IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
November 28, 2016 Session

# PAULA DUGGER v. HOME HEALTH CARE OF MIDDLE TENNESSEE, ET AL.

**Appeal from the Court of Workers' Compensation Claims**
**No. 2015-05-0341 Dale Tipps, Judge**

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**No. M2016-01284-SC-R3-WC – Mailed January 31, 2017**
**April 13, 2017**

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Paula Dugger ("Employee"), a home health nurse, was injured in a motor vehicle accident while returning to her home from an attempt to travel to a patient's residence. Home Health Care of Middle Tennessee ("Employer") denied her claim, contending that the injury did not occur in the course of her employment. Employee sought temporary benefits from the Court of Workers' Compensation Claims ("trial court"). The trial court denied her petition, and that denial was affirmed by the Workers' Compensation Appeals Board. Upon remand to the trial court, Employer filed a motion for summary judgment on the issue of compensability. The motion was supported by a set of agreed facts submitted by the parties. The trial court granted Employer's motion and entered an order dismissing Employee's claim. Employee appealed directly to the Supreme Court, as permitted by Tennessee Code Annotated sections 50-6-225(a)(1) (2014) and 50-6-239(c)(7) (2014). 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 pursuant to Tennessee Supreme Court Rule 51. We reverse and remand.

**Tenn. Code Ann. § 50-6-225(a)(1) (2014) Appeal as of Right;**
**Judgment of the Court of Workers' Compensation Claims Reversed**

ROBERT E. LEE DAVIES, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., and RICHARD DINKINS, SP. J., joined.

Richard T. Matthews, Columbia, Tennessee, for the appellant, Paula Dugger.

Gordon C. Aulgur, Lansing, Michigan, for the appellees, Home Health Care of Middle Tennessee, LLC, United Heartland, and Accident Fund Insurance Company of America.

## OPINION

### Procedural Background

Ms. Dugger filed a petition for benefit determination on September 2, 2015, seeking medical and temporary disability benefits. After mediation was unsuccessful, Ms. Dugger filed a request for an expedited hearing, and the trial court conducted a hearing on January 19, 2016. On January 29, 2016, the trial court issued an order denying the requested benefits. It determined Ms. Dugger was not injured in the course of her employment because the automobile accident in which she was injured occurred while she was returning to her home after attempting to travel to a patient's home.

Ms. Dugger filed an appeal of the trial court's Order on February 8, 2016, and the Workers' Compensation Appeals Board ("Board") issued its decision on March 16, 2016. The Board affirmed the trial court's finding that Ms. Dugger was not injured in the course and scope of her employment because she was not a traveling employee and her accident did not fall within any exception to the "coming and going" rule. Howard v. Cornerstone Med. Assoc., P.C., 54 S.W.3d 238, 240-41 (Tenn. 2001). The Board remanded Ms. Dugger's case to the trial court for any further proceedings.

Home Health Care of Middle Tennessee ("HHC") then moved for summary judgment. The trial court considered the transcript of the proceedings from the interlocutory hearing on January 19, 2016; the affidavit of Paula Dugger dated September 22, 2015; the second affidavit of Paula Dugger dated December 3, 2015; the HHC employee handbook; the visiting nurse job description; written stipulations submitted to the trial court at the interlocutory hearing; employment applications; Ms. Dugger's personnel file; terms and conditions of employment; comprehensive agreement; performance appraisals; and a joint statement of facts. On June 15, 2016, the trial court issued its order granting summary judgment to HHC. Ms. Dugger appealed directly to the Supreme Court, Tenn. Code Ann. §§ 50-6-225(a)(1), -239(c)(7), and her appeal was referred to the Supreme Court Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law, Tenn. Sup. Ct. R. 51.

### Facts

Employee, Paula Dugger, is a Licensed Practical Nurse who was hired by HHC on September 30, 2013. Her written job description required the following qualifications:

1). Licensed practical nurse, currently licensed in the state of Tennessee;
2). Current valid Tennessee driver's license;
3). Must be able to provide direct patient care and take on-call; and
4). Working knowledge of the home health care program and previous experience providing home health visits preferred.

Upon accepting employment with HHC, Ms. Dugger began providing residential home care to various patients in the Middle Tennessee area. One of the essential functions listed in her job description required Ms. Dugger to be available to make PRN (as needed) and routine patient visits when requested and to be available and rotate on-call assignments. Ms. Dugger worked a twelve-hour shift that did not begin until she reached a patient's home and ended when she left. During the course of her employment there were occasions when she made PRN and routine patient visits. Although she was available for rotating on-call assignments, she was never asked to work an on-call assignment. Occasionally, HHC would request that she leave one patient's home and go to another patient's home in the same day. For example, there were occasions when Ms. Dugger would leave her initial patient's home, stop by another patient's home and draw blood, and then drop off the blood sample at the hospital.

HHC required Ms. Dugger to provide her own transportation to deliver health care services to HHC's patients. The employee handbook specifically provided:

> All company employees whose jobs may involve driving on Company business must maintain a current driver's license and automobile liability insurance, providing minimum limits. Employees who use their personal automobile in carrying out their job responsibilities (i.e. travel to and from patient visits and other related work) must furnish the Company evidence of automobile insurance and must carry a minimum of $100,000/$300,000 liability coverage for bodily injury. Employees will not operate any vehicle in the course of employment that does not have liability coverage maintained at $100,000/$300,000. . . .
>
> Employees will not have passengers in their vehicle[s] while in the course of employment, unless notification is given to the company and prior approval granted.

At the time Ms. Dugger applied for a position at HHC, she only carried the minimum automobile liability insurance required by the State of Tennessee, and as a result of her employment, she was required to increase her liability insurance policy to the amounts required by HHC, which she did.

HHC also had a travel expense policy. The expense policy set forth in the employee handbook provided:

> CAR EXPENSE
> For company employees who do not have an assigned company vehicle, the company will reimburse the employee for business miles driven at a fixed rate per mile . . . . Mileage to and from work is not reimbursed and not recorded. If the employee travels directly from home to a patient's home, only the mileage greater than the distance from the employee's home to the office is to be recorded and paid. Similarly[,] if the employee travels from a patient's home directly [to his or her own] home, only the mileage greater than the distance from the office to the employee's home is to be recorded and paid.

There were occasions when Ms. Dugger was paid mileage when she visited a patient in Hermitage and in Nashville. At the time of her accident, Ms. Dugger was caring for a patient whose home was located in Rockvale, Rutherford County, Tennessee. It was approximately seventy-five miles from Ms. Dugger's home to the patient's home in Rockvale. Ms. Dugger had been caring for this patient for six months at the time of the accident. In all of the documents filed in this case by Ms. Dugger, she listed her employer's address as 1412 Trotwood Avenue, Columbia, Maury County, Tennessee. Although there is correspondence on HHC letterhead which lists office addresses in Murfreesboro, Nashville, Columbia, and Springfield, HHC did not file any objection to the office address listed by Employee, nor is there any evidence in the record that the HHC office to which Ms. Dugger reported was one of the other addresses. However, for reasons which have not been explained, the parties stipulated Ms. Dugger was not being reimbursed under the travel policy for her 150-mile round trip from Lawrenceburg to Rockvale.

## Standard of Review

Review of an award of summary judgment in a workers' compensation case is governed by Rule 56 of the Tennessee Rules of Civil Procedure. Goodloe v. State, 36 S.W.3d 62, 65 (Tenn. 2001). "Summary judgment is appropriate when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 250 (Tenn. 2015) (quoting Tenn. R. Civ. P. 56.04). We review the record de novo, without affording a presumption of correctness to a trial court's ruling on a motion for summary judgment, and in doing so, "make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied." Id. (citations omitted). We "must view the evidence in the light most favorable to the non-moving party and must also draw all reasonable

inferences in favor of the non-moving party." McCann v. Hatchet, 19 S.W.3d 218, 219 (Tenn. 2000).

## Analysis

In order for a workers' compensation injury to be compensable, it must arise primarily out of and in the course and scope of employment. Tenn. Code Ann. § 50-6-102(14) (Supp. 2016). "The general rule is that an [accidental] injury sustained by an employee on his way to or from his place of employment does not arise out of his employment and is not compensable, unless the journey itself is a substantial part of the services for which the employee was employed and compensated." Smith v. Royal Globe Ins. Co., 551 S.W.2d 679, 681 (Tenn. 1977) (citations omitted). Thus, the general "coming and going" rule, see Howard, 54 S.W.3d at 240–41, has a broad exception built into it. This general exception has spawned more specific exceptions, such as the traveling-employee exception and the contract-of-employment exception, which recognize situations where an employer furnishes transportation or reimburses an employee for the value of the use of the employee's own car. Pool v. Metric Constructors, Inc., 681 S.W.2d 543, 545 (Tenn. 1984). The issue in this case is whether Employee's injury falls within the "coming and going" rule, which precludes recovery, or within one of the exceptions to that rule.

In the case at bar, the trial court found that neither the traveling-employee exception, nor the contractual exception, involving the furnishing of transportation, applies. The undisputed facts support the conclusion by the trial court as to the traveling-employee exception. Ms. Dugger's employment situation was substantially different from that of a true traveling salesperson, who generally would have a territory in which he might visit a different customer every day.

Ms. Dugger's employment contract is a more nebulous issue. There are components of the employment agreement which support the conclusion that HHC was asserting a degree of control over Ms. Dugger's transportation to its patients. Ms. Dugger testified that, at the time she applied for a job in May of 2013, she did not have liability insurance policy limits of $100,000/$300,000 on her vehicle and increased her insurance coverage after obtaining employment with HHC to satisfy its requirement. Page one of the section titled "Drivers License and Automobile Insurance Agreement" in the employment agreement specifically recognized that traveling "to and from patient visits" in her personal automobile was part of the job responsibilities. The same section of this agreement also prohibited employees from having passengers in their personal vehicle while in the course of employment without prior approval from the Company. This language in the employment agreement suggests HHC recognized that Ms. Dugger's use of her personal automobile to travel to and from home visits with patients was in the scope of her employment, and for that reason, attempted to insulate or limit its own potential liability—firstly, by requiring her to have liability insurance coverage in excess

of the minimum required by the State of Tennessee[1]; and secondly, by prohibiting her from having passengers in her vehicle while she was traveling to a patient's home. Viewing the undisputed facts in the light most favorable to Ms. Dugger, we conclude that HHC deemed Ms. Dugger's use of her vehicle to travel to and from a patient's home as being in the scope of her employment, and for that reason, began exercising a degree of control over the use and insurance coverage of the vehicle.

Thus, the unique facts of this case fall within the general exception to the "coming and going" rule, which is the source of the specific exceptions articulated by our courts. Our Supreme Court has stated that, if "the journey itself is a substantial part of the services for which the employee was employed and compensated," then an accident which occurs on that journey is compensable. Smith, 551 S.W.2d at 681. Professor Larson has discussed how the required use of an employee's personal vehicle in furtherance of the employer's business may bring the employee within an exception to the coming and going rule. Lex K. Larson, Larson's Workers' Compensation Law, § 15.05(1) (2015). Professor Larson explained:

> The theory behind this rule is in part related to that of the employer-conveyance cases: the obligations of the job reach out beyond the premises, make the vehicle a mandatory part of the employment environment, and compel the employee to submit to the hazards associated with private motor travel, which otherwise he or she would have the option of avoiding. *But, in addition there is at work the factor of making the journey part of the job since it is a service to the employer to convey to the premises a major piece of equipment devoted to the employer's purposes*. . .

Id. at § 15.05(2) (emphasis added).

Although Ms. Dugger used her own vehicle to travel to and from her patients' homes, and at the time of the accident was not receiving wages for travel time, the journey itself was clearly a substantial part of the services for which she was employed. HHC—Home Health Care of Middle Tennessee—as its business name reiterates, is in the business of providing in-home nursing care to its patients. Although there may be an office where Ms. Dugger reported, her primary job responsibility consisted of traveling throughout Middle Tennessee and rendering healthcare to patients in their homes.[2] The delivery of nursing services to patients in their homes is the most important feature of HHC's business, and having employees traveling to its patients' homes is an essential

[1] Tennessee Code Annotated section 55-12-102(12) (2016 Supp.) requires a $60,000 single limit policy or a split limit policy of $25,000/$50,000.

[2] Nothing in the record suggests Ms. Dugger was compensated for any time spent at the office. The stipulated facts state her twelve-hour shift began and ended at the patient's home.

component of that service, secondary only to the actual health care which is provided. As such, we find Employee was acting within the course of her employment with Employer at the time her injuries were sustained.

## Conclusion

The judgment of the Court of Workers' Compensation Claims is reversed, and this case is remanded for further proceedings. Costs of this appeal are taxed to Home Health Care of Middle Tennessee and their surety, for which execution may issue if necessary.

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ROBERT E. LEE DAVIES, SR. JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**PAULA DUGGER v. HOME HEALTH CARE OF MIDDLE TENNESSEE, ET AL.**

**Court of Workers' Compensation Claims County**
**No. 2015-05-0341**

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**No. M2016-01284-SC-WCM-WC – Filed April 13, 2017**

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**JUDGMENT ORDER**

This case is before the Court upon the motion for review filed by Home Health Care of Middle Tennessee, LLC, United Heartland, and Accident Fund Insurance Company of America pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's 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 Home Health Care of Middle Tennessee, LLC, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating