

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON  
May 16, 2001 Session

**MARILYN REDDICK v. MURRAY, INC.**

**Direct Appeal from the Chancery Court for Madison County  
No. 54695 Joe C. Morris, Chancellor**

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**No. W2000-02178-SC-WCM-CV - Mailed July 16, 2001; Filed September 19, 2001**

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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. In this appeal, the plaintiff insists the trial court erred in dismissing her claim at the close of her proof. As discussed below, the panel has concluded the judgment should be reversed and the cause remanded for full trial of all issues fairly raised by the pleadings.

**Tenn. Code Ann. § 50-6-225(e) (2000) Appeal as of Right; Judgment of the Chancery Court Reversed; Remanded.**

JOE C. LOSER, JR., SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and ROBERT L. CHILDERS, SP. J., joined.

Bradley G. Kirk, Memphis, Tennessee, for the appellant, Marilyn Reddick.

J. Arthur Crews, II, Jackson, Tennessee, for the appellee, Murray, Inc.

**MEMORANDUM OPINION**

The employee or claimant, Marilyn Reddick, is 47 years old with a high school education and no vocational training. Her employment history consists exclusively of manual labor. She began working for the employer, Murray, approximately four years before her claimed injury by accident on May 6, 1997. Her initial duties consisted of installing components on lawn mowers on the assembly line. For the two years immediately preceding her claimed injury, she built lawn mower seats.

At trial she testified that when she arrived at work on May 6, 1997, she began performing her usual duty of building seats. During the day, she said, she received instructions to cease building

seats and to sweep and clean the area. She obeyed and swept debris into a pile on a large piece of cardboard. When she bent over to pick up the debris, she testified that she heard a pop and felt severe and immediate back pain. She was unable to straighten up and began yelling in pain. Two co-workers, Chris McLean and Recia Cole assisted her. The claimant's testimony was corroborated by Cole.

She immediately reported the accident to her employer. She completed her shift with pain, then drove to a walk-in medical clinic, where she received pain medication. The next day she called in and again reported she was not able to work because of her injury. When she was not offered medical care, she sought out a primary care physician, whom she had seen before, and was eventually referred to a neurological surgeon, Dr. Glenn Bamett, whom she had previously seen in 1992.

She initiated this civil action to recover workers' compensation benefits, averring her injury was one by accident arising out of and in the course of employment. In its answer, the employer, Murray, Inc., denied all material allegations of the complaint, averred that it had paid all benefits to which the claimant was entitled as of June 10, 1998 and contended the complaint should be dismissed for failure to give "proper notice," because it was barred by "the applicable statute of limitations," because the injury did not arise out of and in the course of employment and because the claimant was not permanently disabled.

At the trial on June 21, the claimant was aggressively cross examined as to whether her injury actually occurred while she was moving furniture at home, as to her previous injuries and claims and as to when she first learned that the employer was claiming that she was not injured at work. She admitted to discrepancies concerning prior injuries and when she first learned of the nature of the employer's defense, but adamantly insisted that her present injury occurred at work on May 6, 1997 and that she verbally reported it to a supervisor, Gina Purdue. Recia Cole testified she helped Ms. Reddick walk to the office immediately following the accident and helped her walk to her car at the end of the shift. The claimant's husband confirmed the injury did not occur at home to the best of his knowledge. He picked the claimant up at the walk-in clinic on the day of the injury, because the pain was so severe by then, according to the claimant's testimony, that she did not feel capable of driving herself home.

The claimant first saw Dr. Barnett for treatment of the present injury on June 3, 1997 with severe leg pain following her injury at work. After examining the claimant and ordering diagnostic studies, Dr. Barnett diagnosed "an acutely herniated L-4 disk on the left side with upper fragment migration over the body of L-4 (and) probable L-3 disk herniation on the left side as well." Three back surgeries later, the doctor released her with a permanent impairment rating. On direct examination, Dr. Barnett opined by deposition, based on the history provided by his patient, that the injury arose out of and in the course of the claimant's employment. He conceded on cross examination he had no personal knowledge as to how the injury occurred, but he was unequivocal that the injury was an acute one and that the claimant is permanently impaired.

At the conclusion of Ms. Reddick's proof, the employer moved to dismiss pursuant to Tenn. R. Civ. P. 41.02(2).<sup>1</sup> Although the employer had four witnesses waiting to be called, the chancellor, noting that he knew what Ms. Purdue would say, took the motion under advisement and adjourned court. Eight days later, the trial court granted the motion, finding the employee's testimony was not credible because she never asked for a company doctor, never mentioned to Dr. Barnett that she was injured at work, there was no expert testimony as to causation, there was no credible lay testimony of causation and she had failed to carry the burden of proof as to the issue of causation. The claimant has appealed contending she has made out a prima facie case.

Appellate review is de novo upon the record of the trial court, accompanied by a presumption of correctness of factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). The panel is not bound by the trial court's findings but conducts an independent examination of the evidence to determine where the preponderance of the evidence lies. Wingert v. Government of Sumner County, 908 S.W.2d 921, 922 (Tenn. Sp. Workers' Comp. 1995). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the opportunity to observe the witnesses' demeanor and to hear the in-court testimony. Long v. Tri-Con Ind., Ltd., 996 S.W.2d 173, 177 (Tenn. 1999). The appellate tribunal, however, is as well situated to gauge the weight, worth and significance of deposition testimony as the trial judge. Orman v. Sonoma, Inc., 803 S.W.2d 672, 676-77 (Tenn. 1991).

In the case of a motion for involuntary dismissal pursuant to Tenn. R. Civ. P. 41.02(2), the trial court must impartially weigh and evaluate the evidence as it would after the presentation of all the evidence and must deny the motion if the plaintiff has made out a prima facie case. See Smith v. Inman Realty Co., 846 S.W.2d 819 (Tenn. Ct. App. 1992). Dismissal at the close of a worker's compensation claimant's proof is rarely appropriate inasmuch as a reversal of the trial court's ruling results in additional proceedings and additional delay; instead, trial courts should hear the entire case and make appropriate findings of fact, and alternative findings when necessary, for appellate review. See Cunningham v. Shelton Sec. Service, Inc., \_\_\_ S.W.3d \_\_\_ (Tenn. 2001).

From our independent examination of the evidence, we find no explanation for the claimant's

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(2) After the plaintiff, in an action tried by the court without a jury, has completed the presentation of plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event the motion is not granted, may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence; in the event judgment is rendered at the close of plaintiff's evidence, the court shall make findings of fact if requested in writing within three (3) days after the announcement of the court's decision. Tenn. R. Civ. P. 41.02(2).

acutely herniated disk, other than hers that it occurred at work while she was cleaning up her work area. She told Dr. Barnett it happened at work. Her uncontradicted testimony is supported by the uncontradicted testimony of Ms. Cole and the claimant's husband. Perhaps the four witnesses who were waiting in the wings when the trial court took the case under advisement and adjourned court at the conclusion of the plaintiff's case would have offered countervailing evidence, in which case there would have been other evidence against which the testimony of the claimant and her corroborating witnesses could have been weighed and evaluated. At this point, however, there is none. A worker's compensation claimant's uncontradicted testimony as to causation, supported by the opinion of a qualified medical expert, should not be ignored because of inconsistencies in her testimony concerning extraneous matters. A prima facie case was made out.

For the above reasons, the judgment of the trial court is reversed and the cause remanded to the Chancery Court for Madison County for full trial of the issues raised by the pleadings. Costs are taxed to the appellee, Murray, Inc.

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JOE C. LOSER, JR., SPECIAL JUDGE

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**ORDER**

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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 motion for review is not well-taken and should be denied 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 on appeal are taxed to Murray, Inc.

IT IS SO ORDERED this 19th day of September, 2001.

PER CURIAM

Holder, J. - Not participating.