IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 22, 2008 Session

KRISTINA MOORE v. CITY OF MANCHESTER

Direct Appeal from the Circuit Court for Coffee County
No. 35543 L. Craig Johnson, Judge

No. M2008-00710-WC-R3-WC - Mailed - January 8, 2009
Filed - March 19, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. While at work, Employee received a message that her sister had fallen and injured herself. She started to leave for the purpose of checking on her sister. Before she reached her car, she tripped and fell in a parking lot on Employer's premises. She sustained a broken wrist. Employer denied her workers' compensation claim, contending that she was on a personal errand. The trial court found the injury arose from and occurred in the course of the employment, and awarded workers' compensation benefits. Employer has appealed, arguing that the trial court erred in finding the injury to be compensable. We affirm the judgment, and find the appeal to be frivolous.

Tenn. Code Ann. § 50-6-225(e) (Supp. 2008) Appeal as of Right; Judgment of the Circuit Court Affirmed and Modified

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and JON KERRY BLACKWOOD, SR., J., joined.

James H. Tucker, Jr. and Colin M. McCaffrey, Nashville, Tennessee for the appellant, City of Manchester.

R. Steven Waldron, Murfreesboro, Tennessee for the appellee, Kristina Moore.

MEMORANDUM OPINION

Factual and Procedural Background

The facts are undisputed. Kristina Moore ("Employee") worked as a customer service representative for the City of Manchester's Water and Sewer Department ("Employer"). On September 25, 2006, she arrived at work at approximately 7:30 a.m. She parked in a lot provided

by Employer. At 9:20 a.m., she received a call from her mother. Her mother told her that Employee's younger sister had fallen on her front porch steps. Her mother then asked Employee to "go check on her." Employee asked her supervisor for permission to leave. She then left the building. On her way to her car, she tripped and fell on a curb of a grassy median. As a result of the fall, she broke her wrist.

Employee was taken to the emergency room, then transferred to Middle Tennessee Medical Center in Murfreesboro. Her wrist was surgically repaired by Dr. Kyle Joyner. She was off work until November 13, 2006. Dr. Joyner assigned 15% anatomical impairment to the left arm as a result of the injury. He placed no permanent restrictions upon Employee's activities.

On the date of trial, Employee was twenty-seven years old. She is a high school graduate. She has worked for Employer in various capacities since March 2000. After recovering from her injury, she returned to work for Employer. She moved to a different department, and was earning a higher wage than on the date of the accident. Therefore, the 1.5% cap would apply in this case.

The trial court found that Employee had sustained a compensable injury, and awarded 22.5% PPD to the left arm. Employer has appealed, contending that the trial court erred by finding that Employee's injury arose out of and in the course of her employment. Employee asks us to find this appeal to be frivolous.

Standard of Review

The trial court's findings of fact in a workers' compensation case are reviewed de novo with a presumption of correctness, "unless the preponderance of the evidence it otherwise." Tenn. Code Ann. § 50-6-225(e)(2)(Supp. 2008). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's factual findings. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). We extend no deference to the trial court's findings when reviewing documentary evidence such as depositions, however. *Id.* As to questions of law, our standard of review is de novo with no presumption of correctness. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 825 (Tenn. 2003).

Analysis

Employer contends that the trial court erred by finding the injury to be compensable. Its position is that she was on a "personal mission" unrelated to her employment, and therefore the injury did not arise from her employment. It cites *Shelby Mutual Ins. Co. v. Cates*, 223 Tenn. 442, 446 S.W.2d 682 (1969) and *Bennett v. Vanderbilt University*, 198 Tenn. 1, 277 S.W.2d 386 (1955) in support of its position.

Employee asserts that the trial court ruled correctly. She relies primarily on *Lollar v. Wal-Mart Stores, Inc.*, 767 S.W.2d 143 (Tenn. 1989) and *Copeland v. Leaf, Inc.*, 829 S.W.2d 140 (Tenn. 1992). In *Lollar*, the Supreme Court examined a number of parking lot cases, including *Bennett*, and adopted the following rule: "We hold today 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. 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." 767 S.W.2d at 150.

Employer argues that the *Lollar* rule is not applicable in this case because Employee was embarking upon a purely personal errand, i.e., going to see her sister, and was therefore no longer in the course of her employment. While it is true that Employee was leaving Employer's premises for a strictly personal reason, the same would be true of any employee who had completed her work day, and was in the process of going home, or going shopping or going to a restaurant.

McCurry v. Container Corp. of America, 982 S.W.2d 841, 845 (Tenn. 1998), sets out a very practical test, which is applicable to the facts of this case:

> In cases where an employee is injured while en route to or from work, the injury is in the course of employment if it occurs on the employer's premises or on a necessary route between the work facility and the areas provided for employee parking. 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.

This rule provides a bright line test, which does not require or permit an inquiry into the activities, recent or planned, of an employee who is entering onto or departing from her employer's premises in connection of her employment. In the present case, it is not disputed that Employee had been working, was in the process of departing, and was still on her employer's premises at the moment her injury occurred. The trial court therefore correctly found her injury to be compensable.

Employee requests that this appeal be found frivolous, and that damages be awarded pursuant to Tenn. Code Ann. § 27-1-122. She argues, persuasively, that the *Lollar* rule is clearly applicable, and that the cases and arguments relied upon by Employer were either explicitly or implicitly overruled by *Lollar*. We agree that, based upon *Lollar* alone, Employer's argument before this panel is without merit. *McCurry*, which was not cited by either side in this appeal, controls the result, and Employer has presented no logical, legal or policy argument upon which to base a contrary holding. This appeal is, therefore, frivolous.

We note that Tennessee Code Annotated sections 50-6-225(h) and (i) specifically address the subject of frivolous appeals in workers' compensation cases. Those sections, rather than section 27-1-122, are applicable here. Section 50-6-225(h) applies to frivolous appeals by employers. It authorizes a reviewing court to assess a penalty, "without remand, against the appellant for a liquidated amount." We therefore exercise that authority, and assess a penalty of two thousand five hundred dollars ($2500.00) against the Employer.

Conclusion

The judgment of the trial court is modified to award a penalty of two thousand five hundred dollars to be paid by the City of Manchester to Kristina Moore. The judgment is affirmed in all other

respects. Costs are taxed to the appellant, City of Manchester and its surety, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

KRISTINA MOORE v. CITY OF MANCHESTER

No. M2008-00710-SC-WCM-WC - Filed - March 19, 2009

ORDER

This case is before the Court upon the motion for review filed by the City of Manchester pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(A)(ii), 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, including the assessment by the Panel of a penalty in the amount of $2,500.00 against the City of Manchester for its frivolous appeal. An additional penalty for the frivolous appeal to this Court is assessed against the City of Manchester in the amount of $1,000.00.

Costs are assessed to the City of Manchester, for which execution may issue if necessary.

PER CURIAM

KOCH, J., NOT PARTICIPATING