IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE JANUARY 1999 SESSION

FILED
March 18, 1999
Cecil Crowson, Jr.
Appellate Court
Clerk

WILLIAM HERRON,	)	
	)	BRADLEY CHANCERY
Plaintiff/Appellant	)	
	)	
v.	)	NO. 03S01-9807-CH-00072
	)	
HORNADY TRUCK LINES, INC.,	)	
	)	HON. EARL HENLEY,
Defendant/Appellee	)	CHANCELLOR

For the Appellant:

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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 Frank F. Drowota, III
Senior Judge John K. Byers
Senior Judge William H. Inman

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 Chancery Court of Bradley County, Tennessee, has jurisdiction to hear the case. By way of a motion for summary judgment, the Chancellor held that the Court was without subject matter jurisdiction and entered an order of dismissal. The plaintiff appeals, and presents for review the propriety of the dismissal of his case.

The plaintiff is a resident of Bradley County, Tennessee. He telephoned Hornady Truck Lines, headquartered in Monroeville, Alabama, on April 28, 1997, to enquire about employment as a truck driver. The terminal manager of Hornady, Scott Johnson, invited him to come to the Birmingham, Alabama terminal to apply for a job as a over-the-road driver.

On May 5, 1997, the plaintiff arrived in Birmingham. He filled out and signed an application for employment, took a road test, was given a drug screen, a safety interview, and finally, a Department of Transportation written test. He passed these tests and was offered a job while at the Birmingham terminal. He thereupon accepted the offer.

Plaintiff began work and was assigned the Birmingham location as his home terminal. He received dispatch instructions from the Monroeville, Alabama, office. After completing a delivery he would telephone the Alabama office for further instruction. On July 2, 1997, he was injured in an accident in Alabama while in the course and scope of his employment.

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 548, 550 (Tenn. 1995). We review questions of law *de novo* with no presumption of correctness. *Perry v. Sentry Ins. Co.*, 938 S.W.2d 404 (Tenn. 1996). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law, Tenn. R. Civ. P. Rule 56.03. The plaintiff bears the burden of demonstrating to the Court that there are no disputed, material facts creating a genuine issue, *Byrd v. Hall,* 847 S.W.2d 208 (Tenn. 1993).

The applicable statute is T.C.A. § 50-6-115. It provides

> If an employee, while working outside the territorial limits of this state, suffers an injury on account of which such employee . . . would have been entitled to the benefits provided by this chapter had such injury occurred within the state, such employee . . . shall be entitled to the benefits provided by this chapter; provided that at the time of such injury:
> (1) The employment was principally localized within this state; or
> (2) The contract of hire was made in this state.

It is not disputed that the accident occurred in Alabama; thus, the plaintiff was required to show either that his employment was principally localized within Tennessee or that the contract of hire was made in Tennessee.

The plaintiff argues that the contract for hire was made in Tennessee, because he called Hornady after reading an advertisement in a magazine, answered all pertinent questions, and was told by the telephone recruiter that he was hired provided that he attend an orientation session at the Birmingham terminal and complete certain tests. But it is not seriously disputed that every determinative factor of the employment took place in Alabama: the plaintiff filled out and signed an application for employment in Alabama, he took a drug test, road test, a

Department of Transportation test in Alabama, and he was offered a job, which he accepted in Alabama.[1] Much like the circumstances in *Perkins v. BE & K, Inc.*, 802 S.W.2d 215 (Tenn. 1990), the only event that happened in Tennessee was the plaintiff's response to Hornady's magazine advertisement about a job. Assuming factually that the plaintiff was offered a job during the telephone call, it is not disputed that any offer was strictly conditioned upon the written application, drug and road tests, and the written tests, all of which occurred in Alabama.

The plaintiff relies upon *Matthews v. St. Paul Prop. & Liab. Ins.*, 845 S.W.2d 737 (Tenn. 1992), in support of his argument that the contract for hire was made in Tennessee. In *Matthews*, the plaintiff contacted the trucking company after reading an advertisement in a Tennessee newspaper. Pertinent preliminary information was taken over the telephone, and the application was referred to a lessee of the company, which screened the application and approved him for employment. He was injured in a traffic accident in Ohio, and the company's insurer advised him that he had a choice of fori, those being Ohio, Missouri, or Tennessee. Acknowledging that the question was "a close one," the Court apparently pitched its conclusion on the fact that the plaintiff was offered a job during the telephone conversation and that he accepted the offer. The fact that the agreement was thereafter memorialized in Missouri was held to be of no significance. The Court noted that "nothing in the written contract purports to control the question of jurisdiction over a claim for workers' compensation."

The contrast between *Matthews* and the case at hand is evident. Even assuming as true, which we must, the plaintiff's statement that he was offered a job by telephone is not dispositive because the offer was conditional and was not

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[1]The plaintiff conceded in his deposition that he would not have been hired if he had failed the described tests.

finalized until the events occurred in Alabama. We agree with the Chancellor that the contract for hire was not made in Tennessee. We also agree that the plaintiff's employment was not principally localized in Tennessee. His residency in Tennessee is not controlling, and the fact that he was allowed to return to Bradley County on week-ends has little relevancy to the question of 'principally localized." Hornady has no assets in Tennessee, the plaintiff reported to and received all dispatch instructions from the home office in Alabama, and it is not controverted that 81 out of 82 origins and destinations where the plaintiff picked up and delivered goods were outside Tennessee. Neither is it controverted that the plaintiff's truck was not maintained in Tennessee.

Finally, it is to be noted that in the application for employment, the plaintiff acknowledged, unlike *Matthews, supra,* that the laws of Alabama would control.

The judgment is affirmed at the costs of the appellant.

_____
William H. Inman, Senior Judge

CONCUR:

_____
Frank F. Drowota, III, Justice

_____
John K. Byers, Senior Judge

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WILLIAM HERRON,	)	BRADLEY CHANCERY
	)	No. 97-232
Plaintiff-Appellant,	)	
	)	
	)	No. 03S01-9807-CH -00072
v.	)	
	)	
HORNADY TRUCK LINES	)	Hon. Earl H. Henley
	)	Chancellor
Defendants/Appellants.	)	

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 facts 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 the appellant, William Herron and Michael A. Anderson, surety,for which execution may issue if necessary.

03/18/99