

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
APRIL 2000 SESSION

**EVERETT ALAN SMITH, By and through his wife and Conservator PAM  
SMITH v. SAFETY KLEEN CORPORATION**

**Direct Appeal from the Chancery Court for Hamilton County Part II  
No. 73837    Howell N. Peoples, Chancellor**

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**No. E1999-01123-WC-R3-CV - Mailed - August 9, 2000  
Filed: September 14, 2000**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The plaintiff, Everett Alan Smith, filed various motions in this case, all of which were denied by the trial court. The plaintiff appeals from the trial court's: (1) refusal to award temporary total benefits from the date of injury until time of medical improvement rating by physician or from the date of injury until trial; (2) denial of a lump sum payment of attorney fees because the request was in the form of a motion rather than in the form of a petition; (3) denial of motion requiring the defendant to pay for medication and authorized physician benefits because the plaintiff sought these by motion rather than by petition. The plaintiff also raises the issue of whether the trial court erred in refusing to pay certain pharmacy charges. We affirm the judgment of the trial court in part, reverse the judgment in part, and remand the case to the trial court for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court  
Affirmed in Part, Reversed in Part and Remanded**

BYERS, SR. J., delivered the opinion of the court, in which ANDERSON, C. J., and THAYER, SP. J., joined.

Tricia I. Dennis, Chattanooga, Tennessee, for the appellant, Everett Alan Smith.

Larry L. Cash, Chattanooga, Tennessee, for the appellee, Safety-Kleen Corporation.

**OPINION**

SR. JUDGE BYERS delivered the opinion of the court.

## Discussion

The case was tried in the trial court and judgment for the plaintiff was entered on December 6, 1996. The defendant appealed from the trial court's judgment, and on January 7, 1999, the supreme court entered an order adopting the opinion of a Special Workers' Compensation Panel affirming the case. The judgment became final.

On February 15, 1999, the plaintiff filed a motion for civil contempt, or in the alternative, to amend the final judgment. The motion sought to have temporary total benefits paid by the plaintiff.

The trial judge denied the motion because the matter of temporary total disability was never raised in the original trial. We find the ruling by the trial court is correct. The attempt by the plaintiff to have the trial court declare that permanent and total disability should relate back to the date of the original injury was denied because this was not raised or litigated in the original trial. All matters as to compensability, medical expenses incurred before trial and permanent total benefits were settled by the trial of the case and were affirmed by the Supreme Court and settled by their judgment. The trial court properly dismissed the plaintiff's motions, which sought to re-litigate pretrial issues.

The plaintiff's other questions on appeal—motion for attorneys fees (Issue 2) and issues on medical bills and physicians fees (Issues 3 and 4)—appear to raise issues that arose after trial. The trial judge dismissed these matters because they were raised by motion rather than by petition. We are unable to determine the merit of these issues on the record before us. We conclude the trial court could have treated the motions as properly raising these issues and would have warranted a factual determination of whether relief thereon should have been given. We therefore reverse the judgment of the trial court on issue two, three and four as raised by the plaintiff and remand these to the trial judge for a factual determination of them on the merits.<sup>1</sup>

The costs are taxed equally to the plaintiff and the defendant.

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JOHN K. BYERS, SENIOR JUDGE

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<sup>1</sup>The record indicates there may be competing claims for attorney fees in the case. If this exists, the trial court can make a determination on the right of the attorneys who are claiming a fee.

If the plaintiff here filed petitions for the relief sought subsequent to the hearing on the motions they may be joined for determination at the same time as the motions before us are determined.

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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 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgement of the Court.

Costs on appeal are taxed equally between the plaintiff and the defendant, for which execution may issue if necessary.

09/14/00