IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT NASHVILLE
October 18, 2001 Session

ARMINTA CARTER WOODS V. CITY OF MCMINNVILLE

Direct Appeal from the Circuit Court of Warren County
No. 42 Richard McGregor, Special Judge

No. M2001-00680-WC-R3-CV - Mailed - February 5, 2002
March 7, 2002

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e) for hearing and reporting of findings of fact and conclusions of law. The employer appeals an award of workers' compensation benefits to an employee who, while attending a work-related seminar distant from her place of employment, was injured on a personal mission. We vacate the judgment as void and remand for a trial by a duly elected judge.

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

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

Daniel H. Rader, III, Moore, Rader, Clift and Fitzpatrick, Cookeville, Tennessee, for the Appellant, The City of McMinnville, Tennessee.

A. Vester Parsley, Jr., Smithville, Tennessee, for the Appellee, Arminta Carter Woods

MEMORANDUM OPINION

Facts

Richard McGregor, Clerk and Master of Warren County, Tennessee, conducted a trial of this matter on February 8, 2001. He determined that Arminta Woods ("Woods"), an employee of the City of McMinnville ("City"), was entitled to workers' compensation benefits for an injury she sustained while searching for her broach at the Apple Barn Restaurant in Pigeon Forge, Tennessee. On March 11, 1998 Woods, and three other employees of the City, traveled in a city-owned vehicle to Pigeon Forge to attend a work-related seminar. They went shopping together and ate dinner at the Apple Barn Restaurant. That evening, Woods discovered she had lost her broach. They attended the seminar the next day and then went shopping again. On the way back to their hotel, they stopped at the Apple Barn Restaurant so Woods could look for her broach. While there, she fell and was injured. After conducting a trial, Mr. McGregor granted a judgment awarding Woods 50 percent disability. The City has appealed asserting that the injury did not occur in the course and scope of her employment.

Standard of Review

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452 456 (Tenn. 1988). Conclusions of law are subject to *de novo* review with no presumption of correctness. *Ganzevoort v. Russell*, 949 S.W.2d 293 (Tenn. 1997). Where the trial judge has made a determination based upon the testimony of witnesses whom he has seen and heard, great deference must be given to that finding in determining whether the evidence preponderates against the trial judge's determination. *Humphrey v. David Witherspoon, Inc.*, 734 S.W.2d 315 (Tenn. 1987). When the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. INA*, 884 S.W.2d 446, 451 (Tenn. 1994).

Issue

The City presents the issue on appeal as follows:

> "The trial court erred in finding that the fall sustained by Arminta Woods on March 12, 1998, was compensable under the Workers' Compensation Law. All of the witnesses, including Arminta

> Woods, herself, agreed that she was injured while on a 'purely personal,' errand seeking to retrieve a broach, which she had lost. The accident did not occur in the course and scope of her employment and is not compensable."

Discussion

Although not raised by the parties, we address the conduct of the trial in this case and its effect on the validity of the judgment under review. The transcript of the proceedings shows that Mr. Richard McGregor commenced a hearing on February 8, 2001 as follows:

THE COURT:	As I understand this is a Circuit Court Case Arminta Carter Woods versus City of McMinnville, is that correct?
MR. PARSLEY:	That's correct. Your Honor.
THE COURT:	Am I hearing this as a Special Judge or a Special Master?
MR. RADER:	Whatever.
MR. PARSLEY:	No preference, Your Honor. Special Judge will be fine with me.
MR. RADER:	We've agreed to let you hear it in the traditional way things have been done down here so whatever label we need to put on it will be fine.
THE COURT:	I'll try it as Special Judge. There's an order appointment signed by Judge Haston and I'll get you folks to sign that and we'll go from there. I have read the complaint and the answer in this case. I've also read the deposition of Dr. Rodger Zwemer. Are there any other medical?

The judgment entered in this case recites:

> This cause came to be heard before the Honorable Richard McGregor, Special Judge, holding the Circuit Court for Warren County, Tennessee, in McMinnville, Tennessee, this the 8th day of February 2001. The parties agreed to try this case before Richard McGregor, sitting as Special Judge, as evidenced by the signatures below.

The judgment is signed by Mr. McGregor and counsel for the parties. The record before us is devoid of any other basis for Mr. McGregor to act as judge in this case.

In *Ferrell v. Cigna Property & Cas. Ins. Co.*, 33 S.W.3d 731 (Tenn. 2000), a case also arising from the Circuit Court for Warren County, Tennessee, with Mr. McGregor sitting as special judge, the Supreme Court discussed the legality of the trial court's practice of referring workers' compensation cases to the clerk and master for trial. The Court discussed the constitutional, statutory, and administrative provisions relating to special judges. See Article VI, § ll of the Tennessee Constitution; Tenn. Code Ann. §§17-2-118, 122, and 202; and Tennessee Supreme Court Rule 11 VII(c)(3). A judge may appoint a clerk and master to act as special judge only if the judge finds it necessary to be absent from holding court. 33 S.W.3d at 737. The Court said:

> If a trial judge is unable to interchange or obtain assistance from another judge or this Court and therefore appoints the clerk and master or another judicial officer, the order of appointment should be either for a definite period of time or for a specific case. A standing order appointing a clerk and master as special/substitute judge to hear an entire class of cases is not appropriate.

33 S.W.3d at 739.

Even though the proper procedure had not been followed in *Ferrell*, the Court held that the Clerk and Master was a *de facto* judge in that case and affirmed the judgment below. In so holding, the Court relied on the principle stated in *State ex rel. Newsom v. Biggers*, 911 S.W.2d 715 at 718 (Tenn. 1995) as follows:

> The judicial acts of one in possession of a judicial office created and in existence by law, under color of right, assuming and exercising the functions of such office with a good faith belief in his right to exercise such authority, involved and acquiesced in by the parties, the bar, court officials and the public, are those of a *de facto* officer.

In *Bankston v. State of Tennessee*, 908 S.W.2d 194 (Tenn. 1995), the Court noted that Tennessee has long recognized the doctrine of de *facto* judges for the policy reasons adopted by the United States Supreme Court. "For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined." *Norton v. Shelby County*, 118 U.S. 425, 441-42, 6 S.Ct. 1121, 1125, 30 L.Ed. 178 (1886).

The record in this case fails to disclose how Mr. McGregor was designated to serve as special judge, although we glean from the transcript that he presumed to act pursuant to some standing order or letter of appointment. The record also does not disclose that the duly elected judge was "absent from holding court." In *Ferrell*, supra, the Tennessee Supreme Court specifically held that such a procedure for selecting a special judge was not authorized by law. That decision was published December 8, 2000, two months before the proceedings before Mr. McGregor in this case. Since the parties consented to Mr. McGregor hearing the case as special judge, and the practice has, in the past, been acquiesced by the local bar and court officials, we would ordinarily

hold that he was acting as a *de facto* judge and review this matter as we would any other appeal. Where the practice has previously been determined to be irregular, we cannot ignore the requirement that a person assume and exercise "the functions of such office with a good faith belief in his right to exercise such authority" in order to act as a *de facto* judge. *State ex rel. Newsom*, supra. We find that Mr. McGregor knew or should have known that he could not properly conduct the trial in this case and, therefore, he was not a *de facto* judge. The judgment he entered in this case is void. *Low v. State*, 111 Tenn. 81, 78 S.W. 110 (1903). Accordingly, there is no issue properly before this Court for review.

Disposition

We vacate the judgment and remand this case to the trial court. Costs of the appeal are taxed one-half to the Appellant and one-half to the Appellee.

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Howell N. Peoples, Special Judge

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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 taxed one-half to the Appellant and one-half to the Appellee, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM