

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

August 11, 2015 Session

JIMMY SEGROVES v. UNION CARBIDE ET AL.

Appeal from the Chancery Court for Roane County
No. 2011268 Frank V. Williams, III, Judge

No. E2015-00572-SC-R3-WC-MAILED-OCTOBER 6, 2015
FILED-DECEMBER 10, 2015

An employee filed an action seeking workers' compensation benefits for hearing loss and breathing problems in 2003. In 2005, the hearing loss claim was settled, and the breathing dysfunction claim was dismissed with prejudice. In 2011, the employee was diagnosed with asbestosis-related lung disease. He filed this action, seeking benefits for that condition. The trial court granted his employer's motion for summary judgment, finding that the claim was barred by the 2005 settlement and judgment. The 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 reverse the judgment and remand the case to the trial court for further proceedings.

Tenn. Code Ann. § 50-6-225(a)(2) (2014) Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

BEN H. CANTRELL, SR. J., delivered the opinion of the Court, in which GARY R. WADE, J. and PAUL G. SUMMERS, SR. J. joined.

Timothy M. McLaughlin, Knoxville, Tennessee, for the appellant, Jimmy Segroves.

Laurie C. Ball, Knoxville, Tennessee, for the appellees, Union Carbide Corporation, and Martin Marietta Energy System, Inc.

OPINION

Factual and Procedural History

Jimmy Segroves (“Employee”) was employed by Union Carbide Corporation and Martin Marietta Energy System, Inc. (collectively, “Employer”) at the U. S. Department of Energy’s facility in Oak Ridge, Tennessee from 1950 to 1952 and from 1974 to 1985. In July 2003, Employee filed suit against Employer in the Chancery Court for Cumberland County, seeking workers’ compensation benefits for “breathing impairments and hearing loss,” allegedly caused by exposure to “various materials including metals, solvents, radioactive materials, gases, chemicals, and other agents [and] high levels of noise during the course and scope of his employment.” A settlement of that action was approved by the court in March 2005. The hearing loss claim was settled based upon 9.9% permanent partial disability to Employee’s hearing. Employee also agreed “to voluntarily dismiss all claims of lung dysfunction or pulmonary or breathing impairment.”

The 2005 order incorporated the following findings and conclusions:

That the parties understand and agree that there is always the possibility or probability of later manifestations of injury, disability and resulting expenses; nonetheless in consideration of the foregoing possibility or probability, all parties enter into this settlement agreement.

The plaintiff hereby agrees to voluntarily dismiss all claims of lung dysfunction or pulmonary or breathing impairment with full prejudice against the refile of same;

Based on these findings and conclusions, the court ordered that the defendant be discharged “from all claims arising out of the matters herein [sic] controversy” upon payment of \$2,500 to plaintiff plus any future medical benefits “for hearing only.” [Emphasis added]

Employee filed the instant action in the Chancery Court for Roane County in October 2011. In his complaint, he alleged that he was exposed to asbestos and asbestos-containing materials in the course of his employment and that he has contracted “fibrosis and asbestosis or asbestos related lung disease” as a result of those exposures. In its answer to the complaint, Employer raised the defenses of “res judicata, collateral estoppel, issue or claim preclusion, accord and satisfaction and release” based upon the terms of the 2005 settlement. In January 2014, Employer filed a motion to dismiss, or in the alternative for summary judgment, asserting that Employee’s claim was barred by the

terms of the settlement. The motion was supported by copies of the 2003 complaint and 2005 order approving the settlement. In response to the motion, Employee asserted that the 2005 order did not specifically dismiss his claims for lung dysfunction. In addition, he submitted a statement from Dr. Leonard Wudel, a thoracic surgeon. Dr. Wudel stated that, on April 7, 2011, Employee “underwent a left thoracotomy with extensive open pneumolysis for treatment of a left fibrothorax. [Employee] has a history of asbestos exposure. My findings intraoperatively are most consistent with someone who has had a significant exposure to asbestos causing extreme fibrosis and adhesions within [Employee’s] chest.”

The trial court heard the motion on February 9, 2015. Based upon the materials submitted both in support of and in opposition to the motion and the arguments of counsel, the court stated:

Well, whether he received any money or not, he settled whatever claims he had for breathing impairment back in 2005, and I think that’s res judicata. He either had asbestosis then or he didn’t, and the language of the order that was entered is pretty much all inclusive, it looks like to me, so until the Supreme Court tells me otherwise, then I’m going to -- I think that would be the case if it was an ordinary tort case.

The court entered an order on March 15, 2015 which “ORDERED, ADJUDGED and DECREED that Defendants Motion for Summary Judgment is hereby Granted and based on res judicata this case is DISMISSED with prejudice as to the re-filing of same.”

The employee’s appeal has been referred to this panel pursuant to Tennessee Supreme Court Rule 51.

Analysis

Our Supreme Court recently examined the doctrine of res judicata at length in Jackson v. Smith, 387 S.W.3d 486 (Tenn. 2012). Justice Koch, writing for the Court, explained:

The doctrine of res judicata or claim preclusion bars a second suit between the same parties or their privies on the same claim with respect to all issues which were, or could have been, litigated in the former suit. Creech v. Addington, 281 S.W.3d 363, 376 (Tenn. 2009); Richardson v. Tennessee Bd. of Dentistry, 913 S.W.2d 446, 459 (Tenn. 1995) (quoting Goeke v. Woods, 777 S.W.2d 347, 349 (Tenn. 1989)). It is a “rule of rest,”

Moulton v. Ford Motor Co., 533 S.W.2d 295, 296 (Tenn. 1976), and it promotes finality in litigation, prevents inconsistent or contradictory judgments, conserves judicial resources, and protects litigants from the cost and vexation of multiple lawsuits. In re Estate of Boote, 198 S.W.3d 699, 718 (Tenn. Ct. App. 2005); Sweatt v. Tennessee Dep't of Corr., 88 S.W.3d 567, 570 (Tenn. Ct. App. 2002).

The party asserting a defense predicated on res judicata or claim preclusion must demonstrate (1) that the underlying judgment was rendered by a court of competent jurisdiction, (2) that the same parties or their privies were involved in both suits, (3) that the same claim or cause of action was asserted in both suits, and (4) that the underlying judgment was final and on the merits. Lien v. Couch, 993 S.W.2d 53, 56 (Tenn. Ct. App. 1998); see also Lee v. Hall, 790 S.W.2d 293, 294 (Tenn. Ct. App. 1990). A trial court's decision that a claim is barred by the doctrine of res judicata or claim preclusion involves a question of law which will be reviewed de novo on appeal without a presumption of correctness. In re Estate of Boote, 198 S.W.3d at 719.

387 S.W.3d at 491.

In Creech, the Court observed that “In defining the scope of res judicata, this Court has long been careful to balance the doctrine’s benefits of efficient proceedings and finality and consistency of judgments with the dangers of unduly limiting the rights of litigants to have all of their claims heard on merits.” 281 S.W.3d at 381. In White v. White, 876 S.W.2d 837 (Tenn. 1994), the Court held: “A judgment or decree is res judicata only as to the matters in issue; the adjudication, to be conclusive, should be upon the very point brought directly in issue by the pleadings; and a party will not be prejudiced by a judgment as to rights not then accrued.” 876 S.W.2d at 839. The White Court quoted with approval the following language from Banks v. Banks, 77 S.W.2d 74 (Tenn. Ct. App. 1934):

The estoppel of a judgment extends only to the facts in issue as they existed at the time the judgment was rendered, and does not prevent a re-examination of the same question between the same parties where in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the litigants.

77 S.W.2d at 76.

However, in Regions Fin. Corp. v. Marsh USA, Inc., 310 S.W.3d 382 (Tenn. Ct.

App. 2009) the Court said any “new facts” asserted in a second action must have occurred after the first adjudication; they do not include newly discovered evidence of facts that existed prior to the adjudication. 310 S.W.3d at 394.

Turning to the instant case, it is indisputable that the 2005 order was rendered by a court of competent jurisdiction, that the same parties were involved in both suits and that the judgment has become final. Application of the doctrine of res judicata therefore turns on whether the same cause of action was involved in both cases.

With regard to this question, we are aware that lung diseases causing “breathing impairments” may take many forms and may result from various causes. Even asbestos exposure may cause distinct, unrelated lung diseases. For instance, in Potts v. Celotex, 796 S.W.2d 678 (Tenn. 1990), the Supreme Court held that asbestosis and mesothelioma “are distinct and separate diseases, unrelated one to the other...” 796 S.W.2d at 681.

In that case, the Court was discussing whether a products liability action for mesothelioma filed in 1988 was barred by the statute of limitations when the plaintiff had actually been diagnosed with asbestosis in 1975. The mesothelioma had only been discovered early in 1987, within a year of the action being filed. The Court held that the “single injury rule” favoring indivisible claims (based primarily on the doctrine of res judicata) did not apply to latent disease cases where the occurrence of the second, distinct disease was not reasonably certain at the time of the discovery of the first disease.

The only evidence in the record regarding the issues raised in the 2003 action consists of Employee’s complaint and the 2005 order of the Cumberland County Chancery Court. As set out above, the complaint refers to “breathing impairments” allegedly caused by exposure to “various materials including metals, solvents, radioactive materials, gases, chemicals, and other agents.” No specific disease or type of lung dysfunction is described. The order approving the settlement is similarly vague, referring only to “lung dysfunction or pulmonary or breathing impairment and discharging the defendant from all claims herein [sic] controversy.” There is no mention of asbestos or asbestos-related disease in the complaint or the order. Thus, the “breathing impairments” referred to in the 2003 complaint and the 2005 order could have referred to asthma, allergies or some other pulmonary problem caused by an agent other than asbestos.

In some cases the defense of res judicata may be proved by the judgment in the former case alone. “However, if the judgment leaves any of the elements of the defense uncertain, the party asserting the defense must provide additional evidence.” Jackson, 387 S.W.3d at 492, n. 10 (citing Garrett v. Corry Foam Prods., Inc., 596 S.W.2d 808, 809 (Tenn. 1980)). In our view, the evidence provided by Employer in support of its motion for summary judgment does not demonstrate with certainty that the existence or cause of

asbestos-related disease was at issue in the prior lawsuit.

Moreover, the statement of Dr. Wudel suggests, or permits an inference, that Employee did not know of the existence of his asbestos-related disease prior to April 2011. Indeed, there is no evidence that the disease had progressed to a detectable stage before that time. The progression and diagnosis of the disease arguably constitute new facts or changed facts which prevent application of the bar of *res judicata* in this case. Banks, 77 S.W.2d at 76. Certainly, the evidence in this record is not sufficient to permit summary judgment on the issue.

The defendant also relies on the facts recited in the court's order that the plaintiff agreed to voluntarily dismiss all claims for pulmonary or breathing impairment with full prejudice against refiling such claims. With respect to that issue, we note Tennessee Code Annotated section 50-6-114(a), which provides: "No contract or agreement, written or implied, or rule, regulation or other device, shall in any manner operate to relieve any employer, in whole or in part, of any obligation created by this chapter, except as provided in subsection (b)." Subsection (b) pertains to employer-funded disability plans and is not relevant to this appeal. An agreement to prospectively extinguish or reduce an employer's obligations under the Workers' Compensation Law violates public policy and is unenforceable. Fink v. Caudle, 856 S.W.2d 952, 959 (Tenn. 1993); see also Overman v. Altama Delta Corp., 193 S.W.3d 540, 542 (Tenn. 2006).

We are aware that under Tenn. Code Ann. § 50-6-307(a)(1) an employee "affected by or susceptible to a specific occupational disease" may in certain instances waive compensation for any aggravation of the condition by the employee's work. The waiver, however, is "subject to the approval of the workers compensation division of the department of labor and workforce development..." Whatever other questions might exist about the application of this statute to the employee's condition in this case, the record does not contain any proof of compliance with this requirement.

Based on the foregoing considerations, we conclude that the trial court erred by granting Employer's motion for summary judgment.

Conclusion

The judgment of the trial court is reversed. The case is remanded to the trial court for further proceedings consistent with this opinion.

BEN H. CANTRELL, SR. J.

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Judgment Order

This case is before the Court upon the motion for review filed by Union Carbide Corporation and Martin Marietta Energy System, Inc. 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 to Union Carbide Corporation and Martin Marietta Energy System, Inc., for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM