

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

October 18, 2001 Session

**BEATRICE SCOTT NALL v. E.I. DUPONT DE NEMOURS AND  
COMPANY, ET AL.**

**Direct Appeal from the Juvenile and Probate Court for Humphreys County  
No. P0749-93 Allen Wallace, Judge**

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**No. M2001-01176-WC-R3-CV - Mailed - December 5, 2001  
Filed - January 12, 2002**

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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 issue in this case is whether the plaintiff is entitled to interest on an award of benefits. The judgment did not comply with Rule 58 of the Tenn. R. Civ. P., and never became final, but the judgment was nevertheless satisfied. The defendant declined to pay interest on the judgment because it was not final. The trial court awarded a recovery of interest. We affirm.

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

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JR., J. and HOWELL N. PEOPLES, SP. J., joined.

John R. Lewis, Nashville, Tennessee, and Wm. J. Peeler, Waverly, Tennessee, for the appellants, E.I. Dupont De Nemours and Company and Kemper Insurance Companies.

Charles L. Hicks, Camden, Tennessee, for the appellee, Beatrice Scott Nall.

**MEMORANDUM OPINION**

**I.**

The plaintiff suffered sulphuric acid burns in 1993 while performing her job duties. Her claim for workers' compensation benefits was vigorously resisted on the grounds of misconduct. The case was heard in October 1998 resulting in a finding that the plaintiff was not disqualified for benefits and was totally and permanently disabled. On January 28, 1999, the trial judge signed an

Order drafted by counsel for the plaintiff requiring the defendant to pay the plaintiff benefits to age 65. This Order was signed only by the trial judge and plaintiffs counsel,<sup>1</sup> but was nevertheless entered by the clerk.

The defendant appealed. The plaintiff filed a motion to dismiss the appeal because the Notice of Appeal was not filed within thirty (30) days of the entry of final judgment. The Supreme Court denied the motion, holding that the

January 28 order *was not a final judgment* because the Order did not comply with Rule 58 of the Tennessee Rules of Civil Procedure. The fact that Appellant knew the trial court had entered the January 28 order did not cure the defect created when the court filed an order that failed to comply with Rule 58 of the Tennessee Rules of Civil Procedure. (Emphasis added).

The judgment<sup>2</sup> was affirmed by the Panel and subsequently by the Supreme Court. Following satisfaction of the judgment and the payment by the defendant of the principal obligations, the plaintiff petitioned the trial court to require the defendant to pay interest on the award. The petition was granted and the defendant was “ordered to pay interest” on the judgment from January 28, 1999 to the date of satisfaction.<sup>3</sup> The defendant remained much aggrieved, and appeals. The sole issue presented for review is whether the trial court erred in awarding post judgment interest “on a judgment that was not final under T.R Civ.P. 58.” Our review is *de novo* on the record with no presumption of correctness.

## II.

We press the point that the appellants’ argument is directed solely to the flat assertion that “no final judgment has ever been entered and thus there is no date from which post judgment interest can be calculated.”

The appellee’s response affords no enlightenment. She insists that “since the trial judge signed the order prepared by her counsel,” she is entitled to post judgment interest. This argument merely challenges the finding of the Supreme Court that the order failed to comply with Rule 58 and was therefore not final. Appellee further argues that “Rule 58 is not a standard in which to base post judgment interest, instead it is used to issue that a party knows that an order has been entered so that it has the awareness to be able to appeal the judgment.” Again, the appellee merely challenges the

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<sup>1</sup> Rule 58 requires that if the order is signed only by one counsel, he must certify that a copy has been served on all other parties or counsel. This was not done, and the omission was never corrected.

<sup>2</sup> Neither party - nor the court - raised the issue of the lack of finality of the judgment after the denial of the motion to dismiss the appeal. We deduce the Supreme Court assumed that the plaintiff “cured the defect” and for that reason did not further notice it.

<sup>3</sup> The amount of interest was not calculated, and is not at issue.

finding of the Supreme Court that the awareness of the appellant of the facts did not cure the defect.

### III.

Tenn. Code Ann. § 50-6-225(g)(1) provides for interest on *appealed* judgments in workers' compensation cases. The appellant does not contest its liability for the payments of interest pursuant to the statute; it argues that its liability for interest accrues when the judgment becomes final, and in light of the fact that the Supreme Court has ruled that the judgment is not final, there the matter ends.

This is, to be sure, a heady and perplexive argument, and one that causes us some concern. But it is too hyper technical for the circumstances of this workers' compensation case; the issue of finality of the judgment was not again broached after the denial of the motion to dismiss; the judgment was satisfied by the defendant;<sup>4</sup> the parties treated the judgment as final; the Supreme Court treated the judgment as final, and we shall treat the judgment as final. The judgment is affirmed, with costs assessed to the appellant. The motion of the appellee that we assess a penalty against the appellant for a frivolous appeal is denied.

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WILLIAM H. INMAN, SENIOR JUDGE

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<sup>4</sup> An unlikely event had the appellant relied upon the continued lack of finality of the judgment.

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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, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM