

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
June 24, 2013 Session

DANNY RAY GROOMS v. CITY OF TRENTON, TENNESSEE ET AL.

**Appeal from the Chancery Court for Gibson County
No. 20021 George R. Ellis, Chancellor**

No. W2012-01872-WC-R3-WC - Mailed August 7, 2013; Filed September 12, 2013

The employee, a sanitation worker, was struck in the groin area when he fell onto a bed frame. Within a few days, he developed swelling and infection of same. His treating physician testified that the condition was not caused by the work injury, and an evaluating physician testified that the employee's condition was consistent with the injury. The trial court found that the swelling and infection were not related to the work injury and dismissed employee's complaint. The employee appealed.¹ We affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right;
Judgment of the Chancery Court Affirmed**

TONY A. CHILDRESS, SP. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and DON R. ASH, SR. J., joined

Jay E. DeGroot, Jackson, Tennessee, for the appellant, Danny Ray Grooms

Robert E. Cooper, Jr., Attorney General & Reporter; Alexander S. Rieger, Assistant Attorney General, for the appellant, Tennessee Department of Labor and Workforce Development, Second Injury Fund

John D. Burluson and Matthew R. Courtner, Jackson, Tennessee, for the appellee, City of Trenton, Tennessee

¹ Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law.

OPINION

Factual and Procedural Background

Danny Ray Grooms was employed as a laborer for the City of Trenton, primarily in the City's sanitation department. His job consisted of climbing in and out of the cab of a dumpster truck, attaching a cable to a dumpster, and using a winch to pull the dumpster onto the truck. On Friday, January 23, 2009, shortly before noon, he was working on a dumpster truck when he slipped and fell. As he landed, he straddled a bed frame, which struck him on the inner part of his right thigh near his groin. He contends that this incident resulted in gangrene of this area, requiring surgery and additional medical expenses.

A Benefit Review Conference ("BRC") was held on January 11, 2011, but the parties were unable to resolve their differences. Mr. Grooms filed his complaint on January 14, 2011, and on February 2, 2011, the Employer filed its answer. On February 17, 2011, the Employer filed a notice of wage statement and attached a copy of the BRC Report. According to this report, compensability of the injury was one of the issues agreed on at the BRC. The Employer paid Mr. Grooms Temporary Total Disability benefits, and it paid for his medical treatment.

Mr. Grooms brought suit against the City of Trenton in the Chancery Court of Gibson County seeking permanent partial disability benefits for an on-the-job injury. A trial was held on June 27, 2012.

Mr. Grooms testified that he was wearing three layers of clothing at the time of the incident, consisting of long underwear, jeans, and insulated coveralls. Nevertheless, Mr. Grooms testified that he felt a burning, itching sensation in his groin area at the time of the fall. A short time later, Mr. Grooms examined this area of his body when he came indoors during his lunch hour. He observed a red spot and a small raised area that had the appearance of a pencil lead underneath the skin on his inner thigh. Mr. Grooms did not observe any broken skin, bleeding, or bruising. Over the weekend, his symptoms of burning and itching increased and swelling began to appear in the area. By Monday morning, January 26, 2009, Mr. Grooms believed that he needed medical care. He informed his supervisor of the incident and saw his primary care physician, Dr. Steven Hall.

At trial, Mr. Grooms offered the deposition testimony of Dr. Hall. Dr. Hall testified that he noted substantial swelling of Mr. Grooms' penis and scrotum, two "pinpoint sores," and a possible imprint of a traumatic injury. He immediately referred Mr. Grooms to a urologist for evaluation and treatment, and he arranged an appointment with Dr. Donald McKnight, Jr., for the next day.

Dr. McKnight's deposition was taken on January 18, 2012, and his deposition was admitted into evidence at trial. Dr. McKnight, a urologist, testified that he examined Mr. Grooms on January 27, 2009. Dr. McKnight described urology as a medical specialty that "involves the primarily surgical and medical treatment of the kidneys, ureter, bladder, and male genital system." Dr. McKnight noted that Mr. Grooms had a swollen scrotum and a swollen and inflamed penis. Dr. McKnight testified that Mr. Grooms had acute scrotal gangrene, also known as Fournier's gangrene. Dr. McKnight recommended surgery to remove the dead skin and tissue, and he performed that procedure later the same day. Mr. Grooms was hospitalized for seven days, and his post-operative care consisted of antibiotics and frequent changing of dressings. Dr. McKnight explained that the purpose of this treatment was to allow a base for new skin growth in the area where the dead skin and tissue had been removed. Dr. McKnight arranged for Mr. Grooms to receive home care treatment similar to the care he was receiving at the hospital.

By February 16, 2009, Mr. Grooms' condition had improved sufficiently to permit application of skin grafts to the area where the skin and tissue had been removed. Dr. McKnight testified that he performed the skin grafting procedure on February 19, 2009. During the procedure, Dr. McKnight removed skin from Mr. Grooms' thigh and secured the skin to the areas of Mr. Grooms' scrotum and penis where the skin had previously been removed. Mr. Grooms was discharged from the hospital on February 22, 2009. His post-surgical treatment included dressing changes, antibiotics, and pain medication. Although the grafts successfully healed, there was some contraction of the grafts on Mr. Grooms' scrotum. On April 23, 2009, Dr. McKnight permitted Mr. Grooms to return to work with no restrictions.

Dr. McKnight's final examination of Mr. Grooms occurred on October 7, 2009. Although Mr. Grooms' skin grafts were fully healed, he reported a pulling sensation in his groin. The area on his thigh from which the grafts had been taken had also healed, though it did not look "normal." Dr. McKnight opined that the changes to the thigh were only cosmetic. Mr. Grooms was discharged from Dr. McKnight's care without restrictions placed on his activities.

Although Dr. McKnight testified that he had not determined the cause of Mr. Grooms' gangrene, he thought it unlikely that it was related to the fall. Dr. McKnight stated that the type of gangrene experienced by Mr. Grooms was a "spontaneous thing," and that there was usually no known etiology for this type of condition. Dr. McKnight acknowledged that trauma to the groin area could cause this type of gangrene if there is a laceration where bacteria could enter the area of the trauma. Dr. McKnight testified that he found no lacerations or other evidence of a traumatic injury when he examined Mr. Grooms on January 26, 2009. When asked if he was "aware of anything in this case that caused [Mr. Grooms]

to have these difficulties . . . other than his traumatic work injury,” Dr. McKnight responded that he saw “nothing else.”

Dr. Samuel Chung, a physical medicine and rehabilitation specialist, performed an independent medical examination on November 13, 2009, at the request of Mr. Grooms’ counsel. Dr. Chung’s deposition was taken on November 29, 2011. Dr. Chung described his specialty as one “that treats neurological and orthopedic injuries and impairment that comes from those injuries and then tr[ies] to assist them to gain their independence and maximum improvement.” Based on his review of Dr. McKnight’s records and his own examination of Mr. Grooms, Dr. Chung’s diagnosis was “[r]esidual from right scrotal injury with extensive debridement and skin graft with ongoing symptomatology.” Dr. Chung opined to a reasonable degree of medical certainty that the work history of injury reported to him by Mr. Grooms was “consistent and compatible” with his diagnostic impression.

At the conclusion of the proof, the trial court issued its findings from the bench. Based on Dr. McKnight’s testimony that Fournier’s gangrene could not be caused by a traumatic injury absent a laceration and Mr. Grooms’ testimony that he had no broken skin or bleeding after falling on the bed frame, the trial court found that Mr. Grooms had failed to carry his burden of proof. On August 1, 2012, the trial court entered its written judgment dismissing the complaint. On August 30, 2012, Mr. Grooms appealed from that judgment, contending that the evidence preponderates against the trial court’s finding.²

Standard of Review

The standard of review of issues of fact is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008). When credibility and weight to be given testimony are involved, considerable deference is given to the trial court when the trial judge had the opportunity to observe the witness’s demeanor and to hear in-court testimony. *Madden v. Holland Grp. of Tenn.*, 277 S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony that is contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court’s conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

² Because the trial court did not address any issue other than causation and did not make any alternative findings, we have omitted the evidentiary facts presented at trial concerning all other issues.

Analysis

Mr. Grooms presents three arguments in support of his contention that the trial court's decision should be reversed. He first argues that Dr. McKnight's testimony is a nullity under the "cancellation rule" because he gave contradictory statements during his deposition. Mr. Grooms next contends that Employer's agreement during the BRC that a compensable injury had taken place and its payment of medical and temporary disability benefits should preclude it from contesting causation at trial. Finally, Mr. Grooms maintains that the evidence preponderates against the trial court's decision.

A. The Cancellation Rule

Mr. Grooms contends that Dr. McKnight's testimony concerning causation is contradictory. Because Dr. McKnight's testimony about causation is conflicting, Mr. Grooms' position is that Dr. McKnight's testimony should be disregarded on the issue of causation.

"Tennessee follows the rule that contradictory statements by the same witness regarding a single fact cancel each other out. The Tennessee Supreme Court has characterized mutually contradictory statements by the same witness as 'no evidence' of the fact sought to be proved." *Church v. Perales*, 39.S.W.3d 149, 169-70 (Tenn. Ct. App. 2000)(citations omitted). "When the testimony of a witness is susceptible of multiple interpretations, one of which would produce no inconsistency, we are reluctant to apply the 'cancellation rule'." *Helderman v. Smolin*, 179 S.W.3d 493, 505 (Tenn. Ct. App. 2005)(citing *Gambill v. Middle Tenn. Med. Ctr. Inc.*, 751 S.W.2d 145 (Tenn. Ct. App. 1988)).

For the cancellation rule to apply, a witness must give conflicting or contradictory statements on material issues that are susceptible to only one interpretation. Thus, to apply the cancellation rule in this case, Dr. McKnight must have given conflicting testimony on the cause of Mr. Grooms' gangrene that is susceptible to only one interpretation.

Dr. McKnight testified that it was unlikely Mr. Grooms' gangrene was related to the January 23, 2009 fall at work. Dr. McKnight said the type of gangrene exhibited by Mr. Grooms was almost always a "spontaneous thing" usually with no known cause. Dr. McKnight acknowledged that trauma to the groin area could cause this type of gangrene but only if the trauma included a laceration. He testified that he did not find a laceration during his examination of Mr. Grooms. Mr. Grooms contends this testimony conflicts with Dr. McKnight's response "I see nothing else" when asked the question "[a]re you aware of anything in this case that caused [Mr. Grooms] to have these difficulties that led to the

surgical procedure, other than his traumatic work injury?"

For the cancellation rule to apply, however, we must construe Dr. McKnight's "I see nothing else" response as indicating the January 23, 2009 incident caused Mr. Grooms' gangrene. Such an interpretation is not supported by the record. Instead, when the allegedly conflicting response is read in the context of Dr. McKnight's numerous statements about Fournier's gangrene and its etiology, the response is consistent with the balance of his testimony. The sum of Dr. McKnight's testimony on causation is that Fournier's gangrene normally occurs spontaneously. While Dr. McKnight conceded that gangrene can result from trauma to the area, any trauma must be accompanied by a laceration where bacteria can enter. Because Mr. Grooms did not have a laceration resulting from his fall at work, Dr. McKnight opined that the January 23, 2009 incident was not the cause of Mr. Grooms' gangrene. After reviewing Dr. McKnight's testimony in its entirety, we conclude there is no basis for the application of the cancellation rule in this case.³

³ The questions to Dr. McKnight and his answers to those question on the issue of causation are as follows:

Q: Do you have any idea or have an opinion as to whether it was related to the fall that he described to you in the first visit?

A: I think it's unlikely related to his fall.

Q: Why is that?

A: Fournier's or acute scrotal gangrene is a spontaneous thing.

Q: And when you say "spontaneous," is there a known etiology for that?

A: Usually, there's not.

* * *

Q: Either based on the history that Mr. Grooms gave you, or any other information you've developed in treating this patient, do you have any reason to believe that this Fournier's gangrene was caused or aggravated or related to his work for the City of Trenton?

A: I don't think so.

* * *

Q: Well, I want you to assume, for purposes of this question, in fact, he did have a traumatic, direct-impact injury to his scrotum and to his private genitalia area. Can an acute, traumatic injury result in gangrene forming, if not treated?

A: If there's a laceration, yes.

Q: Okay.

A: Otherwise, I don't think so.

* * *

Q: Okay. Do you have any information that this gentleman's scrotal and penis gangrene was precipitated by anything other than that traumatic accident or injury?

A: Just that when you see a scrotal abscess like that, almost always, it's a spontaneous thing.

Q: Okay. Can it be caused by acute trauma?

A: Unless there's a laceration, no.

(continued...)

B. Ability to Contest Causation

Mr. Grooms' next contention is that Employer's payment of benefits or Employer's position during the BRC precluded it from contesting causation once litigation began, however, he cites no authority to support his position. The BRC took place in January 2011 – well before Dr. McKnight's deposition in January 2012. Furthermore, it is apparent from statements made by counsel during the deposition and at trial that none of the parties were aware of Dr. McKnight's opinion regarding causation until the deposition was in progress. Moreover, the trial took place on June 27, 2012, which gave Mr. Grooms sufficient time to develop additional proof on the issue.

We believe that accepting Mr. Grooms' position would be unwise. First, it would place employers in the position of having to choose between voluntarily paying for medical care or benefits and risk waving the issue of causation in the future, or refusing to voluntarily pay for any care or benefits in order to preserve the right to contest that issue. This dilemma would not only create the potential of delaying medical care and benefits that employees may need, but it could also lead to increased litigation costs and unnecessary delays as employees seek to require employers to pay benefits and provide care. Prohibiting employers and

³ (...continued)

* * *

Q: Dr. McKnight, just a couple of questions. When you first examined this patient on January the 27th, 2009, did you find any laceration or any other evidence of traumatic injury?

A: No, sir.

Q: Did you find any type of laceration or sign from that traumatic injury that would indicate to you that the Fournier's gangrene that developed was related to that traumatic injury?

A: No, sir, I didn't.

* * *

Q: Doctor, what is an abscess?

A: It's a collection of pus.

Q: And you did find presence of scrotal abscess on your examination of Mr. Grooms, did you not?

A: Yes.

Q: Okay. And can an abscess and pus lead to the development of gangrene?

A: They're all one and the same.

Q: One and the same. Okay. Can a traumatic injury lead to the presence of abscess?

A: Not without a laceration. Not without being able to get bacteria into it.

Q: And again, were you aware that Dr. Hall did find some -- what he described as pinpoint sores on the shaft of the penis, and also an imprint where there was a traumatic injury to that area?

A: I was not aware that he found an imprint of a traumatic area.

Q: Are you aware of anything in this case that caused this gentleman to have these difficulties that led to the surgical procedure, other than his traumatic work injury?

A: I see nothing else.

employees from contesting an issue if a BRC is unsuccessful would require both employers and employees to be prepared for litigation prior to the BRC out of concern that one of the parties may agree to something that is later proven to be incorrect. Finally, adopting Mr. Grooms' position would increase the types of unnecessary expenses the BRC process was designed to eliminate. We conclude that neither the payment of medical and temporary benefits nor the positions taken at the BRC precluded Employer from contesting liability at trial.

C. Review of Medical Evidence

In his final issue, Mr. Grooms claims the evidence preponderates against the trial court's decision. "Except in the most obvious, simple and routine cases, a claimant must establish by expert medical evidence the causal relationship between the claimed injury and the employment activity. That relationship must be established by the preponderance of the expert medical testimony, as supplemented by the lay evidence." *Cloyd v. Hartco Flooring Co.*, 274 S.W.3d 638, 643 (Tenn. 2008) (quoting *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn.1991)). "When the medical testimony differs, the trial judge must obviously choose which view to believe. In doing so, he is allowed, among other things, to consider the qualifications of the experts, the circumstances of their examination, the information available to them, and the evaluation of the importance of that information by other experts." *Orman*, 803 S.W.2d at 676.

Applying the *Orman* considerations to this case, we note that Dr. McKnight began treating Mr. Grooms on January 27, 2009, which was just a few days after the January 23, 2003 incident, and he treated him for eight months. Dr. McKnight, a urologist, made a specific diagnosis of Mr. Grooms' condition, Fournier's gangrene. He exhibited particular knowledge about that condition, which was within his medical specialty. In contrast, Mr. Grooms' condition was outside the medical speciality of Dr. Chung, who is a physical medicine and rehabilitation specialist. Dr. Chung examined Mr. Grooms on a single occasion, shortly after he had been released by Dr. McKnight. His diagnosis of "residual from right scrotal injury" is at best vague, and Dr. Chung did not explain the bases for his opinion.

As required, we have conducted an independent review of the medical testimony presented by deposition. After taking all of these considerations into account, we conclude that the trial court correctly gave greater weight to Dr. McKnight's opinion. Thus, the evidence does not preponderate against the trial court's finding that Mr. Grooms failed to sustain his burden of proof on the issue of causation.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Danny Ray Grooms and his surety, for which execution may issue if necessary.

Tony A. Childress

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

DANNY RAY GROOMS v. CITY OF TRENTON, TENNESSEE, ET AL.

**Chancery Court for Gibson County
No. 20021**

No. W2012-01872-WC-R3-WC - Filed September 12, 2013

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 on appeal are taxed to the Appellant, Danny Ray Grooms, and his surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM