

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

FILED

December 16, 1997

**Cecil W. Crowson
Appellate Court Clerk**

JACKSON BRADLEY,)
Plaintiff/Appellee) No. 01S01-9701-CH-00016
) (No. 6447-93 below)
)
v.) LAWRENCE COUNTY CHANCERY
)
LORETTO CASKET COMPANY, INC.,) HON. JIM T. HAMILTON,
HARTFORD CASUALTY INSURANCE) CHANCELLOR
COMPANY and LIBERTY MUTUAL)
INSURANCE COMPANY)
Defendants/Appellants)
_____)

FOR THE APPELLANT:

BLAKELEY D. MATTHEWS
LEIGH A. BUCKLEY
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P.O. Box 190695
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FOR THE APPELLEE:

DAVID L. ALLEN
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MEMORANDUM OPINION

MEMBERS OF PANEL:

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
MICHAEL MALOAN, CHANCELLOR, SPECIAL JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

AFFIRMED

RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court pursuant to the provisions of Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case was compromised and settled by an agreed order entered on August 16, 1994. The settlement order contained, inter alia, this language:

Defendants further agree to leave the future medical benefits open for life, provided that the Plaintiff continues future medical treatment with Dr. George Lien. In the event Dr. Lien becomes unable or unavailable to continue future treatment of the Plaintiff, then, the Defendant, Hartford Casualty Insurance Company, will submit a list of three (3) physicians from which the Plaintiff may choose another attending physician.

On July 19, 1996, Jackson Bradley, the injured employee, filed a motion for medical treatment. He alleged that Dr. George Lien, whose treatment facility is located in Murfreesboro, Tennessee, is so far from Mr. Bradley's home in Lawrence County that the travel to receive treatment severely aggravates the back injury being treated; and that there are competent orthopaedic specialists in Lawrenceburg, Tennessee, and Florence, Alabama, capable of providing the needed treatment. The motion sought the Court's permission to change doctors. The defendants resisted the

motion. After a hearing at which the wife of the injured employee was the only witness, the trial court ordered the defendant to furnish the plaintiff a panel of three (3) doctors in the Loretta, Tennessee, area "to treat Plaintiff under the terms of the Settlement Agreement filed in this case". The defendants have appealed from this order.

Upon the hearing Mrs. Bradley testified that it was a two and a half hour drive each way to and from Dr. Lien's office, that since the settlement order was entered Mr. Bradley's back condition has worsened in that his pain is much greater and he is now suffering from depression; and that when the case was settled Mr. Bradley did not anticipate that his pain would increase to the extent that it has. Mrs. Bradley further testified that the doctor-patient relationship of Mr. Bradley and Dr. Lien has deteriorated, and that the doctor now shows less interest and concern.

The appellants contend that the trial court erred "in modifying the previously entered settlement agreement", and cites Tennessee Code Annotated Section 50-6-206 for the proposition that approved settlements can only be set aside within thirty days after entry. Appellants also cite authority for the proposition that both parties are bound and foreclosed by the entry of a valid decree approving a lump sum settlement. Appellants also contend that Tenn. R. Civ. Proc. 60.02 does not permit setting aside the judgement in this case.

We do not hold that the settlement judgment in this case has been set aside or modified by the trial court. The settlement

mandated that Dr. Lien provide the future treatment unless he became unable or unavailable to do so. The trial judge found that under the uncontroverted testimony Dr. Lien was unavailable to Mr. Bradley, and this triggered the necessity for the submission of a three-doctor panel as the agreement provided.

"Unavailable" is subject to interpretation. The meaning given to it in this case by the trial judge is presumed to be correct, unless the weight of the evidence is otherwise. Tennessee Code Annotated Section 50-6-225 (e)(2).

We affirm the judgment of the trial court. Costs on appeal are assessed to the appellants.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE,
SUPREME COURT

MICHAEL MALOAN, SPECIAL JUDGE

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[REDACTED],

Appellee,

v.

[REDACTED],)
[REDACTED])
[REDACTED], and)
[REDACTED])
[REDACTED]

Appellants.

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

This case is before the Court upon a motion to review pursuant to Iowa Code
[REDACTED], the entire record, including the order of removal to the Special
Master/Constitution Appeal Panel, and the Panel's December 4 opinion setting forth
its findings of fact and conclusions of law, which are incorporated herein by reference;

Moreover, it appears to the Court that the motion to review is not well-taken
and should be denied; 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 to be the judgment of the Court.

Court or appeal are assigned to the appellants.

[REDACTED] this 11th day of December, 1997.

[REDACTED]

With, [REDACTED] participating.