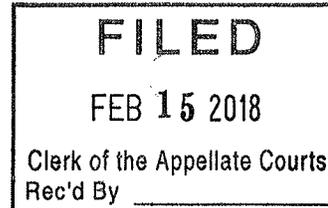


IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

September 18, 2017 Session

TRISTAR CENTENNIAL MEDICAL CENTER v. DANA C. PUGH

**Appeal from the Circuit Court for Davidson County
No. 15C2393 Hamilton V. Gayden, Jr., Judge**



No. M2016-02470-SC-R3-WC – Mailed December 4, 2017

Dana Pugh (“Employee”) and Tristar Centennial Medical Center (“Employer”) settled a claim for a compensable back injury to Employee after participating in and failing to resolve their dispute at a Benefit Review Conference (“BRC”). Employee later filed a motion to compel Employer to approve a surgical procedure recommended by her authorized physician and for attorney’s fees. Employer approved the surgery after another physician conducted a review of Employee’s medical records. Employee subsequently reset her motion, and the trial court awarded her attorney’s fees. Employer has appealed. The 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 pursuant to Tennessee Supreme Court Rule 51. We conclude that the trial court did not have subject matter jurisdiction, vacate the judgment, and dismiss the case.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;
Judgment of the Circuit Court Vacated; Case Dismissed**

JEFFREY S. BIVINS, C.J. delivered the opinion of the court, in which DON R. ASH and ROBERT E. LEE DAVIES, SR. JJ., joined.

Catheryne L. Grant, Nashville, Tennessee, for the appellant, TriStar Centennial Medical Center.

Larry R. McElhaney, II, and Steven C. Fifield, Nashville, Tennessee, for the appellee, Dana C. Pugh.

OPINION

Factual and Procedural Background

Employee sustained a compensable injury to her lower back on April 28, 2014. On June 22, 2015, Employer and Employee attended a Benefit Review Conference (“BRC”) to address the injury. Following the Benefit Review Conference, the Mediator issued a Benefit Review Report which indicated the parties were able to agree upon “Compensability” and “Past Medical Expenses” but that the parties were unable to agree upon “Nature and Extent of Permanent Partial Disability.” Accordingly, the Benefit Review Report indicated that the parties had reached an impasse and had exhausted the benefit review conference process.

Following the issuance of the Benefit Review Report, Employee filed an action in the Circuit Court for Davidson County. While the case was pending, the parties reached an agreement, and a settlement was approved by the trial court on October 1, 2015. The settlement provided, inter alia, that Employer would continue to provide medical treatment to Employee. Dr. Richard Berkman was appointed as the authorized treating physician.

Several months later, on December 15, 2015, Dr. Berkman recommended a surgical fusion surgery of the L4 to S1 vertebrae. Employer submitted the recommendation to its utilization review (“UR”) provider, Broadspire. The reviewing physician, Dr. Robin Simon, declined to approve the procedure. That recommendation was not appealed to the medical director of the Bureau of Workers’ Compensation. In February 2016, Dr. Berkman again recommended surgery. The recommendation was submitted to Broadspire. The reviewing physician, Dr. Gregory Goldsmith, declined to approve the procedure. There is no indication in the record that Dr. Goldsmith’s recommendation was appealed.

Counsel for Employee and counsel for Employer then exchanged a series of email messages. Employee demanded that Employer overrule the decisions of the UR physicians, but Employer did not do so. Employer, however, did schedule a second opinion examination with Dr. Tarik Eliyali. Employee declined to attend the examination, and on March 18, 2016, she filed a motion to compel Employer to approve the surgery. In response, Employer filed a motion to compel Employee to attend a medical examination by Dr. Eliyali. Employee opposed this medical examination and, in the alternative, requested any ordered examination be videotaped. On April 29, 2016, the trial court ordered that Employee attend the proposed examination and that Employee be

permitted to video record the examination.

Dr. Eliyali declined to examine Employee due to the video recording requirement. Instead, he conducted a medical records review. Dr. Eliyali opined that he could not state with a reasonable degree of medical certainty that the proposed surgery was unrelated to the original work injury. Based on the opinion of Dr. Eliyali, Employer approved the surgery.

Following the surgery, Employee reset her motion to compel medical treatment and award attorney's fees. Employer filed a response, arguing that, because the surgery had been approved and performed, no issues remained to be resolved by the court and, in the alternative, that an award of attorney's fees was not warranted in this case. The trial court granted Employee's motion for attorney's fees, awarding \$5,000.00 to her attorneys. Employer appealed from that order.

While the appeal was pending, the Tennessee Supreme Court noted that the record contained no evidence that the parties had participated in a BRC before Employee filed her motion to compel. The parties were directed to show cause why the appeal should not be dismissed for lack of subject matter jurisdiction. Both sides filed appropriate responses to that order.

Standard of Review

This appeal presents only a question of law as there are no disputed facts. The first, and ultimately dispositive, issue to address is whether this Court has subject matter jurisdiction over this case. "Since a determination of whether subject matter jurisdiction exists is a question of law, our standard of review is de novo, without a presumption of correctness." Chapman v. DaVita, Inc., 380 S.W.3d 710, 712-13 (Tenn. 2012) (quoting Northland Ins. Co. v. State, 33 S.W.3d 727, 729 (Tenn. 2000)).

Analysis

In her response to the show cause order, Employee took the position that the June 22, 2015 BRC was sufficient to confer subject matter jurisdiction to the trial court on the issue of the subsequent back surgery. Employer contends that the trial court lacked subject matter jurisdiction because the dispute that forms the basis of this appeal was not addressed, nor even existent, at the June 22, 2015 BRC. The crux of the subject matter dispute is whether the June 22, 2015 BRC was sufficient to provide the trial court with subject matter jurisdiction over an issue that arose *after* that BRC. We conclude that the

June 22, 2015 BRC, which could not have involved any mediation on the request for the back surgery, was an insufficient exhaustion of the BRC process. Thus, this Court does not have subject matter jurisdiction.

“Subject matter jurisdiction is derived, ‘either explicitly or by necessary implication, from the Tennessee Constitution or from legislative acts.’” Robertson v. Roadway Exp., Inc., No. E2011-01384-WC-R3-WC, 2012 WL 2054170, at *3 (Tenn. Workers Comp. Panel June 8, 2012) (quoting Staats v. McKinnon, 206 S.W.3d 532, 542 (Tenn. App. 2006)). A determination of whether a court has subject matter jurisdiction “depends on the nature of the cause of action and the relief sought.” Id.

The Tennessee Supreme Court has specifically addressed subject matter jurisdiction with regard to administrative prerequisites: “[i]t is a settled rule that where a statute provides an administrative remedy, such remedy must first be exhausted before the courts will act.” Robertson, 2012 WL 2054170, at *3 (quoting S. Cellulose Prods., Inc. v. DeFriese, No. E2008-00184-WC-R3-WC, 2009 WL 152313 (Tenn. Workers Comp. Panel Jan. 22, 2009)). Accordingly, exhaustion of the administrative process is required prior to filing suit. Id. The requirements for exhaustion in a worker’s compensation case are mandated in part in Tennessee Code Annotated section 50-6-203(a)(1): “No claim for compensation under this chapter shall be filed with a court having jurisdiction to hear workers’ compensation matters, as provided in § 50-6-225, until the parties have exhausted the benefit review conference process provided by the division of workers’ compensation.”¹ Tenn. Code Ann. § 50-6-203 (2008) (applicable to injuries occurring prior to July 1, 2014) (emphasis added).

The scope of the required BRC is outlined in Tennessee Code Annotated section 50-6-239(b):

(a) In all cases in which the parties have any issues in dispute, whether the issues are related to *medical benefits*, temporary disability benefits, or issues related to the final resolution of a matter, the parties shall request the department to hold a benefit review conference.

¹ We note that this issue is limited to those cases controlled by section 50-6-203(a) prior to the 2014 amendments. The current version of section 50-6-203(a) states: “No request for a hearing by a workers’ compensation judge under this chapter shall be filed with the court of workers’ compensation claims . . . until a workers’ compensation mediator has issued a dispute certification notice certifying issues in dispute for hearing before a workers’ compensation judge.” Tenn. Code Ann. § 50-6-203. We need not address this revised language in this case.

(b) The parties to a dispute shall attend and participate in a benefit review conference that addresses all issues related to a final resolution of the matter as a condition precedent to filing a complaint with a court of competent jurisdiction

Tenn. Code Ann. § 50-6-239(b) (2008) (applicable to injuries occurring prior to July 1, 2014) (emphasis added).

In accordance with those statutes, our Supreme Court has held: “A trial court does not obtain subject matter jurisdiction of a workers’ compensation case until the benefit review conference process has been exhausted.” Chapman, 380 S.W.3d at 715. This requirement is applicable to preliminary claims for temporary benefits and medical care. Holland Grp. v. Sotherland, No. M2008-00620-WC-R3, 2009 WL 1099275, at *3 (Tenn. Workers Comp. Panel Apr. 24, 2009). Importantly, the BRC requirement is also applicable to post-judgment actions seeking medical care pursuant to a judgment or settlement. See Robertson, 2012 WL 2054170, at *3.

In this case, it is undisputed that a BRC was held on June 22, 2015. This BRC resulted in an impasse. However, it is also undisputed that no additional BRC was held before the March 18, 2016 motion was filed. The March 18, 2016 motion in its conclusion requested “[t]he Court [to] order the employer’s insurance carrier to provide authorization for the lumbar surgery as ordered by Dr. Berkman.” As this disputed issue, the back surgery, was not yet in existence at the time of the BRC, the issue of concern in the March 18, 2016 motion was incapable of being addressed at the June 22, 2015 BRC. Thus, this court only will have subject matter jurisdiction if the June 22, 2015 BRC was sufficient to satisfy Tennessee Code Annotated section 50-6-203 for the *subsequent* medical issues which have arisen.

To help resolve this issue, we directed the parties to address two cases in their respective briefs, Robertson v. Roadway Express, Inc., 2012 WL 2054170, and Holland Group v. Sotherland, 2009 WL 1099275.

Robertson involved an employee who settled a compensable injury claim. 2012 WL 2054170, at *1. That settlement was approved by the trial court. Id. At no point did the employee attend or request a BRC.² Id. Later, when a dispute arose regarding

² The employee argued that a letter sent by a doctor constituted exhaustion of the administrative process required. Robertson, 2012 WL 2054170, at *3. However, the Court rejected this argument. Id. at *7.

subsequent medical treatment, the parties sought resolution of the issue in Bradley County Circuit Court. Id. After Employee filed a motion, the trial court ordered the “Employer to provide to Employee the medical benefits recommended” Id. at *2. On appeal the Tennessee Supreme Court concluded:

[P]arties are required to exhaust the benefit review conference process as a condition precedent to filing suit. It is undisputed that a request for a benefit review conference was not filed in this case. The benefit review process was never initiated and, therefore, was never exhausted; consequently, the trial court did not have subject matter jurisdiction to hear the case

Id. at *7.

The second case we requested the parties to brief, Holland, involved an employer who “filed suit seeking a declaration of the parties’ rights under the workers’ compensation statutes” after being ordered to pay benefits by a workers’ compensation specialist. 2009 WL 1099275, at *1. “Employee filed a counterclaim, contending that she was entitled to benefits” Id. Ultimately, the “trial court dismissed the case on the basis that the parties had failed to exhaust the benefit review conference process and, therefore, the court lacked subject matter jurisdiction.” Id. at *2.

The Tennessee Supreme Court affirmed, declaring, “[t]he law is clear that ‘[o]nly when the parties cannot reach an agreement at the benefit review conference may they proceed to court.’” Id. (quoting Lynch v. City of Jellico, 205 S.W.3d 384, 391 (Tenn. 2006)). Employee argued that, by completing a “Request for Assistance,” she had satisfied the exhaustion requirement. Id. The Court disagreed, stating, “[i]t is undisputed that a request for a benefit review conference was not filed. The benefit review process was never initiated, and therefore was never exhausted.” Id. at *3.

Employee argues that Robertson stands for the proposition that a single BRC exhausts the administrative requirements for all subsequent issues. We disagree. Robertson involved an employee who filed a “Motion and/or Petition to Enforce Judgment” in circuit court on issues never presented at a BRC. While it is true that in Robertson the court lacked subject matter jurisdiction because no BRC was ever conducted, it does not follow that a BRC held on certain issues satisfies the exhaustion requirement for other issues. The court in Robertson dismissed the case not simply because no BRC had been held, but because the issues before the Court had not been presented at a BRC.

because no BRC had been held, but because the issues before the Court had not been presented at a BRC.

Employee, however, attempts to distinguish Robertson by arguing that the parties in this case “did attend a BRC, which did impasse, and which did exhaust the benefit review/administrative process.” While true, the dispute between the parties that is the basis of this court action materialized well *after* the BRC. The settlement in this case was approved in October 2015. Dr. Berkman initially recommended additional surgery on or about December 15, 2015. Employer’s UR provider declined to authorize surgery on December 23, 2015. The dispute between the parties arose no earlier than that date, December 23, 2015. Obviously, the back surgery issue was not, nor could have been, presented at the June 22, 2015 BRC. Both Robertson and the present case involve motions filed in a circuit court on *issues* that were never presented at a BRC. Although a BRC was held initially in this case, it did not involve the issues currently before the Court. Therefore, Employee failed to exhaust the administrative requirements, and the trial court never acquired subject matter jurisdiction over this claim.

This holding means the trial court adjudicated this particular issue without subject matter jurisdiction. “Judgments or orders entered by courts without subject matter jurisdiction are void” Dishmon v. Shelby State Cmty. Coll., 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). Accordingly, we vacate the judgment of the trial court and dismiss this case for lack of subject matter jurisdiction. See id. (holding that when a court lacks subject matter jurisdiction, “it must vacate the judgment and dismiss the case without reaching the merits of the appeal.”).

Conclusion

The order of the trial court is vacated and the case is dismissed. Costs are taxed to Dana C. Pugh, for which execution may issue if necessary.

JEFFREY S. BIVINS, CHIEF JUSTICE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED

02/15/2018

Clerk of the
Appellate Courts

TRISTAR CENTENNIAL MEDICAL CENTER v. DANA C. PUGH

**Circuit Court for Davidson County
No. 15C2393**

No. M2016-02470-SC-R3-WC

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Dana C. Pugh pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(A)(ii), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well taken and is, therefore, denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Dana C. Pugh, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Bivins, C.J., not participating