

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT JACKSON
(March 4, 1996 Session)

FILED

August 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

REBA JOYCE MOODY,)
STATUORY REPRESENTATIVE OF) SHELBY COUNTY
CIRCUIT COURT)
JAMES JUNIOR MOODY) NO. 54756 & 56062 T.D.
Plaintiff-Appellant,) Hon. Robert A. Lanier,
v.) NO. 02501-9509-CV-00080
PHELPS SECURITY, INC. and)
FIDELITY and CASUALTY CO.)
OF NEW YORK)
Defendants-Appellees,)

FOR APPELLANT:

FOR APPELLEE:

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MEMORANDUM OPINION

Members of Panel

Lyle Reid, Associate Justice, Supreme Court
F. Lloyd Tatum, Special Judge
Joe C. Loser, Jr., Special Judge

AFFIRMED

Tatum, Judge

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 hearing and reporting of findings of fact and conclusions of law .

Suit was filed in the Circuit Court at Memphis by Reba Joyce Moody as representative of the estate of her deceased husband, James Junior Moody, against Phelps Security, Inc., the employer, and Fidelity and Casualty Co. of New York, the employer's workers' compensation insurance carrier. The plaintiff sued for workers' compensation benefits as a result of an accidental injury that allegedly caused the death of James Junior Moody, including a portion of the medical expenses incurred. The defendants filed an answer admitting that James Junior Moody sustained accidental injuries growing out of and in the course of his employment, but they denied that these injuries resulted in the death of James Junior Moody. The answer also stated that the insurance carrier had paid that portion of the medical expenses which were related to the injuries sustained by James Junior Moody on or about November 7, 1992, the date of the accident.

The defendants filed a suggestion of death showing that Reba Joyce Moody, Administratrix, died on September 19, 1994. James Moody and Deborah Ann Wolfe were appointed as successor Co-Administrators of the estate.

The trial judge found in favor of the plaintiff and awarded weekly benefits from the date of the death of the deceased on January 13, 1993 to the widow's death on September 19, 1994. The total medical expenses owing was Two Hundred and Fifty-Seven Thousand, Three

Hundred and Thirty-Six Dollars and One Cent (\$257,336.01). The trial judge ordered that the defendant pay to the various medical providers the unpaid medical expenses less Fifty One Thousand, Four Hundred Sixty-Seven Dollars and Twenty cents (\$51,467.20) which amount was ordered to be paid to the plaintiff's attorneys for their fee in collecting the medical expenses. The attorneys' fee is twenty percent (20%) of the total medical expenses.

The only issue presented by the plaintiff on this appeal is:

The trial court was in error when it ordered that portion of the judgment representing medical expenses (after proper deduction for attorney fees and litigation expenses) be paid directly to the health care providers rather than to the estate of deceased employee despite the fact that said health care providers failed to file a claim in probate court against said estate.

The defendants present an additional issue:

If, as the plaintiff asserts, the respective health care providers are barred from receiving the hospital expenses for failure to file a claim in the estate of the deceased employee, should the defendants hold plaintiff harmless for such claims, rather than pay the reasonable value of the medical and hospital services to the plaintiff.

The plaintiff's issue is without merit and the judgment of the trial court is affirmed. The plaintiff and the defendants filed the following "Stipulation In Lieu of Transcript":

COME NOW the parties hereto, and in lieu of the transcript of proceedings at trial, would stipulate that the proof at trial was, in pertinent parts, as follows:

1. That the defendant, the Fidelity and Casualty Company of New York, acknowledged that certain medical and hospital expenses incurred by James Junior Moody in the amount of \$61,447.27 were made reasonably necessary by his on the job accident of November 7, 1992, and paid said expenses prior to suit.

2. That in addition thereto, the following medical and hospital expenses were incurred by James Junior Moody subsequent to November 7, 1992 but prior to his death on January 13, 1993:

Eastwood Hospital	
\$252,708.45	
Memphis Radiological Corporation	
94.00	
Duckworth Pathology	
1,525.00	
Dr. T. K. Creson, Jr.	
940.00	
Dr. James H. Shull	
446.56	
Dr. James E. McAfee	
<u>1,622.00</u>	
TOTAL	
<u>\$257,336.01</u>	

3. That defendants at the trial of this case denied that the medical expenses set out above in the total amount of \$257,336.01 were made reasonably necessary by the on the job accident of November 7, 1992 and these expenses were not paid by Defendants.

4. That James Junior Moody died at the Eastwood Hospital on January 13, 1993.

5. That the Estate of James Junior Moody was opened in the Probate Court of Shelby County, Tennessee on August 25, 1993 and that Reba Joyce Moody was duly appointed administratrix of this Estate.

6. That Notice to Creditors was properly published on August 31, 1993 and September 7, 1993, by the Clerk of the Probate Court of Shelby County.

7. That no claims against the Estate of James Junior Moody have been filed by any creditor, including those health care providers rendering medical or hospital services to James Junior Moody.

The parties further stipulate that the defendants have paid to plaintiff's attorneys the court approved attorney's fee in the sum of \$51,467.20, and pursuant to the Order of May 30, 1995, defendants are entitled to credit of \$51,467.20 against any amount to be paid by defendants for medical or hospital expenses incurred by James Junior Moody.

The plaintiffs argue that since the health care providers failed to file a claim in probate court within the time allowed after notice to

creditors was properly published pursuant to *T.C.A. § 30-2-310*, the claim of the health care providers would be defeated in probate court and the estate would be permitted to retain the amount paid to the estate by the defendants for medical expenses.

We find no merit in this appeal. Under *T.C.A. § 50-6-204 (a)(1)* it is provided that the employer "shall furnish free of charge to the employee" various items of medical expenses. It is not disputed that under the trial judge's judgment the medical care was furnished to the deceased employee "free of charge."

The workers' compensation act contemplates that health care providers look to the employer or the employer's insurance carrier for compensation. When the employer is liable under the workers' compensation act, medical providers are prohibited from pursuing a claim against a workers' compensation claimant. *T.C.A. § 50-6-122* provides:

... (b) A health care provider shall not pursue a private claim against a workers' compensation claimant for all or part of the costs of health care services provided to the claimant by the provider unless:

(1) The injury is finally adjudicated not to be compensable under this chapter;

(2) The physician or surgeon, as provided in § 50-6-204, who was not authorized by the employer at the time the services were rendered knew that such physician or surgeon was not an authorized physician or surgeon; or

(3) The employee knew that the physician or surgeon was not an authorized physician or surgeon; provided, that subdivisions (b)(2) and (3) do not apply to emergency care. [Acts 1992, ch.900, § 6.]

The workers' compensation act as a whole made provision for benefits to be received by injured employees. There was no intent on the part of the legislature that injured employees or the estate of an injured employee be enriched by the value of services rendered by

medical providers if the claims of medical providers are defeated. As stated, *T.C.A. § 50-6-122* prohibited the medical providers in this case from proceeding or pursuing a claim against the injured employee or his estate. The issue presented by the plaintiff is without merit and the judgment of the trial court is affirmed.

Costs are adjudged against the plaintiffs/appellants.

F. Lloyd Tatum, Special Judge

CONCUR:

Lyle Reid, Associate Justice

Joe C. Loser Jr., Special Judge