

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
October 25, 2010 Session

ANNE MARIE SMITH v. INTEX ENTERPRISES, LLC

Appeal from the Circuit Court for Anderson County
No. A3LA0220 Donald R. Elledge, Judge

No. E2009-02557-WC-R3-WC - Filed March 7, 2011

The employee filed a motion to compel her employer to provide medical treatment pursuant to a court-approved settlement concerning a claim for an injury sustained in 2002. Her employer opposed the motion, contending that any medical treatment sought by the employee was due to a separate injury sustained in 2004. In the settlement of the 2004 claim, the employee had waived her right to future medical treatment. The trial court granted the employee's motion, and her employer has appealed. We conclude that the employee's claim for medical treatment is not ripe for judicial resolution, and vacate the trial court's order.¹

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

WALTER C. KURTZ, SR.J., delivered the opinion of the Court, in which GARY R. WADE, J., and JON KERRY BLACKWOOD, SR.J., joined.

J. Brent Moore and Michael T. Schmitt, Nashville, Tennessee, for the appellants, Intex Enterprises, LLC and CNA Insurance Company.

J. Timothy Bobo and Ryan C. Edens, Clinton, Tennessee, for the appellee, Anne Marie Smith.

MEMORANDUM OPINION

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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.

Factual and Procedural Background

Anne Smith (“Employee”) sustained a compensable injury to her neck in October 2002. At that time, her employer, Intex Enterprises (“Employer”), was insured by CNA Insurance Company (“CNA”). She had a cervical fusion which was performed by Dr. Paul Johnson. Dr. Johnson assigned a 25% anatomical impairment to the body as a whole due to the injury. Employee was able to return to work. Her claim was settled for 62.5% permanent partial disability (“PPD”) to the body as a whole. The settlement provided that Employer/CNA would provide future medical treatment for the injury. The settlement was approved by the Circuit Court of Anderson County on April 29, 2004.

Employee had a second neck injury on June 14, 2004. At that time, Employer was insured by Harleysville Mutual Insurance Company (“Harleysville”). Employer/Harleysville provided medical treatment for this injury through Dr. Bert Meric. Dr. Meric assigned an impairment of 28% to the body as a whole, inclusive of the prior injury. Employee filed a lawsuit concerning the second injury in March 2007, alleging that she had sustained “a new and distinct injury” to her neck as a result of the June 2004 event.

Dr. Meric’s deposition was taken during the course of the 2007 lawsuit. On direct examination, he testified that Employee’s impairment had increased as a result of the June 2004 injury. On cross-examination by Harleysville’s attorney, he testified that the impairment that he assigned was the same impairment he would have assigned after the first injury and surgery. He testified that a functional capacity evaluation that he had ordered showed a decrease in Employee’s ability to work. However, he later testified that the evaluation did not show this. He testified that the 2004 injury had merely caused a temporary increase in her level of pain. He further testified that he could not state whether or not she had returned to her pre-June 2004 baseline.

Employee and Employer/Harleysville reached a settlement, which was approved by the Circuit Court of Anderson County on July 24, 2008. The order approving the settlement and the attached SD-1 form recite that Employee did not return to work after the injury; that Harleysville had paid \$36,392 for medical treatment; that Employee’s workers’ compensation benefit rate was \$240 per week; and that the claim was being settled pursuant to Tenn. Code Ann. § 50-6-206(b) as a disputed claim. The settlement amount was a lump sum of \$50,000.00. No specific amount of permanent disability was specified.² The settlement also provided that Harleysville was released from liability for all claims, including future medical

²At the stated workers’ compensation benefit rate of \$240 per week, the settlement amount represents slightly more than 52% PPD to the body as a whole. We note that Employer’s maximum exposure under Tenn. Code Ann. § 50-6-208(b), the Second Injury Fund statute, was 37.5% PPD to the body as a whole.

care, but that Employee remained entitled to medical care pursuant to the settlement of her claim arising from the 2002 injury.

After the 2008 settlement was entered, it appears that Employee's attorney sent a letter to counsel for Employer/CNA requesting a panel of physicians for some unspecified medical treatment. The letter is not contained in the record, but its existence can be inferred from a responsive letter from Employer/CNA's attorney, which is in the record. Employer/CNA apparently declined the request, and Employee then filed the motion that is the subject of this appeal.³ Employer/CNA opposed the motion, contending that it had been released from providing future medicals by the 2008 settlement. Employee countered by contending that Employer/CNA was liable for future medicals related to the 2002 injury as part of the 2004 settlement.

The trial court found, based upon statements in the deposition of Dr. Meric, that the 2004 injury was a temporary aggravation of the 2002 injury and that Employer/CNA remained liable for medical care under the 2004 settlement for that injury. An order was entered that granted Employee's motion but did not direct Employer/CNA to take any specific action. Employee's application for attorney's fees was denied. Employer/CNA has appealed, contending that the trial court erred by ordering it to provide medical care to Employee in light of the 2004 injury and settlement. Employee contends that the trial court erred by declining to award her attorney's fees.

Analysis

Employer/CNA contends that the trial court's order was erroneous for three reasons. First, it argues that Employee was judicially estopped to contend that the 2004 injury was not a new and distinct injury due to the representations contained in her pleadings in the lawsuit she filed concerning that injury. Second, it argues that the evidence preponderates against the trial court's finding that the 2004 injury did not cause additional impairment. Third, it argues that the last injurious injury rule precludes Employee from recovering from it. In response, Employee contends that the terms of the settlement regarding the 2004 injury trump any representations contained in the pleadings of that action, that the evidence supports the trial court's finding that no additional impairment occurred, and that the last injurious injury

³ The record contains three different motions concerning medical treatment. The first was filed in September 2004 under the docket number applicable to the 2002 injury. There is no order disposing of that motion. Presumably, it became moot after Harleysville began to provide treatment. The second motion was filed in June 2009. It appears that this motion was filed under the docket number for the settlement of the 2004 injury. There is no order disposing of that motion. The third motion was filed in July 2009, under the docket number applicable to the 2002 injury.

rule is, therefore, not applicable.

We conclude that we are unable to address either party's contentions, because this matter does not present a case or controversy which is ripe for judicial determination. Neither Employee's motion to compel medical treatment nor the materials submitted by the parties in support of and in opposition to it contain any evidence or even an allegation that Employee requires a particular medical treatment. The motion alleges that "[Employer/CNA] has failed to authorize treatment for [Employee's] work-related injuries[,]” and it contains a request that the trial court “enter an Order requiring [Employer/CNA] to approve the treatment of [Employee] by an authorized physician.” The trial court's order states that the motion is granted, but, as mentioned above, does not further specify Employer/CNA's obligations. The only medical evidence contained in the record is a C-32 and deposition of Dr. Meric taken in connection with Employee's lawsuit over the 2004 injury. He was not asked any questions about proposed or potential future medical treatment, and he did not make any spontaneous remarks on the subject. In effect, Employee's motion seeks a *de facto* declaratory judgment that any future medical treatment which she may need is related to the 2002 injury, rather than the 2004 injury.

As stated above, without knowing the specific injury for which the employee seeks medical care, the court cannot find that this is a case or controversy that needs judicial resolution.

Doctrines such as ripeness assist the courts in determining whether a particular case presents a justiciable legal issue. *Norma Faye Pyles Lynch Family Purpose, LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009). The ripeness doctrine focuses on whether the dispute has matured to the point that it warrants a judicial decision. The central concern of the ripeness doctrine is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all. *See Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 479-80, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990). . . .

Determining whether a particular dispute is ripe entails a two-part inquiry. The first question is whether the issues in the case are ones appropriate for judicial resolution. The second question is whether the court's refusal to act will cause hardship to the parties. . . . The court will decline to act “where there is no need for the court to act or where the refusal to act will not prevent the parties from raising the issue at a more appropriate time.” *AmSouth Erectors, LLC v. Skaggs Iron Works, Inc.*, No. W2002-01944-COA-R3-CV, 2003 WL 21878540, at *6 (Tenn. Ct. App.

Aug. 5, 2003) (No Tenn. R. App. P. 11 application filed) (quoting *Window Gallery of Knoxville v. Davis*, No. 03A01-9906-CH-00225, 1999 WL 1068730, at *3 (Tenn. Ct. App. Nov. 24, 1999) (No Tenn. R. App. P. application filed) (emphasis omitted).

B & B Enters. of Wilson Cnty., LLC v. City of Lebanon, 318 S.W.3d 839, 848-49 (Tenn. 2010); *see also Texas v. United States*, 523 U.S. 296, 300 (1998) (“A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580-81 (1985))).

“Whether or not a particular medical treatment is ‘made reasonably necessary’ by Employee’s work for Employer . . . is a question which must be answered based upon the proof presented *at the time the treatment is proposed.*” *Hegger v. Ford Motor Co.*, No. M2007-00759-WC-R3-WC, 2008 WL 4072047, at *4 (Tenn. Workers’ Comp. Panel Sept. 2, 2008) (emphasis added) (citing *Roark v. Liberty Mut. Ins. Co.*, 793 S.W.2d 932, 935 (Tenn. 1990), *abrogated on other grounds by Bazner v. Am. States Ins. Co.*, 820 S.W.2d 742, 745 (Tenn. 1991)). An employer is not liable for post-judgment medical treatment made necessary by an intervening cause. *See Anderson v. Westfield Grp.*, 259 S.W.3d 690, 698-99 (Tenn. 2008).

There is no evidence or allegation in this record that Employee requires any medical treatment for her neck. There is therefore no basis for the trial court to order Employer/CNA to provide any specific medical treatment to her. It follows that there is no evidence in this record upon which the trial court could determine whether any such proposed or suggested treatment is related to the 2002 injury, the 2004 injury, or some other cause. In the absence of such evidence, we conclude that the claim asserted by Employee in her motion to compel medical treatment is not ripe for adjudication.

Conclusion

The order of the trial court is vacated. The case is remanded for any additional proceedings which may be required. Costs are taxed one-half to Intex Enterprises, LLC and CNA Insurance Company and one-half to Anne Marie Smith, and their sureties, for which execution may issue if necessary.

WALTER C. KURTZ, SENIOR JUDGE

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JUDGMENT

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 appeals 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 taxed one-half to Intex Enterprises, LLC and CNA Insurance Company and one-half to Anne Marie Smith, and their sureties, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM