IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
May 19, 2014 Session

BEN J. MOSBY v. McDOWELL CENTER FOR CHILDREN

Appeal from the Chancery Court for Lauderdale County
No. 14329 Martha B. Brasfield, Chancellor

No. W2012-02715-WC-R3-WC - Mailed August 21, 2014; Filed October 2, 2014

The employee alleged that he sustained a compensable workers' compensation injury to his left shoulder and knee from a fall at work. The employer denied the claim. The trial court found that the employee did not comply with the notice statute, Tenn. Code Ann. § 50-6-201(a)(2008) and dismissed the claim. The employee has appealed, contending that the trial court's notice ruling was erroneous. 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 find that the evidence does not preponderate against the trial court's finding and affirm the judgment.

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

PAUL G. SUMMERS, SR. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J. and E. RILEY ANDERSON, SP. J., joined.

Art D. Wells, Jackson, Tennessee, for the appellant, Ben J. Mosby.

Frederick W. Hodge and Rachel M. Stevens, Nashville, Tennessee, for the appellee, McDowell Center for Children.

OPINION

Factual and Procedural Background

Ben Mosby worked for McDowell Center for Children ("McDowell Center") as a Community Counselor. He alleged that he injured his left shoulder and knee on July 11, 2009, when he slipped and fell in some milk. McDowell Center denied the claim. A Benefit Review Conference was held on December 21, 2009, but the parties were not able to resolve their differences. Mr. Mosby then filed this action in the Chancery Court for Lauderdale County on January 4, 2010. The case proceeded to trial on January 24 and March 2, 2012.

McDowell Center houses and cares for troubled and special needs children. Mr. Mosby began working there as a Community Counselor in October 2007. His job entailed supervising the daily activities of a small group of residents, ensuring their safety, and otherwise interacting with them. On the morning of July 11, 2009, he was supervising four residents, including CK. Another Community Counselor, Stephanie Stallings, was supervising four other residents, including EW. Mr. Mosby and Ms. Stallings brought their two groups together for breakfast to a part of the facility referred to as the MP (multipurpose) area. Before and during breakfast, EW threatened to pour or throw milk at CK. EW, whom all witnesses described as roughly six feet tall and weighing two hundred fifty pounds, began moving toward CK. Mr. Mosby sought to prevent a physical confrontation by positioning himself between the two residents. When EW either threw or spilled the milk he was carrying, Mr. Mosby slipped and fell to the floor, landing on his left shoulder and knee. It is this incident that Mr. Mosby alleges was the cause of his injuries. Ms. Stallings witnessed these events and confirmed Mr. Mosby's account.

After Mr. Mosby fell, the situation calmed for a time; EW ceased his aggression; and the residents were able to finish breakfast. Mr. Mosby and Ms. Stallings then each escorted their assigned residents to separate rooms adjoining the MP area, the "dayroom" and the "classroom." Shortly after the groups separated, EW attempted to leave the room where his group had gathered, apparently intending to seek out and harm CK. Ms. Stallings attempted to prevent him from leaving the room, and Mr. Mosby returned to the MP area to prevent EW from entering. Mr. Mosby testified that he also contacted his supervisor, Marshall Crawley, by radio and requested assistance.[1]

[1] This witness's surname is spelled differently in the trial court record, appearing in some places as "Mr. Crowley" and in other places as "Mr. Crawley." This opinion refers to the witness as Mr. Crawley, the spelling used in the transcript.

Mr. Mosby, Ms. Stallings, and Mr. Crawley all testified concerning the ensuing events, as did Sara White, an independent nurse who interviewed EW. Statements taken during a brief investigation of the events were introduced into evidence as well. The evidence and the witness testimony, including that of Mr. Mosby, was not entirely consistent. We will address the discrepancies and disputes in detail at a later point in this opinion. We proceed first to recount the facts that are not in dispute.

EW was very agitated when Mr. Crawley arrived on the scene. Mr. Crawley and Mr. Mosby mutually decided that it was necessary to place EW in a "hold" in order to prevent an altercation. A hold refers to a method of restraint whereby two or more staff members force a resident to the floor or ground and prevent the resident from moving his or her legs and arms. The purpose of the procedure is to immobilize the resident until he or she calms down. Testimony at trial confirmed that staff members were well trained on the methods that should be used in order to properly execute a hold.

Mr. Crawley and Mr. Mosby proceeded to place EW in a hold, and while EW was still restrained, Kim Brown, a nurse at the facility, arrived at the scene. According to records generated by Nurse Brown, EW was held for fourteen minutes and then released. However, when he became unruly again, EW was placed in a second hold. Another counselor, Shawn Brooks, had arrived on the scene by that time; and Mr. Brooks may have assisted in the second hold, which lasted only a few minutes. After EW was released the second time, he was placed in a chair in the MP area. He soon became agitated again, necessitating a third hold, which also lasted only a short time. Mr. Mosby participated in placing EW in all three holds.

Finally, EW calmed down, and staff and residents returned to their normal activities for the rest of the work day. Mr. Mosby completed his shift and also worked the next day, which was a Sunday. Mr. Mosby testified that he spoke with Mr. Crawley later in the day and that Mr. Crawley mentioned the earlier slip and fall incident and asked Mr. Mosby if he was all right. Mr. Mosby said that he responded that he was not, and they both laughed about the morning's events. Mr. Crawley denied that such a conversation occurred. He testified that he was not aware of the fall, or any alleged work injury, prior to McDowell Center's receipt of a notice of the alleged injury from the Department of Labor and Workforce Development on August 31, 2009.

When Mr. Mosby returned to work on Monday, July 13th, Linda Anderson, the program director, met him in the parking area and directed him to the administration building for a meeting that included Mr. Mosby, Ms. Anderson, Mr. Jeff Lawrence, McDowell Center's Human Resources Director, and Denise Lester. At the meeting, Mr. Mosby was given an "Employee Corrective Action Report," which stated that Mr. Mosby

was being terminated for insubordination. The specific charge was that, during the extended incident with EW on July 11th, Mr. Mosby had declined to obey instructions from Mr. Crawley and Nurse Brown to remove himself from the hold and leave the area. In addition, the report charged that Mr. Mosby had used unnecessary force and acted outside the scope of his training during the holds. The Report was supported by written statements from Mr. Crawley and Nurse Brown. The Report was also based on Ms. White's reports concerning the holds, prepared after her post-incident interview of EW. Mr. Mosby denied any and all wrongdoing and refused to sign the Report.

The next morning, Mr. Mosby went to the emergency room of Baptist Hospital in Ripley, Tennessee, seeking treatment for pain in his shoulder and knee and for a knot on his head, which resulted from a blow EW struck during either the second or third hold. It is undisputed that a representative of the hospital called McDowell Center at that time; however, Mr. Mosby was not present during this conversation. Mr. Lawrence, McDowell Center's Human Resources Director at that time, received the call and testified that the caller stated that he was from the hospital and that Mr. Mosby was at the hospital. When the caller asked if Mr. Mosby was authorized to be there, Mr. Lawrence responded that Mr. Mosby was no longer employed by McDowell Center. Mr. Lawrence testified repeatedly that the caller did not make any mention of a possible work injury during the conversation, which, according to Mr. Lawrence, lasted less than a minute.

Mr. Mosby, forty-seven-years old at trial, was a high school graduate; and he had also taken some online courses on criminal justice from a college in Colorado, but he had not completed that program. Mr. Mosby's employment history before his job with McDowell Center included working as a machine operator, a correctional officer, a shipping clerk, and selling cell phones and alarm systems. Mr. Mosby testified that he had not worked since his employment with McDowell Center was terminated. Mr. Mosby had made some efforts to find a job through CareerBuilder® and by going to "car places," but he did not believe that he was capable of sustaining a forty-hour per week job. Mr. Mosby reported that his knee sometimes becomes swollen, that he is stiff in the mornings, and that he has difficulty reaching over his head or behind his back and lifting heavy objects.

Dr. Samuel Chung, a physiatrist, examined Mr. Mosby on August 17, 2010, at the request of Mr. Mosby's attorney. Dr. Chung diagnosed a tear of the lateral meniscus of the left knee and a mild left rotator cuff tear, and he attributed these conditions to a July 11, 2009, work injury. Dr. Chung found that Mr. Mosby had a permanent impairment of 6% to the body as a whole due to these conditions. Although he placed no specific restrictions on Mr. Mosby's activities, Dr. Chung recommended that Mr. Mosby limit various activities, including overhead work, repetitive work with his left arm, and prolonged standing or walking.

The trial court found that Mr. Mosby had sustained an injury by falling in the milk EW spilled. Addressing the three issues raised by the parties, however, the trial court found that Mr. Mosby failed to give McDowell Center notice of the injury as required by Tennessee Code Annotated section 50-6-201 (2008), and that McDowell Center did not otherwise have actual notice of the injury. The trial court therefore denied Mr. Mosby's claim for workers' compensation benefits. However, to facilitate appellate review, the trial court issued alternative findings. See Gerdau Ameristeel, Inc. v. Ratliff, 368 S.W.3d 503, 509 (Tenn. 2012) ("If, on appeal, the trial court's judgment is not affirmed, alternative rulings provide the reviewing court with a basis on which to review the case on its merits."). Those findings were that, because Mr. Mosby was terminated for cause, any award of permanent disability benefits would be subject to the one and one-half multiplier cap set out in Tennessee Code Annotated section 50-6-241(d)(1)(A) (2008), and that Mr. Mosby had sustained an 8% permanent partial disability to the body as a whole from his work injury.

Mr. Mosby has appealed, asserting that the evidence preponderates against the trial court's finding that he failed to satisfy the statutory notice requirement. In the alternative, he contends that his failure to comply with the notice requirement should be excused. Finally, he argues that the evidence preponderates against the trial court's alternative ruling that he was terminated for cause.

Analysis

Appellate review of decisions in workers' compensation cases is governed by Tenn. Code Ann. § 50-6-225(e)(2) (2008), which provides that appellate courts must "[r]eview . . . the trial court's findings of fact . . . 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." As the Supreme Court has observed many times, reviewing courts must conduct an in-depth examination of the trial court's factual findings and conclusions. Wilhelm v. Krogers, 235 S.W.3d 122, 126 (Tenn. 2007). When the trial court has seen and heard the witnesses, considerable deference must be afforded the trial court's factual findings. Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008). No similar deference need be afforded the trial court's findings based upon documentary evidence such as depositions. Glisson v. Mohon Int'l, Inc./Campbell Ray, 185 S.W.3d 348, 353 (Tenn. 2006). Similarly, reviewing courts afford no presumption of correctness to a trial court's conclusions of law. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

Tennessee Code Annotated section 50-6-201(a) (2008) provides:

> Every injured employee or the injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless the written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

The trial court concluded that Mr. Mosby did not give the required notice of his injury to McDowell Center. It further concluded that McDowell Center did not have actual notice of the injury. These conclusions were based on several individual factual findings. First, the trial court found:

> Ms. Stallings and the Plaintiff were the only employees of the Center who were in the room when the Plaintiff slipped and fell in the milk. . . . Both the Plaintiff and Ms. Stallings were Community Counselors. They were not supervisors. Ms. Stallings [was] not responsible [for] reporting or handling workers' compensation claims or injuries of fellow employees. Her knowledge of the fall is not imputed to the Center.

This finding is entirely consistent with the evidence presented at trial. Ms. Stallings testified that she witnessed Mr. Mosby's slip and fall. She did not testify that she shared that information with any other person at McDowell Center, nor did any other witness testify that Ms. Stallings reported the incident or shared the information.

Mr. Mosby testified that he discussed the slip and fall with his supervisor, Mr. Crawley, on the day it occurred. He also testified that Mr. Crawley gave him some paperwork related to workers' compensation to sign. Mr. Crawley flatly denied that account. Reviewing that evidence, the trial court found:

> Mr. Crawley did not see the Plaintiff fall in the milk. There is a dispute between the Plaintiff and Mr. Crawley as to whether Mr. Crawley knew about the Plaintiff's fall in the milk prior to the holds. This discrepancy is irrelevant. Mr. Crawley could know that the Plaintiff had

> fallen but would not necessarily know that the Plaintiff was injured in the fall. For Mr. Crawley to know that the Plaintiff was injured, the Plaintiff had to tell Mr. Crawley that the Plaintiff was injured in the fall. The decision of whether or not the Plaintiff told Mr. Crawley about the injury hinges on the credibility of the Plaintiff versus the credibility of Mr. Crawley. There is more testimony and evidence which [sic] supports Mr. Crawley's statements than the Plaintiff's statements.
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> The Court finds that the Plaintiff did not tell Mr. Crawley about falling in the milk and injuring himself in a specific manner that would have informed Mr. Crawley that the Plaintiff had sustained a work-related injury, which the Plaintiff wanted Mr. Crawley to report to management. Mr. Crawley did not have notice of the Plaintiff's injury; therefore, there would be no notice imputed to the Center through Mr. Crawley.

The evidence in the record does not preponderate against the trial court's findings. Mr. Mosby and Mr. Crawley gave conflicting accounts of their conversations on July 11, 2009. As the trial court observed, any determination of what was, or was not, said must turn on an assessment of the credibility of those two persons. Both men testified at the trial, and the trial court had the opportunity to see and hear them as they spoke. The trial court's assessment of their relative credibility is entitled to our deference. Tryon, 254 S.W.3d at 327. We therefore find no basis for reversal of the finding that Mr. Mosby did not provide notice of his injury to his employer.

Finally, the trial court considered the possibility that Mr. Lawrence's brief telephone conversation on July 14, 2009, with an unnamed representative of Baptist Hospital in Ripley constituted actual notice of Mr. Mosby's injury to McDowell Center. After recounting Mr. Lawrence's adamant testimony that no mention of a work injury occurred during that conversation, and reviewing documents generated by McDowell Center after receipt of a letter from the Department of Labor and Workforce Development on August 31, 2009, the trial court found "that the hospital employee did tell Mr. Lawrence about the Plaintiff's claim of a work injury on July 14, 2009." The trial court found that, standing alone, the information the caller provided Mr. Lawrence was insufficient to satisfy the statutory notice requirement. In so finding, the trial court relied upon Masters v. Indus. Garments Mfg. Co., 595 S.W.2d 811, 815 (Tenn. 1980), which states:. "an employee who relies upon actual knowledge of the employer must prove that the employer had actual notice of the time, place, nature, and cause of the injury." Id.

We agree with the trial court's analysis on this point. The most information Mr. Lawrence learned from the July 14, 2009 telephone conversation with the hospital employee was that Mr. Mosby was claiming to have sustained a work injury. There is nothing in the record to indicate that the hospital employee told Mr. Lawrence of the time, place, nature, and cause of the Mr. Mosby's claimed work injury.

Mr. Lawrence had participated in the termination meeting on July 13, 2009, and was generally aware that Mr. Mosby had participated in subduing an unruly resident on July 11, 2009. Mr. Lawrence was not aware that, earlier on July 11th, before EW attempted to leave his assigned room in search of CK, Mr. Mosby had slipped and fallen in a puddle of milk. It is not disputed that the injury at issue was caused by the fall, rather than any of the subsequent events. Therefore, accepting the trial court's finding that the hospital employee made some reference to Mr. Mosby's claim of a work injury during the July 14, 2009 phone call, that reference did not provide McDowell Center with actual notice of the accident that caused the injury. Consequently, we conclude that the evidence does not preponderate against the trial court's finding that Tennessee Code Annotated section 50-6-201(a) was not satisfied.

Mr. Mosby's final contention is that his failure to comply with the statutory notice requirement should be excused because he had reasonable grounds for not complying. In his brief, Mr. Mosby argues that he had limited experience with the workers' compensation system; thus, his limited understanding of his rights and duties should excuse his failure to provide notice.

In determining whether an employee has shown a reasonable excuse for failure to give such notice, courts consider the following criteria: (1) the employer's actual knowledge of the employee's injury; (2) prejudice, or lack thereof, to the employer if the notice requirement is excused; and (3) the employee's reason for failing to satisfy the notice requirement. McCaleb v. Saturn Corp., 910 S.W.2d 412, 415 (Tenn. 1995).

Applying these factors in the present case, we hold that the McDowell Center did not have actual knowledge of the nature of the injury or its cause. No evidence was presented to show that the delayed notice prejudiced McDowell Center by inhibiting its ability to fully investigate the circumstances, and we presume for present purposes that no prejudice occurred. As to the third factor set out in McCaleb, Mr. Mosby presented no excuse for failing to give proper notice to his employer. To the contrary, he contended that he discussed the slip and fall with his supervisor. The trial court rejected that testimony by accepting, as truth, the statements of Mr. Crawley, and as mentioned above, the trial court's assessment of the relative credibility of the live testimony of witnesses is entitled to our deference. Tryon, 254 S.W.3d at 327.

Here, our analysis must consider whether Mr. Mosby's ignorance of the law alone satisfies the third factor of the McCaleb test. Decidedly, it does not. "[W]hen an employee has failed to give notice within 30 days of the occurrence of an injury, the focus of the trial court's inquiry should be the reasonableness of the employee's failure to do so." Pentecost v. Anchor Wire Corp., 695 S.W.2d 183, 185 (Tenn. 1985). Previous Tennessee decisions have excused an employee's failure to comply with the statutory notice requirement if the employee lacked knowledge of the seriousness of his or her injury or the employee was unaware that his or her injury was work related. See, e.g., CNA Ins. Co. v. Transou, 614 S.W.2d 335, 337 (1981) ("We hold that the trial court was correct in concluding that the employee did not have sufficient knowledge of the nature of his injury and disability to provide the employer with notice of the ruptured disc until . . . he was first informed that he had such an injury."); Pentecost, 695 S.W.2d at 185 ("[A]n employee's lack of knowledge that his injury is work-related, if reasonable under the circumstances, must also excuse his failure to give notice within 30 days that he is claiming a work-related injury."). The record in this case fails to establish that Mr. Mosby's noncompliance resulted from valid excuses such as these.

More than 170 years of Tennessee case law reveals a general public policy of this State as well as an age old principle of common law—mere ignorance of the law will not serve as an excuse for a litigant's error or omission. See, e.g., Bell v. Steel, 21 Tenn. 148 (Tenn. 1840) ("It is a well-known maxim that ignorance of law will not furnish an excuse for any person, either for a breach or omission of duty."). In keeping with this fundamental principle, we conclude that Mr. Mosby's general assertion of his unfamiliarity with workers' compensation law and his ignorance of his obligations thereunder, without any further explanation for his delay in notifying McDowell Center of his injury, is insufficient and not a reasonable basis for excusing his failure to give the required notice. See Brookside Mills v. Harrison, 11 S.W.2d 679, 679 (Tenn. 1928) (applying a prior version of the workers' compensation statute and holding that an injured employee's ignorance of the statutory requirement for notice of injury does not excuse the employee's failure to give such notice).

Conclusion

Because we affirm the trial court's conclusion that Mr. Mosby failed to provide timely notice of his injury as required by statute, we need not discuss any other aspect of the trial court's ruling, including its findings that Mr. Mosby was terminated for cause and that disability benefits, if awarded, would be capped at one and one-half times the impairment rating. Tenn. Code Ann. § 50-6-241(d)(1)(A). The judgment of the trial court is affirmed. Costs are taxed to Ben Mosby and his surety, for which execution may issue if necessary.

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Paul G. Summers, Senior Judge

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

BEN J. MOSBY v. McDOWELL CENTER FOR CHILDREN

Chancery Court for Lauderdale County
No. 14329

No. W2012-02715-WC-R3-WC - Filed October 2, 2014

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 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 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 the Appellant, Ben Mosby, and his surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM