

IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED
January 26, 1998
Cecil W. Crowson
Appellate Court Clerk

GARY REATHERFORD,)	WAYNE CIRCUIT
)	
Plaintiff/Appellee,)	No. 01S01-9707-CV-00145
)	
v.)	HON. WILLIAM B. CAIN
)	JUDGE
LINCOLN BRASS WORKS, INC.,)	
)	
Defendant/Appellant)	

For the Appellant:

For the Appellee:

Mark C. Travis
Perimeter Place Business Park
524 Old Kentucky Road
P. O. Box 655
Cookeville, TN 38503

Jane M. Jennings
231 Mahr Avenue
P. O. Box 794
Lawrenceburg, TN 38464

MEMORANDUM OPINION

Members of Panel:

Justice Lyle Reid
Senior Judge William H. Inman
Special Judge Joe C. Loser, Jr.

AFFIRMED
and **REMANDED**

INMAN, Senior Judge

This workers' compensation appeal has been referred to the Special

Workers' Compensation Appeals Panel of the Supreme Court in accordance with T.C.A. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The Supreme Court on May 17, 1996 affirmed a judgment for the plaintiff entered on September 22, 1994 whereby he was awarded benefits for (1) the loss of an eye, (2) temporary, total disability, and (3) “all medical expenses.”

Benefits for the loss of an eye were calculated to be \$16,524.00, which was paid.

Benefits for temporary, total disability were \$6,616.80, which was paid.

Medical treatment was provided by the Veterans' Administration, whose charges, proved at the trial, were \$11,438.00.

On August 1, 1996, the plaintiff filed a petition for the Writ of Mandamus seeking the judicial coercion of the defendant to pay (1) interest on the benefits for permanent, total disability; (2) interest on the temporary, total benefits, and (3) payment of the medical expenses with accrued interest.

The defendant filed a “Response to Petition for Writ of Mandamus,” alleging that the interest “has now been paid.”

With respect to the medical expenses, the defendant responded that on December 15, 1993, *before the case was tried*, it received a letter from the VA enclosing a statement for medical services provided to the plaintiff in the amount of \$11,438.00. Payment was requested by draft payable to the VA. After the case was concluded, the VA agreed to accept \$7,625.00 in settlement of its claim for medical expenses.

The trial court ruled that “the VA had a valid subrogation interest in the amount of \$11,438.00 for medical benefits provided to the plaintiff and that the

attorney for the plaintiff should be allowed to receive 20 percent of said medical benefits as a fee for representing the interests of the VA in this cause,” and that “the VA has compromised its subrogation interest to \$7,625.00 which has been paid in full.”

Payment of interest was recognized and the attorney for the plaintiff was awarded \$2,287.60 as a fee for representing the VA in this cause, “with such payment to be made by the defendants.”

The defendant appeals, questioning the propriety of the award of attorney fees.

At the outset, we are constrained to observe that the Writ of Mandamus is not an appropriate remedy or pleading in this case. This Writ, authorized by T.C.A. § 29-25-101, *et seq.*, to which we make reference, is used to coerce the performance of official duties, but, even so, it issues only when there is no other specific remedy to enforce the right. It cannot be used to enforce the payment of a judgment rendered against a private litigant. *Hayes v. Civil Service Comm.*, 907 S.W.2d 826 (Tenn. App. 1995); *State ex rel Harned v. Meador*, 153 Tenn. 634, 284 S.W. 890 (1926); *Mobile & Ohio R. R. v. Wisdom*, 52 Tenn. 125 (1871).

The defendant made no objection to the procedure employed. The trial court apparently treated the petition as a RULE 59 MOTION and in the interest of judicial economy, so will this Court.

The VA did not intervene in this action, but contented itself to send a letter to the defendant advising that it expected payment for the medical services provided to the plaintiff.¹ It later reduced its charges to \$7,625.00, as we have seen. Appropo of this, it should be noticed that the initial judgment

¹The VA provided “all medical services” to the plaintiff.

directed the defendant to pay “all medical expenses,” as contrasted to specific amounts to named providers.

Contested medical expenses are a part of the recovery or award specified in the Workers’ Compensation Law on which attorney fees may be assessed. T.C.A. § 50-6-226(a); *Langford v. Liberty Mutual Ins. Co.*, 854 S.W.2d 100 (Tenn. 1993).

The appellee points out that the amount paid by the VA is one-third less than the amount of its proved charges, and that the VA agreed to accept the reduced, or discounted, amount after judgment was affirmed by the Supreme Court, making the perfectly rational observation that payment of the full (and uncontested) amount was certain. We know of no authority, and none has been cited to us, for the proposition that under the circumstances of this case the defendant should be allowed to defeat the attorney fee in the manner fashioned.

Finally, we note that the appellant provided us with a transcript of the original trial as contrasted with a transcript of the proceedings held pursuant to the petition for the Writ of Mandamus. The former is irrelevant, the latter a necessity, without which we must assume the evidence supports the action taken. Our review of the findings of fact made by the trial court is *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. T.C.A. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995).

The judgment is affirmed, and the case is remanded for the assessment of damages pursuant to T.C.A. § 27-1-122 and T.C.A. § 50-6-225(I), as upon a frivolous appeal. *Lovelace v. Owens-Illinois, Inc.*, 632 S.W.2d 553 (Tenn. 1982).

Costs are assessed to the appellant.

William H. Inman, Senior Judge

CONCUR:

Joe C. Loser, Jr., Special Judge

Lyle Reid, Justice

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GARY REATHERFORD,

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WAYNE CIRCUIT

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No. 3901-B-207 Below

Plaintiff/Appellee

}

Hon. William B. Cain,

vs.

}

Judge

}

LINCOLN BRASS WORKS, INC.,

}

No. 01S01-9707-CV-00145

}

Defendant/Appellant

}

AFFIRMED AND REMANDED.

JUDGMENT ORDER

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 appears 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 Defendant/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on January 26, 1998.

PER CURIAM