IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
June 23, 2008 Session

PENNY WELLS v. NISSAN NORTH AMERICA, INC. ET AL.

Direct Appeal from the Chancery Court for Rutherford County
No. 06-1766WC Robert E. Corlew, III, Chancellor

No. M2007-02657-WC-R3-WC - Mailed - March 4, 2009
Filed - April 7, 2009

This 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) (2008). An employee who sustained a workplace injury in 1997 but who did not miss any work filed suit in the Chancery Court for Rutherford County in 2006 seeking a reconsideration of the 2003 settlement of her workers' compensation claim arising out of that injury. In response to the employer's motion for summary judgment on the ground that the suit was time-barred under Tenn. Code Ann. § 50-6-241(a)(2) (2008) because it was not filed within four hundred weeks following her return to work, the employee insisted that the time for seeking reconsideration should begin to run from the date in 2003 that she reached maximum medical improvement, rather than from the date she returned to work in 1997. The trial court granted the employer's motion for summary judgment, and the employee appealed. We affirm the trial court based on the plain language of Tenn. Code Ann. § 50-6-241(a)(2).

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

WILLIAM C. KOCH, JR., J., delivered the opinion of the court, in which JON KERRY BLACKWOOD and WALTER C. KURTZ, SR.JJ., joined.

Larry R. McElhaney II, Nashville, Tennessee, for the appellant, Penny F. Wells.

Randolph A. Veazey and Thomas W. Tucker, III, Nashville, Tennessee, for the appellees, Nissan North America, Inc. and Royal & Sun Alliance Insurance Company.

MEMORANDUM OPINION

I.

Ms. Penny Wells began working for Nissan North America, Inc., ("Nissan") in 1995. In June 1997, she sustained a workplace injury to her lumbar spine. Dr. George Lien evaluated and treated

Ms. Wells for her injury. While Dr. Lien restricted Ms. Wells's duties following the injury, he did not completely restrict her from working, and Nissan was able to accommodate her work restrictions. Ms. Wells did not miss any days of work as a result of her injury.

Dr. Lien placed Ms. Wells at maximum medical improvement in June 2003. He determined that Ms. Wells had sustained a 5% permanent partial impairment to the body as a whole, all of which he attributed to her work injury. Dr. Lien released Ms. Wells to work with a restriction of no bending at the waist more than thirty degrees, and again Nissan accommodated this restriction.

Ms. Wells and Nissan settled her workers' compensation claim in 2003. Nissan agreed to pay certain medical expenses incurred by Ms. Wells as a result of her workplace injury and to compensate her for permanent partial disability of 10% to the body as a whole. The settlement also expressly provided that any reconsideration of the award would be pursuant to the terms of Tenn. Code Ann. § 50-6-241(a)(2) (2008). The Rutherford County Chancery Court approved the settlement in October 2003.

Nissan terminated Ms. Wells in September 2006 after she sustained injuries to her heels that prevented her from working. There is no indication in the record that her heel injuries were work-related. In November 2006, Ms. Wells filed a complaint seeking reconsideration, pursuant to Tenn Code Ann. § 50-6-241(a)(2), of her workers' compensation award related to the 1997 injury. Nissan and Royal & Sun Alliance Insurance Company filed a motion for summary judgment, asserting that Ms. Wells's application for reconsideration was time-barred.

The trial court found that Ms. Wells returned to work on the day of or within a few days following her June 1997 injury,[1] which was more than four hundred weeks before her loss of employment in September 2006. For injuries arising prior to July 1, 2004, an employee may seek reconsideration "if the loss of employment is within four hundred (400) weeks of the day the employee returned to work." Tenn Code Ann. § 50-6-241(a)(2). Having concluded that Ms. Wells returned to work more than four hundred weeks before her employment with Nissan was terminated, the trial court concluded Ms. Wells's claim for reconsideration was time-barred and awarded summary judgment to Nissan and Royal & Sun Alliance Insurance Company.

Ms. Wells appeals from this determination. She maintains that under Tenn. Code Ann. § 50-6-241(a)(2) an employee has not returned to work until he or she has reached maximum medical improvement. We affirm the trial court's decision.

II.

Courts reviewing an award of workers' compensation benefits must conduct an in-depth examination of the trial court's factual findings and conclusions. *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). When conducting this examination, Tenn. Code Ann. § 50-6-225(e)(2)

[1]The parties agree that Ms. Wells did not miss any days of work. Whether Ms. Wells missed zero days or only a few days of work is immaterial to the resolution of this case.

requires the reviewing court to "[r]eview . . . the trial court's findings of fact . . . 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." The reviewing court must also give considerable deference to the trial court's findings regarding the credibility of the live witnesses and to the trial court's assessment of the weight that should be given to their testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). However, the reviewing courts need not give similar deference to a trial court's findings based upon documentary evidence such as depositions, *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006); *Bohanan v. City of Knoxville*, 136 S.W.3d 621, 624 (Tenn. 2004), or to a trial court's conclusions of law, *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003).

III.

An employee may seek reconsideration "where the employee is no longer employed by the pre-injury employer and makes application to the appropriate court within one (1) year of the employee's loss of employment, if the loss of employment is within four hundred (400) weeks of the day the employee returned to work." Tenn. Code Ann. § 50-6-241(a)(2). Ms. Wells contends "the day the employee returned to work" means the date an employee reaches maximum medical improvement. Nissan and Royal & Sun Alliance Insurance Company argue that the phrase means precisely what the plain language suggests.

When called upon to construe a statute, courts must first ascertain and then give full effect to the General Assembly's intent and purpose. *Auto Credit of Nashville v. Wimmer*, 231 S.W.3d 896, 900 (Tenn. 2007); *State ex rel. Pope v. U.S. Fire Ins. Co.*, 145 S.W.3d 529, 534-35 (Tenn. 2004). We must construe statutes as we find them, *Jackson v. Jackson*, 186 Tenn. 337, 342, 210 S.W.2d 332, 334 (1948), and therefore, our search for a statute's meaning and purpose must begin with the words of the statute. *Blankenship v. Estate of Bain*, 5 S.W.3d 647, 651 (Tenn. 1999). When interpreting the Workers' Compensation Act, the court is to give a liberal construction in favor of compensation and resolve any doubts in the employee's favor. *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d 220, 224 (Tenn. 2007). However, construing its provisions liberally in favor of employees "does not authorize courts to amend, alter, or extend its provisions beyond its obvious meaning" *Wait v. Travelers Indem. Co. of Ill.*, 240 S.W.3d at 224-25.

The General Assembly has provided that an employee may seek reconsideration based upon loss of employment where the "loss of employment is within four hundred (400) weeks of the day the employee returned to work." Tenn. Code Ann. § 50-6-241(a)(2). In *Lay v. Scott County Sheriff's Dep't*, 109 S.W.3d 293, 297-99 (Tenn. 2003), the Tennessee Supreme Court held that an employee may be deemed to have made a meaningful return to work even though he or she has not yet reached maximum medical improvement. The trial court's determination that the four hundred week period began running on the day of or within a few days of the injury, rather than on the date the employee reached maximum medical improvement, is consistent with the plain meaning of the statute and the Court's decision in *Lay v. Scott County Sheriff's Dep't*. To embrace Ms. Wells's argument would be to improperly amend or alter this provision beyond its obvious meaning. *See Wait v. Travelers*

Indem. Co. of Ill., 240 S.W.3d at 225. A contrary resolution would also produce extraordinarily anomalous outcomes.

IV.

The judgment of the trial court is affirmed. Costs are taxed to Ms. Penny Wells and her surety, for which execution may issue if necessary.

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WILLIAM C. KOCH, JR., JUSTICE

IN THE SUPREME COURT OF TENNESSEE
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JUNE 23, 2008 SESSION

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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 appeals 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 Ms, Penny Wells and her surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM