IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
June 27, 2016 Session

TERRY ARNOLD v. COURTYARD MANAGEMENT CORPORATION

Appeal from the Chancery Court for Shelby County
No. CH141696 Walter L. Evans, Chancellor

No. W2015-02266-SC-WCM-WC – Mailed July 6, 2016; Filed September 28, 2016

Terry Arnold ("Employee") filed suit against Courtyard Management Corporation ("Employer"), alleging that she sustained a compensable injury to her neck on August 18, 2012. Employer provided medical and temporary partial disability benefits for a period of time. The last payment for medical treatment was issued on April 29, 2013. Employee requested additional medical treatment on May 5, 2014. Employer denied the claim based on the one-year statute of limitations. Tennessee Code Annotated section 50-6-203(b) , (c). Employee filed a request for assistance with the Department of Labor ("Department") on May 7, 2014, and a request for benefit review conference ("BRC") on May 13, 2014. The Department issued a "Benefit Review Report" on May 30, 2014. This action was filed on November 19, 2014. Employer filed a motion for summary judgment asserting that the claim was barred by the applicable statutes of limitation. The trial court denied Employer's motion but granted Employer's subsequent request for an interlocutory appeal. The Tennessee Supreme Court granted Employers' application and referred the appeal 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 reverse the judgment.

Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;
Judgment of the Chancery Court Reversed

BRANDON O. GIBSON, J., delivered the opinion of the court, in which ROGER A. PAGE, J., and WILLIAM B. ACREE, Senior Judge, joined.

Nicholas S. Akins, Nashville, Tennessee, for the appellant, Courtyard Management Corporation.

James E. Blount, IV, Collierville, Tennessee, and Benjamin Louis Taylor, Southaven, Mississippi, for the appellee, Terry Arnold.

OPINION

Factual and Procedural Background

Employee worked as a maintenance technician for Employer. She alleged that she injured her neck while caulking and scraping a tub on August 18, 2012. She gave notice of her injury to Employer on August 24, 2012. She was initially seen by Concentra Clinic, which recommended orthopaedic care. Employee chose Campbell Orthopaedic Clinic from a panel provided by Employer. Dr. John Dockery of that Clinic became her authorized treating physician. Her last day of treatment by Dr. Dockery was April 1, 2013. Employer's last payment for medical treatment was issued on April 29, 2013. Employee received temporary partial disability payments from October 2, 2012, until December 18, 2012, when she was released to return to full duty work.

Dr. Dockery's April 1, 2013 note states:

> INTERVAL HISTORY: Ms. Arnold has disc issues in her neck much improved with a left 06-T1 translaminar. We put her on Arthrotec. We gave her some topical medication as well. We brought her back today to see how she is doing for [follow-up]. She is about 75% better since that time. She returns today stating that she is still feeling better overall. The neck is still doing better. The main issue that she has is in her arm, especially the left arm. It wakes her up at night. She still feels better overall with the injection. She is asking today about surgery. We discussed that since she is so much better with the first injection we would probably try one more injection before we would consider doing a surgical approach. She is not hurting bad enough right now but really thinks that she wants to do the injection but she is starting to think that she may have to as it is starting to bother her a little bit more. She is doing her exercises. She could not take the Arthrotec because it hurt her stomach.
> IMPRESSION: Ms. Arnold had disc herniation at C4. She has spondylolisthesis at C5. She is much better with a left C7-T1 translaminar.
> PLAN: We will have her keep up with her exercises. I will have her come back and see me down the road. If she wants to do an injection she will give us a call and we will do a left C7-T1 translaminar and have her keep on the same restrictions. She is full duty.

At an unspecified later date, Employer filed a Final Report of Payment and Receipt of Compensation with the Department. Employee did not sign that report. No additional activity regarding Employee's claim occurred until May 5, 2014, when she contacted Employer to request additional medical treatment. Employer denied the

request, based on the expiration of the one-year statute of limitations. Tenn. Code Ann. § 50-6-203(b) , (c) (2008 & Supp. 2012). Employee then filed a request for assistance with the Department on May 7, 2014, and a request for a BRC on May 13, 2014. The Department issued a "Benefit Review Report" on May 30, 2014, noting the existence of the legal issue concerning the statute of limitation and waiving the benefit review process. The notice recited that "[i]f the benefit review conference process is exhausted, as the result of this report, you will have ninety (90) days to file a claim in an appropriate court." This language is consistent with Tennessee Code Annotated section 50-6-203(g)(1). Employee filed this action on November 19, 2014.

Employer filed an answer to the complaint on December 26, 2014. On February 26, 2015, Employer filed a motion for summary judgment, contending that Employee's lawsuit was barred by the one-year statute of limitations, Tennessee Code Annotated section 50-6-203(b), (c), and also by the ninety-day statute of limitations, Tennessee Code Annotated section 50-6-203(g)(1).[1] The motion was supported by an affidavit from Henry Hill, Employer's claims adjuster. Mr. Hill verified payment records concerning the claim, verifying that the last payment was made on April 29, 2013. The motion was also supported by several documents that Employer filed with the Department of Labor. Employer's statement of undisputed facts submitted in support of the motion set out the timeline of events pertaining to the claim, as set out hereinabove.

Employee's response to the motion admitted that compensation benefits were terminated on December 18, 2012, due to Employee's release to full duty work, that the final payment was made to Campbell Clinic on April 29, 2013, and that Employee did not contact the Employer's adjuster again to request medical treatment until May 5, 2014. In fact, Employee's response to the motion admitted all facts alleged in support of Employer's motion, except one. Employee denied that she had reached maximum medical improvement on April 1, 2013. Employee also submitted Dr. Dockery's April 1, 2013 note in support of her position. However, she did not submit any affidavits or other evidence in response to the motion. In her memorandum of law, she asserted that the statute of limitations did not begin to run because she had not reached maximum medical improvement. She also contended that Employer was estopped to raise the statute of limitations defense because Dr. Dockery did not file a final report with an impairment rating and because Employer's filing of a final report of payment and receipt of compensation was a deliberate misrepresentation that she relied upon in not filing her action.

[1]In her response to Employer's motion, Employee did not address the ninety-day limitation. The trial court made no reference to the ninety-day statute in its order denying Employer's motion. Neither party has raised the issue in this appeal. The issue is not before us, and we will not address it further.

The trial court issued a one-paragraph order denying the motion, but the order did not set out the basis of the trial court's ruling. *See* Tenn. R. Civ. P. 56.04. The court then granted Employer's motion for an interlocutory appeal.

Analysis

A motion for summary judgment should be granted only when "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Rye v. Women's Care Ctr. of Memphis*, 477 S.W.3d 235, 250 (Tenn. 2015) (quoting Tenn. R. Civ. P. 56.04). The appellate court must review the evidence in a light most favorable to the nonmoving party and draw all reasonable inferences in favor of the nonmoving party. *Staples v. CBL & Assocs.*, 15 S.W.3d 83, 89 (Tenn. 2000). The standard of review is *de novo* with no presumption of correctness attached to the trial court's conclusions. *Teter v. Republic Parking Sys.*, 181 S.W.3d 330, 337 (Tenn. 2005).

We conclude that the trial court erred by denying Employer's motion for summary judgment. Tennessee Code Annotated section 50-6-203(b)(2), (c) states:

> (b)(2) In those instances where the employer has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the right to compensation is forever barred, unless a form prescribed by the commissioner requesting a benefit review conference is filed with the division within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.
>
> (c) For purposes of this section, the issuing date of the last payment of compensation by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide the date on request.

Tenn. Code Ann. § 50-6-203 (Supp. 2012).

Employee admits that her request for assistance and request for a BRC were filed more than one year after the last payment of compensation was made. She contends that the statute did not begin to run because she was never declared to be at maximum medical improvement, referring to Dr. Dockery's April 1, 2013 note in support of that

contention. Upon examination, Dr. Dockery's note is ambiguous on the subject. It did not state that Employee was at maximum medical improvement. It referred to potential future treatments, including injections and surgery. However, it also stated that she was doing well, released her to full duty work, and placed the onus on Employee to initiate an appointment if she becomes interested in future treatment. Because we are reviewing a motion for summary judgment, and Employee is the nonmoving party, we assume that she was not at maximum medical improvement on that date.

Tennessee Code Annotated section 50-6-203(b) makes no reference to maximum medical improvement. The rules of the Department of Labor declare only that a BRC cannot be *scheduled* until maximum medical improvement occurs. Tenn. R. & Regs. 0800-2-5-.07(3)(a). Moreover, the rules also clearly state that a request for a BRC "must be filed within the statute of limitations provided by Tenn. Code Ann. § 50-6-203." Tenn. R. & Regs. 0800-2-5-.07(1). Employee cites *Gerdau Ameristeel v. Ratliff*, 368 S.W.3d 503 (Tenn. 2012), and earlier cases applying the "discovery rule" and holding that the limitation period does not begin to run until an employee discovers or, in the exercise of reasonable diligence, should have discovered, that she has a claim. *Id.* at 508. Those decisions are not relevant to the case before us. Here, Employee was well aware of her claim. She reported the injury to Employer within a few days of the incident; she requested and received medical treatment through workers' compensation; she received temporary partial disability benefits for three months; her treating physician diagnosed a herniated cervical disc; and he discussed potential surgery with her. *Cf. Davis v. Harwell Enterprises*, No. M2009-02145-WC-R9-WC, 2010 WL 4939512, at *2 (Tenn. Workers Comp. Panel Nov. 29, 2010). Employee's assertion that the one-year limitation was tolled until she reached maximum medical improvement is incorrect.

In the alternative, Employee contends that Employer is estopped to raise the one-year limitation as a defense. She raised this issue in the trial court in her memorandum of law in response to Employer's motion and restated it in her brief on appeal. Employee asserts she has shown evidence that Employer intentionally concealed relevant information that resulted in her delay in filing her lawsuit. Specifically, she complains of Employer's filing of its notice of final payment and receipt of compensation, implying that she was unaware of the filing or the contents in the document. She also points to Dr. Dockery's failure to file a physician's final report as further evidence of concealment.

In *Lusk v. Consolidated Aluminum Corp.*, 655 S.W.2d 917, 920 (Tenn. 1983), the Tennessee Supreme Court held that estoppel may apply in a workers' compensation claim if an employee justifiably relies upon a misrepresentation or concealment of a material fact by her employer which results in failure to file suit within the one-year period of limitations. *Lusk*, 655 S.W.2d at 920. When equitable estoppel is raised, the trial court must determine whether the employer engaged in conduct specifically

designed to prevent the employee from suing in a timely manner. *Fahrner v. SW Mfg., Inc.*, 48 S.W.3d 141, 145 (Tenn. 2001). "The party invoking the doctrine of equitable estoppel bears the burden of proof." *Hardcastle v. Harris*, 170 S.W.3d 67, 85 (Tenn. Ct. App. 2004) (citations omitted). The plaintiff's reliance on the alleged misrepresentation is also a required element of equitable estoppel. *Id.*

Because this appeal concerns a summary judgment motion, Employee did not bear a burden of proof to establish the validity of her claim of equitable estoppel. Her burden was merely to demonstrate that a genuine issue of material fact existed regarding that claim. She did not meet that burden. Employee did not file an affidavit in response to Employer's motion. The evidence submitted by Employer shows that a final report of compensation was filed. There is no evidence that the report was a misrepresentation. There is no evidence that the report was concealed from Employee, and there is no evidence that Employee relied on the filing or non-filing of any report to decide to wait more than a year after her last medical appointment before filing her requests for assistance and for a BRC with the Department. Tennessee Rule of Civil Procedure 56.06 states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but his or her response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

In the absence of any evidence that Employer misrepresented or concealed any facts from Employee or that Employee did not timely file her action in reliance upon any action of the Employer, we conclude that Employee failed to establish the existence of a disputed issue of material fact pertaining to equitable estoppel.

Conclusion

The order of the trial court denying Employer's motion for summary judgment is reversed. The case is remanded to the trial court for entry of an order granting the motion and dismissing the complaint. Costs are taxed to Terry Arnold, for which execution may issue if necessary.

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BRANDON O. GIBSON, JUDGE

IN THE SUPREME COURT OF TENNESSEE
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Chancery Court for Shelby County
No. CH141696

No. W2015-02266-SC-WCM-WC – Filed September 28, 2016

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Terry Arnold 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 Terry Arnold, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

Page, Roger A., J., not participating