

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
June 2, 2014 Session

KRISTEN BALL v. REGIONS FINANCIAL CORPORATION, ET AL.

**Appeal from the Circuit Court for Shelby County
No. CT-0044668-11 Jerry Stokes, Judge**

No. W2013-02454-SC-R3-WC - Mailed August 29, 2014; Filed October 2, 2014

An employee fell in the bathroom at her place of employment and reported pain in her right shoulder and hip. She was treated and released by her authorized physician. Approximately five months after the fall, she developed left knee pain. Five more months later, she developed pain her left hip and lower back. The employee's knee and back conditions ultimately required surgery, but her employer denied that the fall at work caused her conditions. The trial court disagreed and awarded benefits for the knee and back injuries. The employer appealed. After a thorough review of the record, we conclude that the evidence preponderates against the trial court's finding that the employee sustained a permanent, work-related injury to her back. We otherwise affirm the judgment of the trial court and remand the case to the trial court for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (2008 & Supp. 2013) Appeal as of Right;
Judgment of the Trial Court Reversed; Case Remanded**

JON KERRY BLACKWOOD, SR. J., delivered the opinion of the Court, in which JANICE M. HOLDER, J., and DONALD P. HARRIS, SP. J., joined.

Hope B. Calabro, Memphis, Tennessee, for the appellants, Regions Financial Corporation and Insurance Company of the State of Pennsylvania.

Steve Taylor, Memphis, Tennessee, for the appellee, Kristen Ball.

OPINION

I. Factual and Procedural Background

From 1994 until her branch closed in 2010, Kristen Ball worked as a bookkeeper for Regions Financial Corporation (“Regions”). On January 29, 2009, she slipped and fell in a bathroom stall at her workplace. As she was falling, Ms. Ball grabbed a nearby handicap bar, landing on her right hip and injuring her right arm and shoulder. She immediately reported the injury to her supervisor and worked the remainder of her shift. That evening, however, she sought medical treatment at the local emergency room for pain in her right shoulder, hip, and back. After being discharged from the emergency room, Ms. Ball was referred to Dr. Stephen Waggoner, an orthopedic surgeon, for further evaluation and treatment. Dr. Waggoner provided conservative treatment for her injuries and released her from his care on May 19, 2009.

In June 2009, Ms. Ball experienced pain in her right hip and left knee and eventually sought treatment from Dr. Kenneth Grinspun, who performed arthroscopic surgery on her left knee to repair the medial meniscus. In November 2009, Ms. Ball returned to Dr. Waggoner with additional complaints of back pain, and on February 16, 2010, he performed a discectomy at the L1-L2 level. On May 6, 2010, Ms. Ball sought further treatment of her left knee from Dr. Apurva Dalal, who performed another arthroscopic surgery on June 25, 2010. Regions denied that these problems resulted from Ms. Ball’s January 2009 fall at work.

On October 13, 2011, the parties conducted a Benefit Review Conference but were unable to reach an agreement. That same day, Ms. Ball filed the present workers’ compensation action in the Circuit Court for Shelby County, Tennessee. The case went to trial on April 23, 2013.

Ms. Ball testified that she was 61 years old at the time of her fall on January 29, 2009. After her visit to the emergency room, Regions referred her to Dr. Waggoner to whom she reported pain in her right shoulder and lower back. Ms. Ball testified, however, that her shoulder pain improved within a few days of the fall.

In June 2009, Ms. Ball experienced sudden pain in her left knee. Although she was unaware of the cause her knee pain, Ms. Ball admitted that her left knee never struck anything in the bathroom on the date of her fall at work. She testified that she sought treatment from her primary care physician, Dr. Pomykala, whose medical records reflect that Ms. Ball had fallen at home while going down some steps. Ms. Ball, however, denied having fallen at home, explaining instead that she almost fell but “caught [her]self on [her] car.”

Ms. Ball admitted that she has a significant problem with memory loss, for which she has received treatment from Dr. Pomykala.

Ms. Ball testified that she experiences pain when standing or sitting for long periods of time. She stated that approximately 75% of her work for Regions was sedentary and that she continued working for Regions until her branch was phased out. She stated that her injuries require her to use a cane. She also testified that although she had a prior back injury in 2001, she had totally recovered from that injury prior to her fall at work in January 2009.

Dr. Waggoner testified by deposition that he first saw Ms. Ball on February 18, 2009, for complaints of pain in her right shoulder, hip, and lower back. He ordered x-rays, which revealed that Ms. Ball had “degenerative . . . or arthritic changes in her lower back[] . . . between L4 and L5.” Based on these x-rays and his examination, Dr. Waggoner diagnosed Ms. Ball with a “lumbar strain[,] . . . right shoulder strain[,] and trochanter bursitis in the right hip.” Dr. Waggoner noted that Ms. Ball’s gait was intact. He testified that if her gait were altered, he would have mentioned that in his notes because an altered gait is often a sign of a lower-extremity injury.

Dr. Waggoner saw Ms. Ball again on March 5, 2009. By that time, her shoulder pain “had completely resolved,” but she was still experiencing mild pain in her back and her right hip. On March 17, 2009, Ms. Ball returned and reported that she was better and had very little pain. She stated that she had mild pain in her mid-back, but Dr. Waggoner’s examination revealed full flexion of her back and showed no indication of a disc problem. Dr. Waggoner also noted that Ms. Ball had full range motion and that her neurological exam revealed normal results. Dr. Waggoner felt that Ms. Ball’s symptoms had completely resolved. He prescribed a home exercise program and anti-inflammatory patches for her lower back. Dr. Waggoner placed Ms. Ball at maximum medical improvement that day and assigned no impairment.

On April 23, 2009, Ms. Ball returned to Dr. Waggoner with reports of pain in her right hip. At that time, however, Ms. Ball did not report any pain in her leg, and her gait remained normal. Dr. Waggoner diagnosed Ms. Ball with right hip bursitis and scheduled a follow-up for May 19, 2009. On that date, Ms. Ball reported minimal pain in her right hip but noted some tenderness in her left hip. Dr. Waggoner again noted that Ms. Ball’s gait was normal. Dr. Waggoner released Ms. Ball to return to work full duty with instructions to continue a home exercise program.

On November 30, 2009, Ms. Ball returned to see Dr. Waggoner complaining that the pain in her lower back had never completely resolved and had worsened over the summer. Dr. Waggoner’s examination of Ms. Ball revealed moderate tenderness in the lumbar area.

He testified, however, that Ms. Ball was intact neurologically. He ordered an x-ray, which revealed degenerative changes in the lumbar area of Ms. Ball's spine. Due to Ms. Ball's ongoing symptoms, Dr. Waggoner ordered an MRI, which was conducted on December 3, 2009. The MRI revealed degenerative changes throughout the lumbar spine, degenerative disc disease at multiple levels, and a focal disc protrusion at L1-L2 on the left side with some nerve impingement.

Ms. Ball saw Dr. Waggoner again on December 7, 2009, and reported pain in her back and left buttocks area. She had no pain in her leg. These symptoms were different from the symptoms for which Dr. Waggoner had provided treatment from January 2009 through May 2009. Her present symptoms radiated into the left hip while her earlier symptoms concerned the right hip. Dr. Waggoner considered these symptoms to be a new finding unrelated to her January 2009 fall at work, stating:

[b]ecause she wasn't having those symptoms back at that point, and she had had excellent improvement in my opinion with the treatment that we had provided her prior, and she has maybe some mild lower back discomfort when I discharged her on those two previous occasions, but at this point her symptoms were dramatically worse, and I did not feel it was related to an injury ten or eleven months prior to that.

Dr. Waggoner also opined that the symptoms of a herniated disc usually occur within days or weeks after a particular episode, not ten months later.

Dr. Waggoner performed a discectomy at the L1-L2 level on February 16, 2010. Ms. Ball continued to report pain after the surgery, but her radicular symptoms improved. Dr. Waggoner ordered another MRI on April 29, 2010, which revealed no signs of post-operative complication. Ms. Ball returned on May 27, 2010, with complaints of mild lower back pain but had no radicular pain, numbness, tingling, or weakness. She had a normal neurological exam. Dr. Waggoner explained that the small protrusion at L4-L5 was degenerative in nature and did not cause any significant nerve root impingement. Dr. Waggoner felt that it was a pre-existing condition that did not require surgery. In conclusion, Dr. Waggoner opined that Ms. Ball's back injury did not result from her fall on January 29, 2009. He admitted, however, that Ms. Ball continued to complain of lower back pain throughout the course of his treatment.

Dr. Grinspun testified by deposition that Ms. Ball was referred to his partner, Dr. Michael Lynch, on July 14, 2009, during which the following history was recorded:

This 62 year old lady presents today for evaluation of left knee pain. This began about a month ago without antecedent trauma or unusual activity. The only possible causal event was the fact she had had with pain in her right hip and had been sitting at work cross[[]]-legged with the left knee up against a sorting machine at her work station. She developed pain over the anterior aspect of the patella and the patellofemoral joint following this and presents today for evaluation. It was getting somewhat better until a fall two weeks ago which seems to have aggravated it. There has been no significant swelling or locking or instability symptoms.

Dr. Lynch diagnosed Ms. Ball with arthritis in both knees. He ordered an MRI that revealed a complex tear of the medial meniscus of the left knee and arthritis. Dr. Lynch referred Ms. Ball to his partner, Dr. Kenneth Grinspun, for treatment.

Based on his review of Dr. Lynch's records and the MRI results, Dr. Grinspun recommended arthroscopic surgery to repair the medial meniscus. On August 28, 2009, he performed arthroscopic surgery on Ms. Ball's left knee, during which he repaired a large tear in the medial meniscus. Dr. Grinspun observed extensive arthritis in Ms. Ball's knee and noted that the lateral meniscus was intact. Dr. Grinspun saw Ms. Ball again on September 3 and 8, 2009. He released Ms. Ball to return to work on September 24, 2009.

In March 2010, Ms. Ball returned to Dr. Grinspun reporting that her knee was painful and swelling. Dr. Grinspun's exam revealed that she had tenderness and swelling over the medial side of her knee and fluid on the knee indicating that her arthritis was flaring up. He took x-rays, which confirmed the arthritis. Dr. Grinspun also ordered an MRI, which was performed on April 26, 2010. He compared this MRI with the July 30, 2009 MRI. The comparison indicated that her arthritis was progressing. The MRI did not reveal the presence of a lateral meniscal tear. Dr. Grinspun did not believe additional surgery would be beneficial and recommended a gel injection for relief.

Ms. Ball introduced the deposition transcript of Dr. Dalal. Dr. Dalal testified that Ms. Ball was referred to him by her attorney. During Ms. Ball's first visit on May 6, 2010, she complained of significant pain in her left knee and lower back. She told Dr. Dalal that she had fallen on January 29, 2009, and that she had never had back or knee problems until her fall at work.¹ Ms. Ball informed Dr. Dalal that she had been treated by Dr. Waggoner and that Dr. Grinspun had performed a left knee arthroscopic surgery. On May 6, 2010, Dr. Dalal ordered x-rays, which revealed significant degenerative arthritis in the lumbar area of Ms.

¹ Ms. Ball admitted at trial that she did not relate to Dr. Dalal that she had a prior back injury in 2001 nor that she had been given an impairment rating of 10% to her lower back.

Ball's spine, especially in the L5-S1 regions. A radiograph of Ms. Ball's left knee showed mild degenerative arthritis. Dr. Dalal reviewed the April 26, 2010 MRI ordered by Dr. Grinspun and noted that the MRI revealed a progressive medial compartment chondromalacia with partial and full thickness chondral loss. Dr. Dalal recommended a second knee surgery because Ms. Ball "was hurting, her knee was swelling so a knee arthroscopy is the best thing to take a look inside the knee and see if there is anything else which can be done." During the surgery, he found "significant arthritis" and tears to both the medial and lateral menisci. Dr. Dalal testified that he removed the torn material from the knee.

Dr. Dalal evaluated Ms. Ball again on November 29, 2010, at the request of her attorney, at which time Dr. Dalal diagnosed a lower left extremity sciatica and status post-operative left knee injury now with impairment. He also found "significant degenerative disease at L5-S1 which was causing pinching on the nerve, and it's called radiculopathy." Dr. Dalal opined that Ms. Ball's lower back and left knee problems were related to the January 29, 2009 fall, explaining that "[t]he fall made her have an abnormal gait, [which] caused problems with the knee." Dr. Dalal found that Ms. Ball sustained a permanent impairment of 18% to the body as a whole but revised that rating to 25%. He suggested that Ms. Ball "should avoid repetitive bending, pulling, pushing[,]. . .prolonged walking, standing, stooping, and squatting."

On cross examination, Dr. Dalal testified that he was "not aware of any significant back problem or any significant treatment she may have had to her back prior to this work related injury." He was unaware, or unsure, that Ms. Ball's lower back symptoms were on her right side after the January 2009 injury or that her left side injuries did not appear until September 2009. He testified, however, that it "doesn't matter" whether Ms. Ball's symptoms were left or right-sided and that "[a] lot of times, patients have surgery on the left side and then they hurt on the right side." Dr. Dalal also conceded that he was unaware of the records of Dr. Pomykala and Dr. Jon Rynes, Ms. Ball's chiropractor, all of which showed Ms. Ball's treatment for low back pain on six occasions prior to her fall in January 2009. Dr. Dalal was also unaware of her lower back injury for which she received a permanent impairment rating of 10%. Dr. Dalal could not state when Ms. Ball sustained a herniated disc, stating instead that "all I know is this injury and what [Ms. Ball] described."

Dr. David Strauser, a vocational consultant, testified at trial on Ms. Ball's behalf. Dr. Strauser met with Ms. Ball on December 14, 2010, to conduct a vocational assessment. He reviewed the records of Drs. Grinspun, Waggoner, and Dalal and assessed a vocational impairment rating of 64%.

Trial Court's Findings

At the conclusion of the trial, the trial court took the case under advisement and issued a decision from the bench on May 22, 2013. The trial court found that Ms. Ball was 64% vocationally impaired and also ordered Regions to pay twenty-five weeks of temporary total disability benefits. Regions appealed, contending among other things that the evidence preponderates against the trial court's findings concerning causation. This 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.

Standard of Review

Our standard of review of factual issues in workers' compensation cases is de novo on the record of the trial court, accompanied by a presumption of correctness of the trial court's factual findings unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005); Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). When issues of witnesses' credibility and the weight to be given their in-court testimony are before the reviewing court, considerable deference must be accorded to the trial court's factual findings. Richards v. Liberty Mut. Ins. Co., 70 S.W.3d 729, 733 (Tenn. 2002); see Rhodes v. Capital City Ins. Co., 154 S.W.3d 43, 46 (Tenn. 2004). When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson v. Wal-Mart Stores, Inc., 654 S.W.2d 675, 676-77 (Tenn. 1983). This panel, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the medical proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997). Questions of law are reviewed de novo with no presumption of correctness afforded to the trial court's conclusions. Gray v. Cullom Machine, Tool & Die, 152 S.W.3d 439, 443 (Tenn. 2004).

Analysis

Notice – Knee Injury

We first address Regions' contention that Ms. Ball's left knee claim is barred by her failure to give written notice pursuant to Tennessee Code Annotated section 50-6-201(a) (2008).² Regions does not dispute that Ms. Ball gave oral notice of the January 2009 fall

² Tennessee Code Annotated section 50-6-201(a) provides:

Every injured employee or the injured employee's representative shall, immediately upon the occurrence of an injury, or as soon thereafter as is reasonable and practicable, give or

shortly after it occurred. Likewise, Regions does not dispute that Ms. Ball received medical treatment through its workers' compensation program for that fall. As our Supreme Court has observed,

[W]e know of no requirement that an employee give notice of each of several injuries he received in an on-the-job accident. He is in compliance with the statutory requirement of notice if he notifies his employer of the accident and the fact that he has suffered an injury. The nature and extent of the employee's injuries, and the issue of medical causation, usually come to light in the course of treatment of the employee's injuries.

Quaker Oats Co. v. Smith, 574 S.W.2d 45, 48 (Tenn. 1978). Accordingly, the trial court correctly determined that Ms. Ball's knee injury was not barred by Tennessee Code Annotated section 50-6-201.

Causation – Knee Injuries

We next consider Regions' argument that the evidence preponderates against the trial court's finding that Ms. Ball's January 29, 2009 fall at work caused or aggravated her left knee injuries. In support, Regions relies on Ms. Ball's memory problems to attack her credibility and the trustworthiness of Dr. Dalal's opinion concerning causation, which was based in large part on the history given to him by Ms. Ball.

Although we recognize that Ms. Ball provided varying explanations concerning the onset of her knee pain, she told Dr. Dalal that she walked with a limp and began to use a cane after she fell. More importantly, her trial testimony unequivocally established that she "had been limping at work . . . [a]fter the fall." Because Ms. Ball testified live at trial, we give great deference to the trial court's assessment of her credibility. Richards, 70 S.W.3d at 733; Rhodes, 154 S.W.3d at 46. In this case, the trial court did not make an explicit finding concerning Ms. Ball's credibility, but its rulings implicitly suggest that it believed her testimony. Interstate Mech. Contractors, Inc. v. McIntosh, 229 S.W.3d 674, 678 (Tenn.

cause to be given to the employer who has no actual notice, written notice of the injury, and the employee shall not be entitled to physician's fees or to any compensation that may have accrued under this chapter, from the date of the accident to the giving of notice, unless it can be shown that the employer had actual knowledge of the accident. No compensation shall be payable under this chapter, unless written notice is given the employer within thirty (30) days after the occurrence of the accident, unless reasonable excuse for failure to give the notice is made to the satisfaction of the tribunal to which the claim for compensation may be presented.

2007). Based on our standard of review, we are unable to conclude that the evidence preponderates against the trial court's finding that Ms. Ball's left knee injury was work-related. We therefore affirm the judgment of the trial court on this issue.

Causation - Back

Regions also asserts that the evidence preponderates against the trial court's finding that Ms. Ball's disc problems at L1-L2, L4-L5, and L5-S1 were caused or aggravated by the January 2009 fall at work. In essence, Regions argues that Dr. Waggoner's testimony is more credible than that of Dr. Dalal. When expert medical testimony differs, it is within the trial judge's discretion to accept the opinion of one expert over another. Hinson, 654 S.W.2d at 676-77 (Tenn. 1983). In this case, however, Drs. Waggoner and Dalal testified by deposition. Accordingly, we may draw our own conclusions about the weight and credibility to be given their testimony. Krick, 945 S.W.2d at 712.

Dr. Waggoner was Ms. Ball's treating physician. He first saw her shortly after her fall, at which point he performed an x-ray of her spine. The x-ray revealed arthritis at L4-L5, and he diagnosed her with a lumbar strain. When he released her from his care in May 2009, he noted that she had some residual "discomfort" in her lower back but had shown "excellent improvement." He assigned no impairment and permitted her to return to work without restrictions. When she returned to him in September 2009, "her symptoms were dramatically worse." A subsequent MRI revealed a herniated disc at L1-L2. Dr. Waggoner opined that the symptoms of a herniated disc usually occur within days or weeks after a particular episode, not ten months later. He also testified that Ms. Ball's symptoms had changed from her right to her left side and that her left-sided symptoms were attributable to the disc herniation at L1-L2. In conclusion, he testified that the L1-L2 herniation was not work-related and that the January 2009 fall at work did not cause any permanent injury to Ms. Ball's spine.

Dr. Dalal, on the other hand, only saw Ms. Ball for her alleged back injuries on one occasion. His independent medical examination took place approximately two years after Ms. Ball's fall at work. He seemed to be unaware of the eight-month delay between the fall and the drastic change in Ms. Ball's lower back pain and symptomology.

Based on all of these facts, we find that Dr. Waggoner's opinions, which were based on his more than one year of treatment and his professional observations during that time, are more persuasive than the opinions of Dr. Dalal. We therefore conclude that the evidence preponderates against the trial court's finding that Ms. Ball sustained permanent, work-related injuries to her spine.

Temporary Total Disability

Regions maintains that the trial court erred by awarding temporary total disability benefits based on Ms. Ball's period of recovery following the knee surgery performed by Dr. Dalal. At trial, Regions sought to exclude Dr. Dalal's testimony concerning Ms. Ball's inability to work following her second knee surgery because Ms. Ball did not disclose this as a subject of testimony in her responses to its interrogatories pertaining to expert witnesses. The trial court overruled Regions' objection and considered Dr. Dalal's testimony on this subject. Issues concerning the admission of evidence rest within the sound discretion of the trial court and will only be overturned on appeal when the trial court abuses its discretion. Otis v. Cambridge Mut. Fire Ins. Co., 850 S.W.2d 439, 442 (Tenn.1992). An abuse of discretion occurs only when the trial court "applies an incorrect legal standard or reaches a decision that is without logic or reasoning and the result of that decision prejudices the complaining party." State v. Shirley, 6 S.W.3d 243, 247 (Tenn.1999) (citing State v. Shuck, 953 S.W.2d 662, 669 (Tenn.1997)). Ruskin v. Ledic Realty Servs., Ltd., No. W2009-02595-WC-R3-WC, 2011 WL 684606, *7 (Tenn. Workers Comp. Panel Feb. 25, 2011). In this case, Dr. Dalal served as both a retained expert and a treating physician. In workers' compensation cases, treating and evaluating physicians routinely testify about patients' temporary disabilities following surgical procedures. Accordingly, we are unable to conclude that the trial court's ruling was "without logic or reasoning." We therefore affirm the trial court's award of temporary total disability benefits.

Medical Expenses

Regions also contends that the trial court erred by ordering it to pay for unauthorized medical care provided by Drs. Waggoner, Grinspun, and Dalal. As discussed above, Ms. Ball's back injuries were not work-related. The trial court's award of medical expenses for those conditions is therefore reversed.

As for Ms. Ball's knee injuries, Regions denied that these injuries were compensable. "When a claim is denied, the employee may obtain medical care at his or her own expense through a group or individual health care plan If the claim is found to be compensable, the employer becomes liable for the employee's medical expenses." State Auto. Mut. Ins. Co. v. Hurley, 31 S.W.3d 562, 564 (Tenn. Workers' Comp. Panel 2000). Accordingly, the trial court properly ordered Regions to reimburse Ms. Ball's private insurer for all necessary and reasonable medical expenses related to her left knee. On remand, the trial court should review all medical expenses in accordance with this opinion to determine which expenses are related to only Ms. Ball's knee.

Extent of Permanent Disability

Finally, Regions argues that the trial court's permanent partial disability award was excessive. Because we have concluded that Ms. Ball's back injury was not compensable, the trial court is directed on remand to determine the amount of permanent disability attributable to Ms. Ball's knee injury only.

Conclusion

The award of permanent disability benefits and medical expenses for Ms. Ball's back injuries is reversed. The award of temporary and permanent disability benefits and medical expenses for her knee injury is affirmed. The case is remanded to the trial court for further proceedings in accordance with this opinion. Costs are taxed one-half to Kristen Ball and one-half to Regions Financial Corporation, Insurance Company of the State of Pennsylvania and their surety, for which execution may issue if necessary.

JON KERRY BLACKWOOD, SENIOR JUDGE

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

KRISTEN BALL v. REGIONS FINANCIAL CORPORATION, ET AL.

**Circuit Court for Shelby County
No. CT-0044668-11**

No. W2013-02454-SC-R3-WC - Filed October 2, 2014

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 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 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 one-half to the Appellee, Kristen Ball, and one-half to the Appellants, Regions Financial Corporation and Insurance Company of the State of Pennsylvania, and their surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM