

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
September 18, 2017

**LLOYD MICHAEL HARRIS, JR. v. MASTEC NORTH AMERICA, INC., ET
AL.**

**Appeal from the Circuit Court of Cheatham County
No. 5183 Larry J. Wallace, Judge**

**No. M2016-02307-SC-R3-WC – Mailed December 1, 2017
Filed January 9, 2018**

In March 2004, the trial court entered a final order finding the employee permanently and totally disabled and awarding benefits of \$274.49 per week “until he is eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act.” The trial court also ordered that 180 weeks of benefits and attorney’s fees would be paid to the employee in a lump sum. In May 2016, the employer filed a motion to amend, alleging that the order should have reflected the employee’s retirement age as sixty-five (65) and should have stated “with specificity when [the employer] shall receive a credit for the commuted portion of the award.” The trial court found that the motion was untimely and that, in any event, the final order provided the employee with weekly benefits “through the date of his eligibility for full benefits in the Old Age Insurance Benefit Program under the Social Security Act as of the date of the entry of the Final Judgment,” i.e., age sixty-seven (67). We affirm the trial court’s judgment.

**Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right;
Judgment of the Circuit Court of Cheatham County Affirmed.**

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

Clifford Wilson and Michelle D. Reid, Nashville, Tennessee, for the appellant, Mastec North America, Inc.

Blakely D. Matthews and Pele I. Godkin, Nashville, Tennessee, for the appellee, Lloyd Michael Harris, Jr.

OPINION

Procedural History

On January 4, 1999, Lloyd Michael Harris was twenty-four (24) years of age, when he suffered serious injuries to his arms, back, neck, head, and body in the course and scope of his employment with Mastec North America, Inc. (“Mastec”). After a contested trial, the court entered an order in which it found that Mr. Harris was permanently and totally disabled and that he was “entitled to compensation at the benefit rate of \$274.49 per week until he was eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act.” The trial court also awarded 180 weeks of benefits and attorney’s fees in a lump sum which would in turn be credited against the final 180 weeks of benefits. On March 31, 2004, the trial court entered an agreed final order that added the following provision:

Mr. Harris was 25.07 years of age on November 14, 2000, the date at which he reached maximum medical improvement. According to Table VI of the Mortality Tables of the Tennessee Code Annotated, Mr. Harris is expected to live 54.66 years beyond the date of maximum medical improvement. The employee after payment of attorney’s fees and litigation costs and expenses, will net \$538,320.93 in permanent disability benefits. For purposes of calculating an offset for Social Security Disability benefits, Mr. Harris will receive \$188.96 per week in permanent disability benefits.

More than twelve years later, on May 20, 2016, Mastec filed a motion to amend the final order. In its motion, Mastec relied upon Rule 60.01 of the Tennessee Rules of Civil Procedure, which allows the trial court to correct clerical mistakes in judgments arising from oversight or omissions, at any time. In its motion, Mastec asserted that the trial court’s order should be amended to reflect a retirement age of sixty-five (65) to comply with Tennessee Code Annotated section 50-6-207(4)(A)(i) as it existed at the time of injury. The motion also alleged that the order did not state with specificity when Mastec should receive a credit for the commuted portion of the award and did not state with specificity when Mr. Harris’s monthly award shall be prorated.

On September 1, 2016, Mr. Harris filed a response arguing that Mastec’s motion to amend the final judgment was not filed within one year of the trial court’s final order as required by Rule 60.02(1) or Rule 60.02(5) of the Tennessee Rules of Civil Procedure. In addition, Mr. Harris countered that the trial court’s final order properly provided for the payment of permanent and total disability benefits until he “is eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act,” i.e., until age

sixty-seven (67), and that the commuted benefits were to be “credited against the final 180 weeks of benefits.”

On September 30, 2016, the trial court entered an order which found that either under Rule 60.02(1) or Rule 60.02(5) of the Tennessee Rules Civil Procedure Mastec’s motion was not timely filed and was therefore denied. The trial court also concluded that the final judgment provided Mr. Harris with benefits through the date of his eligibility for full benefits in the Old Age Insurance Benefit Program under the Social Security Act as of the date of the entry of the Final Judgment. Mastec timely filed its notice of appeal.

Analysis

I.

Mastec initially argues that the trial court erred when it failed to grant relief pursuant to Rule 60.01 of the Tennessee Rules of Civil Procedure. Rule 60.01 states that “clerical mistakes in judgments, orders or other parts of the record, and errors therein arising from oversight or omissions, may be corrected by the court at any time on its own initiative or on motion of any party and after such notice, if any, as the court orders.” Tenn. R. Civ. P. 60.01.

Mastec argues that the trial court abused its discretion by refusing to clarify when Mr. Harris will stop receiving benefits for his permanent and total disability. Mastec points out that at the time of Mr. Harris’ injury in January 1999, the Tennessee Code provided for permanent and total disability benefits until the age of sixty-five. Tenn. Code Ann. § 50-6-207(4)(A)(i)(1999). Although Mastec concedes that the statute was later amended to provide for payments until “the employee is, by age, eligible for full benefits in the Old Age Insurance Benefit Program under the Social Security Act,” See 2000 Tenn. Laws Pub. Ch. 852, Sect. 4 (Approved May 31, 2000), it contends that the amended statute applied prospectively.

Mr. Harris counters that the trial court correctly determined that the motion to amend was untimely inasmuch as it was filed over twelve years after the final order was entered. In addition, Mr. Harris asserts at the time the final order was entered, permanent and total disability benefits were to be paid “through the date of his eligibility for full benefits in the Old Age Insurance Benefit Program under the Social Security Act.”

We agree with the trial court that Mastec’s reliance upon Rule 60.01 is misplaced. In this case, there is no clerical error that the trial court should have corrected. Examples of relief that has been allowed under Rule 60.01 include: when the Defendant’s name was listed incorrectly on a final judgment; to interpret a provision in a parenting plan order

that was ambiguous on its face; and when the order inadvertently granted a nonsuit regarding all claims, rather than the one type of claim intended to be nonsuited. See Continental Cas. Co. v. Smith, 720 S.W.2d 48, 49 (Tenn. 1986); Battleson v. Battleson, 223 S.W.3d 278, 288 (Tenn. Ct. App. 2006); SecurAmerica Business Credit v. Schledwitz, 2011 W.L. 3808232 at 9 (Tenn. Ct. App. 2011). In Continental, the Supreme Court stated that “[Rule 60.01], like its federal counterpart . . . should be applied to strike a proper balance between the competing principles of finality and justice.” 720 S.W. 2d at 49. Rule 60.01 applies when an error occurs in the drafting of a judgment that causes the trial court to sign an order which does not reflect the actual findings of the court. It appears from our courts’ prior decisions that Rule 60.01 has been consistently used to provide relief from judgments which have technical errors such as a spelling mistake or the insertion of an incorrect number or letter. Burke v. Huntsville NH Operations, LLC, 491 S.W.3d 683, 688 (Tenn. Ct. App. 2015). In Jerkins v. McKinney, 533 S.W.2d 275 (Tenn. 1976), our Supreme Court defined clerical mistakes as follows:

We do not here deal with Rule 60.01, since this rule is designed to afford relief in those character of cases wherein the judgment or order, either standing alone, or when viewed in connection with other portions of the record, shows *facially* that it contains errors arising from oversight or omission.

Id. at 280 (emphasis added). Likewise, “[A]t least one Tennessee court has restated that proposition to apply in those situations where an error in the drafting of a judgment ‘cause[s] the judgment to fail to reflect the court’s ruling accurately.’” Tantaris v. Boehms, 1989 W.L. 137853 at 4 (quoting Addington v. Staggs, 1989 W.L. 5453 at 3 (Tenn. Ct. App. 1989)).

In this case, the original order accurately reflects the trial court’s ruling, which Mastec now is attempting to set aside. Rule 60.01 is not the proper vehicle for this type of relief.

II.

An amendment to the final order which Mastec is requesting can only be accomplished by use of Rule 60.02 Tenn. R. Civ. P. However, Mastec’s contention that the order should have clarified the appropriate requirement age was never raised as a “mistake” of law within one year of the final order, see Tenn. R. Civ. P. 60.02(1). In other words, one year is the maximum limit on time allowed for filing a motion under Rule 60.02(1) or 60.02(2). Rogers v. Estate of Russell, 50 S.W.3d 441, 445 (Tenn. Ct. App. 2001). Rule 60.02 does not “permit a litigant to slumber on her claims and then belatedly attempt to relitigate issues long since laid to rest.” Thompson v. Firemen’s Fund Ins. Co., 798 S.W.2d 235, 238 (Tenn. 1990).

The trial court also found that under Rule 60.02(5) Mastec's motion was not filed timely. We agree. Although motions based on Rule 60.02(5) are subject only to the "reasonable time" limitation, this provision has been construed narrowly by Tennessee courts. See Holiday v. Shoney's South, Inc., 42 S.W.3d 90, 94 (Tenn. Ct. App. 2000) (citing Underwood v. Zurich Ins. Co., 854 S.W.2d 94, 97 (Tenn. 1993)). As our Supreme Court observed in Furlough v. Spherion Atlantic Workforce, LLC, 397 S.W.3d 114 (Tenn. 2013).

Rule 60.02(5) does not "relieve a party from his or her free, calculated, and deliberate choices." (citation omitted). Instead, the rule "affords relief in the most extreme, unique, exceptional, or extraordinary cases and generally applies only to circumstances other than those contemplated in Sections (1) through (4) of Rule 60.02. (citations omitted) and untimely requests under Rule 60.02(1) or (2) may not be asserted under Rule 60.02(5) (citations omitted). Relief under Rule 60.02(5) is not proper "simply because relief under other provisions is time barred." (citing Wallace v. Aetna Life and Cas. Co., 666 S.W.2d 66, 67 (Tenn. 1984).

Furlough v. Spherion Atlantic Workforce, LLC, at 130.

In this case, the relief requested by Mastec was not raised within a reasonable time. Here, the injury to Mr. Harris occurred in January 1999, and the trial court's final order was entered in March 2004. Mr. Harris points out that he filed a notice of appeal intending to challenge the compensation rate applied by the trial court. However, he ultimately elected to dismiss his appeal, and he is now bound by the final order. Mastec did not initiate or execute an appeal from the trial court's judgment and did not seek any relief from the judgment until May 2016. Rather than seeking clarification of the trial court's order, Mastec is actually asking this Court to set aside the trial court's order and replace it with an amended order which reduces Mr. Harris' future benefits by two years, and it has failed to identify any reason for waiting over twelve years to seek this relief.¹

III.

Mastec's final argument is that the trial court abused its discretion by refusing to amend the judgment to ensure that it will receive full credit for the lump sum paid to Mr.

¹ Mastec's reliance on Brown v. Consolidation Coal Co., 518 S.W.2d 234 (Tenn. 1974), is unavailing. In that case, the trial court granted relief under Rule 60.02(5) for the final judgment awarded benefits based upon an incorrect compensation rate, and the motion was filed one year and two months after the final judgment had been entered.

Harris. Mastec cites Tenn. Code Ann. § 50-6-207(4)(A)(ii)(c), which states: After the total amount of the commuted lump sum is determined, the amount of the weekly disability benefits shall be recalculated to distribute the total remaining permanent total benefits in equal weekly installments beginning with the date of entry of the order and terminating on the date the employee's disability benefits terminate pursuant to Subdivision (4)(A)(1)(i) . . .

Mr. Harris argues that the final order plainly states that the commuted benefits of 180 weeks were to be "credited against the final 180 weeks of benefits . . ." Although the trial court did not recalculate the rate of weekly benefits in accordance with Section 50-6-207(4)(A)(ii)(c), Mr. Harris again asserts that Mastec did not appeal the trial court's judgment and did not seek to amend the judgment for over twelve years and is therefore barred.

Once again, we conclude that the trial court properly denied Mastec's motion. As discussed above, Mastec has not shown that the final order contained a clerical error pursuant to Tenn. R. Civ. P. 60.01. Moreover, the motion was not filed within one year of the final order, nor was it filed within a reasonable time. Tenn. R. Civ. P. 60.02(1) and (5).

IV.

Mr. Harris requests damages for frivolous appeal. A frivolous appeal is one that is "devoid of merit such that it had no reasonable chance of succeeding." Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 50 n. 4 (Tenn. 2004). Tenn. Code Ann. § 50-6-225(i), provides that "[w]hen a reviewing court determines . . . that the appeal of an employee is frivolous, a penalty may be assessed by the court, without remand, against the appellant for a liquidated amount." Tenn. Code Ann. § 50-6-225(i). In addition, Tenn. Code Ann. § 27-1-122 states that when it appears to a reviewing court that the appeal was "frivolous or taken solely for delay, the court may, either upon the motion of a party or on its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on judgment, and expenses incurred by the appellee as a result of the appeal."

In this case, Mr. Harris was found to be permanently and totally disabled. Under the facts of this case he should not be required to bear the cost of defending an action by an insurance carrier to alter his final benefit awards which he received more than twelve years ago. We therefore conclude that this appeal was frivolous.

Conclusion

The judgment of the trial court is affirmed. The case is remanded to the trial court for determination of reasonable attorney's fees and expenses incurred by Mr. Harris in defending this appeal. Costs are taxed to Mastec North America, Inc., and its surety for which execution shall issue if necessary.

ROBERT E. LEE DAVIES, SR. JUDGE