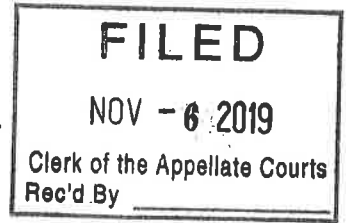


IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
August 5, 2019 Session

RONALD BRANTLEY v. MIKE BRANTLEY ET AL.

**Appeal from the Chancery Court for Campbell County
No. 09-024 Elizabeth C. Asbury, Chancellor**



No. E2018-01793-SC-R3-WC – Mailed October 1, 2019

In 2009, Ronald Brantley (“Employee”) settled a workers’ compensation claim with Brantley Excavating (“Employer”) regarding a hand injury he sustained during the course and scope of his employment. Employee returned to his authorized treating physician in 2017, seeking medication for pain he was experiencing in his injured hand. The diagnostic test results were normal. The treating physician declined to prescribe pain medication and offered no further treatment. Employee subsequently moved to compel Employer to provide a panel of pain management physicians, claiming the treating physician had made a referral. The trial court concluded the treating physician did not make a referral and denied Employee’s motion, citing Tenn. Code Ann. § 50-6-204(j)(2)(A). Employee has appealed. 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 affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(a) (2014) (applicable to injuries occurring
prior to July 1, 2014) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

WILLIAM B. ACREE, SR.J., delivered the opinion of the Court, in which SHARON G. LEE, J., and THOMAS R. FRIERSON, II, J., joined.

Ameesh A. Kherani, Knoxville, Tennessee, for the appellant, Ronald Brantley.

William P. Claxton, Chattanooga, Tennessee, for the appellee, Mike Brantley d/b/a Brantley Excavating.

OPINION

Factual and Procedural Background

On March 13, 2008, Employee sustained a crush injury to his left hand while working for Employer. The injury resulted in the amputation of Employee's small finger and the surgical insertion of pins in two other fingers by the authorized treating physician, Dr. Richard S. Smith. Dr. Smith assigned an impairment rating and discharged Employee from his care in September 2008. In March 2009, the Chancery Court for Campbell County approved a lump sum settlement, including reasonable and necessary future medical expenses within the scope of Tennessee Code Annotated section 50-6-204.

In June 2017, Employee returned to Dr. Smith for the first time since his discharge in 2008, complaining of pain and numbness in his left hand and requesting narcotic pain medication. Dr. Smith ordered a nerve conduction study and an electromyography (EMG), the results of which were normal. Consequently, Dr. Smith opined that Employee's symptoms were unrelated to the previous injury and advised Employee there was nothing he could do to help him.

Employee sought a panel of physicians for pain management, claiming Dr. Smith had made such a referral. However, Employer refused to provide a panel and refuted Employee's claim of a referral.¹ In February 2018, Employee filed a pleading entitled "Plaintiff's Motion to Compel Payment of Benefits and/or In the Alternative, Motion for Contempt" to compel Employer to provide a panel of long-term pain management physicians. Employee attached copies of Dr. Smith's records as well as a form from University Center for Pain Management (UCPM) of Knoxville listing Dr. Smith as the

¹ If a treating physician determines that pain is persisting for an injured or disabled employee beyond an expected period for healing, the treating physician may either prescribe, if the physician is a qualified physician as defined in subdivision (j)(2)(B), or refer, such injured or disabled employee for pain management encompassing pharmacological, nonpharmacological and other approaches to manage chronic pain.

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.

Tenn. Code Ann. § 50-6-204(j)(1)-(2)(A) (2014) (applicable to injuries occurring prior to July 1, 2014).

referring provider. In its response, Employer attached the affidavit of Dr. Smith affirming that Dr. Smith neither referred Employee to a pain management physician nor directed such a referral. At the June 5, 2018 motion hearing, Employee briefly testified about his injury and the recurring pain in his left hand. He said he obtained a form for referral to pain management from Dr. Smith's office. The trial court continued the hearing to give the parties an opportunity to depose Dr. Smith.

During his August 9, 2018 deposition, Dr. Smith reiterated the points he had made in his earlier affidavit. He described Employee's injuries and the medical care he provided to Employee from the time of injury through his 2008 discharge. Dr. Smith next saw Employee in June 2017 at which time Employee sought medication for pain in his left hand. Dr. Smith ordered diagnostic tests to assess whether the pain was attributable to the 2008 hand injury. Upon learning that the test results were normal, Dr. Smith concluded Employee's pain was not related to the original injury/surgery. He told Employee he did not believe there was anything he could do to help him. Employee asked for pain medicine, but Dr. Smith told him he did not think that was indicated. Dr. Smith found no reason to refer Employee for pain management and did not make a referral. On cross-examination, Dr. Smith acknowledged that he does not provide pain management care and that he does not always sign the referral forms.²

The matter returned to the trial court for argument on August 28, 2018. No additional testimony was taken.

The trial court found that Dr. Smith "did not make or intend to make a referral to pain management." Citing Tennessee Code Annotated section 50-6-204(j)(2)(A), the trial court concluded Employer was not required to provide a panel of pain management physicians. Accordingly, the trial court denied Employee's motion. Employee filed this appeal.

Analysis

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 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

² We are aware that Employee had an independent medical evaluation on June 23, 2018, conducted by Dr. C.M. Salekin. However, Employee did not rely upon Dr. Salekin's testimony in either the trial court or in this Court. Therefore, this testimony has no bearing on the issues before us.

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).

Employee’s sole contention is that the trial court erred in not compelling Employer to provide ongoing future medical benefits pursuant to Tennessee Code Annotated section 50-6-204. In the trial court, the thrust of Employee’s argument was that Dr. Smith referred him to a pain management specialist and, therefore, Employer was required to provide Employee a panel of qualified physicians.

To support his contention, Employee testified that he returned to Dr. Smith in 2017 due to numbness and pain in his hand. Employee identified a form he claimed to have obtained directly from Dr. Smith’s office which referred him to pain management. The referral form bore no signature.

In his deposition, Dr. Smith recalled his original treatment of Employee in 2008 and Employee’s return visit in 2017. According to Dr. Smith, Employee was seeking pain medication for recurring pain in his hand. Because the results of a nerve conduction study and EMG were normal, Dr. Smith opined that the pain in Employee’s hand was unrelated to the previous injury. Dr. Smith did not believe the pain medicine sought by Employee was indicated, saw no reason to send Employee for pain management, and did not make a referral for pain management.

In urging the Panel to conclude that Dr. Smith made a referral, Employee points to Dr. Smith’s testimony that he does not always sign the referral forms; that he commonly refers his patients who need pain management to UCPM; and that the physicians at UCPM are good physicians. Employee also emphasizes that Dr. Smith informed him there was nothing else he could do for him.

The trial court was required to assess the credibility of Employee and Dr. Smith. The trial court chose to accredit Dr. Smith rather than Employee. Because the trial court heard the live testimony of Employee, the trial court’s factual findings are entitled to

deference on appeal. However, such deference does not extend to Dr. Smith's deposition testimony which the Panel can review and draw its own conclusions. Dr. Smith testified unequivocally that any pain Employee was having was not related to his 2008 injury, that there was no reason to send him for pain management, and that he did not refer him. Employee (excluding answers to leading questions asked by his attorney) testified that he obtained a referral form from Dr. Smith's office and offered no explanation of the circumstances under which it was given to him. We conclude that the findings of the trial court are supported by a preponderance of the evidence and that Dr. Smith did not make a referral. Because no referral was made, Tennessee Code Annotated section 50-6-204(j)(2)(A) does not apply, and Employer was not required to provide Employee a panel of pain management physicians. *See Smith v. Goodall Bldgs., Inc.*, No. M2017-01935-SC-R3-WC, 2018 WL 4381691, at *3 (Tenn. Workers' Comp. Panel Sept. 14, 2018) (alteration in original) (quoting *Patterson v. Prime Package & Label Co., LLC*, No. M2013-01527-WC-R3-WC, 2014 WL 7263811, at *5 (Tenn. Workers' Comp. Panel Dec. 22, 2014)) (“[Section 50-6-204(j)] is triggered only when there is a referral to a pain-management specialist.”). Employee is not entitled to relief.

Employee also suggested, for the first time at oral argument, that Tennessee Code Annotated section 50-6-204(j) was not in effect at the time of the 2008 injury. This argument contradicts his primary argument that he is entitled to pain management because Dr. Smith referred him to pain management.

Tennessee Code Annotated section 50-6-204(j)(1) provides that if a treating physician determines that an employee is experiencing persistent pain, the treating physician may refer such an employee for pain management. Tenn. Code Ann. § 50-6-204(j)(1) (2014). “*In the event that a treating physician refers an injured . . . employee for pain management, the employee is entitled to a panel of qualified physicians . . .*” Tenn. Code Ann. § 50-6-204(j)(2)(A) (2014) (emphasis added).

A previous workers' compensation panel determined that a referral for pain management made on or after July 1, 2012, is governed by section 50-6-204(j). *Patterson*, 2014 WL 7263811, at *5 (considering a 2013 request for a pain management specialist stemming from a 2007 injury). The *Patterson* panel explained that “[t]he purpose of section 50-6-204(j), reflected in its plain language, is to apply the new restrictions regarding pain-management therapy to referrals for pain management . . . that occur after July 1, 2012.” *Id.* (adding that “[b]ecause Mr. Patterson's request occurred after July 1, 2012, no retroactivity issue prevents the application of Tenn. Code Ann. § 50-6-

204(j)(2)(A))”.³ Pursuant to this authority, the contention Employee made at oral argument that the statute does not apply to his claim is without merit.

Conclusion

For the foregoing reasons, the judgment of the Chancery Court for Campbell County is affirmed. The costs of this appeal are taxed to Ronald Brantley, or his surety, for which execution may issue if necessary.

WILLIAM B. ACREE, SR. JUDGE

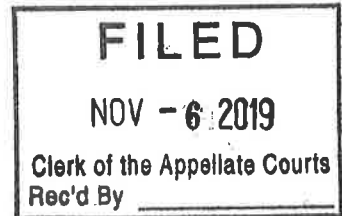
³ The *Patterson* panel’s conclusion is consistent with the Compiler’s Notes, which indicate subsection (j) was added by the Acts of 2012, chapter 1100, section 5 and “appl[ies] to pain management, including the prescription of Schedule II, III, or IV controlled substances prescribed on or after July 1, 2012.” See Tenn. Code Ann. § 50-6-204 Compiler’s Notes (2014) (applicable to injuries occurring prior to July 1, 2014).

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Chancery Court for Campbell County
No. 09-024

No. E2018-01793-SC-R3-WC



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 Memorandum 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 Memorandum 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 are assessed to Ronald Brantley, or his surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM