

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT NASHVILLE
(November 30, 2000 Session)

**EGYPTIAN LACQUERS MANUFACTURING COMPANY, and
RELIANCE INSURANCE COMPANY. v. MEGAN LEE RAINEY, a
Minor, by Next Friend and Natural Mother, PAMELA KAY DEAL,
and TIFFANY SHATRELL RAINEY, a Minor, By Next Friend and
Natural Mother, CYNTHIA DIANE HUMPHREYS MURPHY.**

**Direct Appeal from the Circuit Court for Williamson County
No. I-99529 Russell Heldman, Circuit Judge**

**No. M2000-00658-WC-R3-CV - Mailed - February 6, 2001
Filed - March 9, 2001**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The trial court found the deceased worker had two dependent children entitled to receive workers' compensation death benefits. The issue is whether the presumption of dependency was rebutted for the older child. We affirm the trial court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court Affirmed.

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J. and JOE C. LOSER, JR., SP.J., joined.

Jay R. Slobey, Nashville, Tennessee, for the Appellant Tiffany Shatrell Rainey, Minor, by Next Friend and Natural Mother, Cynthia Diane Humphreys Murphy.

Phillip R. Newman, Franklin, Tennessee, for the Appellee Megan Lee Rainey.

Gerald C. Wigger, Nashville, Tennessee, for the Appellee Egyptian Lacquer Manufacturing Company and Reliance Insurance Company.

MEMORANDUM OPINION

1.

Johnny Vincent Rainey (Mr. Rainey) was employed by Egyptian Lacquers Manufacturing Company (Egyptian Lacquers) on June 23, 1999. On that date, Mr. Rainey suffered a work-related accident. Mr. Rainey, due to injuries from the accident, died on July 4, 1999. Mr. Rainey was survived by two minor children, Megan Lee Rainey (Megan) and Tiffany Shatrell Rainey (Tiffany). The eldest, Megan, was born on November 11, 1981 to Mr. Rainey and his then wife, Pamela Kay Deal (Ms. Deal). The youngest, Tiffany, was born out-of-wedlock to Mr. Rainey and Cynthia Diane Humphreys Murphy (Ms. Murphy) on September 8, 1988.

In 1985, Mr. Rainey and Ms. Deal were divorced. As part of the divorce decree, Mr. Rainey was ordered to pay \$55 per week in child support to Ms. Deal on behalf of Megan. This obligation was not changed or altered at any time prior to Mr. Rainey's death. After the divorce, Mr. Rainey quickly and permanently fell behind in his child support payments. However, Megan spent most weekends with Mr. Rainey's mother, Ms. Bettie Jewell (Ms. Jewell). Ms. Jewell also provided financial support to Megan in the form of purchasing school supplies, clothing, and other items. Apparently, an informal agreement was reached between Ms. Deal, Mr. Rainey, and Ms. Jewell that Ms. Jewell's support and care stood in place of Mr. Rainey's child support payments. Mr. Rainey frequently saw Megan on the weekends she was with Ms. Jewell. At these visits, Mr. Rainey gave Megan money, usually \$20.00-\$30.00, though sometimes more for special occasions, such as an impending vacation.

Ms. Deal was aware of Tiffany and was under the belief that Tiffany and her mother, Ms. Murphy, would be unable to survive without the financial support of Mr. Rainey. This was a factor in Ms. Deal's decision to not actively pursue the back due child support from Mr. Rainey.

Mr. Rainey provided health insurance for both Megan and Tiffany through the group insurance plan offered by his employer, Egyptian Lacquers. Also, Mr. Rainey had one or more life insurance policies listing Megan and Tiffany as beneficiaries.

Egyptian Lacquers filed this action to determine who should receive the death benefit under the Tennessee Workers' Compensation Act. Egyptian Lacquers and its insurer have since paid the monies currently due into the Williamson County Clerk's Office and expressed a willingness to pay whatever benefits are awarded as a result of this litigation. This litigation centers on a dispute between Megan, who turned 18 and became a high school senior during the action below, and Ms. Murphy, as next friend and natural mother of Tiffany. The trial court found that both Megan and Tiffany were both "actual dependents" pursuant to Tenn. Code Ann. §50-6-210. Accordingly, the trial court ordered that Megan and Tiffany were each to receive one-half of the death benefits owed under Tenn. Code Ann. §50-6-210, so long as each qualifies for said benefits under that statute.

2.

Our review in workers' compensation cases is *de novo* upon the record, accompanied by a presumption of the correctness of the factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. §50-6-225(e)(2). A trial court's determination of issues of law is reviewed *de novo* without any limitation or presumption. Spencer v. Towson Moving and Storage, Inc., 922 S.W.2d 508, 509 (Tenn.1996)

3.

The essence of this dispute is that if Tiffany is found to be the only surviving minor dependent, she will receive one-half of Mr. Rainey's average weekly wages for as long as she qualifies for benefits. If Tiffany and Megan are both found to be surviving dependents, each will receive one-half of sixty-six and two-thirds percent, or thirty-three and one-third percent, of Mr. Rainey's average weekly wages for as long as each qualifies for benefits. If Megan was only partially dependent on Mr. Rainey, then the amount she is to receive is to be proportional to the amount of support she received. Tenn. Code Ann. §50-6-210(e)(9).

Whether Megan is a surviving dependent is determined by applying the standards set forth in Tenn. Code Ann. §50-6-210. The applicable portions of §210 are:

(b) Persons Prima Facie Dependent. Children between sixteen (16) and eighteen (18) years of age, or those over eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.

(c) Actual Dependents. Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, father-in-law, who were wholly supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto, shall be considered actual dependents, and payment of compensation shall be made in the order named.

(d) Partial Dependents. Any member of a class named in subsection (c) who regularly derived part of such member's support from the wages of the deceased employee at the time of death and for a reasonable period of time immediately prior thereto shall be considered a partial dependent, and payment of compensation shall be made to such dependents in the order named.

The trial court found that Megan was an actual dependent under §210(c) due to the fact that Mr. Rainey was under an affirmative child support obligation. Since Mr. Rainey owed child support, the child receiving that support was "wholly supported" for purposes of §210(c). Counsel for Tiffany objects saying that Megan was not an actual or partial dependent of Mr. Rainey within the meaning of the Workers' Compensation Act. Counsel for Megan counters by raising a public policy argument, that if child support does not count as "wholly supporting" a child, then no child receiving child support

would ever be eligible for full benefits under §210 because each parent would only be partially supporting the child.

At this time, this court will not rule on the issue of whether a parent owing child support is to be considered as wholly supporting the child for purposes of §210(c). It is not necessary for the court to examine this issue at this time, because regardless of whether Megan qualified as a dependent under §210(c), she does qualify under §210(b). At the time Mr. Rainey died, Megan was 17 years, 7 months and 23 days old. Therefore, she is a prima facie dependent pursuant to §210(b). As Megan is prima facie dependent, it is incumbent upon the challenging party, in this case Tiffany, to refute Megan's status as a dependent by a preponderance of the evidence. Megan's status as a dependent was not refuted by a preponderance of the evidence. A substantial fact supporting Megan's dependant status that Appellant cannot overcome is that Mr. Rainey owed Megan child support, a duty that was never altered or amended. The statutory duty of fathers to support their children was recently confirmed in Berryhill v Rhodes, 21 S.W.3d 188 (Tenn. 2000). Appellant failed to show that the prima facie determination of dependency was incorrect, and so Megan is a dependent eligible to receive workers' compensation benefits pursuant to §50-6-210.

In resolving the issue of whether Megan was a partial dependent of the decedent, this Court finds that the burden of showing that she was less than wholly dependent should be upon the party making such a contention. Tenn. Code Ann. § 50-6-210-(e)(9) provides that partial dependents shall receive the proportion of benefits for actual dependents that corresponds with the proportion that the decedent's wages contributed to the "total income of the dependent." While we find evidence of the amount contributed by the decedent or on his behalf, we find no evidence of the total income of Megan. Therefore, the proof fails to establish partial dependency.

CONCLUSION

The trial judge correctly determined that Megan was a dependent pursuant to Tenn. Code Ann. §50-6-210. The trial court properly apportioned the benefits to each of Mr. Rainey's daughters. This appeal is dismissed, with costs for the appeal charged to Appellant and sureties, the trial court's decision is affirmed, and this case is remanded to the trial court for collection of cost and further proceedings consistent with this opinion.

HOWELL N. PEOPLES, Special Judge

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**EGYPTIAN LACQUERS MANUFACTURING COMPANY, ET AL. v.
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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 fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by the appellant and sureties, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM