

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

January 28, 2008 Session

**HOMER HOOPER, JR. v. KATHY FREEMAN TRUCKING, INC. ET AL.**

**Direct Appeal from the Circuit Court for Davidson County**

**No. 06C2107 Hamilton Gayden, Judge**

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**No. M2007-00794-WC-R3-WC - Mailed - March 19, 2008**

**Filed - April 22, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. The employee, Homer Hooper, Jr., filed a motion to set aside a court-approved settlement of his workers' compensation claim. The trial court granted the motion, but ordered that Mr. Hooper repay the original settlement amount to his employer, Kathy Freeman Trucking, Inc., within thirty days. Mr. Hooper failed to do so and the trial court reinstated its previous order approving the settlement. On appeal, Mr. Hooper contends that the trial court erred in requiring repayment as a condition of setting the settlement aside. We reverse the trial court and remand the case for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of the Circuit Court Reversed; Remanded**

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and JERRY SCOTT, SR. J., joined.

Nina Homer Parsley, Donald D. Zuccarello and Heather D. Wood, Nashville, Tennessee, for the appellant, Homer Hooper, Jr.

Michael Haynie, Nashville, Tennessee, for the appellees, Kathy Freeman Trucking, Inc. and Brookwood Insurance Company.

**MEMORANDUM OPINION**

**FACTUAL AND PROCEDURAL BACKGROUND**

The parties entered into a workers' compensation settlement agreement which was approved by the trial court on August 11, 2006. The order approving the settlement states that Mr. Hooper alleged that he had sustained a compensable injury on June 20, 2006 and that Freeman Trucking and

its insurer, Brookwood Insurance Company, had disputed the compensability of the claim. The order further stated that some medical expenses had been paid by Freeman Trucking and Brookwood, that no temporary disability had been paid, and that the settlement was “a compromised settlement of a disputed claim pursuant to the [sic] Tennessee Code Annotated § 50-6-206(b). . . .” The amount of the settlement was \$4972.50, the maximum permissible amount for a disputed claim settlement pursuant to that code section. Neither the petition nor the order set forth the basis upon which Freeman Trucking contested the claim.

On September 16, 2006, Mr. Hooper filed a motion to set aside the order approving the settlement. The motion alleged that Mr. Hooper was injured on June 20, 2006, and that the claim was not denied or contested. The motion further stated that Mr. Hooper was unable to return to work due to restrictions placed upon him by his treating physician, that he required additional medical treatment, and that he had not reached maximum medical improvement at the time the settlement had been approved. According to the motion, Mr. Hooper had understood the settlement to concern temporary disability benefits only, and not permanent disability benefits. Subsequent to filing the motion, Mr. Hooper filed his affidavit supporting the factual claims made in the motion.

Freeman Trucking filed a response to the motion, supported by the affidavits of Tammi Duckworth and Colin McCaffrey. Ms. Duckworth was the adjuster who handled the claim for Freeman Trucking’s insurer, Brookwood Insurance Company. Mr. McCaffrey was the attorney who presented the settlement to the trial court. In her affidavit, Ms. Duckworth stated that her investigation of Mr. Hooper’s claim revealed “facts which raised questions concerning whether Mr. Hooper’s alleged injuries arose out of his employment.” The affidavit does not state what those facts were. The affidavit states that she thereafter discussed the claim with Mr. Hooper, advised him that she was going to dispute the claim, and offered to settle the matter as a disputed claim. Mr. McCaffrey’s affidavit states that he explained to Mr. Hooper that the settlement was a “full and final settlement of his workers’ compensation claim and if the Court approved his settlement, he could not get any additional money for his injury.”

The trial court heard the motion on November 17, 2006. The motion was denied because it was not timely filed in accordance with Tennessee Code Annotated section 50-6-206(b) (2005)<sup>1</sup>.

Mr. Hooper thereafter filed a second motion to set aside the settlement based upon Rule 60.02 of the Tennessee Rules of Civil Procedure. It was supported by a second affidavit of Mr. Hooper, which restated and elaborated upon the allegations contained in his earlier affidavit. In response, Freeman Trucking filed additional affidavits of Ms. Duckworth and Mr. McCaffrey. Ms.

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<sup>1</sup>Tennessee Code Annotated section 50-6-206(a)(1) (2005) provides that a settlement may be set aside upon motion of either the employee or the administrator of the Division of Workers’ Compensation within thirty days of the receipt of a certified copy of the settlement by the Division. Section 50-6-206(b), pertaining to the settlement of disputed claims, does not refer to either a motion to set the settlement aside, or a time period for filing such a motion.

Duckworth's affidavit stated that Mr. Hooper had refused on three occasions to provide a recorded statement concerning his injury and that, on one occasion, he had instructed her to contact his attorney. When she contacted the attorney, she was advised that the attorney had not at the time decided whether he would represent Mr. Hooper. Ms. Duckworth further stated in her affidavit that she discussed "issues with respect to causation" with Mr. Hooper when she made an offer of settlement. Mr. McCaffrey stated in his affidavit that he advised the trial court that the settlement was a full and final settlement at the time it was approved, and that Mr. Hooper did not object or otherwise indicate disagreement or lack of understanding.

The trial court granted the Rule 60 motion. Its order included a requirement that Mr. Hooper be responsible for repaying Freeman Trucking the amount of the settlement within thirty days of the entry of the order. Mr. Hooper failed to make the repayment, and Freeman Trucking filed a motion requesting that the approval of the settlement be reinstated. Mr. Hooper filed a response contending that he was entitled to an offset of the entire amount of the settlement against medical expenses which he had incurred, and requesting that the matter be referred to the Department of Labor and Workforce Development for a Benefit Review Conference. The trial court granted Freeman Trucking's motion and reinstated the August 11, 2006 order approving the original settlement. Mr. Hooper has appealed from that order contending that the trial court erred by requiring him to reimburse Freeman Trucking with the settlement amount before proceeding with his lawsuit. Freeman Trucking asserts that the trial court properly required reimbursement or, in the alternative, contends that the trial court erred in setting aside the August 11, 2006 settlement.

#### STANDARD OF REVIEW

Our standard of review of issues of fact is *de novo* upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2007). We extend considerable deference to factual findings based upon the trial court's evaluation of live witnesses, but where, as here, the evidence is entirely in the form of affidavits, we are in as good a position as the trial court to make factual determinations and do not defer to the trial court's findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002).

This appeal arises from the disposition of a motion for relief based on Rule 60.02 of the Tennessee Rules of Civil Procedure. Such a motion addresses itself to the sound discretion of the trial judge. The scope of review of an appellate court is to determine if the discretion was abused. Underwood v. Zurich Ins. Co., 854 S.W.2d 94, 97 (Tenn. 1993); see Banks v. Dement Const. Co., Inc., 817 S.W.2d 16, 18 (Tenn.1991); Toney v. Mueller Co., 810 S.W.2d 145, 146 (Tenn.1991). The Tennessee Supreme Court has said that a trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." State v. Shirley, 6 S.W.3d 243, 247 (Tenn. 1999) (quoting State v. Shuck, 953 S.W.2d 662, 669 (Tenn. 1997)).

## ANALYSIS

### *1. Repayment of Settlement Proceeds*

The trial court's order in this case clearly required Mr. Hooper to tender the proceeds of the settlement before he could proceed with his lawsuit. In Betts v. Tom Wade Gin, 810 S.W.2d 140, 144 (Tenn. 1991), the Tennessee Supreme Court abandoned the previously-existing rule and announced that "tender should not be required in workers' compensation cases in which the petitioner seeks to set aside a prior settlement agreement." Freeman Trucking suggests three reasons to distinguish this case from Betts. The first of these is that the motion in Betts was based upon Tennessee Code Annotated section 50-6-206, while the motion in this case was based upon Rule 60.02 of the Tennessee Rules of Civil Procedure. Trial courts have broad discretion to impose conditions upon a party seeking relief from a judgment under Rule 60. Qualls v. Qualls, 589 S.W.2d 906, 910 (Tenn. 1979); Loveday v. Food Lion, Inc., No. E1999-00188-WC-R3CV, 2000 WL 1606590, \*4 (Tenn. Workers' Comp. Panel Oct 27, 2000). However, Betts is premised upon the broad remedial purposes of the workers' compensation law. Betts, 810 S.W.2d at 144. The same concerns are present here. Viewing the matter in that light, we find no reason to limit the application of Betts to motions brought under section 50-6-206.

Freeman Trucking's second contention is that Betts applied only to a requirement of tender as a prerequisite to filing a motion, rather than as a condition of proceeding after such a motion was granted. That interpretation of Betts is, again, at odds with the stated purpose of the decision<sup>2</sup> and with the remedial purpose of the workers' compensation law. We find no merit in this argument.

Freeman Trucking's third argument is more substantial. The Betts court specifically noted that compensability was not at issue in that case and, therefore, the employer would be sufficiently protected by a credit for the amount of the settlement. Id. Freeman Trucking contends that, in contrast to Betts, this claim is disputed, and a credit would be of no value if it prevailed on the issue of compensability. While this is a valid consideration, we do not read Betts as being limited to those cases where compensability is not at issue. Compensability was one of several factors which the Supreme Court considered in deciding Betts. We find that the same process is applicable here. Compensability is one factor which must be weighed with the other factors particular to the case, in the context of the broad remedial purposes of the workers' compensation law. In this case, the only evidence concerning compensability was contained in the affidavits filed in support of Mr. Hooper's motion and by Freeman Trucking in response. Mr. Hooper stated that, on June 20, 2006, he "was injured on the job at Kathy Freeman Trucking when, while unloading the contents of a dump truck he was driving, the dump truck turned over on its side." The only statement in the affidavits submitted by Freeman Trucking that deals with compensability is contained in the first affidavit

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<sup>2</sup>"Under the decision we announce today, injured employees who have unadvisedly agreed to settle legitimate claims for insufficient compensation will be able to set aside such inadequate settlements without tendering funds that may have already been used to defray the many costs associated with compensable on-the-job injuries." 810 S.W.2d at 144.

submitted by Ms. Duckworth. She stated that through her investigation of Mr. Hooper's claim, she "discovered facts that raised questions concerning whether Mr. Hooper's alleged injuries arose out of his employment." Nowhere, in any of the affidavits submitted by Freeman Trucking, does it reveal what those facts were. Additionally, according to Mr. Hooper's affidavit, Mr. Hooper was not at maximum medical improvement at the time the settlement was approved, received no temporary total disability payments and had not been able to return to work because of restrictions placed upon him by his treating physician. The amount of the settlement was relatively small. Based upon this meager record, it appears more likely than not that Mr. Hooper had a meritorious claim and was entitled to more benefits than he received under the settlement. In such cases, according to the Betts court, the settlement should be set aside without requiring the amount of the settlement be tendered into court. Id. at 143-144. Therefore, we conclude that the trial court applied an incorrect legal standard and, therefore, erred in requiring Mr. Hooper to repay Freeman Trucking as a prerequisite to setting the settlement aside.

## *2. Rule 60 Motion*

Freeman Trucking contends that the trial court erred in granting Mr. Hooper's Rule 60.02 motion. The trial court's order stated that the motion was "granted on the grounds that the settlement included closure of future medical benefits and consequently did not afford the employee, substantially, the benefits to which he would be entitled for a compensable claim, if compensable, and was not otherwise in the employee's best interest." This language is similar to that in Tennessee Code Annotated section 50-6-206(a): "If it appears that any settlement approved by the court does not secure to the employee in a substantial manner the benefits of the Workers' Compensation Law, the settlement may, in the discretion of the trial judge, be set aside at any time within thirty (30) days" from the date of receipt of certified copies of the settlement documents by the Department of Labor and Workforce Development. However, this claim was not settled pursuant to that section. The order which approved the settlement specifically states that the matter was being settled as a disputed claim pursuant to section 50-6-206(b). That section provides:

Notwithstanding any other provision of this section, whenever there is a dispute between the parties as to whether or not a claim is compensable, or a dispute as to the amount of compensation due, the parties may settle such matter without regard to whether the employee is receiving substantially the benefits provided by the Workers' Compensation Law, compiled in this chapter; provided, however, that such settlement paid to the employee shall not exceed fifty (50) times the minimum weekly benefit rate as of the date of the claimed injury. If the parties settle such matter pursuant to this subsection (b), the employee shall be entitled to no future medical benefits. . . .

Tenn. Code Ann. § 50-6-206(b). Based upon the language of the statute, the closure of future medical benefits and the fact Mr. Hooper did not receive substantially the benefits provided by the Workers' Compensation Law were not appropriate bases for setting aside the settlement under

section 50-6-206(b). Rather, the issue should have been whether the criteria set forth in Rule 60.02 of the Tennessee Rules of Civil Procedure had been satisfied.

Notwithstanding the language of the trial court's order, we believe that the record contains a sufficient basis to set aside the original settlement. In Mr. Hooper's Rule 60.02 motion, he alleged that "the final order should be set aside for mistake or excusable neglect." Mr. Hooper contended in the affidavit filed in support of his motion that he misunderstood the nature of the settlement. The affidavits submitted in opposition to his motion state that: (1) he was advised that the claim was disputed (although there is no indication in the record of the nature of the dispute); (2) he was advised by counsel for Freeman Trucking that the settlement was final; and (3) he would receive no additional compensation as a result of the injury.

We are mindful that workers' compensation settlements in which the employee is not represented by counsel require a reviewing court to exercise "the highest degree of care" to ascertain compliance with the workers' compensation law. Dennis v. Erin Truckways, Ltd., 188 S.W.3d 578, 588 (Tenn. 2006); Lindsey v. Hunt, 215 Tenn. 406, 384 S.W.2d 441, 443-44 (1964). Moreover, "[t]he purpose of Rule 60 is to alleviate the effect of an oppressive or onerous final judgment." Killion v. Tennessee Dept. of Human Servs., 845 S.W.2d 212, 213 (Tenn. 1992). In this case, Mr. Hooper's claim was initially accepted by Freeman Trucking as compensable. Fifty-two days following the incident that gave rise to the claim, the matter was settled as a disputed claim. There is no evidence in the record concerning the nature of that dispute. The settlement came before Mr. Hooper had reached maximum medical improvement. During the time between the injury and the settlement, Mr. Hooper was not being paid temporary total disability benefits nor is there evidence he had any other income. The limited information contained in the record is consistent with the conclusion that Mr. Hooper did not understand or appreciate the significance of the proceeding or his right to benefits under the workers' compensation law. We reemphasize that the absence of any explanation of the nature of the alleged dispute regarding compensability is significant in arriving at that conclusion. In our view, Mr. Hooper either did not understand the nature of the settlement proceeding, as he alleges, or it cannot be determined that he understood the advisability of surrendering the benefits he gave up by settlement of his workers' compensation claim without some explanation of the nature of the dispute concerning compensability. We, therefore, conclude the trial court properly granted Mr. Hooper's Rule 60.02 motion.

#### CONCLUSION

The judgment of the trial court reinstating the August 11, 2006 settlement is vacated. The case is remanded for further proceedings in accordance with this opinion and the workers' compensation law. Costs are taxed to Kathy Freeman Trucking, Inc. and Brookwood Insurance Company, for which execution may issue if necessary.

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DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
JANUARY 28, 2008 SESSION

**HOMER HOOPER, JR. v. KATHY FREEMAN TRUCKING, INC., ET AL**

**Circuit Court for Davidson County  
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**No. M2007-00794-WC-R3-WC - Filed - April 22, 2008**

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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 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 Kathy Freeman Trucking, Inc. and Brookwood Insurance Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM