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

LISA SHELTON v. CENTRAL MUTUAL INSURANCE COMPANY

Direct Appeal from the Chancery Court for Bradley County
No. 00-237 Jerri S. Bryant, Chancellor

Filed April 24, 2009

No. E2008-00553-WC-R3-WC - Mailed January 27, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn.Code Ann. § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. In 2004, Employee was found to be permanently and totally disabled as a result of a work-related injury. In January 2006, he died as a result of an overdose of prescription medication. His widow sought workers' compensation death benefits, alleging that his death was the direct result of his prior work injury. Employer filed a motion for summary judgment, contending that the medical evidence was insufficient. The trial court granted the motion. Employee's widow has appealed. We reverse the judgment and remand for further proceedings.

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

WALTER C. KURTZ, SR. J., delivered the opinion of the court, in which GARY R. WADE, J., and DONALD P. HARRIS, SR. J., joined.

Bert H. Bates, Cleveland, Tennessee, for the appellant, Lisa Shelton.

Stuart F. James and S. Todd Hastey, Chattanooga, Tennessee for the appellee, Central Mutual Insurance Company.

MEMORANDUM OPINION

Factual and Procedural Background

John Shelton was injured in a work-related automobile accident in December 1999. He was found to be permanently and totally disabled in October 2004 as a result of physical and mental impairments resulting from that accident. In January 2006, he died. An autopsy concluded that the cause of death was an accidental overdose of prescription medication.

Lisa Shelton, Mr. Shelton's widow filed a petition for death benefits. The petition initially alleged that Mr. Shelton had committed suicide as a result of depression caused by his December 1999 injury. After the results of the autopsy were released, her petition was amended to include the alternative theory that Mr. Shelton's death was the result of an accidental overdose. On appeal, she is pursuing the accidental death theory only.

Before the accidental death theory was raised, Employer filed a motion for summary judgment, supported by an affidavit of Dr. James Gregory Kyser, a psychiatrist. Based upon a review of the medical records, Dr. Kyser opined that there was no medical evidence that Mr. Shelton's (alleged) suicide was related to his work injury. Ms. Shelton filed a response to the motion and a cross-motion for summary judgment in her favor. Her motion was supported by the deposition of Dr. Sarath Gangavarapu, a psychiatrist. Dr. Gangavarapu had conducted an evaluation of Mr. Shelton in connection with his original application for workers' compensation benefits. He had subsequently supervised Mr. Shelton's psychiatric care, which was provided by Lori Firestone, a nurse practitioner. However, he had personally examined Mr. Shelton on only one occasion.

Dr. Gangavarapu testified that the drugs detected in postmortem testing of Mr. Shelton included medications which his office had prescribed for anxiety, as well as pain medication and additional anxiety medication, which were not prescribed by his office. His office had also prescribed antidepressant and mood-stabilizing medication for Mr. Shelton, but these were either not tested for or not detected during the autopsy. He testified that Mr. Shelton suffered from chronic pain and depression and that these conditions are risk factors for suicide. On that basis, he opined that Mr. Shelton's death was related to his original injury "if it was a suicide attempt." Dr. Gangavarapu also opined that "if [Mr. Shelton] was in a lot of pain, it's possible that

he could have taken more medication to alleviate the pain, or if he was going through some severe anxiety, it's possible that he could have taken more of the anxiety medication to alleviate the anxiety symptoms and which could have resulted in that accidental overdose."

On cross-examination, Dr. Gangavarapu testified that Mr. Shelton had been seen by the nurse practitioner in June, August, October and December 2005. On each of those occasions, Mr. Shelton had denied having suicidal ideations. He further stated that Mr. Shelton appeared to be stable in December 2005. There was nothing in his records which suggested that there was a serious potential of suicide in Mr. Shelton's case. Dr. Gangavarapu stated that he did not know whether or not Mr. Shelton's death was a suicide. He agreed that the autopsy didn't "necessarily test for everything" and stated that it was possible that the overdose was not related to chronic pain or depression. In that regard, he testified that Mr. Shelton had financial and marital problems, which were additional causes of stress and anxiety.

The trial court found that Dr. Gangavarapu's testimony established a mere possibility that Mr. Shelton's death was related to his original injury and was not sufficient to establish causation. It therefore granted Employer's motion for summary judgment and denied the motion of Ms. Shelton. Ms. Shelton then filed a motion to alter or amend the judgment, arguing that the trial court had applied an incorrect burden of proof in the case. Specifically, she contended that Employer's position was based upon an affirmative defense, i.e., independent intervening cause, that the burden of proof should therefore have been placed upon Employer, and that Employer failed to meet that burden. The trial court denied the motion to alter or amend. The widow has appealed, contending that the trial court erred by granting Employer's motion and denying her motion.

Standard of Review

A workers' compensation appeal from a summary judgment order is not controlled by the de novo standard of review provided by the Workers' Compensation Act, Tenn.Code Ann. § 50-6-225(e); rather, it is governed by Tenn. R. Civ. P. 56. If any material evidence indicates that a genuine issue of material fact exists, summary judgment is inappropriate. *Blocker v. Reg'l Med. Center*, 722 S.W.2d 660, 662 (Tenn.1987). In determining whether Rule 56 has been correctly applied, the pleadings, depositions, answers to interrogatories, admissions, and competent affidavits are viewed in a light most favorable to the opponent of the

motion. Likewise, all legitimate conclusions from the record should be drawn in favor of the opponent of the motion. *Price v. Mercury Supply Co.,* 682 S.W.2d 924, 929 (Tenn. Ct. App. 1984). Moreover, "the burden is on the moving party to show the absence of a genuine issue as to any material fact and that movant is entitled to judgment as a matter of law." *Jones v. Home Indem. Ins. Co.*, 651 S.W.2d 213, 214 (Tenn.1983). "When weighing such a motion, if the mind of the court entertains any doubt whether or not a genuine issue exists as to any material fact, it is its duty to overrule the motion." *Poore v. Magnavox Co. of Tenn.*, 666 S.W.2d 48, 49 (Tenn.1984).

Analysis

On appeal, Ms. Shelton alleges that Mr. Shelton's death was accidental; that the drugs which caused his death were for the treatment of depression and chronic pain arising from his initial injury, and that his death therefore was a natural consequence of that injury. She contends that Employer had the burden of showing an independent intervening cause in order to avoid liability and failed to meet this burden. She cites *Guill v. Aetna Life & Cas. Co.*, 660 S.W.2d 42 (Tenn. 1983), and *Simpson v. H. D. Lee Co.*, 793 S.W.2d 929 (Tenn. 1990). Both cases concerned employees who died as a result of overdoses of medication not prescribed by the treating physician. Both trial courts found the deaths to be non-compensable, and the Supreme Court affirmed both results. Ms. Shelton then points out that, in contrast to *Guill* and *Simpson*, the drugs which caused Mr. Shelton's death in this case were prescribed by his treating physician, and she argues that this distinction mandates a different result.

Two very recent decisions of our Supreme Court bear directly on the issues presented by this appeal. *Anderson v. Westfield Group*, 259 S.W.3d 690 (Tenn. 2008) addresses the doctrine of intervening independent cause in workers' compensation cases. In that case, the employee sustained a compensable injury to his hand. His claim was settled. The settlement included a provision for future medical treatment for the injury. The employee re-injured the hand as a result of placing it on a hot stove and then again as a result of tripping and falling. Medical testimony established that he had a loss of sensation in the hand. This in turn made him vulnerable to suffer the burn injury, because he was unable to feel and react quickly to the heat of the stove. The trial court denied medical benefits. The primary issue on appeal was whether an employee's negligence alone could be an independent intervening cause, or if only an intentional act could break the chain of causation. The Supreme Court

held that "negligence is the appropriate standard for determining whether an independent intervening cause relieves an employer of liability for a subsequent injury purportedly flowing from a prior work-related injury." *Id*. at 699. Applying that principle to the facts of the case, the trial court's denial of medical benefits was affirmed.

Anderson does not characterize the existence of an independent, intervening cause as an affirmative defense, but rather "as a way of assessing the scope of an employer's liability for injuries occurring after a compensable injury." *Id.* at 697. In making that observation, the Court specifically considered *Guill* and *Simpson*. The question of whether a subsequent injury is a "direct and natural consequence" of a prior compensable injury or the result of an "independent, intervening cause" is therefore a matter of assessing the preponderance of the evidence in a given case.

More explicably, the Court stated:

> Equally well-established is the general rule that a subsequent injury, whether in the form of an aggravation of the original injury or a new and distinct injury, is compensable if it is the "'direct and natural result'" of a compensable injury. *Rogers v. Shaw*, 813 S.W.2d 397, 399-400 (Tenn. 1991)(quoting 1.A.Larson, *The Law of Workmen's Compensation* § 13.11 (1990)). The rule, commonly referred to as the direct and natural consequences rule, has been stated as : "[w]hen the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment." 1 *Larson's Workers' Compensation Law* § 10 (2004). Consequently, "all the medical consequences and sequelae that flow from the primary injury are compensable." *Id.* at § 10.01. Thus, for example, an injured worker may recover for a new injury or an aggravation of a compensable injury resulting from medical treatment on the theory that "the initial injury is the cause of all that follows." *McAlister v. Methodist Hosp. of Memphis*, 550 S.W.2d 240, 245 (Tenn. 1977); *see Rogers*, 813 S.W.2d at 399 (stating "death or disability due to a poor result of treatment, or complications of treatment, or negligent treatment of a

> work-related injury or disease is compensable.") The rational for the rule is that the original compensable injury is deemed the "cause of the damage flowing from the subsequent" injury-producing event. *Revell v. McCaughan,* 162 Tenn. 532, 538, 39 S.W.2d 269, 271 (1931). There is no question that the direct and natural consequences rule is an integral part of Tennessee's workers' compensation jurisprudence.
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> However firmly implanted the principle may be that a subsequent injury is deemed to arise out of the employment if it flows from a compensable injury, the rule has a limit. That limit hinges on whether the subsequent injury is the result of independent intervening causes, such as the employee's own conduct. The rule's limitation has been expressed in general terms as "[w]hen the primary injury is shown to have arisen out of the employment, *unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct."* 1 *Larson's Workers' Compensation Law* § 10 (2004) (emphasis added). "More specifically, the progressive worsening or complication of a work-connected injury remains compensable *so long as the worsening is not shown to have been produced by an intervening nonindustrial cause." Id.* (emphasis added).

Anderson, 259 S.W.3d at 696-97.

There are occasions where self-medication and its aftermath are compensable. In *Wheller v. Glen Falls Ins.*, 513 S.W.2d 179 (Tenn. 1974), the Court confronted a situation where post-accident the employees drank heavily because of the pain he experienced, and this drinking caused additional injury. The Court found the additional injury to be compensable as there was evidence that drinking was the only way the employee could relieve himself of pain because the medication the employee was taking for pain was ineffective.

The Supreme Court has also recently examined the relative burdens of production to be used in considering summary judgment motions in *Hannan v. Alltel Publ'g Co.*, _____ S.W.3d _____, 2008 WL 4755788 (Tenn. 2008). The issue before

the Court in *Hannan* was whether Tenn. R. Civ. P. 56 permitted a moving party to shift the burden of production to the non-moving party by "merely challenging the nonmoving party to 'put up or shut up' on a critical issue." *Id.* at *5. This is the approach followed by the federal courts. *Celotex v. Catrett*, 477 U.S. 317 (1986); *Street v. J. C. Bradford & Co.*, 886 F.2d 1472 (6th Cir. 1989). After considering *Byrd v. Hall*, 847 S.W. 2d 208 (Tenn. 1993) and subsequent cases, the Supreme Court concluded that Tennessee does not follow the federal approach. Rather, "in Tennessee, a moving party who seeks to shift the burden of production to the nonmoving party who bears the burden of proof at trial must either: (1) affirmatively negate an essential element of the nonmoving party's claim; or (2) show that the nonmoving party cannot prove an essential element of the claim at trial." *Hannan*, _____ S.W.3d at _____, 2008 WL 4755788 at *8. *See also Martin v. Norfolk S. R.R.*, ____ S.W.3d ____, 2008 WL 4890252 (Tenn. 2008).

The distinction between the federal approach and the rule adopted in *Hannan* is, in our view, critical to the resolution of the issues presented by this appeal. The testimony of Dr. Gangavarapu, the only substantive evidence submitted by Ms. Shelton, would be insufficient to withstand Employer's motion under the federal standard. Viewed in the light most favorable to Ms. Shelton, that testimony at best suggests a possibility of a causal nexus between the original injury and her husband's accidental death.[1] Standing alone, it does not provide sufficient basis to support a conclusion that an accidental overdose was a direct and natural consequence of the original injury.

However, Dr. Gangavarapu's testimony, if supplemented by additional credible evidence, could be sufficient to support a finding that Mr. Shelton's death was a natural and direct result of his original injury. The employee's burden of proof concerning causation in a workers' compensation case can be met by "medical testimony to the effect that a given incident 'could be' the cause of the employee's injury, when there is also lay testimony from which it reasonably may be inferred that the incident was in fact the cause of the injury." *Reeser v. Yellow Freight Sys., Inc.*, 938 S.W.2d 690, 692 (Tenn. 1997) In this case, Dr. Gangavarapu's opinion provides a medical basis for the proposition that Mr. Shelton's death could have been related to his original injury, if in fact Mr. Shelton had recently had episodes of severe pain

[1]Counsel for Ms. Shelton stated during oral argument that the suicide theory had been abandoned. Based upon our review of the record, we conclude that, to the extent the issue was placed before the trial court, summary judgment was properly granted as to that theory.

or anxiety which had diminished his faculties to the extent that he was at risk to inadvertently take an overdose of medication. There is no evidence of such episodes in the record. The records of Ms. Firestone, the nurse practitioner who provided direct mental health care to Mr. Shelton, do not mention any such episodes. However, records of other medical providers which document problems of this sort and credible lay testimony of specific examples of such events may exist.

Ms. Shelton's original claim was that Mr. Shelton had committed suicide as a direct and natural consequence of his work-related injury. Employer's motion sought to negate an essential element that claim with evidence, in the form of Dr. Kyser's affidavit, that no medical evidence established a causal relationship between the original injury and the alleged suicide. Mr. Shelton's death was subsequently found by the medical examiner to be accidental. Evidence of that finding was placed before the trial court. Ms. Shelton then presented evidence, in the form of Dr. Gangavarapu's testimony, that there was a potential causal relationship between Mr. Shelton's accidental death and his work-related injury. Employer did not present any additional evidence in response, taking the position that Dr. Gangavarapu's opinion was not sufficient to sustain Ms. Shelton's burden of proof. If this record had come to us after a trial on the merits, we would agree. However, this record comes to us after a motion for summary judgment only. Ms. Shelton did not bear the burden of proving her case by a preponderance of the evidence but only to establish the existence of a genuine issue as to any material fact. We conclude that the evidence she presented was sufficient, if barely, to sustain that burden.

Conclusion

The judgment of the trial court is reversed. The case is remanded for further proceedings consistent with this opinion. Costs are taxed to Central Mutual Insurance Company, for which execution may issue if necessary.

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WALTER C. KURTZ, SENIOR JUDGE

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ORDER

This case is before the Court upon the motion for review filed by Central Mutual Insurance Company pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

Costs are assessed to Central Mutual Insurance Company, for which execution may issue, if necessary.

PER CURIAM

GARY R. WADE, J., not participating.