IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 27, 2009 Session

JUDY MINUTELLA v. FORD MOTOR CREDIT COMPANY

Direct Appeal from the Chancery Court for Rutherford County
No. 06-1788WC Robert E. Corlew, III, Chancellor

No. M2008-01920-WC-R3-WC - Mailed - October 12, 2009
Filed - November 12, 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 section 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. Employee sought post-judgment medical care for a knee injury after the trial court approved a settlement agreement wherein Employer agreed that it would be responsible for medical expenses related to the injury. Employer declined to authorize the original treating physician to provide additional care and instead offered Employee a choice from a panel of three physicians. The first physician Employee chose declined her as a patient. The second physician she chose opined that her need for treatment was unrelated to her work injury and did not treat her. Employee then sought and received further treatment from her original treating physician. At the same time, Employee petitioned the trial court for an order authorizing Employee's original physician to act as her treating physician, requesting that Employer be held in contempt for failing to comply with the order of settlement, and requiring that Employer pay for all of Employee's past and future medical treatment for her injury, along with all attorney fees and costs. The trial court ordered that Employer pay only a portion of Employee's attorney fees, denied Employee's request that Employer be held in contempt, and otherwise granted Employee's petition in full. We reverse the judgment of the trial court as to the award of attorney fees and remand for further proceedings in that regard but otherwise affirm the judgment in full.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed in Part and Remanded

E. RILEY ANDERSON, SP. J., delivered the opinion of the court, in which SHARON G. LEE, J., and ALLEN W. WALLACE, SR. J., joined.

Colin M. McCaffrey, Nashville, Tennessee for the appellant, Ford Motor Credit Company.

Robert P. Gritton, Murfreesboro, Tennessee for the appellee, Judy Minutella.

MEMORANDUM OPINION

FACTS/PROCEDURAL HISTORY

On September 19, 2005, Judy Minutella ("Employee") fell in the parking lot of her employer Ford Motor Credit ("Employer") and injured her right knee. Employer offered her a panel of three physicians for treatment, but she declined medical treatment at that time and, therefore, did not select a physician from the panel. However, the injury apparently worsened, and Employee sought medical treatment from Dr. Roderick Vaughan, who was not on the Employer's panel. On February 23, 2006, Dr. Vaughan, an orthopedic surgeon, performed anterior cruciate ligament reconstruction, partial medial and lateral meniscectomies and a chondroplasty on Employee's right knee. Dr. Vaughan's medical records indicate that he administered a steroid injection to Employee's right knee on June 19, 2006, and Visco supplement injections on July 24, 2006; July 31, 2006; and August 11, 2006. He informed Employee that this injection series could be repeated at six month intervals, and additional surgery was discussed as a "last resort."

In November of 2006, while under the care of Dr. Vaughan, Employee pursued a workers' compensation claim with respect to her fall and resulting injuries. The parties eventually settled this claim, as approved by order entered August 20, 2007, the pertinent language of which provides as follows:

> The Defendant employer and the Defendant insurer have agreed to pay any authorized, reasonable and necessary future medical expenses incurred by the employee caused by this injury in accord with the Workers' Compensation Law of the State of Tennessee for a period of life, pursuant to statute, from the date of this settlement, provided that the employer and/or insurer has granted permission for future medical treatment prior to said treatment being rendered, but they will not be liable for any unauthorized, unreasonable or unnecessary past, present, or future medical expenses caused by this injury.

The settlement agreement does not specify an authorized treating physician.

After the settlement was approved, Employee began experiencing additional problems with her right knee. On September 4, 2007, Employee wrote Employer a letter advising that Dr. Vaughan had been administering injections to her right knee "to postpone inevitable knee replacement surgery" and requesting that Employer approve Employee's return to Dr. Vaughan for "another round of injections." Employer refused to authorize Dr. Vaughan as Employee's treating physician and instead, presented Employee with the option of selecting her treating physician from a panel of physicians, consisting of Dr. James Renfro, Dr. Michael LaDouceur, and Drs. David Moore and Burton Elrod, who practice medicine in the same office.

When Employee selected Drs. Moore and Elrod, Dr. Elrod declined to accept her as a patient and Employer instructed Employee to select one of the two remaining physicians on the panel. On November 28, 2007, Employee selected Dr. James Renfro from the proffered list, and

on that same date, Employer sent Dr. Renfro a written, litigation-oriented memorandum, reciting the history of Employee's knee injury, attaching her medical records, and referencing Employee's workers' compensation claim. The memorandum states that "the physicians initially said that the injury on 9/19/05 was not related to the surgery,[1] but changed their minds and thus the employee received a settlement." The memorandum then states in bold type:

> The current appointment is requested to address causality of current pain related to the fall in the parking lot on 9/19/05 and if any current treatment is necessary related to the fall in the parking lot incident. Within the employee's request for continuing care, she has stated that her personal physician, Dr. Vaughn [sic], has told her that she will need a total knee replacement at some time in the future. The causal relationship needs to be established between a total knee replacement and the parking lot fall that did not even afford her medical treatment at the time and in the weeks thereafter.

On December 12, 2007, Dr. Renfro conducted an independent medical examination ("IME") on Employee which he advised her that he had been hired to conduct for "insurance purposes." Although Dr. Renfro conducted the IME, he did not provide Employee with any medical treatment. After conducting the IME, Dr. Renfro prepared a written report setting forth his findings and conclusions in compliance with Employee's request of November of 28, 2007. Seeking to answer the question of "what relationship of ongoing medical needs of the patient's knee are related to the fall in the parking lot on 09/15/05,"[2] he stated in the report that "[t]he injury as described on 09/15/05, i.e. stepping out of her car, twisting, and falling landing on both knees, and not requiring any medical treatment would to a significant degree of medical certainty not be responsible for the findings of the knee as noted in the surgery performed by Dr. Roderick Vaughan or as noted on the MRI scan." Dr. Renfro further concluded that Employee's knee problems predating her September 2005 fall "will be responsible for the ongoing needs of treatment," recommended "quadriceps strengthening," and referred Employee back to her treating physician, Dr. Vaughan. Based on this report, Employer refused to provide Employee further medical treatment related to her knee injury.

Dr. Vaughan continued to treat Employee after her meeting with Dr. Renfro and in March of 2008, Employee filed a "Petition to Compel Post-Judgment Medical Treatment and for Contempt." This petition requested that the trial court enter an "an Order compelling [Employer and its insurance company] to pay for all medical and medication costs incurred in connection with this worker's compensation injury, authoriz[ing] Dr. Roderick Vaughan as [Employee's] authorized treating physician, authoriz[ing Employee's] future medical treatment, [and] award[ing Employee] her attorneys' fees and costs associated with this action." Fourteen days later, on April 9, 2008, Employer presented Employee with a new panel of three physicians from which to choose; however, Employee rejected the panel and continued under the care of Dr. Vaughan.

---

[1] This appears to be a reference to the surgery performed by Dr. Vaughan on February 23, 2006.

[2] As stated elsewhere in this opinion, Employee's fall actually occurred on September 19, 2005.

In May of 2008, Dr. Vaughan administered an additional steroid injection to Employee's right leg after she complained of "pain when attempting to exercise," and on June 17, 2008, Dr. Vaughan wrote Employee's attorney, reciting as follows:

> [Employee] sustained an injury to her right knee in September 2005. It is probable that an injury sufficient to tear her ACL aggravated and/or contributed to degenerative change of her knee. Intraoperative findings confirmed chondromalacia of the knee. It is noted that [Employee] has a history of patellofemoral problems; however, she also sustained tearing of her meniscus, and chondromalacia of the weightbearing portion of the medial femoral condyle was also identified intraoperatively. [Employee's] chondral pathology is not sufficient to warrant joint arthroplasty at this time nor is she the optimal age for such a procedure. Of note, she has responded well to viscosupplementation in the past. She . . . describes the clinical benefit she received as "a miracle."

The letter recommends additional Visco supplement injections and concludes that Employee "is not an optimal candidate for major joint reconstruction at this time and viscosupplementation may continue to significantly improve the quality of life and her function."

Following a hearing on July 18, 2008, the trial court granted Employee's petition for medical treatment upon its determination that Employer failed to provide Employee with a panel of three physicians. Specifically, the trial court found that "although [Employer] did provide [Employee] with a panel of physicians to choose from neither of the two (2) physicians [Employee] selected provided her with any medical treatment. Because two (2) of the physicians chose not to treat [Employee], [Employee] was left with only one (1) other physician to choose for treatment. Thus, the employer *de facto* only offered one physician." The trial court also recognized that the panel did not include any physicians in Employee's county of residence. The trial court further found that Employee attempted to comply with her statutory obligations, and decreed that she was "justified in engaging a physician on her own initiative," that she could continue her treatments by Dr. Vaughan, and that Employer would be obligated for payment of her medical expenses. By subsequent order, the trial court awarded Employee attorney fees pursuant to Tennessee Code Annotated section 50-6-204(b)(2), which provides that "the court may award attorney fees and reasonable costs . . . when the employer fails to furnish appropriate medical . . . care provided for pursuant to a settlement or judgment under this chapter." However, the trial court determined that the award of attorney fees should be limited to the period before April 9, 2008, the date that Employer provided Employee with a new panel of physicians. Employer appeals.

Issues

We address two issues in this case:

1) Whether the trial court erred in authorizing Dr. Vaughan as Employee's treating physician and ordering Employer to pay for medical treatment of Employee's right knee injury.

2) Whether the trial court erred in limiting Employee's award of attorney fees to the time preceding April 9, 2008, the date Employer presented Employee with a new panel of physicians.

Standard of Review

Our standard of review of factual issues in a workers' compensation case is de novo upon the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When issues of credibility of witnesses and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the factual findings of the trial court. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 732 (Tenn. 2002); see Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

Employer contends that the trial court erred in ordering it to continue to pay for Employee's medical treatments by Dr. Vaughan because the order of settlement provided that Employer would only pay for the medical treatment incurred as a result of her fall on September 19, 2005. Employer asserts that Employee "suffered from multiple pre-existing right-knee problems," and that Dr. Renfro's opinion establishes that Employee's current medical needs do not stem from the injury she sustained in the September 2005 fall, which are, therefore, not encompassed by the parties' settlement agreement. Employer also asserts that Employee's testimony established that she suffered from multiple right knee problems that pre-dated that fall. Further, Employer maintains that in compliance with its statutory duties, it offered Employee a panel of three orthopedic physicians for her future medical treatment and that it had no control over either Dr. Elrod's decision not to accept her as a patient or Dr. Renfro's report and opinion regarding the cause of her need for ongoing treatment. Employer argues that, contrary to the settlement agreement, it is being required to pay for medical treatment of any right knee problem experienced by Employee, whether or not the problem was the result of her work-related injury in September of 2005.

Employer maintains that, even if it is responsible for Employee's current medical needs, she should be compelled "to choose a new authorized treating physician from the panel offered to her in April 2008." Alternatively, Employer argues that it should be allowed to offer Employee yet another panel of physicians from which to choose. And finally, Employer insists that "[u]nder no circumstance should [Employee] be permitted to treat with her own unilaterally-

chosen physician."

Employee argues that Employer's failure to offer Employee a viable panel of three physicians following her surgery and request for continued care is fatal to Employer's appeal. Employee contends that Employer should have replaced Drs. Elrod and Moore with another physician, rather than forcing Employee to choose between the remaining two physicians on the panel. In addition, she asserts that once she selected Dr. Renfro, Employer "tasked [him] with the dubious assignment to provide an opinion to defeat [her] request for medical treatment," and he failed to afford her treatment.

Under Tennessee Code Annotated section 50-6-204, an employer is obligated to furnish an employee medical treatment reasonably necessary to treat a work-related injury. Under subsection (a)(4)(A) of that statute, the injured employee has a duty to accept the medical benefits that the employer has furnished, but only if the employer has provided the employee with a list of three or more physicians "from which the employee shall have the privilege of selecting the operating surgeon and attending physician." Tenn. Code Ann. § 50-6-204(a)(4)(A) (2008).

With respect to the physician panel that Employer provided Employee in April 2008, Employee notes that under Goodman v. Oliver Springs Mining Co., Inc., once a worker has "justifiably engaged a doctor on his own initiative, a belated attempt by the employer to offer a doctor chosen by the employer will not cut off the right of the employee to continue with the employee's doctor." 595 S.W.2d 805, 808 (Tenn. 1980) (quoting Larson, the Law of Workmen's Compensation, s. 61.12, at 10-454 to 10-455).

We agree that Goodman controls in the present case. Dr. Vaughan was the treating physician at the time the settlement agreement was entered into and approved, and the agreement did not provide for a different authorized physician, or offer a panel of physicians from which an authorized doctor might have been be selected. Of the three physicians making up the panel subsequently offered by Employer, Drs. Elrod and Moore refused to see Employee. Furthermore, the language of the memorandum sent by Employer to Dr. Renfro is consistent with a request for an IME, rather than a request to provide medical treatment and, in accord with that request, Dr. Renfro provided an opinion as to causation, but no medical treatment. Effectively then, the panel Employer offered Employee consisted of only one physician, Dr. LaDouceur and, therefore, Employer did not comply with its obligation under the Workers' Compensation Law at Tennessee Code Annotated section 50-6-204(a)(4)(A). Under these circumstances, we conclude that Employee was justified in returning to Dr. Vaughan to seek additional treatment. Moreover, once Employer had placed Employee in the position of seeking medical treatment on her own, Employer's attempt to re-assume control was simply too late. We conclude that the evidence does not preponderate against the trial court's decision on this issue.

Attorney Fees

Employee argues that the trial court erred by limiting her award of attorney fees to those incurred as of April 9, 2008, the date upon which Employer offered her a new panel of

physicians. We hold that at that point, Employer had failed to comply with its statutory obligation to provide medical care for a period of six months and had lost its right to submit a new panel of physicians. Employee reasonably sought treatment from Dr. Vaughan, who had been her original treating physician, and had treated her to her satisfaction. However, without valid reason, Employer refused to authorize treatment by Dr. Vaughan, and only by resorting to litigation was Employee successful in obtaining such authorization. Thus, we conclude that Employee is entitled to recover all attorney fees and expenses incurred at trial and as a result of the present appeal pursuant to Tennessee Code Annotated section 50-6-204(b). See also Norfleet v. J.W. Goad Construction, Inc, No. M2001-00425-WC-R3-CV, 2001 WL 1538520, at *3 (Tenn. Workers' Comp. Panel December 3, 2001) ("Where an employer refuses to provide reasonably necessary medical benefits, it may be assessed attorney fees and reasonable costs necessary to enforce a court order requiring the payment of expenses incurred by the employee for the recovery of such expenses.").

Conclusion

For the reasons stated herein, the judgment of the trial court is affirmed in full except that the portion of the judgment awarding attorney fees is vacated, and the cause is remanded to the trial court for an award of attorney fees consistent with this opinion. Costs are taxed to Ford Motor Credit Company, Inc. and its surety, for which execution may issue if necessary.

_____

E. RILEY ANDERSON, SPECIAL JUSTICE

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

APRIL 27, 2009 SESSION

JUDY MINUTELLA v. FORD MOTOR CREDIT COMPANY

Chancery Court for Rutherford County

No. 06-1788WC

No. M2008-01920-WC-R3-WC - Filed -November 12, 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 will be paid by Ford Motor Credit Company, Inc. and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM