IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
May 23, 2011 Session

MICHAEL[1] A. PARISH v. HIGHLAND PARK BAPTIST CHURCH ET AL.

Appeal from the Chancery Court for Hamilton County
No. 09-0355 W. Frank Brown, III, Chancellor

No. E2010-01977-WC-R3-WC-FILED-OCTOBER 18, 2011

Pursuant to Tennessee Supreme Court Rule 51, this workers' compensation 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. The Employee was injured when he was thrown from a horse. He alleged that the injury arose in the course and scope of his employment. His Employer contended that the Employee was engaged in a purely private activity; therefore, the injury was not compensable. The trial court denied the claim. On appeal, the Employee contends that the trial court erred by finding his injury was not related to his employment. We affirm the judgment.

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

JERRI S. BRYANT, SP. J., delivered the opinion of the Court, in which GARY R. WADE, J. and JON KERRY BLACKWOOD, SR. J., joined.

Richard A. Schulman and McKinley S. Lundy, Jr., Chattanooga, Tennessee, for the Appellant, Michael A. Parish.

Thomas O. Sippel and Benjamin T. Reese, Chattanooga, Tennessee, for the Appellees, Highland Park Baptist Church and Guideone Mutual Insurance Company.

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[1] Mr. Parish's first name is spelled "Michael" in the transcript of proceedings below and the trial court's order, but "Micheal" in his appellate brief. The former spelling is used throughout this opinion.

MEMORANDUM OPINION

Factual and Procedural Background

Michael Parish ("Employee") was employed as the Business Manager and Personnel Director of Highland Park Baptist Church ("Employer") from 1992 until May 2009. He was injured on May 17, 2008 when he was thrown from a horse on the premises of Camp Joy. Camp Joy is a summer camp for inner city-children operated by Employer. As a result of the injury, Employee suffered a "burst fracture" of the L1 vertebra. The injury required a long period of recuperation and caused him to have some permanent limitations of his activities. For purposes of this appeal, it is not disputed that Employee was ultimately unable to continue in his employment because of the combined effects of non-related selenium poisoning and the back injury.

At the time Employee's injury occurred, Jeff Frances[2] was the director of Camp Joy and his wife, Gail, was the assistant director. Dr. David Bouler was the senior pastor of the church and Employee's direct supervisor. Mr. Frances, Ms. Frances, Dr. Bouler and Employee all testified at length about the history of horses at Camp Joy. In the spring of 2008, someone offered to donate four horses to Camp Joy. The offer was accepted, and the horses were received in March or April of that year. Employee implied that the intent was for the horses to be ridden by children campers. Mr. Frances testified that he "envisioned . . . bring[ing] horses back where kids could actually do trail rides again." Ms. Frances understood that the horses were to be ridden but did not specify by whom. Dr. Bouler testified that the horses were to be "personal horses" for Mr. and Ms. Frances and their family, and that the church would allow the horses to be kept at Camp Joy. He testified that he did not consider the horses to be safe for children to ride and that he never intended for them to be used for that purpose.

When the horses arrived at Camp Joy, it was apparent to Mr. Frances that they had not been ridden for some time and were not suitable for children to ride. Ms. Frances agreed with that assessment. Both decided it would be necessary to work with the horses before they could be used at the camp. Employee testified that he told Mr. Frances that "if you guys can get them ready, I'm planning on going out there and checking them out. If I feel like they're ready to go, I'll make the recommendation to Dr. Bouler." During the week before May 17, 2008, Employee had a brief conversation with Ms. Frances. He testified that he "told her it was getting time for the camp to open and that I wanted to come out and check

[2] Mr. Frances's name is spelled both "Frances" and "Francis" in the record. The former spelling is used throughout this opinion.

the horses and make sure they are okay for liability [purposes]." He testified that his "intent was to ride all four horses and check them out and make sure they were ready to go."

Although Employee did not usually work on Saturdays, on May 17, 2008, he and his wife, Patricia, rode to Camp Joy on his motorcycle. Although they both owned saddles, they did not bring them on this occasion. At the camp, they took two horses from their stalls. Ms. Parish brushed one of them while Employee saddled the second, then "took it for a ride around the pasture several times." Employee then saddled the horse his wife had been grooming. When he got on the horse, "[s]omething spooked her. She went up on her back legs. She lost her balance and went back and slammed me into the ground." Employee was immediately in pain. He rested for a short time but did not improve. Eventually, his wife obtained the camp truck and took him to a nearby hospital. He was diagnosed with a broken bone in his right knee and a burst fracture of the L1 vertebra.

Employee testified that he viewed checking the safety of the new horses as his responsibility. However, neither Dr. Bouler, nor any other official of Employer, instructed him to check the horses. He testified that he had done this when the camp had owned horses in the past, including during a year when the director of the camp had no experience with the animals. However, this was not within his job description. Employee's wife testified that he had also helped an assistant pastor handle the horses on one occasion in the past. Employee had also ridden the camp's horses for recreation.

The trial court issued a written opinion and order. It found that Employee

> was not injured in the course of his employment by [Employer]. [Employee] was the business manager of [Employer]. He was not employed as the director of Camp Joy. It was not his job to train the horses. The camp director did not expect [Employee] to train the horses. [Employee] was not asked to ride the horses. His riding of the horses was a personal mission, outside his job duties, even though such may have some remote, potential benefit to [Employer].

The trial court, therefore, dismissed Employee's claim for workers' compensation benefits. It made an alternative finding that, if his injury was determined on appeal to be compensable, Employee had sustained a permanent partial disability of 22% to the body as a whole. Employee has appealed, arguing that the trial court erred by finding that his injury was not compensable and by awarding discretionary costs to Employer.

Standard of Review

In Tennessee workers' compensation cases, this Court reviews the trial court's findings of fact de novo, accompanied by a presumption of correctness of the findings, unless

the evidence preponderates otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2008); *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007). "This standard of review requires us to examine, in depth, a trial court's factual findings and conclusions." *Galloway v. Memphis Drum Serv.*, 822 S.W.2d 584, 586 (Tenn. 1991) (citing *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 675 (Tenn. 1991)). We give considerable deference in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony when the trial court has heard in-court testimony. *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002). On questions of law, our standard of review is de novo with no presumption of correctness. *Wilhelm*, 235 S.W.3d at 126. Although workers' compensation law must be construed liberally in favor of an injured employee, it is the employee's burden to prove causation by a preponderance of the evidence. *Crew v. First Source Furniture Grp.*, 259 S.W.3d 656, 664 (Tenn. 2008).

Analysis

Employee contends that the evidence preponderates against the trial court's decision. He points out that his job responsibilities included supervision of Camp Joy, including direct supervision of the director of the camp, as well as securing insurance for the camp and for other church activities. He was familiar with horses and had "assisted" with the camp horses in the past. Further, he notes that although his job primarily involved oversight of the books of Employer's various functions, he also frequently participated in "hands on" activities such as assisting with security and moving pews within the church. In light of the breadth of his responsibilities and activities, he argues that his activities on May 17, 2008 bore a rational connection to his employment. He cites *Loy v. North Brothers Co.*, 787 S.W.2d 916 (Tenn. 1990) in support of his position.

In *Loy*, the employee was injured in a motor vehicle accident. 787 S.W.2d at 918. The accident occurred after his normal working hours while he was driving to meet with a potential replacement for an employee who had quit earlier that day. *Id.* at 917-18. The employee did not have the authority to hire employees himself and did not inform his employer of his intent to seek a replacement employee. *Id.* The trial court found that the injuries sustained as a result of the accident were compensable, however, and the Supreme Court affirmed that decision. *Id.* at 920.

Employee also relies upon *Jones v. Hartford Accident & Indemnity Co.*, 811 S.W.2d 516, 519-20 (Tenn. 1991), in which the Supreme Court applied the "mutual benefit test" in affirming a trial court's finding that an employee was acting in the course of her employment while performing her duties as a union steward.

Employer argues that the evidence in the record supports the trial court's finding that Employee's injury was not compensable. In support of this position, it points out that

Employee's job description, which Employee drafted, does not contain any reference to maintaining safety at Camp Joy generally, or evaluating horses specifically. Employer further points to the testimony of Mr. and Mrs. Frances that they considered themselves responsible for training and evaluating the horses. Also, Employer relies on Dr. Bouler's testimony that he considered the donated horses to be the Franceses' responsibility and did not intend for them to be ridden by campers. In light of this assertion, Employer argues that there was no reason for Employee to make an independent evaluation of the animals.

We agree with Employer's contention that *Loy* is not applicable to these facts. In *Loy,* the trial court found that the injured employee's supervisor "expected" him to take independent action to replace the employee who had resigned if "he knew someone." 787 S.W.2d at 918. In contrast to *Loy*, the trial court in this case found that Employer had no expectation that Employee would train or evaluate the horses at Camp Joy. Similarly, *Jones* is not applicable because the employee in that case had been "summoned pursuant to a direct order from the owner of the plant to receive and pass along a message to the union's business manager . . . [that] related directly to the plant owner's authority to question employees in general, and [the employee] specifically, about their employment status." 811 S.W.2d at 520. The trial court in this case found that, unlike the employee in *Jones*, Employee was on a personal mission that Employer did not order or expect. Moreover, the benefit of that mission to Employer was remote at best.

In its decision, the trial court referred to *McClain v. Holiday Retirement Corp.*, No. M2001-02850-WC-R3-CV, 2002 WL 31512326 (Tenn. Workers' Comp. Panel Nov. 12, 2002). Employee criticizes the trial court's reliance upon that decision, arguing that the facts of the two cases are not comparable. In *McClain*, the Special Workers' Compensation Appeals Panel affirmed the trial court's finding that the employee's injury, which occurred while she was packing her personal belongings in her residence on the employer's premises, was not compensable. *Id.* at *2. We agree that the facts in *McClain* are not analogous to the facts here. However, it is clear to us that the case was cited to illustrate the principle that injuries sustained in the course of a personal mission outside the employment relationship are not compensable, rather than to support a finding that the facts of that case somehow dictate the result here.

The trial court's factual findings are supported by evidence throughout the record, including Employee's past recreational use of the camp horses, the testimony of Dr. Bouler that the horses were not going to be ridden by campers, and the testimony of Mr. and Ms. Frances that the horses were their responsibility. Further, Dr. Bouler was surprised Employee had gone out to the camp. Those findings were necessarily based in large part upon the trial court's assessment of the credibility of the witnesses. We give the trial court's credibility determination the deference to which it is entitled. *Whirlpool Corp.*, 69 S.W.3d at 167 ("When the trial judge has seen and heard a witness's testimony, considerable

deference must be accorded on review to the trial court's findings of credibility and the weight given to that testimony."). Having examined the entire record independently, as we are required to do, we conclude that the evidence does not preponderate against the trial court's finding that Employee's injury occurred in the course of a personal mission and is therefore not compensable. In light of that conclusion, it follows that the trial court did not err by awarding discretionary costs to Employer pursuant to Tennessee Rule of Civil Procedure 54.04.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Michael Parish and his surety for which execution may issue, if necessary.

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JERRI S. BRYANT, SPECIAL JUDGE

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ORDER

This case is before the Court upon the motion for review filed on behalf of Michael A. Parish pursuant to Tenn. Code Ann. § 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 Memorandum 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 Michael A. Parish, and his surety, for which execution may issue if necessary.

PER CURIAM

GARY R. WADE, J., not participating