IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 24, 2005 Session

DAVID R. McPEAK v. SPECIALTY SURGICAL INSTRUMENTATION, INC., et al.

Direct Appeal from the Criminal Court for Wilson County, Tennessee
No. 03-1154 Honorable J. O. Bond, Judge

No. M2004-01470-WC-R3-CV - Mailed - June 28, 2005
Filed - July 29, 2005

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with the provisions of Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The Appellant, David R. McPeak, has appealed the action of the trial court, which dismissed his cause of action for failure to timely file his petition for reconsideration of disability pursuant to Tennessee Code Annotated section 50-6-241. After a thorough review of the record and the relevant caselaw, we conclude that the petition was timely filed. Accordingly, we reverse the judgment of the trial court and remand for further proceedings consistent with this opinion.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Criminal Court is Reversed.

ROBERT E. CORLEW, SPECIAL JUDGE, delivered the opinion of the court, in which ADOLPHO A. BIRCH, JUSTICE and DONALD P. HARRIS, SENIOR JUDGE, joined.

Allen Barnes, Nashville, Tennessee, for the Appellant, David R. McPeak.

Vanessa R. Comerford, Brentwood, Tennessee, for the Appellee, Specialty Surgical Instrumentation, Inc.

MEMORANDUM OPINION

FACTUAL BACKGROUND

It is indeed a great understatement that this is a most unusual case. Despite grave differences between the parties as to the legal significance of the facts, the occurrence of the factual issues themselves are virtually undisputed. Only the most abbreviated of hearings took place in this case, during which the trial court heard statements of counsel and then the very brief testimony of the Deputy Clerk for the Criminal Court. The other evidence is presented by the Appellant in the form of four affidavits filed by: 1) counsel for the Appellant, 2) the "secretary/legal assistant" for the Appellant's counsel, 3) the Clerk of the Circuit Court, and 4) the Commissioner of Commerce and Insurance.

The Appellant, a resident of Wilson County, originally was a Plaintiff in a Workers' Compensation action in the Criminal Court for Wilson County. An award of permanent partial disability apportioned to the body as a whole was made in favor of the Appellant. The Appellant returned to work for his pre-injury employer, but, less than 400 weeks later, he became unemployed under circumstances which he asserts entitle him to file a new cause of action for reconsideration of his initial disability award. Tennessee Code Annotated section 50-6-241 allows such a filing of a "new cause of action" when, within 400 weeks of the worker's return to work, he loses his job, provided he files his petition for reconsideration within one year of the date he lost his job.

It is undisputed that the Appellant lost his job on November 12, 2002. Thus, under the provisions of Tennessee Code Annotated section 50-6-241, the Appellant was allowed one year after that date to file his complaint, or through the close of business on November 12, 2003. The uncontroverted evidence showed that counsel for the Appellant sent by regular mail a "Complaint for Reconsideration of Workers' Compensation Award" to the office of the Clerk of the Criminal Court for Wilson County on November 7, 2003, five days prior to the expiration of the statute of limitations. Although it is also undisputed that the complaint arrived in the office of the clerk, there is no evidence as to when it was received or by whom.

The first evidence in this record of the receipt of the complaint in the office of the clerk is the testimony of Ann Boyd, a deputy clerk. Ms. Boyd testified briefly

before the trial court. She explained that on Friday, November 14, 2003, she had been working outside the office, and, when she returned, the complaint was on her desk. It is undisputed that prior to any action by Ms. Boyd in processing the complaint, another unidentified deputy clerk, had stamped the complaint with a mechanical stamp, the stamp showing a "filed" date of November 14, 2003.

In addition, it is undisputed that either the same or a different deputy clerk had used a white substance, perhaps a product known as "White Out," or some similar product designed to cover errors on paper, and had covered the mechanically-stamped date such that the date of November 14, 2003 was not visible, and had written in pen a date of November 8, 2003. Ms. Boyd testified that the first time she saw the complaint, it had already been stamped with the mechanical stamp, and the date had been covered with the white substance. Ms. Boyd then testified that she proceeded to process the complaint by logging it into the computer on that Friday, November 14, 2003, she entered the filing date as November 8, 2003. The hearing in which Ms. Boyd testified appears to have been rather informal, though conducted in the courtroom, inasmuch as the record reflects what might be termed a "round-robin" discussion between the court, both attorneys, and Ms. Boyd prior to two transcribed pages of testimony.

No other witnesses testified. Affidavits were presented for consideration by the trial court, without exception, and those affidavits are contained within the record before this Court. Counsel for the Appellant presented his affidavit in which he presented his sworn statement that he had sent the complaint by regular mail, properly addressed to the clerk on November 7, 2003. He testified that he originally was of the opinion that the statute of limitations expired on November 6, and thus that he began preparing the complaint on November 3. He further presented documentation showing that he had, on November 3, received information from the State Department of Labor and Workforce Development concerning the workers' compensation insurance carrier for Appellant's employer, Specialty Surgical Instrumentation, Inc. Further, he presented his checkbook stubs showing that a check to the "Wilson Circuit Clerk" was written on November 7, and his transmittal letter to the clerk also bears the date of November 7.

The Appellant also presented the affidavit of his counsel's secretary, Patsy Benson, who stated under oath that she mailed the complaint on November 7. Attached to Ms. Bensons's affidavit is her "mail log" showing a mailing to "Wilson

County" on November 7, 2003. She also presented her sworn statement that she verified with the clerk's office that the complaint had arrived timely.

Linda Neal, the Circuit Court Clerk, presented her affidavit in which she confirmed that the summons and complaint left her office on Friday, November 14, 2003, having been marked with a handwritten filing date of November 8, 2003. She presented her sworn statement that it was not "discovered" that the November 14 date was stamped under the "White Out" until March of 2004 when questions were raised by counsel for the Appellee.

STANDARD OF REVIEW

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). Conclusions of law established by the trial court come to us without any presumption of correctness. Perrin v. Gaylord Entertainment Co., 120 S.W.3d 823, 825 (Tenn. 2003).

ISSUE

The only issue before this Court is whether the complaint for reconsideration was filed prior to the expiration of the statute of limitations.

LAW

The commencement of a civil action is governed by the provisions of Rule 3 of the Tennessee Rules of Civil Procedure. Rule 3 provides, in pertinent part, that an action is commenced "by filing a complaint with the clerk of the court." Id. So long as process is issued within thirty days, the date on which the clerk issues process is not significant in order for filing to be complete. Frye v Blue Ridge Neuroscience Center, P.C., 70 S.W.3d 710, 716 (Tenn. 2002). A final order in a workers' compensation case is filed when it is stamped by the clerk. Corum v. Holston Health & Rehabilitation Center, 104 S.W.3d 451, 455 (Tenn. 2003). Generally, it is not significant that the clerk stamps the complaint or issues the summons. See Grahl v. Davis, 971 S.W.2d 373, 380 (Tenn. 1998) (holding that although documents did not "bear a stamp from the clerk's office, reflecting the precise date of filing, the parties agree[d] that the documents were filed with the clerk"). The Tennessee Constitution

appears to require that the clerk must sign the complaint, but it contains no discussion as to whether that signature must be accomplished before filing is complete. The Constitution of Tennessee, Article 6, section 12 provides: "All ... process shall ...be signed by the ... clerks." Id. Thus, it appears that the law requires only that in order to file a complaint, a party must place the document in the hands of the clerk of the court.

The proof before us is uncontroverted that the complaint was mailed on November 7, 2003. Certainly, when the mailed document arrived, we should then consider that it was in the hands of the clerk, and thus was properly filed. There is no evidence as to when the mail was received. There is uncontroverted evidence that at some point prior to the running of the statute of limitations, the secretary for the Appellant's attorney called the office of the clerk and was told that the complaint had been received. The evidence shows that the complaint was not processed by the clerk until November 14, 2003, seven days after it was mailed, but the date of the processing of the complaint and of the issuance of process is of no consequence, so long as it is accomplished within thirty days of the date of the filing of the complaint. That the issue of such process would not occur simultaneously with the filing may be unusual, but it is among the possibilities contemplated by the law.

The undisputed proof shows that a clerk originally stamped the date of November 14, 2003 on the complaint but then changed the date to November 8, 2003 by a handwritten notation in ink. Nothing in our jurisprudence requires the use of date stamping machines in the marking of documents, nor is the use of pen and ink prohibited. Although it is unusual to see a corrected date of filing, there is nothing in the law which prohibits the correction of errors by the clerk. The record contains no explanation of the change of the filing date from November 14, 2003 to November 8, 2003. In considering the proof, we must consider that, in absence of evidence to the contrary, all witnesses and affiants have sworn truthfully. E.g. Lundy v. State, 752 S.W.2d 98, 103-104 (Tenn Crim. App. 1987); State v. Pender, 687 S.W.2d 714, 718 (Tenn. Crim App. 1984); Hull v. State, 553 S.W.2d 90, 93 (Tenn. Crim. App. 1977). Further, in the absence of proof to the contrary, again, we must consider that all Clerks and Deputy Clerks have been duly sworn faithfully to perform their duties without prejudice or partiality, and that they have in fact performed their duties faithfully. C.f. Martin v. Sizemore, 78 S.W.3d 249, 266 (Tenn. Ct. App. 2001) (holding that members of the Board of Examiners for Architects and Engineers "like other public officials" will be presumed to perform their duties "in good faith and in

the manner prescribed by law"); State, for Use of Lay v. Clymer, 182 S.W.2d 425, 427 (Tenn. Ct. App. 1943) (holding that the chief mine inspector and district mine inspectors were presumed faithfully to have performed their duties as they were required to give bonds approved by the Governor, conditioning that "they will faithfully discharge the duties of their officers", and making oath that they would "faithfully and impartially discharge the duties of their respective offices").

We find that it is significant that the clerk considered the date of filing of the complaint to have been November 8, 2003, and we deem that the clerk, in entering that date with pen and ink after obliterating the machine-stamped date, did so in order to faithfully perform her duties and because that clerk felt the correct date on which the complaint arrived at the clerk's office was, in fact, November 8, 2003, not November 14, 2003. One certainly may speculate that the clerk changed the document due to some clandestine conspiracy between a member of the office of the Criminal Court Clerk and the Appellant or his counsel or staff. Though certainly such is possible, there is no evidence that such were true.

Further, applying rules of logic, we have noted that were the clerk to have intended falsely to enter an improper date of filing falsely or improperly to benefit the Appellant, a more logical change of the filing date would appear to have been a change to November 12, or perhaps November 11, sufficient to provide for filing within the period of limitations, but not so far back as a Saturday after the documents were mailed, where attention might be drawn to the pen and ink entry on a weekend day. In the absence of any other evidence to the contrary, we do not attribute any improper motives to the office of the clerk, nor to counsel for the Appellant or his staff. In the absence of any other proof, we consider that the change of the filing date was made for proper reasons. We must assume that the change of the date was made as a legitimate correction of an erroneously stamped date. Thus, we must consider that the unnamed clerk who originally stamped the complaint with the date of "November 14, 2003," then realized that the document had in fact, not just arrived on the day when she stamped it, but that it had in fact arrived at some earlier time. Though there is no evidence as to when the complaint arrived, we recognize that the complaint, if mailed on November 7, 2003, as the uncontradicted evidence shows, may have traveled the short distance from the place where it was deposited in the mail in Nashville, to the place where it was received in Lebanon in a single day. Thus, the clerk may have recognized that the complaint was contained in an article of mail

which was received the prior weekend, but had not been properly stamped or processed.

The facts of this case address a number of obvious practice pointers for attorneys. First, and most obvious, is that parties and their counsel should not wait until the approach of a deadline before they tender documents to be filed. Second, counsel should clearly ascertain the deadline for the filing of complaints or other documents well in advance of the filing date. Third, the better rule is always to file important documents in person when there is an "unforgiving deadline". Those who rely on the mail and delivery services do so at their peril. Where attorneys have a staff member hand-deliver a complaint, those persons can obtain a receipt from the clerk proving the date of filing, or perhaps a stamped copy of the complaint or other document filed. See Paul v. State, 75 S.W.3d 926, 928 (Tenn. Crim. App. 2001) (containing an excellent discussion of the opportunities which free persons have when filing documents with the courts versus opportunities denied to those who are incarcerated).

An additional practice pointer not only for attorneys, but also for clerks of court is that the practice of using "White Out" or other correcting fluids on complaints, answers, judgments, and other official documents should be avoided. The better approach is to overline or strike-out portions containing errors in official Court documents with a single line noting that the overlined or stricken wording is deleted, but so that the wording continues to be readable for those who seek to learn the portions of the document which have been deleted. Thus, ~~for example, words may be stricken, although~~ the stricken words are still visible. Had that procedure been followed here, we feel confident that this same issue would certainly have arisen, but it would have developed at a time closer to the occurrence of the events where memories perhaps would have been clearer, and more information would have been available to the court in attempting to determine the facts at issue.

For the reasons stated above, we find that the evidence shows that the complaint in this cause was timely filed. We therefore reverse the order of the trial court dismissing the action, and we remand this case to the trial court for further proceedings in accordance with this opinion.

Costs on appeal will be paid by the Employer.

ROBERT E. CORLEW, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
MARCH 24, 2004 SESSION

DAVID R. McPEAK v. SPECIALTY SURGICAL INSTRUMENTATION, INC., ET AL

Criminal Court for Wilson County
No. 03-1154

No. M2004-01470-WC-R3-CV - Filed - July 29, 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 Employer, Specialty Surgical Instrumentation, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM