

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
August 27, 2012 Session

LATOSHA READ v. HILL SERVICES, INC. ET AL.

**Appeal from the Chancery Court for Shelby County
No. CH-08-2112-2 Kenny Armstrong, Chancellor**

No. W2012-00224-SC-WCM-WC - Mailed October 26, 2012; Filed January 10, 2013

An employee was found dead at a job site, and his widow made a claim for workers' compensation death benefits. The claim was denied by his employer. A trial court found that the widow did not sustain her burden of proving that her husband's death was caused by his employment and entered judgment in favor of the employer. The widow has appealed, contending that the evidence preponderates against the trial court's finding. We affirm the judgment of the trial court.

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

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J. and DONALD E. PARISH, SP. J., joined.

Kenneth M. Margolis and Handel R. Durham, Memphis, Tennessee, for the appellant, Latosha Read.

Sean Antone Hunt, Memphis, Tennessee, for the appellees, Hill Services, Inc., Broadspire Services Inc., and American National Property and Casualty Company,

MEMORANDUM OPINION

Factual and Procedural Background

Hill Services, Inc. ("HSI") employed Timothy Read as a pump truck operator. Mr. Read's job duties at HSI included emptying grease traps at restaurants and hotels. In performing these duties, Mr. Read connected sections of rubber hose three inches in

diameter. Each section was approximately twenty feet long and weighed approximately twenty-five pounds. After connecting the hose sections, Mr. Read removed the cover of the grease trap, placed one end of the hose into the grease trap, and attached the other end of the hose to Mr. Read's truck. Mr. Read then activated the truck's vacuum pump and monitored the pumping activity until the grease trap was emptied.

On August 17, 2008, Mr. Read was assigned to empty the grease trap at the Hilton Hotel on Ridgelake Boulevard in Memphis. Mr. Read arrived at the hotel and began setting up his equipment to empty the trap. A short time later, Mr. Read was found unconscious in a hallway between the kitchen and the loading dock, where his pump truck was parked. Emergency services personnel were called, and CPR was administered. Mr. Read was transported by ambulance to St. Francis Hospital, where he was pronounced dead.

Mr. Read's widow, LaTosha Read, filed a complaint for workers' compensation death benefits in the Chancery Court for Shelby County, Tennessee, on November 14, 2008. The Shelby County Medical Examiner's office conducted an autopsy, and the autopsy report describes the cause of death as "cardiomegaly¹ of undetermined natural etiology." The autopsy report also lists "morbid obesity" as a contributing condition. At the time of his death, Mr. Read was thirty-four years of age, weighed 377 pounds, and was six feet, two inches tall. The autopsy report notes the presence of a two-centimeter scar on the posterior left ventricle. Expert medical testimony later established that this scar was the result of a heart attack Mr. Read suffered in February 2008.

Mrs. Read testified that she attended church services with her husband on the morning of August 17 and that he displayed no symptoms of distress or discomfort. Mrs. Read testified that Mr. Read left the church services early to dress and go to work. Mrs. Read spoke to Mr. Read by telephone after he left the church, and she testified that there was nothing unusual about the conversation.

Clifford Burks was the night manager of the Hilton Hotel. Mr. Burks testified that on August 17, 2008, he was called to the area where Mr. Read collapsed. When he arrived, Mr. Read was lying on his back in the hallway between the loading dock and the kitchen area. Mr. Burks testified that there was an overturned cart on Mr. Read's foot and the marble surface of a nearby table was split in two. The hoses used to empty the grease trap were connected, and one end of the hose was already in the grease trap. Mr. Burks observed that Mr. Read had a pulse and had no wounds, bleeding, or torn clothing. Mr. Burks observed that Mr. Read had white foam around the corners of his mouth and was making "breathing

¹ Enlarged heart.

noises,” which he described as a “snoring” type sound. Mr. Burks administered chest compressions until EMT personnel arrived.

Dr. O’Brian C. Smith, a forensic pathologist, testified at trial. Dr. Smith reviewed the records of medical examinations and treatment provided to Mr. Read and the autopsy report. Dr. Smith also reviewed photographs and tissue slides at the medical examiner’s office and the reports and depositions of the other medical experts involved in the case. Dr. Smith testified that Mr. Read had an enlarged heart and high blood pressure. Dr. Smith interpreted the autopsy report to show congestion of the liver and kidneys and edema in the lungs. Based on these factors, Dr. Smith opined that the physical exertion of moving and connecting hose sections caused Mr. Read to have pulmonary edema and heart failure, which led to his death.

Although Dr. Smith agreed that the autopsy report did not contain a finding of pulmonary edema, he stated that the autopsy report described Mr. Read’s lungs as “non-crepitant,” which Dr. Smith considered to be equivalent to a finding of edema. Dr. Smith agreed that Mr. Read was morbidly obese and that an echocardiogram performed in February 2008 showed that he had normal heart function at that time. Dr. Smith also agreed that it was possible for an enlarged heart to function normally.

Dr. Grady Saxton, a cardiologist, testified by deposition. Dr. Saxton opined that Mr. Read had an injured and weakened heart and likely died as a result of “terminal cardiac arrhythmia,” or irregular heartbeat. He characterized this “terminal cardiac arrhythmia” as a form of “heart attack.” Dr. Saxton opined that the physical exertion of Mr. Read’s job was a “contributing factor” in his death. Dr. Saxton agreed, however, that Mr. Read’s death was not caused by either congestive heart failure or by a myocardial infarction.

Dr. Joseph Weinstein, also a cardiologist, testified at trial. Dr. Weinstein examined the same reports and records that Dr. Smith had reviewed. Unlike Dr. Smith, however, Dr. Weinstein did not review photographs and tissue slides at the medical examiner’s office. Dr. Weinstein testified that he did not know exactly what caused Mr. Read’s death but that “more likely than not, [Mr. Read’s work] activities did not cause his death. [His death] just happened.”

In reaching his conclusion, Dr. Weinstein relied on the absence of any reference in the autopsy report to fluid in the lungs and the absence of any reference in the records of the emergency personnel of the presence of “pink frothy sputum” in Mr. Read’s mouth or air passages. Dr. Weinstein testified that both of these conditions would be expected if congestive heart failure had occurred. In addition, Dr. Weinstein relied on the February 2008 echocardiogram, which demonstrated normal heart function, as evidence that it was unlikely that Mr. Read’s death was related to cardiac failure caused by physical exertion. Instead, he

considered it more likely that Mr. Read's death was caused by a combination of sleep apnea and restrictive lung disease than an acute cardiac event. Dr. Weinstein admitted, however, that Mr. Read had never been diagnosed with sleep apnea and testified that he could not definitively say why Mr. Read died.

The trial court issued its decision in a memorandum opinion. The trial court noted that all of the experts agreed that Mr. Read's death was not the result of a heart attack or myocardial infarction and found that the autopsy findings and Mr. Read's medical history were inconsistent with Dr. Smith's and Dr. Saxton's theories concerning the cause of death. The trial court concluded that Mrs. Read had failed to sustain her burden of proof and entered judgment in favor of HSI. Mrs. Read appealed, contending that the evidence preponderates against the trial court's findings.

This appeal has been referred to a Special Workers' Compensation Panel for a report of findings of fact and conclusions of law. See Tenn. Sup. Ct. R. 51, § 1.

Analysis

Mrs. Read contends that the trial court erred by finding that her husband's work on August 17, 2007, did not involve physical exertion or strain, applying an incorrect standard of proof, and finding that there was no causal relationship between his employment and his death.

In most workers' compensation cases, causation must be established by expert medical evidence. Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). The relationship between the injury and employment is shown by the preponderance of the expert medical testimony, as supplemented by lay evidence. Cloyd v. Hartco Flooring Co., 274 S.W.3d 638, 643 (Tenn. 2008). "Although causation in a workers' compensation case cannot be based upon speculative or conjectural proof, absolute certainty is not required because medical proof can rarely be certain" Cloyd, 274 S.W.3d at 643 (quoting Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004)). All reasonable doubts as to the causation of an injury and whether the injury arose out of the employment should be resolved in favor of the employee. Phillips v. A&H Constr. Co., 134 S.W.3d 145, 150 (Tenn. 2004). The trial court may properly award benefits based on medical testimony that the employment "could or might have been the cause" of the employee's injury when there is also lay testimony supporting a reasonable inference of causation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005).

The trial court was presented with the testimony of three medical experts. Dr. Smith testified at trial and opined that the exertion of moving several hose sections from the truck

to the grease trap in the kitchen of the Hilton Hotel, connecting those hose sections to each other, and removing the lid of the grease trap caused Mr. Read to experience heart failure and pulmonary edema, resulting in his death. Dr. Saxton testified by deposition and opined that Mr. Read had a “weak heart” and that the exertion from his work activities strained it, causing arrhythmia and death. Finally, Dr. Weinstein testified at trial that the autopsy findings and other medical records conflicted with the opinions of Dr. Saxton and Dr. Smith. Dr. Weinstein theorized that undiagnosed sleep apnea may have played a role in Mr. Read’s death but did not think there was sufficient evidence in the medical records to prove his theory.

The standard of review of findings of fact in a workers’ compensation case is “de novo upon the record of the trial court, accompanied by a presumption of correctness of the finding, unless the preponderance of evidence is otherwise.” Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness’ demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., 277 S.W.3d 896, 900 (Tenn. 2009). Questions of law are reviewed de novo with no presumption of correctness. Seiber v. Reeves Logging, 284 S.W.3d 294, 298 (Tenn. 2009).

The three expert medical opinions differed concerning the relationship between Mr. Read’s work activities on August 17, 2008, and his death. The trial court found that Dr. Smith’s opinion of Mr. Read’s cause of death was inconsistent with Mr. Read’s autopsy results. The trial court also accredited Dr. Weinstein’s testimony that the lack of evidence that Mr. Read had retained fluid in his lungs or that he had exhibited signs of distress or discomfort on August 17 was inconsistent with Dr. Saxton’s opinion that Mr. Read had experienced arrhythmia.

The evidence in this case presented a number of possible causes of death, each in conflict with some aspect of the medical record. When presented with a conflict of expert testimony, a trial court has the discretion to choose which expert to accredit. Johnson v. Midwesco, Inc., 801 S.W.2d 804, 806 (Tenn. 1990). The trial court heard in-court testimony from Dr. Smith and Dr. Weinstein. The trial court accredited Dr. Weinstein’s testimony over that of Dr. Smith. Moreover, Dr. Weinstein reviewed Dr. Saxton’s deposition testimony and testified that Dr. Saxton’s opinion was incorrect. After giving appropriate deference to the trial court in its choice of Dr. Weinstein as the most reliable expert, the evidence does not preponderate against the trial court’s finding that Mrs. Read failed to carry her burden of proof of causation. Our resolution of the issue of causation is dispositive of the appeal. The remaining issues raised by Mr. Read are therefore pretermitted.

Conclusion

The judgment of the trial court is affirmed. Costs are assessed against Latosha Read, and her surety, for which execution may issue if necessary.

TONY A. CHILDRESS, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT JACKSON

LATOSHA READ v. HILL SERVICES, INC., ET AL

**Chancery Court for Shelby County
No. CH-08-2112-2**

No. W2012-00224-SC-WCM-WC - Filed January 10, 2013

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Latosha Read, 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 Latosha Read, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

HOLDER, Janice M., J., Not Participating