IN THE SUPREME COURT OF TENNESSEE

SPECIAL WORKERS' COMPENSATION APPEALS PANEL

AT NASHVILLE

FILED

June 24, 1997

Cecil W. Crowson
Appellate Court Clerk

LUTHER T. BECKETT, Plaintiff/Appellant v. GAYLORD ENTERTAINMENT COMPANY, Defendant/Appellee	)	DAVIDSON CIRCUIT NO. 01S01-9610-CV-00209 HON. WALTER C. KURTZ, JUDGE

For the Appellant:

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172 Second Avenue, North
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Nashville, TN 37201

For the Appellee:

Richard K. Smith
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M E M O R A N D U M O P I N I O N

Members of Panel:

Justice Lyle Reid
Senior Judge William H. Inman
Special Judge William S. Russell

AFFIRMED **INMAN, Senior Judge**

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 is whether the defendant should be estopped to plead the bar of the Statute of Limitations. The trial judge ruled that waiver and estoppel were not implicated and dismissed the suit.

The plaintiff alleged that he was injured while working for the Opryland Hotel on May 28, 1994. The defense of the Statute of Limitations was raised by motion for summary judgment, the hearing of which was bifurcated. The trial court determined that the plaintiff was aware of a job-related injury no later than June 8, 1994,[1] but conducted a separate hearing on the issue of waiver and estoppel, following which he ruled that the delay in filing suit was the fault of the plaintiff.

Plaintiff was employed at the Opryland Hotel in Nashville on May 28, 1994, as a doorman. On the early afternoon of May 28, 1994, he felt a pain in his lower right abdomen, and thought he had pulled a muscle and reported this to the door captain. He then told the bell services manager that he thought he had pulled a muscle and requested permission to go home, which was granted. He returned to work on his next scheduled work day, and continued to work without complaint until he was terminated for an unrelated reason on August 13, 1994.

Plaintiff went to see his personal physician, Dr. Jacokes, about this injury on June 8, 1994. After examining the plaintiff, Dr. Jacokes advised him that he had a hernia. Plaintiff knew that his injury had occurred at work, but he made no mention to Opryland of his hernia before leaving his employment.

Plaintiff testified that the pain in his lower abdomen worsened in April, 1995, and he sought additional medical treatment. His physician told him that he would need surgery and, as a result, he contacted defendant to file a workers' compensation claim. He was referred to Willis Corroon, the third party administrator of Opryland's workers' compensation claims, and spoke with Ms. Ann Parker, claims adjuster, at Willis Corroon.

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[1]The Complaint was filed July 26, 1995.

Ms. Parker informed Mr. Beckett that Willis Corroon would investigate the claim, and then she took steps to obtain medical records from his doctors. She also attempted to contact the two persons plaintiff claimed to have notified about his injury. She did not tell him that his claim would be paid, or that his claim was compensable, or offer to negotiate.

On June 15, 1995, Willis Corroon forwarded a Notice of Denial of the claim for compensation to the workers' compensation division at Opryland and sent a letter to Mr. Beckett informing him that his claim was being denied. The reason stated in the letter for the basis of the denial was plaintiff's failure to give notice of his injury and failure to meet the criteria necessary under the workers' compensation statute to be compensated for a hernia.

Both plaintiff and defendant presented proof concerning the conversation between Mr. Beckett and Ms. Parker. He acknowledged that Ms. Parker never said that she was negotiating a claim or would settle the claim, but that she was "still investigating" the claim, and that he would hear from her when she decided the claim. Mr. Beckett realized that Ms. Parker could just as easily deny the claim as she could approve it.

Plaintiff argued that the actions of Willis Corroon in investigating the claim estopped defendant from relying on the Statute of Limitations and/or constituted a waiver of the Statute of Limitations. He acknowledged at trial that there was no misrepresentation or concealment of material facts by defendant, but contended that the actions of the adjuster "lulled him to sleep."

Appellant argues that the adjuster continued to investigate his claim and to assure him that no decision had been made for seven days after the bar date, which "in equity and conscience" should estop the defendant from pleading the bar of the statute.

Our 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 finding, 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 584 (Tenn. 1991). There is no presumption of the correctness of a question of law. *NCNB Nat'l Bank v. Thrailkill,* 856 S.W.2d 150 (Tenn. Ct. App. 1993).

In *Warton v. Everhart,* 895 S.W.2d 317 (Tenn. 1995), the Court noted that its research has not revealed that the doctrine of equitable tolling has ever been judicially recognized in Tennessee. The Court, rather, stated that the existing doctrine of equitable estoppel *with its requirement that the opposing party have engaged in misconduct* more appropriately strikes a balance between the need for predictable procedural rules on the one hand and the need to relieve innocent parties of the consequences of the expiration of the limitations on the other.

The plaintiff must prove an affirmative misrepresentation by the defendant to implicate the doctrine of waiver or equitable estoppel and we agree with the trial judge that the statements by Ms. Parker are not equatable to affirmative misrepresentation.

The judgment is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Lyle Reid, Justice

_____
William S. Russell, Special Judge

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LUTHER T. BECKETT,	}	*DAVIDSON CIRCUIT*
	}	*No. 95C-2366 Below*
Plaintiff/Appellant	}	
	}	*Hon. Walter C. Kurtz,*
vs.	}	*Judge*
	}	
GAYLORD ENTERTAINMENT COMPANY,	}	*No. 01S01-9610-CV-00209*
	}	
Defendant/Appellee	}	*AFFIRMED.*

JUDGMENT ORDER

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 Plaintiff/Appellant and Surety, for which execution may issue if necessary.

IT IS SO ORDERED on June 24, 1997.

PER CURIAM