether, under the specific subsections (e)(4) and (8) of Tenn. Code Ann. § 50-6-210, death benefits payable to a *sole* surviving spouse can be commuted to a lump sum. Therefore, the Jones holding and the legal authorities cited in Jones do not control this case. See Clayton, 824 S.W.2d at 170 (affirming commutation of death benefits to a lump sum to a surviving spouse with minor children); Perdue, 837 S.W.2d at 60 (affirming commutation of death benefits payable to a surviving spouse with dependent children). In Smith v. Gallatin Nursing Home, 629 S.W.2d 683 (Tenn. 1982), the Supreme Court affirmed lump sum commutation in favor of a widower who did not have any dependent children, but the Court only had to decide whether the trial judge had erred by ordering death benefits commuted based on the facts in that case, without considering the widower's status as a "sole" surviving spouse. Id. at 684.

After a careful reading of the statutes, we find that commutation of death benefits due under Section 50-6-210 is limited by subsections (e)(4) and (8). Section 50-6-210(e)(4) provides in pertinent part: "Remarriage of surviving spouse. Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate." Section 50-6-210(e)(8) provides: "Compensation to dependents to cease upon death or marriage. If

compensation is being paid under this chapter to any dependent, such compensation shall cease, upon the death or marriage of such dependent, unless otherwise provided herein.” These two subsections specifically limit a surviving spouse’s entitlement to death benefits in spite of the general holding in Jones that death benefits can be commuted to a lump sum. Considering the Section 50-6-229(a) requirement that the total lump sum payments of a workers’ compensation award must amount to an aggregate of all its future installments, we find that Mrs. Gentry should not be awarded a lump sum because the ultimate sum of all future benefits payable to her cannot be ascertained at this point, as she may lose her dependency status at any time prior to the end of the installment payment period. In cases such as Clayton and Perdue, advance calculation of the aggregate award was not an issue due to the fact the surviving spouse had a contingent beneficiary who would be entitled to benefits even if the surviving spouse died or remarried.

Here, the issue requires us to analyze the interplay between the statutory provisions of Tenn. Code Ann. §§ 50-6-229(a) and 50-6-210 (e)(4) and (8). Issues of statutory construction are questions of law, to which the *de novo* standard with no presumption of correctness applies. Perry v. Sentry Ins. Co., 938 S.W.2d 404, 406 (Tenn. 1996). Because this issue requires an interpretation of the interaction between the statutory provisions, we turn to the applicable rules of statutory construction. The role of the Court in construing statutes is to ascertain and give effect to legislative intent. Legislative intent is to be ascertained whenever possible from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language. Schering-Plough v. State Bd. of Equalization, 999 S.W.2d 773, 775 (Tenn. 1999). We must seek the most “reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.” LensCrafters, Inc. v. Sundquist, 33 S.W.3d 772, 777 (Tenn. 2000).

Statutory construction which places one statute in conflict with another must be avoided; therefore, we must resolve any possible conflict between statutes in favor of each other. Cronin v. Howe, 906 S.W.2d 910, 912 (Tenn. 1995). An application of these general rules requires that we examine the plain language and intended purpose of the statutes to determine whether any potential conflict between the two can be avoided by a fair and reasonable construction which will effectuate the legislative intent. Id. We must presume that the legislature did not intend an absurdity. Kite v. Kite, 22 S.W.3d 803, 805 (Tenn. 1997). Statutes relating to the same subject or sharing a common purpose must be construed together (*in pari materia*) in order to advance their common purpose. Carver v. Citizen Utils. Co., 954 S.W.2d 34, 35 (Tenn. 1997). Moreover, the basic rule of statutory construction provides that a general statute concerning a subject must defer to a more specific statute concerning the same subject. Five Star Exp., Inc. v. Davis, 866 S.W. 2d 944, 946 (Tenn. 1993).

Applying these rules of statutory construction, we find that the trial court correctly concluded that lump sum commutation is not appropriate in the case of a sole surviving spouse. First, we find that the plain language of the statutes in question warrants strict adherence to the requirements of Section 50-6-210(e)(4) and (8), which require, as a matter of law, termination of death benefits upon remarriage of a surviving spouse or death or marriage of dependents. Tenn. Code Ann. § 50-6-210(e)(4), (8) (“ . . . compensation *shall* terminate. . .”; “. . . compensation *shall* cease. . .”) (emphasis added). Also, Section 50-6-229(a) strictly requires that a lump sum

payment amount to a sum of all future installments of compensation. Tenn. Code Ann. § 50-6-229(a) (“ . . . *shall* amount to . . .”) (emphasis added). On the other hand, the plain language of Section 50-6-229(a) provides for a mere possibility of commutation subject to the approval of a court. Id. (“ . . . *may* be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court.”) (emphasis added).²

Secondly, we find that the intended purpose of the statutes further demonstrates limitations on lump sum commutation. The purpose of workers’ compensation is to provide injured workers with periodic payments as a substitute for lost wages in a manner consistent with the worker’s regular wage. Perdue, 837 S.W.2d at 59. This principle is consistent in death cases since an award of periodic payments to surviving dependents accords with the general purpose “to substitute periodic contributions to the support of those accustomed to and dependent upon such regular periodic incomes.” Id. Therefore, lump sum awards are an exception to the general purpose of workers’ compensation law and should occur only in exceptional circumstances and not as a matter of course. North American Royalties, Inc. v. Thrasher, 817 S.W.2d 308, 310 (Tenn. 1991); Williams v. Delvan Delta, Inc., 753 S.W.2d 344, 349 (Tenn. 1988). Additionally, the Supreme Court has recognized that the obvious objective of Section 50-6-210(e)(4) is to provide benefits to a surviving spouse “only during the period of dependency.” Jones, 856 S.W.2d at 134-35; Luedtke v. Travelers Ins. Co., 100 S.W.3d 188, 193 (Tenn. 2000) (noting that death benefits to a surviving spouse continues until the spouse dies, remarries, or the maximum total benefit is reached).

Workers’ compensation law is a creature of the General Assembly, and any change in its structure must come from that body and not from the courts. Aerosol Corp. of the South v. Johnson, 435 S.W.2d 832, 836 (Tenn. 1968); Lindsey v. Hunt, 387 S.W.2d 344, 345 (Tenn. 1965). Circumstances under which benefits are paid and the manner in which they are calculated depend solely upon statutory authority. Leatherwood v. United Parcel Service, 708 S.W.2d 396, 399 (Tenn. App. 1985). Given the language of the statutes, we find that the trial court’s interpretation is fair and reasonable and provides the only way to avoid a conflict, to allow harmonious operation of the law, and to effectuate the legislative intent. To read the statutes otherwise and award a lump sum payment to a sole surviving spouse would have the effect of negating Tenn. Code Ann. § 50-6-210(e)(4) and (8).

Therefore, we affirm the holding of the trial court. Costs of appeal are taxed to the appellant, Christine Gentry.

JERRY SCOTT, SENIOR JUDGE

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This is consistent with the Jones holding: “. . . death benefits awarded under Tenn. Code Ann. § 50-6-210 *can* be commuted to a lump sum.” Jones, 856 S.W.2d at 136. (emphasis added).

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FEBRUARY 26, 2004 Session

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**Chancery Court for Cheatham County
No. 11448**

No. M2003-02865-WC-R3-CV - March 9, 2005

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 appeals 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 appellant, Christine Gentry, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM