IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 23, 2009 Session

JELD-WEN, INC. v. MARVIN L. CLARK

Direct Appeal from the Chancery Court for White County
No. 9682 Ronald Thurman, Chancellor

No. M2008-01678-WC-R3-WC - Mailed - June 12, 2009
Filed - July 13, 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. The trial court ordered Employer to provide pain management treatment to Employee. Employer has appealed, contending that the proposed treatment was made necessary by a pre-existing condition, an independent intervening cause, or both, rather than Employee's work injury. We affirm the judgment of the trial court.

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

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and DONALD P. HARRIS, SR., J., joined.

Richard C. Mangelsdorf, Jr., Nashville, Tennessee, for the appellant, Jeld-Wen, Inc.

Donald P. Zuccarello, Nina H. Parsley, and Marshall H. McClarnon, Nashville, Tennessee, for appellee, Marvin L. Clark.

MEMORANDUM OPINION

Factual and Procedural Background

Marvin L. Clark ("Employee") sustained a compensable lower back injury on March 11, 2005. Jeld-Wen, Inc. ("Employer") provided medical care, but denied that Employee had sustained a permanent disability as a result of the injury. Employee previously had back surgery in 1999; Employer contended that any continuing symptoms were a result of that event. Suit was filed, and the case was tried in December 2006. The trial court found that Employee had sustained a 12% permanent partial disability. The judgment required Employer to provide medical care in accordance with the workers' compensation law. Employer was specifically ordered to provide a panel of

physicians for future treatment. Employer did so, and selected Dr. Donald Arms, an orthopaedic surgeon in McMinnville.

Dr. Arms saw Employee on two occasions in February and March of 2007. At the time of the second appointment, he concluded that he could provide only limited assistance to Employee. He recommended that Employee be referred to a pain management program, specifically suggesting Dr. Jeffrey Hazlewood. Approximately two weeks later, Employee was seriously injured when he was attacked by his son, receiving two stab wounds to the lower back. Employee was taken by helicopter to Chattanooga for treatment of the injuries.

Employer disputed that the pain management treatment ordered by Dr. Arms was related to the work injury. Employee filed a motion to compel Employer to provide the treatment. The deposition of Dr. Arms was taken. Employer thereafter authorized treatment by Dr. Hazlewood. Employee was seen by Dr. Hazlewood on three or four occasions. Employer then again raised the issue of causation, as it pertained to Dr. Hazlewood's treatment. Employee renewed his motion to compel medical treatment. The deposition of Dr. Hazlewood was taken. Employee's motion was heard in June 2008. The depositions of Drs. Hazlewood and Arms were introduced into evidence.

Dr. Arms testified that Employee had symptoms of back pain and leg pain, and that these symptoms were "more probably than not" related to his March 2005 work injury. He also testified that Employee's "pathology [was] multifactorial," stating that degenerative disc disease, posterior facet arthritis, smoking, the previous back surgery, the work injury and the stab wounds were all potential contributing factors. On the subject of pain management treatment, he said: "I think it's in the best interest of this patient to see Dr. Hazlewood." On cross examination, he reiterated that Employee's need for treatment was "more probably than not related to his 2005 injury." Dr. Arms had not examined Employee after the stabbing injury, and was therefore unable to state what, if any, effect that event had on Employee's condition.

Dr. Hazlewood testified that Employee had advised him that the stab wounds "had not affected his back pain in general. Again, temporary increase, but he felt they had no long-lasting effect." Dr. Hazlewood considered that history to be plausible. He made several long statements addressing the causal relationship between Employee's pain and the March 2005 injury. On direct examination, he stated:

> If I were looking at this case and being asked, such as an independent medical evaluation, or second opinion on causation, I would have to state that there are a lot of concerns here about how much of this injury is related to the March 11, 2005 injury. The reason I say that is that it looks to me like he suffered a soft tissue injury back then, on top of a preexisting degenerative spine problem. He's had a history of back surgery. The stab wounds, again, all you can go by is subjective report, honestly. I think it's certainly reasonable to state that one can have stab wounds, increased back pain. Once that heals, that shouldn't cause any lingering back pain. So I think the pain I'm seeing now is really more related, typically, to degenerative spine disease.

* * * *

> I think there's a big question that any of it is [related to the 2005 injury], honestly. I think you've got to go back to the mechanism of injury, and lifting a brick mold, ten pounds, twisting, and having debilitating back pain for the rest of your life, walking on a cane, and feeling like you need a hundred percent disability makes no sense to me.
>
> On cross examination, he added:
>
> And it's a complicated situation. But I still say that if I were seeing this patient and giving an opinion, does this gentleman need life-long treatment for this mechanism of injury? I've got a big problem with that because this injury was minimal, and I honestly believe I'm treating primarily a degenerative spine condition and an accumulation of a lot of different factors here and not just this simple injury from March 11, 2005.
>
> But at this point, when I've been treating him, I've been treating his pain with the understanding that I was approved to do that and nobody was going to ask me about how much am I treating versus this or that. So if I'm being asked that, it's a whole different situation.

The trial court found that the proposed treatment by Dr. Hazlewood was related to the March 11, 2005 injury, and that Employer was therefore obligated to provide that care pursuant to the earlier judgment in the case. The court also awarded attorney's fees and costs in accordance with Tennessee Code Annotated section 50-6-204(b)(2). Employer has appealed, contending that the trial court erred by ordering it to provide pain management care as a part of its obligation to provide medical treatment under the judgment, and by awarding attorney's fees to Employee.

Standard of Review

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2) requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." The reviewing court must also give considerable deference to the trial court's findings regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008); *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

Analysis

Employer contends that the trial court erred in granting Employee's motion to compel medical treatment. It argues that the two stab wounds were an independent intervening cause, which terminated its obligation to provide medical care for Employee's low back pain. *See*, *Anderson v. Westfield Group*, 259 S.W.3d 690 (Tenn. 2008). Although this assertion is superficially plausible, there is no evidence in the record to support it. Dr. Hazlewood, who saw Employee after the stabbing, did not attribute his continuing symptoms to that event. It is undisputed that Dr. Arms recommended pain management treatment before the stabbing occurred. He testified that the treatment was likely related to the original work injury. He did not have any contact with Employee after the stabbing, and therefore could only speculate on the effects of that event.

Employer produced no medical evidence that Employee's continued pain management is linked to the stabbing incident. Therefore Employer's assertion of an intervening cause cannot be sustained when considered under the standards set forth in *Cronan v. Cleveland Chair Co.*, 2007 WL 1710938 (Tenn. Workers' Comp. Panel, 2007); *Yeary v. CMH Mfg., Inc.*, 2008 WL 2557369 (Tenn. Workers' Comp. Panel 2008).

Employer also relies upon the testimony of Dr. Hazlewood, set out at length above, to contend that Employee's pain was the result of his underlying degenerative condition, rather than the work injury. In response, Employee points to the testimony of Dr. Arms, which the trial court specifically noted in its decision. He argues that Employer seeks to relitigate the issues concerning causation heard and decided by the trial court at the December 2006 trial. We agree. Employer took the position that Employee's symptoms at that time were the result of his pre-existing problems, although he had not sought or received medical treatment for his lower back for nearly five years prior to the injury at issue. The trial court decided that issue in favor of Employee. That order was not appealed, and is the law of the case. Dr. Hazlewood's remarks are more in the nature of a comment on the workers' compensation law than a medical opinion. Taken in the context of the evidence as a whole, including his own testimony and that of Dr. Arms, those remarks are not compelling. For those reasons, we are unable to conclude that the evidence in this record preponderates against the trial court's decision.

Employer's argument concerning the award of attorney's fees is directly based upon its position that the trial court's order is erroneous. There is no contention that the fees awarded were excessive, or otherwise not supported by the evidence. Having concluded that the trial court's order was correct, we find no basis for disturbing that award. We further find that Employee is entitled to recover his attorney's fees and costs for prosecuting this appeal, and remand the case to the trial court for the purpose of determining the amount of that award.

Conclusion

The judgment of the trial court is affirmed. The case is remanded to the trial court for further proceedings consistent with this opinion. Costs are taxed to Jeld-Wen, Inc., and it surety, for which execution may issue if necessary.

_____

ALLEN W. WALLACE, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
FEBRUARY 23, 2009 SESSION

JELD-WEN, INC. v. MARVIN L. CLARK

Chancery Court for White County
No. 9682

No. M2008-01678-WC-R3-WC - Filed - July 13, 2009

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 Jeld-Wen, Inc. and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM