IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
February 24, 2014 Session

JAMES PATTERSON v. PRIME PACKAGE & LABEL CO., LLC

Appeal from the Circuit Court for Rutherford County
No. 59471 J. Mark Rogers, Judge

No. M2013-01527-WC-R3-WC - Mailed October 14, 2014
FILED: December 22, 2014

This workers' compensation appeal involves the application of the recently enacted pain-management provisions of Tenn. Code Ann. § 50-6-204(j) (2014). An employee who sustained a work-related injury in 2007 settled his workers' compensation claim with his employer in 2010. The settlement enabled the employee to continue receiving pain-management treatment from a physician in Lebanon, Tennessee. The employee moved to Vonore, Tennessee in late 2012. Because his pain-management physician was now 162 miles away, the employee requested his former employer to provide a new panel of pain management physicians closer to his new residence. The employer declined, citing Tenn. Code Ann. § 50-6-204(j)(2)(A) that exempts pain-management physicians who live within 175 miles of the employee from the general statutory "community" residence requirement. The employee filed a motion in the Circuit Court for Rutherford County to compel the employer to provide a new doctor. The trial court held that the new 175-mile rule did not apply to the employee's claim and ordered the employer to provide a new panel of pain-management physicians. The employer has appealed to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Sup. Ct. R. 51. We reverse the judgment of the trial court.

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

WILLIAM C. KOCH, JR., J., delivered the opinion of the Court, in which DONALD P. HARRIS and J. B. COX, SP. JJ., joined.

Nicholas S. Akins and A. Allen Grant, Nashville, Tennessee, for the appellant, Prime Package & Label Company, LLC.

Larry R. McElhaney and Steven C. Fifield, Nashville, Tennessee, for the appellee, James Patterson.

OPINION

I.

On November 19, 2007, James Patterson sustained a compensable injury to his lower back while employed by Prime Package & Label Company, LLC ("Prime Package"). Mr. Patterson settled his claim with the company by an agreement that was approved by the Circuit Court for Rutherford County on October 19, 2010. This agreement provided that Mr. Patterson, who had been receiving pain-management treatment from Dr. Jeffrey Hazlewood, would continue to receive that treatment.[1]

Dr. Hazlewood continued to treat Mr. Patterson every three months until December 2012 when Mr. Patterson moved from Smyrna, Tennessee, to Vonore, Tennessee. Mr. Patterson's new residence was 162 miles from Dr. Hazlewood's office in Lebanon, Tennessee.

Because he was concerned that making a six-hour round trip to visit Dr. Hazlewood would exacerbate his back pain, Mr. Patterson requested Prime Package to provide him with a new panel of pain-management physicians closer to his new home. Prime Package denied the request. Its lawyer stated that "[u]nder the new [Tennessee Department of Labor] rules[,] we can provide a panel up to 175 miles from Mr. Patterson's address. My client will pay mileage but does still want to stick with Dr. Hazelwood [sic]." The lawyer was actually referring to Tenn. Code Ann. § 50-6-204(j)(2)(A),[2] which provides:

> In the event that a treating physician refers an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) except that, in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

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[1]The agreement states, "All future medical benefits . . . are to remain open . . . with Dr. Jeffrey Hazelwood [sic] as the treating physician for pain management, upon prior authorization and approval by Insurer of Defendant."

[2]Act of May 1, 2012, ch. 1100, § 3, 2012 Tenn. Pub. Acts 1996-98 (effective July 1, 2012).

Dissatisfied with Prime Package's response, Mr. Patterson filed a request for assistance with the Tennessee Department of Labor and Workforce Development on March 1, 2013. The Department declined to enter an order and instead issued a benefit review report on March 22, stating that the parties are "free to pursue their remedies in a court of competent jurisdiction."

On March 22, 2013, Mr. Patterson filed a motion to compel post-settlement medical treatment in the Circuit Court for Rutherford County. Prime Package filed its response on April 24, 2013. At the conclusion of the hearing on April 26, 2013, the trial court decided that Mr. Patterson was entitled to a panel of pain management physicians in his community, pursuant to Tenn. Code Ann. § 50-6-204(a)(4)(A). The court also awarded attorneys' fees to Mr. Patterson.

On June 12, 2013, Mr. Patterson requested the trial court to award him discretionary costs and additional attorneys' fees. The trial court conducted a hearing on July 12, 2013. On July 25, 2013, the trial court granted Mr. Patterson discretionary costs and additional attorneys fees. Prime Package has appealed from these orders.

II.

This appeal does not involve any disputed issues of fact. Rather, Prime Package challenges the trial court's interpretation and application of Tenn. Code Ann. § 50-6-204(j). The interpretation of a statute and its application to undisputed facts are questions of law that we review de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009); *Ridings v. Ralph M. Parsons Co.*, 914 S.W.2d 79, 80 (Tenn. 1996).

When interpreting a statute, our task is to ascertain and to give effect to the General Assembly's purpose without unduly restricting the statute or expanding it beyond its intended scope. *Shore v. Maple Lane Farms, LLC*, 411 S.W.3d 405, 420 (Tenn. 2013). To ascertain a statute's purpose, we focus first on the statute's words, giving these words their natural and ordinary meaning in light of their context. When a statute's language is clear and unambiguous, we will apply its plain meaning and go no further. *Keen v. State*, 398 S.W.3d 594, 610 (Tenn. 2012). When, however, the statutory language is unclear, we may consider other relevant sources. *Morgan Keegan & Co., Inc. v. Smythe*, 401 S.W.3d 595, 602 (Tenn. 2013). These sources include, among other things, the broader statutory scheme, the history and purpose of the legislation, public policy, historical facts preceding or contemporaneous with the enactment of the statute, earlier versions of the statute, the caption of the act, and the legislative history of the statute. *Pickard v. Tennessee Water Quality Control Bd.*, 424 S.W.3d 511, 518 (Tenn. 2013); *see also Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527-28 (Tenn. 2010); *Leggett v. Duke Energy Corp.*, 308 S.W.3d 843, 851-52 (Tenn. 2010).

III.

The process for selecting treating physicians for workers' compensation beneficiaries is governed by Tenn. Code Ann. § 50-6-204(a)(4) which in most cases requires the employer to provide the employee with a list of three qualified physicians in the employee's "community." The statute states:

> The injured employee shall accept the medical benefits afforded under this section; provided, that, except as provided in subdivision (a)(4)(B) or (a)(4)(C), the employer shall designate a group of three (3) or more reputable physicians or surgeons not associated together in practice, *if available in that community*, from which the injured employee shall have the privilege of selecting the operating surgeon and the attending physician.

Tenn. Code Ann. § 50-6-204(a)(4)(A) (emphasis added). The Tennessee Supreme Court has long held that this statute "gives an employer the right, in the first instance, to designate three physicians from which the employee is entitled to make a final selection." *Goodman v. Oliver Springs Mining Co.*, 595 S.W.2d 805, 807 (Tenn. 1980) (citing *Atlas Powder Co. v. Grimes*, 200 Tenn. 206, 292 S.W.2d 13 (1956)); *see also Lambert v. Famous Hospitality, Inc.*, 947 S.W.2d 852, 854 (Tenn. 1997).

In 2012, the General Assembly amended Tenn. Code Ann. § 50-6-204 to more closely regulate treatment provided by pain-management physicians. The stated purpose of the bill was to curb the abuse of prescription narcotics among workers' compensation beneficiaries undergoing long-term pain management care.[3]

This bill amended three sections of Tennessee's workers' compensation law. One part of the bill added Tenn. Code Ann. § 50-6-124(f) which states that "[i]t is the intent of the general assembly to ensure the availability of quality medical care services for injured and disabled employees and to manage medical costs in workers' compensation matters by eradicating prescription drug abuse." To combat prescription drug abuse, this section also

[3] As the bill's Senate Sponsor explained, "What we're trying to attack here . . . is the abuse and overutilization of [Schedule II, III, and IV] drugs." The bill, he said, was meant to prevent workers' compensation beneficiaries from "unfortunately becoming addicted and perhaps doing some doctor shopping." Hearing on S.B. 3315 before the Senate Finance, Ways, and Means Committee, 107th Gen. Assemb., (Apr. 23, 2012) (statement of Sen. Jack Johnson), *available at* http://tnga.granicus.com/MediaPlayer.php?view_id=196&clip_id=5394.

provides for utilization review of prescriptions for Schedule II, III, or IV controlled substances that exceed ninety days. *See also* Tenn. Code Ann. § 50-6-204(j)(5).

In addition, Tenn. Code Ann. § 50-6-204(j)(2)(B) sets out new requirements for a doctor to serve as a "qualified physician" for pain management purposes. It provides that pain management physicians may require their patients to enter into a "formal written agreement." If the patient-employee violates the agreement more than once, the employee faces termination of the employee's pain management benefits, as well as other sanctions. Tenn. Code Ann. § 50-6-204(j)(4).

Finally, Tenn. Code Ann. § 50-6-204(j)(2)(A) creates an exception to Tenn. Code Ann. § 50-6-204(a)(4)(A)'s "community" rule. It states that

> in light of the variation in availability of qualified pain management resources across the state, if the office of each qualified physician listed on the panel is located not more than one hundred seventy-five (175) miles from the injured or disabled employee's residence or place of employment, then the community requirement of subdivision (a)(4) shall not apply for the purposes of pain management.

This 175-mile rule is discussed twice in the bill's legislative history. First, the Bill Summary for Senate Bill 3315/House Bill 3372 stated:

> if the treating physician makes a referral for pain management, the injured or disabled employee is entitled to such a panel of physicians, except that the community requirement would not apply for the purposes of pain management if the office of each physician listed on the panel is located not more than 175 miles from the injured or disabled employee's residence or place of employment.

Second, during the consideration of this proposal by a subcommittee of the House Committee on Consumer and Human Resources, a representative of the Tennessee Chamber of Commerce and Industry explained that "pain management" was "fraught with abuse" and that the bill expanded the "community" rule with regard to pain management because finding qualified pain management physicians "in rural areas" could pose "a challenge."[4]

[4]Hearing on H.B. 3372 before the House Consumer and Employee Affairs Subcommittee, 107th Gen. Assemb., (Tenn. Apr. 4, 2012) (statement of Bradley Jackson), *available at* http://tnga.granicus.com/

Based on the statute's language and its legislative history, no conclusion can be reached other than that the General Assembly intended to exempt pain management physicians from Tenn. Code Ann. § 50-6-204(a)(4)(A)'s "community" rule and to require only that a pain-management physicians' offices must be within 175 miles of the employee's residence or place of employment. The purpose of the rule was to ensure an adequate available pool of qualified pain management physicians for workers' compensation beneficiaries located in rural areas.[5]

IV.

The parties' legal arguments in the case have focused on whether Tenn. Code Ann. § 50-6-204(j)(2)(A) can be applied to Mr. Patterson. Mr. Patterson insists that this provision cannot be applied to him for three reasons. First, he points out that he was injured in 2007 and that he and Prime Package settled his claim in 2010 – well before the effective date of Tenn. Code Ann. § 50-6-204(j)(2)(A) in 2012. Second, he cites the principle that "in the absence of contrary legislative intent, statutes are presumed to operate prospectively and not retroactively." *Cates v. T.I.M.E., DC, Inc.*, 513 S.W.2d 508, 510 (Tenn. 1974). Third, he argues that Tenn. Code Ann. § 50-6-204(j)(2)(A) should not apply to him because "[a]bsent some indication of a contrary intent on the part of the legislature, the statute that determines the rights of the parties under the [Workers'] Compensation Law is [the statute] in effect on the date of the accident or injury that provides the basis for the employee's claim." *Liberty Mut. Ins. Co. v. Starnes*, 563 S.W.2d 178, 179 (Tenn. 1978).

The Tennessee Supreme Court has consistently invoked *Liberty Mutual Insurance Company v. Starnes* when construing and applying statutes that create new recovery rights or that determine the compensation rate or other substantive benefits available to workers' compensation claimants. *See Shell v. State*, 893 S.W.2d 416, 420 (Tenn. 1995); *Swanger v. Old Republic Ins. Co.*, 629 S.W.2d 904, 906 (Tenn. 1982); *Shope v. Allied Chem. Corp.*, 611 S.W.2d 818, 819 (Tenn. 1981). However, the Court has also held that statutes that are "remedial" or "procedural" in nature ordinarily will apply retroactively unless the General

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[4](...continued)
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[5]Tenn. Code Ann. § 50-6-204(b)(7) also provides that if the "specialized medical attention" the employee needs is "not available in the community in which the injured employee resides, the injured employee can be required to go, at the request of and at the expense of the employer, to the nearest location at which the specialized medical attention is available." Thus, even prior to 2012, the workers' compensation statute contained an exception to the "community" rule to accommodate beneficiaries who lived in rural areas. *See also* Tenn. Code Ann. § 50-6-204(a)(6)(A) (providing for reimbursement of a workers' compensation beneficiary's travel expenses when the medical provider is more than 15 miles away from the beneficiary's residence or workplace).

Assembly specifies otherwise or unless the statute takes away a vested right or impairs contractual obligations. *See Nutt v. Champion Int'l Corp*., 980 S.W.2d 365, 368 (Tenn. 1998); *Kee v. Shelter Ins.*, 852 S.W.2d 226, 228 (Tenn. 1993).

The statute at issue in this case does not alter the compensation or other substantive benefits Mr. Patterson is entitled to receive. It is both remedial and procedural, and it does not affect Mr. Patterson's vested right – the right memorialized in his settlement with Prime Package – to continue receiving pain management treatment from Dr. Hazlewood. *See Nutt v. Champion Int'l Corp*., 980 S.W.2d at 368 (defining a procedural statute as "one that addresses the mode or proceeding by which a legal right is enforced" and a remedial statute as one that provides the "means or method whereby causes of action may be effectuated, wrongs redressed and relief obtained").

This case, however, can be decided without addressing the retroactive application of Tenn. Code Ann. § 50-6-204(j)(2)(A). This statute is triggered only when there is a referral to a pain-management specialist.[6] A referral to a pain-management specialist must necessarily be preceded by the employee's request for a pain-management specialist. Mr. Patterson requested a new pain management specialist in January 2013, well after Tenn. Code Ann. § 50-6-204(j)(2)(A) had taken effect. Thus, the referral he was requesting, coming as it would after July 1, 2012, is governed by Tenn. Code Ann. § 50-6-204(j)(2)(A).

This conclusion is buttressed by the language of the effective date clause of the 2012 legislation.[7] This clause states: "This act shall take effect July 1, 2012, the public welfare requiring it, and shall apply to pain management, including the prescription of Schedule II, III, or IV controlled substances, prescribed on or after such date." Just as Mr. Patterson's request would necessarily involve a new referral, it would also necessarily involve a new prescription written by a new physician. Because any new prescription that Mr. Patterson might obtain from a new doctor has not yet been written, such a prescription would be governed by Tenn. Code Ann. § 50-6-204(j), which explicitly applies to all prescriptions given after July 1, 2012.

The purpose of Tenn. Code Ann. § 50-6-204(j), reflected in its plain language, is to apply the new restrictions regarding pain-management therapy to referrals for pain management and to prescriptions for Schedule II, III, and IV controlled substances that occur after July 1, 2012. Because Mr. Patterson's request for a new pain-management panel

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[6]Tenn. Code Ann. § 50-6-204(j)(2)(A) provides that "[i]n the event that a treating physician *refers* an injured or disabled employee for pain management, the employee is entitled to a panel of qualified physicians as provided in subdivision (a)(4) . . . ." (emphasis added)).

[7]*See* Act of May 1, 2012, ch. 1100, § 5, 2012 Tenn. Pub. Acts 1998.

occurred after July 1, 2012, no retroactivity issue prevents the application of Tenn. Code Ann. § 50-6-204(j)(2)(A).

Tenn. Code Ann. § 50-6-204(j)(2) requires Prime Package to supply Mr. Patterson with a panel of statutorily qualified pain-management physicians within 175 miles of his residence or place of employment, from which Mr. Patterson may select one physician. Tenn. Code Ann. §§ 50-6-204(a)(4)(A), -204(j)(2)(A). Prime Package has exercised its statutory "right . . . to designate three physicians from which the employee is entitled to make a final selection." *Goodman v. Oliver Springs Mining Co.*, 595 S.W.2d at 807. Mr. Patterson has the statutory "duty to accept the medical benefits that the employer has furnished." *Minutella v. Ford Motor Credit Co*., No. M2008-01920-WC-R3-WC, 2009 WL 3787340, at *5 (Tenn. Workers Comp. Panel Nov. 12, 2009). Mr. Patterson has selected Dr. Hazlewood whose office is within 175 miles of his home. This choice was memorialized in the settlement agreement between Mr. Patterson and Prime Package. That arrangement complied with the law in existence when Mr. Patterson's injury occurred and with the law in effect after July 1, 2012. Accordingly, there is no legal basis to set it aside.

Nothing prevents Prime Package from providing Mr. Patterson with a new pain management physician closer to his home. But if Prime Package does not wish to do so, nothing in the statute requires Prime Package to produce a new panel at this juncture. Mr. Patterson may continue to drive a three-hour round-trip to see Dr. Hazlewood, and Prime Package may continue to pay his travel expenses under Tenn. Code Ann. § 50-6-204(a)(6).

Tenn. Code Ann. § 50-6-204(a)(6) was enacted, in part, to enable injured workers requiring long-term treatment to manage chronic pain to obtain the services of a qualified and reputable provider who specializes in pain management. It is not lost on us that the application of the statute in this case more likely than not achieves a contrary result by imposing a significant, and perhaps unnecessary, inconvenience on an injured worker living in a rural area.[8] However, the courts are obliged to interpret statutes as they find them and to faithfully apply them according to their plain meaning. *Rush v. Great Am. Ins. Co.*, 213 Tenn. 506, 516, 376 S.W.2d 454, 458 (1964). The workers' compensation scheme is "committed to the intelligence and discretion" of the General Assembly, and courts are not generally empowered to "question of the wisdom and propriety of such legislation." *Bush v. State*, 428 S.W.3d 1, 21 (Tenn. 2014) (quoting *Rush v. Great Am. Ins. Co*., 376 S.W.2d at 459). Accordingly, we must "enforce the law impartially as written." *Pickard v. Tennessee Water Quality Control Bd*., 424 S.W.3d at 524 (quoting *Somerville v. McCormick*, 182 Tenn. 489, 497, 187 S.W.2d 785, 788 (1945)).

[8]While the parties presented no evidence on the question, it is quite likely that very well qualified pain management specialists maintain offices closer than 162 miles from Mr. Patterson's current residence.

V.

We reverse the trial court's order requiring Prime Package to provide Mr. Patterson with a new panel of pain-management physicians. Because Mr. Patterson is no longer a prevailing party, it necessarily follows that we must also vacate the trial court's award of attorneys' fees and other litigation expenses to Mr. Patterson. The costs of this appeal are taxed in equal proportions to James Patterson and to Prime Package and Label Co., LLC and its surety for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JAMES PATTERSON v. PRIME PACKAGE & LABEL CO., LLC

Circuit Court for Rutherford County
No. 59471

No. M2013-01527-SC-WCM-WC - Filed December 22, 2014

Judgment Order

This case is before the Court upon the motion for review filed by James Patterson 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 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 equally to James Patterson and his surety and to Prime Package and Label Co., LLC and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM