

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 27, 2010 Session

DION JONES v. MELISSA RODRIGUEZ, ET AL.

**Appeal from the Chancery Court for Rutherford County
No. 04-8814-WC J. Mark Rogers, Judge**

**No. M2010-00366-WC-R3-WC - Mailed - January 26, 2011
Filed - April 12, 2011**

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. After the employee sustained an on the job injury, she sued her employer for workers' compensation benefits. She alleged that her employer was a subcontractor for the principal contractor but she sued only the employer, not the principal contractor. Nearly two years later, the employee requested and received the trial court's permission to amend her complaint to add the principal contractor as a defendant. The principal contractor filed a motion to dismiss based upon the expiration of the applicable statute of limitations. The trial court granted the motion. After a trial, the trial court awarded the employee judgement for workers' compensation benefits against the employer. The employee appealed, contending that the trial court erred by granting the principal contractor's motion to dismiss. We affirm the judgment.

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

SHARON G. LEE, J., delivered the opinion of the Court, in which JON KERRY BLACKWOOD, SR. J., and JERRI S. BRYANT, SP. J., joined.

Marshall H. McClarnon and Donald D. Zuccarello, Nashville, Tennessee, for the appellant, Dion Jones.

Stephen B. Morton and Brad Hearne, Nashville, Tennessee, for the appellee, Ole South Properties, Inc.

MEMORANDUM OPINION

Factual and Procedural Background

Ole South Properties (“Ole South”) contracted with Melissa Rodriguez, d/b/a Dove’s Cleaning Service (“Employer”), to clean subdivision construction sites. Dion Jones (“Employee”) was hired by Employer to work at the site. Employee alleges that she was injured on June 16, 2003, and that her injuries arose out of and in the course of her employment. She filed a lawsuit seeking workers’ compensation benefits on June 16, 2004, naming Employer as the sole defendant. The lawsuit alleged that at the time of the injury Employer had contracted with Ole South to perform cleanup services. Although Ole South’s name, address, and the address of its registered agent were included in the complaint, Ole South was not named as a defendant or served with process.

Employer filed an answer denying liability. On April 6, 2006, after two trial dates had been postponed, Employee’s counsel filed a motion to withdraw because Employee had terminated his services. Counsel was permitted to withdraw. Employee’s new counsel filed a motion on April 28, 2006, seeking to amend the complaint to add Ole South as a defendant to the lawsuit. An agreed order was entered allowing the amendment, and an amended complaint against Ole South was filed on May 23, 2006 – nearly three years after the injury. Ole South answered the amended complaint, and later filed a motion for summary judgment asserting that the action was barred by the statute of limitations. The trial court granted Ole South’s motion and dismissed the action as to Ole South. The trial court subsequently granted Employee’s Tenn. R. App. P. 9 motion for an interlocutory appeal, and same was denied by the Supreme Court. Employer filed a bankruptcy petition, which stayed the proceedings, but the petition was ultimately dismissed. Counsel for Employer was permitted to withdraw. When the case was eventually tried on January 6, 2010, Employer, who was proceeding pro se and had no workers’ compensation insurance, did not appear. The trial court awarded Employee 400 weeks of permanent disability benefits, additional temporary total disability benefits, and open medical benefits. Employee appeals, contending that the trial court erred by finding that her claim against Ole South was barred by the statute of limitations.

Analysis

The issue presented is whether the trial court erred in dismissing Employee’s claim against Ole South because the petition was not timely filed. Because this appeal presents a question of law only, we review the trial court’s conclusions *de novo* with no presumption of correctness. Gray v. Cullom Machine, Tool & Die, Inc., 152 S.W.3d 439, 443 (Tenn. 2004).

On the date of Employee's injury, Tennessee Code Annotated section 50-6-203(a) (1999) provided that the right to receive workers' compensation is barred unless notice required by section 50-6-202 is given to the employer and suit is filed within one year after the accident occurred. Employee's injury occurred on June 16, 2003. Employer paid Employee no workers' compensation benefits. The motion to add Ole South as a defendant was filed on April 28, 2006, granted on May 23, 2006, and the amended complaint was filed on May 23, 2006.

Employee argues that the broad remedial purpose of the workers' compensation act supports the conclusion that Tennessee Code Annotated sections 50-6-113 and 50-6-203 should be construed together to protect workers from uninsured subcontractors. Employee asserts that the one-year statute of limitations is tolled until the conclusion of proceedings against the employer; that based on the language of Tennessee Code Annotated section 50-6-113, an employer and general contractor are jointly and severally liable for any recovery by the employee; that the general contractor is the guarantor for all workers' compensation claims brought against their subcontractors based on Tennessee Code Annotated section 50-6-113; and that Tennessee Code Annotated section 50-6-113 makes the general contractor the "employer at law" that is afforded all protections against tort liability as the employer under workers' compensation law, thereby making the general contractor the alter ego or proxy of the employer. Thus, the argument goes, a timely suit against the employer satisfies the requirement of a timely suit against the general contractor.

We disagree. The language of section 50-6-113 does not support Employee's position. The statute gives an employee who is injured while working for any of the subcontractors of the principal, intermediate contractor or subcontractor the right to collect benefits from a principal, intermediate contractor, or subcontractor to the same extent as the immediate employer. The employee, however, cannot receive a double recovery and recovery of full compensation from one employer bars recovery by the employee against any others. The statute does not make the general contractor the "guarantor" of benefits for claims against the subcontractor, nor does it make the general contractor the alter ego or proxy of the employer. The statute does not indicate that suit need not be timely filed against a general contractor by an employee who seeks benefits or that suit against only the immediate employer is sufficient to expose the general contractor to liability. Employee cites no authority and we are aware of no authority which supports her interpretation of section 50-6-113.

Employee also argues that the one-year limitation period contained in Tennessee Code Annotated section 50-6-203(a) is not applicable to general contractors with liability to a subcontractor's injured employee under Tennessee Code Annotated section 50-6-113, but that the ten-year limitation period under Tennessee Code Annotated section 28-3-110 is

applicable. She analogizes her situation to cases in which successful litigants seek to “pierce the corporate veil” to collect a judgment from the owners of a corporation. Again, Employee cites no Tennessee case applying this reasoning to section 50-6-113 liability and we are aware of none. In our view, this argument amounts to a reconfiguration of Employee’s unsuccessful assertion that a principal contractor is a guarantor of workers’ compensation judgments obtained against its subcontractors.

Finally, Employee argues that she could not name Ole South as a defendant within the limitation period because section 50-6-113(c) required her to bring suit against her immediate employer as a prerequisite to suing Ole South. She argues that, because of that alleged requirement, the statute implicitly suspends the limitation period as to intermediate and principal contractors until her action against her immediate employer is concluded. Her premise is incorrect. In P.H. Reynolds & Co. v. McKnight, 148 S.W.2d 357, 360 (Tenn. 1941), the Supreme Court held that section 113(c)’s requirement to first “present” a claim to the immediate employer

relates to the notice and to the service of the notice. To the preliminaries of suit on the claim, not to the suit itself. The principal contractor and the subordinate contractors being by the statute made liable ‘to the same extent’ as the immediate employer, . . . all of them may be sued in the same action.

This section of the workers’ compensation law was more recently considered in Potts v. Am. Mut. Ins. Co., No. 01S01-9212-CH-00138, 1994 WL 30088 (Tenn. Feb. 7, 1994). In that case, the insurer of a principal contractor contended that it was not liable because the employee had failed to sue his immediate employer, a subcontractor. The Court held that the subcontractor was not a necessary party, if the other conditions of section 50-6-113 were satisfied. Id. at *3.

Employee was not barred from naming Ole South as a defendant in her original complaint. Moreover, she was clearly aware of the existence of the contractual relationship between her employer and Ole South and of its location and the identity of its registered agent, because this information was contained in the complaint. Under the circumstances, there is no factual or legal basis for her position. Employee failed to timely sue Ole South and therefore, her claim is barred.

Ole South argues that this appeal is frivolous, and requests that sanctions be imposed pursuant to Tennessee Code Annotated section 27-1-122. In our discretion, we decline to do so.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to the Appellant, Dion Jones, and her surety, for which execution may issue if necessary.

SHARON G. LEE, JUSTICE

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No. M2010-00366-SC-WCM-WC - Filed - April 12, 2011

JUDGMENT ORDER

This case is before the Court upon the motions for review filed by Dion Jones and Ole South Properties 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 motions for review are not well-taken and are 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 Dion Jones, and her surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Sharon G. Lee, J., not participating