

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

December 10, 2012 Session

TIMOTHY L. WILSON v. MEMPHIS LIGHT, GAS & WATER DIVISION

**Appeal from the Chancery Court for Shelby County
No. CH-07-1034-2 Arnold B. Goldin, Chancellor**

No. W2012-00889-SC-WCM-WC - Mailed January 7, 2013; Filed March 7, 2013

The employee alleged that he sustained an on-the-job injury in June 2004. The settlement of that claim was approved in December 2004. The employee alleges in this case that he suffered additional compensable injuries in June 2005 and July 2006. The employer contends that the new allegations pertain not to new injuries but rather a continuation of symptoms from the 2004 injury. The employee also filed a third-party tort action arising from the 2004 injury. The employer intervened in the tort case to protect its medical subrogation lien. The parties settled all claims at a joint mediation that resulted in the tort defendant paying a sum of money, the employee dismissing with prejudice this workers' compensation case, and the employer reducing its medical subrogation lien. Accordingly, the workers' compensation case was dismissed with prejudice. More than a year later, the employee moved to vacate the dismissal, contending that he had not authorized it, and the employer moved to strike that motion. While these motions were pending, the employee sought to depose the mediator, the third party's attorney, and the employer's attorney. After an evidentiary hearing, the trial court found that the employee had agreed to the dismissal, and it granted the employer's motion to strike. The trial court also quashed the deposition subpoenas issued at the employee's request. The employee has appealed from these orders, and 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.

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

DONALD E. PARISH, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and TONY A. CHILDRESS, SP. J., joined.

Timothy L. Wilson, Memphis, Tennessee, pro se.

Shatterra Reed, Effie Bean Cozart, and Sean Antone Hunt, Memphis, Tennessee, for the appellee, Memphis Light, Gas & Water Division.

MEMORANDUM OPINION

Factual and Procedural Background

Memphis Light, Gas & Water Division (“MLG&W”) employed Timothy Wilson as a meter reader. Mr. Wilson sustained a compensable injury in June 2004 while reading a meter on the premises of Duratek Services, Inc. (“Duratek”). Mr. Wilson entered into a court-approved settlement of his workers’ compensation claim in December 2004. He also filed a tort action against Duratek. MLG&W intervened in that action to protect its subrogation lien pursuant to Tennessee Code Annotated section 50-6-112(c)(1) (2008).

Mr. Wilson filed this action against MLG&W in May 2007, alleging that he had suffered additional compensable injuries in June 2005 and July 2006. MLG&W filed an answer denying liability. In January 2010, Mr. Wilson, Duratek, and MLG&W participated in a mediation regarding the tort claim against Duratek. The mediation resulted in an agreement in which Duratek agreed to pay \$115,000 to Mr. Wilson, MLG&W agreed to reduce its subrogation lien from approximately \$50,000 to \$10,000, and Mr. Wilson agreed to dismiss his pending workers’ compensation action against MLG&W. The payments required by the agreement were made, and an order dismissing this workers’ compensation action with prejudice was entered by the trial court on April 29, 2010. Fifteen months later, on July 29, 2011, Mr. Wilson filed a motion to vacate the order of dismissal. In that motion, he asserted that he had not authorized his attorney for the instant workers’ compensation case, Henry Sledge, to dismiss the case. MLG&W thereafter filed a response to the motion to vacate, asserting that the motion was not timely pursuant to Tennessee Rule of Civil Procedure 60 and also that Mr. Wilson had consented to the dismissal of the workers’ compensation action, as evidenced by his signature on the mediation agreement.

Mr. Wilson did not set his motion for hearing. On January 6, 2012, MLG&W filed a motion to strike Mr. Wilson’s motion to vacate, based on the same issues raised in its response to his motion. The motion to strike was heard on January 20, 2012. At that time, Mr. Wilson asserted that he had not signed the mediation agreement. The trial court held an evidentiary hearing to address that issue on February 27, 2012.

In the meantime, Mr. Wilson requested the issuance of deposition subpoenas directed to (1) George Brown, the mediator who conducted the January 2010 mediation; (2) Kimberly Coggins, the attorney who represented Duratek at the mediation; and (3)

Sean Antone Hunt, the attorney who represented MLG&W at the mediation. The trial court issued orders quashing the subpoenas against Ms. Coggins and Mr. Hunt and denying a motion by Mr. Wilson to compel Brown's attendance at the planned deposition.

Robert Spence, the attorney who represented Mr. Wilson in the third-party action, testified at the February 2012 hearing on the motion to strike. Mr. Spence testified that Mr. Wilson was present at the January 2010 mediation, that he explained the terms of the agreement to him, and that Mr. Wilson agreed to and signed the mediation agreement in his presence. Mr. Spence also testified that Duratek had issued payment to him, and that he had disbursed the funds to MLG&W and Mr. Wilson in accordance with the terms of the agreement. Mr. Spence further stated that he had facilitated the dismissal of the workers' compensation action by transmitting a proposed order, with an explanation of the terms, to Henry Sledge, who represented Mr. Wilson in that action. Copies of the mediation agreement, and of correspondence among Mr. Spence, Mr. Wilson, Mr. Sledge, and counsel for MLG&W were introduced as exhibits.

Mr. Wilson also testified at the hearing. He stated that the agreement he signed at the time of the mediation hearing did not provide for the dismissal of his workers' compensation action. He denied receiving correspondence from Mr. Spence or Mr. Sledge concerning the order of dismissal. On cross-examination, he agreed that he had testified at an earlier proceeding that he had received payment in accordance with the mediation agreement.

The trial court ruled from the bench. It found Mr. Spence to be a credible witness. It found that the testimony of Mr. Wilson to be "simply not credible." It held that the mediation agreement was a binding contract and granted MLG&W's motion to strike. Mr. Wilson has appealed from that decision.

Standard of Review

Appellate review of decisions in workers' compensation cases is governed by Tennessee Code Annotated section 50-6-225(e)(2) (2008 & Supp. 2012), 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[s], unless the 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).

Analysis

MLG&W's Motion to Strike

Mr. Wilson asserts that the trial court erred by granting the MLG&W motion to strike his motion to vacate the voluntary dismissal of his workers' compensation action. Much of his argument concerns the application of the one-year limitation contained in Tennessee Rule of Civil Procedure 60. However, the trial court did not base its ruling on that limitation; accordingly, we will not address that argument. The gist of Mr. Wilson's remaining argument is that the evidence preponderates against the trial court's finding that he knowingly agreed to the dismissal of his workers' compensation action. The trial court's finding was based on both the documentary evidence before it and the live testimony of Mr. Wilson and Mr. Spence. All of the documentary evidence is consistent with the trial court's finding. Further, the trial court, which had the opportunity to observe the demeanor of both witnesses as they testified, found that Mr. Spence was credible and Mr. Wilson was not. That finding is entitled to considerable deference on appeal. *Tryon*, 254 S.W.3d at 327. As the testimony of Mr. Wilson was the only evidence presented in support of his contention that he did not agree to the dismissal of his case, the trial court's finding is dispositive of his motion to vacate and MLG&W's motion to strike. We conclude that the evidence does not preponderate against the trial court's finding.

The Deposition Subpoenas

Mr. Wilson also contends that the trial court erred by quashing his subpoenas to Ms. Coggins and Mr. Hunt, and denying his motion to compel the attendance of Judge Brown. We decline to address the merits of the privilege claims underlying those orders. Inasmuch as the trial court found that Mr. Wilson had agreed to the dismissal of his workers' compensation action and that his testimony to the contrary was not credible, his motion to vacate was without merit. Mr. Wilson does not explain, and this Panel is unable to discern, how the information sought could be material to this case.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Timothy Wilson, for which execution may issue if necessary.

DONALD E. PARISH, Special Judge

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**Chancery Court for Shelby County
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JUDGMENT ORDER

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

It is so ORDERED.

PER CURIAM

Cornelia A. Clark, J., not participating