

IN THE SUPREME COURT OF TENNESSEE
WORKERS' COMPENSATION APPEALS PANEL
KNOXVILLE, MARCH 1998 SESSION

FILED

June 9, 1998

CLAYTON HOMES, INC.)
)
Plaintiff/Appellee)
)
V.)
)
ALBERT D. BOWLING)
)
Defendant/Appellant)

BLOUNT CHANCERY
Cecil Crowson, Jr.
Appellate Court Clerk

Hon. Chester S. Rainwater, Jr.
Chancellor

NO. 03S01-9708-CH-00120

For the Appellant:

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For the Appellee:

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& Catron, P.C.
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MEMORANDUM OPINION

Members of Panel:

Adolpho A. Birch, Jr., Justice
William H. Inman, Senior Judge
Roger E. Thayer, Special 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 to the Supreme Court of findings of fact and conclusions of law.

The appeal has resulted from a ruling of the trial court that the employee's attorney was not entitled to an award of attorney's fees from medical expenses recovered in the case.

At the trial below, the claim for compensation benefits was contested on all issues except for a stipulation regarding the employee's compensation rate and an agreement that the sum of \$582.25 had been paid in temporary total disability benefits. The employer denied the herniated cervical discs were caused by the employee's work activities and contended if there were an injury, it was of a minor nature. After a contested hearing, the trial court found against the employer, Clayton Homes, Inc., on these issues.

The Chancellor announced his decision on March 11, 1997 at a hearing where he made detailed findings of fact and conclusions of law. On April 8, 1997, the employee filed a motion to be awarded discretionary costs and a separate motion seeking a 20% award of attorney's fees on the amount of medical expenses allowed in the case.

A final judgment was entered on May 13, 1997, which provided for (1) an award of 15% permanent partial disability to the body as a whole, (2) an award of \$6,707.60 for additional temporary total disability benefits, (3) directing all accrued permanent partial benefits in the sum of \$17,200.80 be paid in a lump sum, and (4) directing the employee to pay all necessary and reasonable medical expenses.

In connection with the payment of medical expenses, the judgment stated: "That this sum shall be paid in the registry of the Court and after it has been determined as to the amount, that the attorney for the defendant is awarded a lien of the recovery herein for his attorney's fees of 20% for the recovery of this disputed medical."

On May 15, 1997, the employee filed a motion to alter or amend the judgment seeking an increase in the award of 15% permanent disability. The employer filed a response to the motion and the motion for discretionary costs.

The record indicates a hearing was conducted on June 18, 1997, when the trial court overruled the motion to increase the award of permanent disability and also overruled the motion to allow a reasonable attorney's fee for collecting the disputed medical expenses which totaled \$19,784.05. The court granted the motion to recover discretionary costs. This appeal was perfected from this order and the appeal only pertains to the ruling on attorney's fees.

The record is silent as to why the trial court denied an allowance of attorney's fees as there was no transcript of the hearing and the order entered on July 18, 1997, does not give any reason for the denial.

On appeal the employee's attorney is insisting the Supreme Court has held that contested medical expenses are part of the recovery of the award of benefits and it is proper to allow attorney's fees on this part of the recovery citing the recent cases of *Langford v. Liberty Mut. Ins. Co.*, 854 S.W.2d 100 (Tenn. 1993) and *Wilkes v. Resource Auth. of Sumner Cty.*, 932 S.W.2d 458 (Tenn. 1996).

The employer argues the issue does not affect it and that the employer has complied with the order of the trial court leaving only a distribution of the money question.

In the *Langford* case, *supra*, the employer denied liability contending the injury did not arise out of the employment and that it occurred as a result of intentional horseplay. Upon finding against the employer on this issue, the trial court enumerated the medical expenses that would have to be paid by the employer to the employee who in turn was responsible for payments to all medical care providers. The trial court was of the opinion the law did not subject the medical expenses to attorney's fees and the Supreme Court reversed noting that most state courts have determined attorney's fees may be assessed on medical expenses recovered as part of a contested judgment. The opinion cites numerous authorities on this issue.

In the present case, it would appear the judgment entered by the trial court on May 13, 1997, granted the relief for attorney's fees as requested by the motion filed on April 8, 1997. However, it may be the parties and the trial court treated the

motion as not being ruled upon after entry of the judgment. On the other hand, it may be the trial court was aware the question had been resolved by entry of the final judgment but was merely attempting to change the ruling. If this be true, some question may arise as to whether the court could alter the ruling as the post trial motions did not raise the question as to attorney's fees and thirty days had expired from entry of the judgment to the June 18th hearing.

Our review of the case is de novo accompanied by a presumption of the correctness of the findings of fact unless the preponderance of the evidence is otherwise. T.C.A. § 50-6-225(e)(2). However, the presumption does not attach in a case where there is no dispute of the facts but only a question of law is presented. *Prost v. City of Clarksville*, 688 S.W.2d 425 (Tenn. 1985).

We resolve the issue by holding the disputed medical expenses of \$19,784.05 which is currently in the registry of the trial court, is subject to attorney's fees on behalf of the employee's attorney and that under the record and circumstances of the case, the maximum fee of 20% of the expenses is appropriate.

Therefore, the judgment of the trial court is reversed and the case is remanded for further proceedings as may be necessary. Costs of the appeal are taxed equally to the parties.

Roger E. Thayer, Special Judge

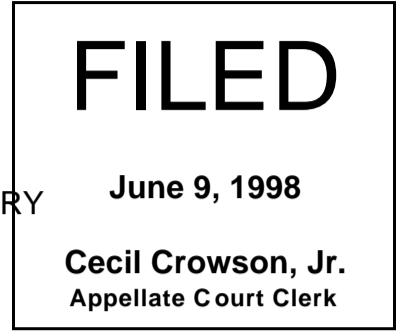
CONCUR:

Adolpho A. Birch, Jr., Justice

William H. Inman, Senior Judge

IN THE SUPREME COURT OF TENNESSEE

AT KNOXVILLE



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|----------------------|---|-------------------------------|
| CLAYTON HOMES, INC., |) | BLOUNT CHANCERY |
| |) | |
| Plaintiff/Appellee, |) | No. 95-095 |
| |) | |
| vs. |) | |
| |) | Hon Chester S. Rainwater, Jr. |
| |) | Chancellor |
| ALBERT D. BOWLING |) | |
| |) | No. 03S01-9708-CH-00120 |
| Defendant/Appellant |) | |
| |) | |

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation 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 on appeal are taxed to equally to the parties, Clayton Homes, Inc.

And Albert D. Bowling and surety, Norbert J. Slovis, for which execution may issue if necessary.

06/09/98

This case is before the Court upon motion for review pursuant to Tenn. Code Ann .§ 50-6-225 (e) (5) (B), 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 motion for 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 made the judgment of the Court.

Costs will be paid by the plaintiff-appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED this ____ day of June, 1997.

PER CURIAM

Anderson, J. - Not Participating

al to the Special Worker' Compensation 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 act and conclusions of law are adopted and affirmed, and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed to the plaintiff-appellant, Vernon Harris and Gilbert and Faulkner. surety, for which execution may issue if necessary.

06/03/97