

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 21, 2008 Session

JUANITA I. KIRK v. ST. MICHAEL MOTOR EXPRESS, INC.

**Direct Appeal from the Circuit Court for Davidson County
No. 05C-3553 Barbara Haynes, Judge**

**No. M2007-01058-WC-R3-WC - Mailed - July 30, 2008
Filed - September 2, 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) (Supp. 2007) for a hearing and a report of findings of fact and conclusions of law. The employee, Juanita Kirk, sustained a compensable injury and her claim was settled. The settlement was approved by the trial court based upon an affidavit executed by the employee. Several months later, Ms. Kirk filed a motion pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure, seeking to set aside the settlement on the basis of fraud, that it was approved without Ms. Kirk having personally appeared before the court, and that it did not afford to Ms. Kirk substantially the benefits to which she was entitled. After an evidentiary hearing, the trial court found that Ms. Kirk had not sustained her burden with regard to the issue of fraud and denied the motion. She has appealed from that order. Although we agree that the evidence supports the trial court's conclusion on the issue of fraud, we find that there were "other reason[s] justifying relief from the operation of the judgment." Tenn. R. Civ. Proc. 60.02(5). We therefore reverse the trial court's judgment and remand the case for additional proceedings.

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

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and ALLEN W. WALLACE, SR. J., joined.

Michael L. Weinman, Jackson, Tennessee, for the appellant, Juanita I. Kirk.

W. Stuart Scott and Patrick J. McHale, Nashville, Tennessee, for the appellee, St. Michael Motor Express, Inc.

MEMORANDUM OPINION

Factual and Procedural Background

The employee, Juanita Kirk, was a truck driver for St. Michael Motor Express, Inc. (“St. Michael”), which is located in Jackson, Tennessee. Ms. Kirk injured her back when the front tire of her truck blew out and she ran off the road. The accident occurred in Virginia on March 16, 2005, and Ms. Kirk sustained a spinal “burst fracture” at T12. As a result of this injury, surgical hardware was implanted in her back, fusing her spine from T11 to L1. St. Michael did not have workers’ compensation insurance. Its Chief Executive Officer, Louis Saia, testified that the company was “self-insured.” However, the company had not complied with the procedures of the Department of Labor for self-insured employers. Apparently, St. Michael paid this and other claims directly out-of-pocket. On November 17, 2005, Ms. Kirk’s physician placed her at maximum medical improvement and assessed permanent impairment of 25-28% to the body as a whole.

St. Michael directly negotiated a settlement with Ms. Kirk. The sequence of events that led to the agreement are disputed. In any event, the settlement was submitted to the trial court and approved on November 21, 2005. Ms. Kirk was not present at the settlement approval. The proposed agreement was presented to the trial court by means of a petition and an affidavit executed by Ms. Kirk. The petition contains the following language:

The Employee was seen again by Dr. Stefko on November 17, 2005 and assessed with a 25-28% permanent partial impairment to the body as a whole. The Employee has ongoing and permanent complaints of back pain and problems due to her alleged injury in this matter which significantly reduces her vocational opportunity.

The terms of the settlement were \$25,000 for permanent disability, which approximates 15% permanent partial disability, and a \$10,000 advance on future medical treatment. Ms. Kirk retained the right to continue to receive future medical care, conditioned upon proof that she had spent \$10,000 for treatment of her injury by physicians approved by St. Michael.

On May 8, 2006, Ms. Kirk filed a motion pursuant to Tennessee Rules of Civil Procedure 60.02, requesting that the settlement be set aside. The motion asserted that Ms. Kirk was fraudulently induced into signing the settlement documents and that she understood that the proceeds were merely a loan or advance against future permanent partial disability benefits. The motion also stated that the documents presented to the trial court indicated the settlement did not afford Ms. Kirk the benefits to which she was entitled under the Workers’ Compensation Act, that there was no hearing by the trial court related to the settlement approval and that she had not attended the settlement approval proceeding because she was not informed of it. Finally, the motion alleged that St. Michael had not paid all of the medical bills arising from the injury, as set out in the petition and order approving the settlement. Ms. Kirk submitted her affidavit in support of these allegations.

The defendants responded by presenting affidavits of the Chief Executive Officer of St. Michael, the safety manager, and a friend of Ms. Kirk who accompanied her from her home in

Decatur County to Nashville to pick up the settlement check and other documents. Each of these affidavits contradicted portions of Ms. Kirk's affidavit. The trial court held an evidentiary hearing on the matter.

Ms. Kirk testified that while she was at St. Michael's office to pick up her temporary total disability check in November 2005, she mentioned to Louis Saia that she was having some financial problems. According to Ms. Kirk, Mr. Saia offered to make a loan of \$35,000 against the proceeds of her claim against St. Michael. Later, she was presented with some papers to be signed by Joseph Weekly, St. Michael's Vice-President of Operations. Ms. Kirk testified that she signed the papers, but did not read them and no one informed her that she was settling her claim.

Mr. Weekly testified on behalf of St. Michael that Ms. Kirk came to his office to review the settlement documents. According to Mr. Weekly, Ms. Kirk asked questions about the documents and, in order to answer her questions, a telephone call was placed to St. Michael's attorney. After Ms. Kirk's questions were answered to her satisfaction, Mr. Weekly drove her to a local bank, where she signed the documents before a notary public. Mr. Weekly denied that it was ever represented to Ms. Kirk that the transaction was a loan.

Mr. Saia testified that Ms. Kirk approached him concerning possible settlement of her claim. She told him she had an opportunity to purchase a new home at a good price. Mr. Saia testified that he told her he was arranging a loan for the business, and would have "an extra 25 or \$35,000 from the loan, and that would be all [he] would be able to offer at the moment." According to Mr. Saia, Ms. Kirk pleaded with him "to give her that money." Mr. Saia pointed out to Ms. Kirk that he had received a letter from Michael Weinman, an attorney, stating that he represented her in the claim. According to Mr. Saia, she stated that Mr. Weinman represented her in a claim, but not the one against St. Michael. There is no evidence in the record that anyone at St. Michael made an attempt to confirm this information with Mr. Weinman or otherwise inform him of the settlement. Mr. Saia denied telling Ms. Kirk that the payment was either a loan or an advance against her workers' compensation claim.

Mr. Saia also testified that all medical bills had either been paid, or arrangements had been made with the providers for payment. Shortly after the settlement was approved by the trial court, but more than thirty days after the approval, there were discussions and correspondence between Stuart Scott, the attorney who presented the settlement to the trial court, and Michael Weinman concerning the propriety of the settlement. There is no evidence in the record that any further activity occurred concerning the claim until the filing of the Rule 60 motion in May 2006.

The trial court took the case under advisement and, later, entered an order denying the motion to set aside. The order states that the trial court found "that [Ms. Kirk] failed to carry her burden of proving fraud on the part of [St. Michael] or its agents or employees." Ms. Kirk has appealed from that order, contending that the trial court erred by failing to set aside the settlement.

Standard of Review

The 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). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 826 (Tenn. 2003); Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis

Tennessee Code Annotated section 50-6-206(a)(1) provides, in part, as follows:

The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or chancery court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court or chancery court to whom any proposed settlement shall be presented for approval under this chapter, to examine the proposed settlement to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in this chapter. To this end, such judge may call and examine witnesses. Upon such settlement's being approved, judgment shall be rendered thereon by the court and duly entered by the clerk.

Subsection (b) of Tennessee Code Annotated section 50-6-206 provides that if there is a dispute between the parties as to whether a claim is compensable or 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. This subsection imposes a maximum of fifty times the minimum weekly benefit rate on the amount of the settlement and, further, excludes any future medical benefits to the employee. The subsection specifically provides that "no settlement agreement between the parties shall be approved by either the court or the commissioner, or the commissioner's designee, if the settlement agreement contains an amount of money designated or allocated for future medical benefits." Finally, a settlement under subsection (b) must be determined by the court to be in the best interest of the employee.

We begin with the observation that, if this motion had been brought timely pursuant to Tennessee Code Annotated section 50-6-206(a), the settlement would clearly have been set aside because it did "not secure to the employee in a substantial manner the benefits of the Workers' Compensation Law." The amount of money designated in the agreement as a lump sum payment for disability was substantially less than the percentage of disability diagnosed by the treating physician, which was the only medical testimony provided. The method for providing future medical benefits also was problematic. However, motions under section 50-6-206(a) must be brought within thirty days of the date that the settlement documents are received by the Department

of Labor and Workforce Development. Ms. Kirk's motion in this matter was filed nearly six months after the approval of the settlement, and could not, therefore, be brought under that statute.

Instead, Ms. Kirk filed this action pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure, which authorizes relief from judgments on various specified grounds. 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); Banks v. Dement Const. Co., 817 S.W.2d 16, 18 (Tenn. 1991); Toney v. Mueller Co., 810 S.W.2d 145, 146 (Tenn. 1991). A trial court abuses its discretion only when it applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining. Mercer v. Vanderbilt Univ., Inc., 134 S.W.3d 121, 131 (Tenn. 2004); Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001).

Ms. Kirk's Rule 60.02 motion was based upon three premises. First, she contended that the settlement was obtained by fraud. Second, she asserted there was no hearing conducted with regard to the settlement approval and that section 50-6-206(a) requires that an unrepresented employee appear in person before the court in order for a binding settlement to occur. Finally, she alleged the settlement did not afford to her substantially the benefits to which she was entitled under the Workers' Compensation Act.

In support of her first argument, that the settlement was procured through fraud, Ms. Kirk cites the alleged misrepresentations by Saia and Weekly that the payment was a loan, the choice of venue in Davidson County, and the apparent non-payment or slow payment of some of the medical expenses. St. Michael responds that Ms. Kirk initiated the transaction; that she admitted signing all of the documents, which clearly set out that the transaction was a settlement; and that the affidavit of Ms. Kirk's friend demonstrates that Ms. Kirk was aware the transaction was a settlement.

Ms. Kirk's version of what occurred that led to the settlement is not reconcilable with that of St. Michael. Ms. Kirk's position was that the representatives of St. Michael misled her into believing the settlement was a loan or advance against her claim for benefits. St. Michael's position was that Ms. Kirk initiated and actively pursued settlement negotiations. Although the trial court made no findings concerning credibility, the conflicts in the proof are such that a denial of the motion must be read as a rejection of Ms. Kirk's testimony. In our view, the evidence supports the trial court's conclusion that Ms. Kirk was aware that she was settling her claim.

The trial court's ruling, however, failed to address the remaining issues raised by Ms. Kirk's Rule 60.02 motion. Rule 60.02 of the Tennessee Rules of Civil Procedure provides, in pertinent part, as follows:

60.02. Mistakes — Inadvertence — Excusable Neglect — Fraud, etc. — On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied,

released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than one year after the judgment, order or proceeding was entered or taken.

Having affirmed the trial court's finding that Ms. Kirk failed to prove fraud as a ground for relief under this rule, we next examine the rule to determine whether any of the remaining grounds for relief exist. It appears the only other ground for relief available to Ms. Kirk is the catch-all provision contained in Rule 60.02(5), "any other reason justifying relief from the operation of the judgment."

While the language of Rule 60.02(5) of the Tennessee Rule of Civil Procedure is open-ended and leaves the task of interpretation to the courts, Tennessee has chosen to construe the rule narrowly. Underwood, 854 S.W.2d at 97; Banks, 817 S.W.2d at 18. Accordingly, there are very few workers' compensation cases in which relief has been granted under Rule 60.02(5). With these principles in mind, we now turn to Ms. Kirk's arguments in support of her Rule 60.02 motion.

Ms. Kirk's first allegation of "other reason" is that there was no hearing at which she appeared. In support of that argument, Ms. Kirk cites Wilkinson v. Johnson City Shale Brick Corp., 156 Tenn. 373, 379, 299 S.W. 1056, 1057 (Tenn. 1927). In that case, the parties signed a written settlement agreement. At a later date, a judge wrote "Approved" on the agreement and signed it. No hearing was held, nor judgment entered. The Supreme Court held that the settlement was not binding, and did not bar a subsequent action by the employee concerning the same injury, stating:

[The workers' compensation] act contemplates a judicial proceeding, and where a claimant is not represented by counsel, the circuit judge should require his presence in open court, in order that he might interrogate him with respect to the settlement before giving his approval thereto, or should, at least, require notice to be served on the employee, stating the time and place when the employer would ask the court to make their agreement the judgment of the court. Were it otherwise, this provision of the act would amount to no more than a useless formality.

Id. at 1057.

In Thompson v. Firemen's Fund Ins. Co., 798 S.W.2d 235 (Tenn. 1990), the Tennessee Supreme Court held, however, that current Tennessee Code Annotated section 50-6-206 does not require the personal appearance of the employee before the court at a settlement approval hearing, "although the better practice would clearly include personal examination by the trial judge." Id. at 238.¹ In this case, Ms. Kirk executed an affidavit which states on its face that she understood the

¹Section 50-6-206 has been amended in pertinent part since Wilkinson to provide that the approving judge "may call and examine witnesses". Thus the voluntary nature of the obligation was clarified.

terms of the agreement and requested the trial court's approval. While it clearly would have been the better practice for Ms. Kirk to have appeared and been examined before the trial court, based upon the current language in the statute and the holding in Thompson, we cannot find the failure of the trial court to require her appearance was fatal to the approval proceeding.

Ms. Kirk's second assertion of "other reason" is that the settlement did not secure to her substantially the benefits provided for in the Workers' Compensation Law. First, the amount of disability is not specifically stated in the agreement, which is a requirement. Lindsey v. Hunt, 215 Tenn. 406, 413, 384 S.W.2d 441, 444 (Tenn. 1964) (overruled on other grounds by Betts v. Tom Wade Gin, 810 S.W.2d 140, 144 (Tenn. 1991)). Second, mathematical computation reveals that the benefits she actually received were not commensurate with the percentage of disability assessed by her physician. The provision in the settlement agreement regarding future medical benefits appears to violate section 50-6-206(a)(2) and approaches unconscionableness. Pursuant to this provision, the sum of \$10,000.00 was advanced to her for future medical benefits. In order to receive additional future medical benefits from St. Michael, she will have to prove that she has expended the \$10,000.00 advanced for medical treatment for her injury. Since she has not been able to return to the workforce, there is a substantial likelihood she will spend the advanced monies for living expenses. If she continues to be unable to work, she would then have no source of funds to spend for medical treatment and, thus, effectively would be denied future medical treatment for the injury she has sustained.

In Federated Ins. Co. v. Lethcoe, 18 S.W.3d 621, 622-23 (Tenn. 1990), the Tennessee Supreme Court held that "where a party agrees to settle a workers' compensation claim, and the trial court approves the settlement, the settling party generally is not entitled to relief from judgment under Rule 60.02(5)." While the court in Lethcoe did not foreclose application of Rule 60.02(5) to workers' compensation settlement approvals, it gave no indication of what the exceptions to that general rule might be.

In Brown v. Consol. Coal Co., 518 S.W. 234, 238 (Tenn. 1974), relief was granted where a mistake had been made in the final judgment as to the applicable compensation rate. The Brown court held:

[T]he award of the correct work[ers'] compensation rates applicable to any given suit under said Act is of such overriding importance to employer and employee alike, that, in those cases where there is no dispute as to the date controlling the compensation rates, authority is vested by Rule 60.02(5) for the correction of error therein. . . .

Id.

A further indication of the parameters of an exception to the general rule stated in Lethcoe, is found in Dennis v. Erin Truckways, Ltd., 188 S.W.3d 578 (Tenn. 2006). In that case, the settlement had been approved by the Department of Labor and Workforce Development pursuant to Tennessee Code Annotated section 50-6-206(c). Pursuant to that code section, a workers' compensation settlement may be approved by either a circuit or chancery court or the commissioner

of the Department of Labor and Workforce Development or the commissioner's designee. Subsection (c)(5) provides that when the settlement is approved by the commissioner or the commissioner's designee, the employee must be "thoroughly informed of the scope of benefits . . .". Subsection (c)(2) provides that a settlement approved by the commissioner shall be entitled to the same standing as a judgment of a court of record. In Dennis, the trial court set aside the settlement based upon a petition filed some two years after its approval. The petition was, in large part, based upon the fact that the benefits review specialist advised Mr. Dennis that the maximum benefit he could receive pursuant to the Workers' Compensation Law was 400 weeks of compensation and failed to explain the benefits available to an employee found to be permanently and totally disabled. The Supreme Court affirmed, agreeing with the lower court's finding that the Department had not complied with the requirements of the statute and had misstated the law to the unrepresented employee. 188 S.W.3d at 588-89. In arriving at its determination, the Supreme Court stated:

[W]hen an employee is unrepresented in a workers' compensation settlement, the highest degree of care should be used by the reviewing judge to make sure that the rights of the employee are being upheld under the Compensation Law. There is more than the welfare of the worker at stake in this respect, because the public also has a vested interest in the fair administration of the Compensation Laws.

The entire compensation system has been set up and paid for, not by the parties, but by the public. The public has ultimately borne the cost of compensation protection in the price of the product, and it has done so for the specific purpose of avoiding having the disabled victims of industry thrown on private charity or local relief. To this end, the public has enacted into law a scale of benefits which will forestall such destitution. It follows, then, that the employer and employee have no private right to thwart this objective by agreeing between them on a disposition of the claim that may, by giving the workman less than this amount, make him a potential public burden.

Id. (internal citations omitted). Because the Department of Labor and Workforce Development failed to comply with the statute relating to the approval of workers' compensation settlement agreements, the Supreme Court held that the trial court had the "inherent authority" to set aside the settlement. Based upon its holding, the Court did not reach a determination as to whether Mr. Dennis would be entitled to relief pursuant to Rule 60.02(5). Id. at 589.

The same reasoning which entitled the employee to relief in Brown and Dennis applies in the case being considered by this Panel. There was no determination made by the trial court that the settlement agreement substantially secured to Ms. Kirk the benefits of the Workers' Compensation Law. The petition filed seeking approval of the settlement clearly indicated Ms. Kirk was not receiving the benefits to which she was entitled. While the petition vaguely alluded to an issue between the parties relating to the causation of Ms. Kirk's injuries, there is no indication of the basis for any dispute and the settlement exceeds the limits imposed by Tennessee Code Annotated section 50-6-206(b) for disputed claims. The settlement agreement also contains a provision for future medical benefits which prohibits the trial court from approving it as a disputed claim. Finally, the

settlement agreement violates Tennessee Code Annotated section 50-6-114 which provides that “[n]o contract or agreement, . . . shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this chapter, . . .” except for the offset of benefits paid under an employer funded disability plan.

The facts of this case highlight the conflicts among important principles of workers’ compensation law. This law is social legislation that we are required to interpret liberally in favor of the employee. Tenn. Code Ann. § 50-6-116; Peace v. Easy Trucking Co., 38 S.W.3d 526, 528 (Tenn. 2001). Moreover, “when an employee is unrepresented in a workers’ compensation settlement, ‘the highest degree of care should be used by the reviewing judge to make sure that the rights of the employee are being upheld under the Compensation Law.’” Dennis, 188 S.W.3d at 588 (internal citations omitted). On the other hand, the Supreme Court has “repeatedly expressed concern that reopening workers’ compensation agreements frustrates legitimate goals of judicial economy and finality of settlements.” Lethcoe, 18 S.W.3d at 625. It has also been said that “Rule 60.02 acts as an escape valve from possible inequity that might otherwise arise from the unrelenting imposition of the principle of finality imbedded in our procedural rules.” Thompson, 798 S.W.2d at 238. Still, because of the importance of this ‘principle of finality,’ the ‘escape valve’ should not be easily opened. Toney, 810 S.W.2d at 146.

Based upon the extent of Ms. Kirk’s injury, the likelihood that absent receipt of workers’ compensation benefits she will become a public burden, and the failure of the trial court to follow the Workers’ Compensation Law in approving the agreement, we find this to be a proper case for relinquishing the importance of the principle of finality of judgments and granting the requested relief pursuant to Rule 60.02(5) of the Tennessee Rules of Civil Procedure. To hold otherwise on these facts would allow employers to reduce their obligations under the Workers’ Compensation Act by agreement with employees who find themselves in financial difficulty, perhaps due to the injury they have sustained. Failure to grant relief in situations such as now before this Panel potentially allows the employer to shift its obligations to the public. Granting the requested relief will, after all, only require the employer to pay the benefits it was obligated to pay at the time the settlement approval was sought. Because the trial court limited its determination to whether Ms. Kirk carried her burden of proving fraud and failed to consider whether the settlement approval complied with the statutes relating to settlement agreements, we are of the opinion that it applied an incorrect legal standard resulting in an injustice to Ms. Kirk. In our view, Ms. Kirk’s Rule 60.02 motion was filed within a reasonable time and should have been granted.

Conclusion

The judgment of the trial court is reversed. The case is remanded for further proceedings consistent with this opinion. Costs are taxed to the appellee, St. Michael Motor Express, Inc., for which execution may issue if necessary.

DONALD P. HARRIS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
APRIL 21, 2008 SESSION

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**Circuit Court for Davidson County
No. 05C-3553**

No. M2007-01058-WC-R3-WC - Filed - September 2, 2008

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 are taxed to the appellee, St. Michael Motor Express, Inc., for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM