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

FILED

October 26, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

NORMA J. BAKER, Plaintiff/Appellee v. SALLY BEAUTY SUPPLY and THE TRAVELERS INSURANCE COMPANY, Defendants/Appellants	)	MADISON CHANCERY NO. 02S01-9709-CH-00078 HON. JOE C. MORRIS, CHANCELLOR

For the Appellants:

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M E M O R A N D U M O P I N I O N

Members of Panel:

Senior Judge John K. Byers
Special Judge F. Lloyd Tatum
Special Judge Paul R. Summers

AFFIRMED

BYERS, Senior Judge

OPINION

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 trial judge found the plaintiff had suffered a 55 percent vocational impairment to her left leg and also awarded medical expenses in the amount of $1,112.00, which the defendant says were unauthorized.

The defendant raises the following issues:

I. Whether the evidence presented at trial preponderates against the trial court's award of 55% permanent partial disability to plaintiff's left lower extremity as a result of plaintiff's work related accident?

II. Whether the medical expenses incurred by the plaintiff were reasonable, necessary and causally related to an injury arising out of the course and scope of employment?

We affirm the judgment of the trial court.

The plaintiff was injured on December 14, 1994 when a car backed into her and penned her legs between the bumpers of two cars. The plaintiff was performing duties in the course of her work for the defendant when this occurred. The plaintiff had significant injuries to her left leg.

As near as we can tell from this record, the plaintiff was absent from work for a week. When she wished to return to work, the employer told her she would have to have a release from a physician to return. The employer had not then, nor so far as this record shows never, furnished the plaintiff with a panel of doctors for examination or treatment.

The plaintiff was 53 years of age at the time of trial, has a high school education, and has nine months of beauty training. She testified that she continued to work for the defendant for one and a half years after her injury but had difficulty in doing the work because she could not stand for long periods of time and had trouble stooping and bending.

We are of the opinion that the resolution of this case turns upon whether the medical evidence offered by the defendant was admissible.

The defendant offered as medical proof a memorandum report by James G. Warmbrod, an orthopedic surgeon, as well as various reports from physical

therapists associated therewith. The defendant offered these reports under Rule 803(6), Tenn. R. Evid., as a business record. The trial judge held they were admissible.[1]

Tenn. Code Ann. § 50-6-235(2)(c)(2), which was amended under the Act of 1966 ch. 944 entitled "Workers' Compensation Reform Act of 1966," provides:

> The written medical report of a treating or examining physician shall be admissible at any stage of a workers' compensation claim in lieu of a deposition upon oral examination, if notice of intent to use the sworn statement is provided to the opposing party or counsel not less than twenty (20) days before the date of intended use. If no objection is filed within ten (10) days of the receipt of such notice, the sworn statement shall be admissible as herein described. In the event that a party does object, then the objecting party shall depose the physician within a reasonable period of time or the objection shall be deemed to be waived.

The defendant did not give notice under Tenn. Code Ann. § 50-6-235(2)(c)(2) of its intent to introduce the medical records which were offered. The plaintiff had no opportunity to object to this and take the deposition of Dr. Warmbrod, as provided by the statute. It seems the legislature fashioned this procedure to reduce the cost of presenting evidence in workers' compensation cases but intended to preserve the right of the adverse party to examine the witness concerning the medical report.

We think in workers' compensation cases that Rule 803(6), Tenn. R. Evid., is not available for introduction of medical records touching upon the injury. Rule 803(6), Tenn. R. Evid., is general in nature and Tenn. Code Ann. § 50-6-235(2)(c)(2) is specifically devoted to the admission of medical evidence in workers' compensation cases. Where there is a conflict between a specific statute and a general statute, the specific statute will be given effect. *Walker v. First State Bank,* 849 S.W.2d 337 (Tenn. App. 1992). Following this rule, we find the evidence offered by the defendant was inadmissible and of no effect in determining the issue in this case.

The only medical evidence properly entered in this case is that of Dr. Robert J. Barnett, an orthopedic surgeon whose records were introduced in accordance with Tenn. Code Ann. § 50-6-235(2)(c)(2). Dr. Barnett's report reflects that the injury arose out of the plaintiff's employment and that she has suffered a 10 percent permanent impairment to the left leg due to "crepitation which is an early form of

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[1] We note that there is considerable confusion in the preparation of these records which could well keep them from reaching the level of admissibility under Rule 803(6), Tenn. R. Evid. However, we need not examine that in this case.

arthritis." Dr. Barnett found the plaintiff should not climb, stoop, kneel, crouch, crawl, etc.

This medical evidence, along with the testimony of the plaintiff concerning her inability to work, is sufficient to support the judgment of the trial court.

The defendant complains that the trial judge should not have awarded the plaintiff medical expenses charged by Dr. Glenn Barnett, an orthopedic surgeon who saw the plaintiff on a referral from Dr. Mandle's office, because the defendant did not authorize the treatment and because the plaintiff did not show the charges were reasonable.

We think the defendant may not prevail on its claim that the medical care was not authorized. Under Tenn. Code Ann. § 50-6-204, the employer must furnish the plaintiff with at least three physicians for care. If the employer does not do so, the plaintiff may seek medical care and the employer shall be liable for the reasonable cost of the care. *See Simpson v. Frontier Community Credit Union,* 810 S.W.2d 147 (Tenn. 1991); *U.S. Fidelity and Guar. Co. v. Morgan,* 795 S.W.2d 653 (Tenn. 1990).

The defendant may have a more viable argument concerning the necessity of the treatment by Dr. Glenn Barnett but for the fact that the defendant did not furnish the plaintiff with a list of physicians. In fact, the defendant accepted the statement of the plaintiff's physician, Dr. Mandle, in determining the condition of the plaintiff vis-a-vis her medical condition and return to work. Because the plaintiff continued to have problems with her injury, Dr. Mandle referred her to Dr. Glenn Barnett for treatment. The plaintiff testified concerning the treatment by Dr. Glenn Barnett, and the trial judge accepted the bill as reasonable.

If the defendant had furnished the plaintiff with the names of three physicians and she had chosen one of these three and the physicians chosen had referred the plaintiff to Dr. Glenn Barnett, then the burden of proving the medical bill was unreasonable would be upon the defendant. *Russell v. Genesco, Inc.,* 651 S.W.2d 206 (Tenn. 1983).

We believe in this case that both the failure of the defendant to furnish medical care or a list of physicians and the defendant's acceptance of Dr. Mandle's medical report on the plaintiff's return to work bring the medical bill in dispute within

the meaning of *Russell* and place the burden on the defendant to disprove the reasonableness of the bill.

The defendant seeks to use the report of Dr. Glenn Barnett to attack the reasonableness of the bill. This was introduced under the business records rule of Rule 803(6), Tenn. R. Evid., and not under the provisions of Tenn. Code Ann. § 50-6-235(2)(c)(2). For the reasons previously stated, we find this evidence was not admissible and cannot be considered on this issue. We find no error in the award of this medical expense.

The judgment of the trial court is affirmed and the cost of this appeal is taxed to the defendant.

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John K. Byers, Senior Judge

CONCUR:

_____
F. Lloyd Tatum, Special Judge

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Paul R. Summers, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

NORMA J. BAKER,	)	MADISON CHANCERY
	)	NO. 52005
Plaintiff/Appellee,	)	
	)	Hon. Joe C. Morris,
vs.	)	Chancellor
	)	
SALLY BEAUTY SUPPLY and THE TRAVELERS INSURANCE COMPANY,	)	NO. 02S01-9709-CH-00078
	)	
	)	
	)	
Defendants/Appellants.	)	AFFIRMED.

FILED

October 26, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

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 Appellants and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 26th day of October, 1998.

PER CURIAM