IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
Assigned on Briefs October 10, 2000

CARROLL EDWARD MUMPOWER v. CITY OF ERWIN, TENNESSEE

Direct Appeal from the Chancery Court for Unicoi County
No. B-68633 Jean A. Stanley, Circuit Court Judge (sitting by interchange)

No. E2000-00698-WC-R3-CV - Mailed
FILED: January 4, 2001

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 raised on appeal is whether the filing of a complaint by plaintiff Mumpower within one year after discovering his current medical condition to be causally related to an earlier accident is time-barred and cause for dismissal of this suit. The trial court found equitable estoppel not implicated and the fact that in 1998 plaintiff received additional information that his 1992 injury was worse than originally believed did not serve to extend the operation of the statute of limitations. We affirm the judgment of the court.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Affirmed.

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, C.J., and JOHN K. BYERS, SR. J., joined.

J. Wesley Edens, Bristol, Tennessee, for the appellant, Carroll Edward Mumpower.

John Rambo, Johnson City, Tennessee, for the appellee, City of Erwin, Tennessee.

OPINION

The plaintiff alleges that he was compensably injured on October 16, 1992. He filed this complaint on April 27, 1998, and alleged nothing in avoidance of the statute of limitations; contrarily, he alleged that his employer refused to acknowledge the compensability of his injuries.

The defendant responded that the plaintiff, on October 16, 1992 reported an injury, for which

the plaintiff was paid benefits for temporary total disability, permanent partial disability, and medical expenses. The plaintiff thereupon admitted the receipt of these benefits but avers that the purported settlement, under date of December 16, 1993, was not approved by a court and thus of no legal efficacy. He avers that on February 25, 1998, his treating physician told him that his current need for surgical treatment was causally related to the accidental injury he suffered on October 16, 1992, and that his complaint was thus timely filed.

The plaintiff recognized his legal difficulties, but undertook to extricate himself by relying on the doctrine of equitable estoppel, pleading and arguing that the City was under a duty to advise him of his rights and failed to do so.[1] Acting on the defendant's motion to dismiss, the Chancellor ruled that since the plaintiff was at work on December 16, 1993, that he had suffered a compensable injury, his action would be barred December 16, 1994, and the fact that on February 25, 1998, he obtained additional information that his 1992 injury was worse than originally believed would not serve to extend the operation of the statute of limitations.

The plaintiff appeals and presents for review the dispositive issue of whether the filing of his complaint within one year after discovering that his current medical condition is causally related to the accident of October 16, 1992 and thus is not time-barred.

We agree with the Chancellor that equitable estoppel is not implicated. The defendant did nothing to mislead the plaintiff, who admits that he was not unfairly or fraudulently induced by anyone. The defendant is accordingly not estopped to plead the bar of the statute. *Giles County Board of Education v. Hickman*, 547 S.W.2d 944 (Tenn. 1977). The emphasis by the plaintiff on the assertion that a material fact was concealed, *see Lusk v. Consolidated Aluminum Corporation*, 655 S.W.2d 917 (Tenn.1983), cannot be directed to the defendant, who had no knowledge of the plaintiff's medical condition. While it is well settled that the running of the statute is suspended until by reasonable diligence it is discoverable and apparent that a compensable injury has been sustained, *Murray Ohio Manufacturing Company v. Vines*, 498 S.W.2d 897 (Tenn. 1973) as noted by the Chancellor, the proof is evident that the plaintiff knew, in December 1993, more than four years before this complaint was filed, that he had suffered a compensable injury. As noted by the appellee, the plaintiff does not claim that he suffered from an aggravation of a pre-existing work-related injury or that he now has a medical or vocational impairment of which he was previously ignorant.

The judgment is affirmed with costs of the appeal taxed to the appellant.

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[1] The fact of the non-approval of the settlement of December 16, 1993, is given much play by the plaintiff. Under the circumstances of this case the non-approval of the purported settlement is largely irrelevant. Because the settlement was not approved, it has no legal efficacy. The statute began to run from the date of the last payment of benefits.

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WILLIAM H. INMAN, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

CARROLL EDWARD MUMPOSWER V. CITY OF ERWIN, TENNESSEE
Unicoi County Chancery Court
No. 6214

No. E2000-00698-WC-R3-CV - Filed: January 4, 2001

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 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, Carroll Edward Mumpower, and J. Wesley Edens, surety, for which execution may issue if necessary.

01/04/01