

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

October 27, 2014 Session

DANNY DEW v. REES-MEMPHIS, INC. ET AL.

Appeal from the Chancery Court for Dyer County
No. 13CV102 Tony A. Childress, Chancellor

No. W2013-02528-SC-WCM-WC – Mailed January 23, 2015; Filed April 13, 2015

An employee filed this action, seeking to compel his former employer to pay for a surgical procedure pursuant to the medical provision of a settlement approved by the Department of Labor and Workforce Development. The trial court granted the employer's motion to dismiss on the ground that the action was barred by the one-year statute of limitations contained in Tennessee Code Annotated § 50-6-224(a)(3). The employee has appealed, arguing that § 50-6-224 does not apply to actions for post-judgment medical treatment. The employer seeks an award of attorney's fees pursuant to Tennessee Code Annotated § 20-12-119. The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law in accordance with Tennessee Supreme Court Rule 51. We affirm the judgment.

Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right; Judgment of the Chancery Court Affirmed

DONALD E. PARISH, Sp. J., delivered the opinion of the Court, in which HOLLY M. KIRBY, J. and BRANDON O. GIBSON, Sp. J., joined.

C. Wesley Fowler and William B. Ryan, Memphis, Tennessee, for the appellant, Danny Dew.

Hope B. Calabro and Robin H. Rasmussen, Memphis, Tennessee, for the appellee, Rees-Memphis, Inc.

OPINION
Factual and Procedural Background

Danny Dew (“Employee”) filed this civil action against his former employer, Rees-Memphis, Inc. (“Employer”) in the Chancery Court for Dyer County. In its order, the trial court gave the following factual summary, which has been adopted by both parties:

On December 29, 2004, [Employee] injured his right shoulder while in the course and scope of his employment. On July 24, 2007, [Employee] settled his workers’ compensation case “for 18% permanent partial disability to the body as a whole with open future medical expense for relief pursuant to Tenn. Code. Ann. § 50-6-204.” On June 5, 2008, [Employee] “decided to proceed with the surgery [on his right shoulder] based on the advice of his [treating] physician.” [Employee’s] decision to proceed with the surgery was apparently relayed to [Employer], because on June 27, 2008, [Employer] denied this request. [Employer’s] denial was in writing. [Employee] filed this complaint on March 20, 2013. In this complaint [Employee] requests that [Employer] be required to provide him with the surgery he requested be provided on June 5, 2008. [Employee] did attempt to pursue relief through the benefit review process.¹

Employer filed a motion to dismiss and answer on May 1, 2013. The motion states that it is based on Tennessee Code Annotated § 20-12-119, and the answer asserts that the action is barred by the “applicable statute of limitations.” It also asserts that the complaint fails to state a claim for which relief can be granted, referring to Tennessee Rule of Civil Procedure 12. After additional filings by both parties, the trial court issued a written order of dismissal on October 31, 2013. In that order, the trial court held that the one-year limitation period contained in Tennessee Code Annotated § 50-6-224(a)(3) applied to this case. It found that the limitation period began to run on July 27, 2008, (thirty days after Employer’s letter of denial) and expired on July 27, 2009. As the

¹Various documents filed by the parties in support of and opposition to Employer’s motion to dismiss reflect that Employee filed a Request for Assistance with the Department of Labor and Workforce Development and that the Department ultimately denied the Request by an *Order Reversing A Workers Compensation Specialists Order* entered on July 8, 2011. Because the date of injury was prior to January 1, 2005, the benefit review process was not mandatory. Tenn. Code Ann. § 50-6-203(a); Lynch v. City of Jellico, 205 S.W.3d 384 (Tenn. 2006).

complaint had been filed in March 2013, the trial court granted Employer's motion to dismiss. In doing so, the trial court stated:

"T.C.A § 20-12-119 does not contain a statute of limitation, and the Court is not dismissing this case pursuant to that statute. Instead, this case is being dismissed pursuant to Rule 12.02(6) of the Tennessee Rules of Civil Procedure."

Employee appeals the trial court's ruling. He contends that § 50-6-224(a)(3) does not apply to his claim because he is not seeking "compensation" as the term is used in that statute. Employer contends that the trial court erred by failing to award it attorney's fees pursuant to § 20-12-119.

Standard of Review

Our Supreme Court set out the standard for reviewing a trial court's grant of a motion to dismiss under Tennessee Rule of Civil Procedure 12.02(6) in Trau-Med of Am., Inc. v. Allstate Ins. Co., 71 S.W.3d 691, 696-97 (Tenn. 2002):

A Rule 12.02(6) motion to dismiss only seeks to determine whether the pleadings state a claim upon which relief can be granted. Such a motion challenges the legal sufficiency of the complaint, not the strength of the plaintiff's proof, and, therefore, matters outside the pleadings should not be considered in deciding whether to grant the motion. See Bell ex rel. Snyder v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., 986 S.W.2d 550, 554 (Tenn. 1999). In reviewing a motion to dismiss, the appellate court must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences. See Pursell v. First Am. Nat'l Bank, 937 S.W.2d 838, 840 (Tenn. 1996). It is well-settled that a complaint should not be dismissed for failure to state a claim unless it appears that the plaintiff can prove no set of facts in support of his or her claim that would warrant relief. See Doe v. Sundquist, 2 S.W.3d 919, 922 (Tenn. 1999); Fuerst v. Methodist Hosp. S., 566 S.W.2d 847, 848 (Tenn. 1978). Great specificity in the pleadings is ordinarily not required to survive a motion to dismiss; it is enough that the complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." White v. Revco Disc. Drug Ctrs., Inc., 33 S.W.3d 713, 718 (Tenn.2000) (citing Tenn. R. Civ. P. 8.01). We review the trial court's legal conclusions *de novo* without giving any presumption of

correctness to those conclusions.

71 S.W.3d at 696.

Analysis

Tennessee Code Annotated § 50-6-224 reads, in pertinent part:

(a) The time within which the following acts shall be performed under this chapter shall be limited to the following periods, respectively:

....

(3) Proceedings to obtain judgment in case of default of employer for thirty (30) days to pay any compensation due under any settlement or determination: one (1) year after the default[.]

....

(b) This section applies only to injuries that arise on or before December 31, 2004, and shall have no applicability to injuries that arise on or after January 1, 2005.

Tennessee Code Annotated § 50-6-224 (2014).

For purposes of this appeal, it is undisputed that Employee was injured on December 29, 2004, that his claim for workers' compensation benefits was settled on July 24, 2007, that he subsequently requested approval for a surgical procedure under the medical provision of the settlement agreement, that Employer denied that request in writing on June 27, 2008, and that Employee filed this civil action seeking to compel Employer to approve the same procedure on March 20, 2013. Thus, Employee's injury occurred prior to January 1, 2005, and his suit was filed more than one year after Employer's denial. If § 50-6-224(a)(3) applies to Employee's claim, then it is barred by the one-year limitation period. See § 50-6-224(a)(3). However, Employee contends that § 50-6-224(a)(3) does not apply because the term "compensation," as used in that section, does not include medical benefits. See id.

"Compensation" is not defined in the workers' compensation statute. Employee points to several sections of the law where the term is used to describe either permanent or temporary disability benefits, or both. See Tenn. Code Ann. §§ 50-6-205, 206, 207, 209. (2014). He also notes that the term does not appear in § 50-6-204, which addresses medical benefits. See Tenn. Code Ann. § 50-6-204 (2014). From those examples, he argues that "compensation," as used in the workers' compensation law, "means 'money' and not medical services, care or benefits."

The trial court rejected this reasoning, stating:

For example, Tennessee Code Annotated § 50-6-205(a) provides in part that “[n]o **compensation** shall be allowed for the first seven (7) days of disability resulting from the injury, excluding the day of injury, **except the benefits provided for in § 50-6-204**” Tenn. Code. Ann. § 50-6-205(a) (emphasis added in the original). Tennessee Code Annotated § 50-6-204 is the portion of the workers’ compensation act that provides for the medical benefits employers are to provide to injured workers, and incidently [sic] it is also the statute through which the Plaintiff is asserting his claim. There would be no need for Tennessee Code Annotated § 50-6-205(a) to make an exception for the medical benefits provided for in § 50-6-204 if the word compensation, as it is used in that particular statute, did not include medical benefits.

Further, our Supreme Court has held on several occasions that “compensation,” as used in Tennessee Code Annotated § 50-6-203 (1999)² “may consist of the furnishing of medical services through physicians or others[.]” Norton Co. v. Coffin, 553 S.W.2d 751, 752-53 (Tenn. 1977); see also, Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 647 (Tenn. 2008); Fields v. Lowe Furniture Corp., 415 S.W.2d 340, 341 (Tenn. 1967). And, in Harville v. Emerson Elec. Co., No. W2010-01011-WC-R3-WC, 2011 Tenn. LEXIS 610 (Tenn. Workers’ Comp. Panel July 6, 2011), this Panel held that an action to compel medical treatment was timely under § 50-6-203(i) when brought within one year and thirty days of the employer’s written decision to deny benefits. Taking these decisions into consideration, we conclude that the trial court correctly held that the Employee’s action, brought almost five years after Employer’s written decision to deny benefits, was barred by the statute of limitations.

The employee urges this Panel to find that the limitations period was equitably tolled during the time that the claim was being administratively pursued. Even if we did so, it appears that a final administrative decision was issued on July 8, 2011. The employee did not file this action until about twenty one months later. The brief of the employee also claims that the employee filed a petition for judicial review of the

²Section 50-6-203(i), as Employee notes in his brief, is substantially similar to § 50-6-224(a)(3). Employee asserts that only the latter statute is applicable to his claim. The trial court referred to § 50-6-203(i) in its decision but did not explicitly address its applicability in this case. In light of our conclusion that the claim is barred by § 50-6-224(a)(3), we find it unnecessary to address the question.

administrative decision on September 6, 2011, in the Chancery Court of Davidson County which was dismissed on December 3, 2012. However, the record does not contain any information regarding this earlier suit nor does it appear that the trial court below was asked to address this issue. We decline to do so now.

Employer contends that the trial court erred by declining to award attorney's fees to it pursuant to Tennessee Code Annotated § 20-12-119(c)(1) (2013). See Tenn. Code Ann. § 20-12-119 (2014). That statute, which became effective on July 1, 2012, provides:

Notwithstanding subsection (a) or (b), in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

§ 20-12-119(c)(3)

We note that § 20-12-119(c)(3) sets out the timing for an award of fees and costs pursuant to § -119(c)(1):

An award of costs pursuant to this subsection (c) shall be made only after all appeals of the issue of the granting of the motion to dismiss have been exhausted and if the final outcome is the granting of the motion to dismiss. The award of costs and attorneys' fees pursuant to this section shall be stayed until a final decision which is not subject to appeal is rendered.

§ 20-12-119(c)(3).

Based on this language, we conclude that this issue must be presented to the trial court only after all appeals in this matter have been exhausted. As the trial court has not

addressed the issue at this time, nor could it have done so, the issue is not properly before this Panel.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Danny Dew and his surety, for which execution may be issued if necessary.

Donald E. Parish, Special Judge

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

DANNY DEW v. REES-MEMPHIS, INC. ET AL

**Chancery Court for Dyer County
No. 13CV102**

No. W2013-02528-SC-WCM-WC – Filed April 13, 2015

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Danny Dew, 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Danny Dew, and his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM