

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
April 20, 2015 Session

MAE REYNOLDS, ET AL. v. FREE SERVICE TIRE COMPANY

Appeal from the Chancery Court for Sullivan County
No. K0039187M John S. McLellan, III, Chancellor

No. E2014-02233-SC-R3-WC-MAILED-JULY 6, 2015
FILED-SEPTEMBER 16, 2015

The trial court awarded death benefits based on the statutory maximum benefit of the State's average weekly wage, rather than basing the maximum on the decedent's weekly wages. It also awarded lump sum benefits to some of the decedent's dependents. The employer has appealed. Pursuant to Tennessee Supreme Court Rule 51, the 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. We affirm in part, reverse in part, and remand for entry of an order consistent with this opinion.

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

DON R. ASH, SR. J., delivered the opinion of the Court, in which SHARON G. LEE, C. J. and DEBORAH C. STEVENS, SP. J., joined.

T. Joseph Lynch, Knoxville, Tennessee, for the appellant, Free Service Tire Company.

Jerry J. Fabus, Jr., Johnson City, Tennessee, for the appellee, Mae Reynolds.

Dan Bieger, Bristol, Tennessee, for the appellees, Peggy Ann Reynolds, on behalf of her minor children Chyaine Paige Reynolds and Chloe Madison Reynolds and Lauralynn Lewis Wilson on behalf of her minor child, Jason Lee Wilson.

OPINION

Factual and Procedural Background

The underlying facts in this case are not disputed. The decedent, Jason Reynolds, died on November 18, 2013, as a result of injuries sustained in a work-related accident. He was survived by his widow, Mae Reynolds, and he is also survived by his three minor children: Jason Wilson, whose mother is Lauralynn Wilson, and Chyaine Paige Reynolds and Chloe Madison Reynolds, whose mother is Peggy Ann Reynolds. The parties stipulated decedent's average weekly wage was \$541.09 per week, resulting in a workers' compensation benefit rate of \$360.74 per week.

The Department of Labor waived a Benefit Review Conference on November 19, 2013, and this action was filed by Mae Reynolds on December 12, 2013. Ms. Wilson and Peggy Ann Reynolds were permitted to intervene on behalf of their minor children pursuant to agreed orders dated February 11, 2014. The matter proceeded to hearing on October 6, 2014, and the trial court was presented with two issues to resolve. The first issue was the total potential recovery available to the dependents. Employer took the position the maximum recovery was \$144,260.00, a figure based on 400 weeks times decedent's workers' compensation benefit rate. The dependents took the position the maximum recovery was \$334,000, a figure based on 400 weeks times the state's average weekly wage during 2013. The trial court heard argument on the issue of maximum recovery and ruled for the dependents.

The second issue concerned lump sum benefits. All dependents sought full or partial lump sum benefits. Mae Reynolds, Lauralynn Wilson, and Peggy Ann Reynolds testified concerning their ability to manage any potential lump sum award. The trial court found Mae Reynolds had failed to demonstrate she could manage a lump sum award and therefore denied her application. The court found Lauralynn Wilson and Peggy Ann Reynolds had demonstrated they were capable of managing an award and such an award was in the best interest of their dependent children. It therefore awarded lump sum benefits to each of the dependent children for the period until their eighteenth birthdays and permitted each to apply for additional benefits at the time he or she reaches the age of majority, if he or she is enrolled in a college or university pursuant to Tennessee Code Annotated section 50-6-210(e)(11).

Employer has appealed, contending the trial court erred by finding the maximum total benefit to be \$334,000 and by awarding lump sum benefits to the dependent children.

Analysis

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). When credibility and weight to be given testimony are involved, considerable deference is given the trial court when the trial judge had the opportunity to observe the witness' demeanor and to hear in-court testimony. *Madden v. Holland Grp. of Tenn.*, 277 S.W.3d 896, 898 (Tenn. 2009). When the issues involve expert medical testimony contained in the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Maximum Total Benefit

Tennessee Code Annotated section 50-6-209(b) (2008) provides:

(1) In all cases of death of an employee covered by this chapter, sixty-six and two-thirds percent (66 2/3%) of the average weekly wages shall be paid in cases where the deceased employee leaves dependents, subject to the maximum weekly benefit.

* * * *

(3) The total amount of compensation payable under this subsection (b) shall not exceed the maximum total benefit exclusive of medical, hospital and funeral benefits.

Tenn. Code Ann. § 50-6-209(b)

The applicable definitions of maximum weekly benefit and maximum total benefit applicable on November 18, 2013, are set out at Tennessee Code Annotated section 50-6-102(13)(D) and (14)(A)(ix) (Supp. 2012):

(13) "Maximum total benefit" means the sum of all weekly benefits to which a worker may be entitled;

* * * *

(D) For injuries occurring on or after July 1, 2009, the maximum total benefit shall be four hundred (400) times one hundred percent (100%) of the state's average weekly wage, as determined pursuant to subdivision (14)(B), except in instances of permanent total disability. Temporary total disability benefits paid to the injured worker shall not be included in calculating the maximum total benefit;

* * * *

(14)(A) "Maximum weekly benefit" means the maximum

compensation payable per week;

* * * *

(ix) For injuries occurring on or after July 1, 2004, the maximum weekly benefit for permanent partial disability benefits shall be sixty-six and two-thirds percent up to (66 2/3%) of the employee's average weekly wage up to one hundred percent (100%) of the state's average weekly wage, as determined by the [Department of Labor and Workforce Development].

* * * *

(14)(B) As used in subdivision (14)(A), the state average weekly wage shall be determined as of the preceding January 1, and shall be adjusted annually using the data from the division and shall be effective on July 1 of each year.

The Supreme Court addressed the question of the maximum death benefit in *Jones v. Gen. Accident Ins. Co. of Am.*, 856 S.W.2d 133 (Tenn. 1993). There, as here, the employer asserted the maximum amount recoverable by the decedent's widower was 400 times the weekly benefit rate.¹ *Id.* at 134. In *Jones*, the widower asserted he was entitled to recover up to the maximum total benefit, which was defined in August 1991, as \$117,600. Tenn. Code. Ann. § 50-6-102(14)(B). Section 50-6-210 provided, "compensation shall be paid during dependency not to exceed the maximum total benefit." Tenn. Code Ann. § 50-6-210(e)(10) (1991). Reversing the trial court, the Supreme Court held the death benefit was limited only by the maximum total benefit as set out in section 50-6-102(14)(B). *Jones*, 856 S.W.2d at 135.

Subsequently, the Court addressed a similar issue in *Spencer v. Towson Moving & Storage, Inc.*, 922 S.W.2d 508 (Tenn. 1996). In *Spencer*, the employee suffered an injury resulting in his death on February 12, 1993. *Id.* at 509. At the time the Court reviewed the issue in *Spencer*, the definitions of maximum total benefit and maximum weekly benefit had been amended by the General Assembly:

"Maximum total benefit" is defined in Tenn. Code Ann. § 50-6-102(a)(6) to mean "the sum of all weekly benefits to which a worker may be entitled." For injuries occurring on or after July 1, 1992, it is four hundred (400) weeks times the *maximum weekly benefit*. Thus, under this definition, the maximum total benefit" is determined by multiplying the "maximum weekly benefit" by four hundred.

"Maximum weekly benefit" is defined in § 50-6-102(a)(7)(A) as

¹Because the employer's widower was her only dependent for purposes of the workers' compensation act, the benefit rate was 50% of the employee's average weekly wage. *Jones*, 856 S.W.2d at 134.

“the maximum compensation payable to the worker per week.” For injuries occurring on or after August 1, 1992, through June 30, 1993, the maximum weekly benefits are sixty-six and two-thirds percent of the employee's average weekly wage up to seventy-eight percent of the state's average weekly wage as determined by the department of employment security.

Id., at 510. The Court recognized in *Spencer* the amended definition affected the amount of benefit the plaintiffs in *Spencer* would receive, as it tied the maximum total benefit to the individual employee's earnings, rather than setting an across-the-board maximum as the statute had previously defined the benefit. *Id.* at 510-11. *Spencer* was followed by this Panel in two subsequent decisions, *Amell ex rel. Amell v. Liberty Mut. Ins. Co.*, No. E1999-01021-WC-R3CV, 2000 WL 559552 (Tenn. Workers' Comp. Panel May 3, 2000) and *Luedtke v. Travelers Ins. Co.*, 100 S.W.3d 188 (Tenn. Workers' Comp. Panel 2000).

In 2009, the General Assembly again amended the definition of “maximum total benefit.” Tennessee Code Annotated section 50-6-102(13)(D) (Supp. 2009) provides the maximum total benefit “[f]or injuries occurring on or after July 1, 2009 . . . shall be four hundred (400) times one hundred percent (100%) of the state's average weekly wage[.]” Tenn. Code Ann. § 50-6-102(13). Thus, the maximum total benefit has been detached from the individual employee's earnings and is once again an across-the-board figure. The parties do not dispute the calculation of 400 times the state's average weekly wage was \$334,000. Applying the principle set out in *Jones*, we conclude the trial court correctly held the maximum benefit payable in this case is \$334,000.

Lump Sum

The trial court found Mae Reynolds did not have the ability to wisely manage a lump sum payment and so declined to award her benefits in a lump sum. Ms. Reynolds did not appeal this finding.

The trial court found Peggy Ann Reynolds was able to wisely manage a lump sum payment. It cited her testimony indicating she was employed as a manager of a truck stop, she had received a \$40,000 settlement from a previous employer, she had retained the entire settlement amount as of the date of trial, and both of her children had serious medical issues which frequently required extraordinary expenses. The trial court awarded the benefits due Chyaine Paige Reynolds and Chloe Madison Reynolds until their eighteenth birthdays to be paid in a lump sum.

The court likewise noted Jason Wilson had medical problems which prevented him from earning an income while still in high school, and he had demonstrated financial responsibility in the purchase and ownership of an automobile. His mother, Ms. Wilson, testified she had no outstanding debts, she had never declared bankruptcy, and she was current in payment of her rent and other obligations. The court therefore awarded the benefits due Jason Wilson until his eighteenth birthday to be paid in a lump sum.

Employer argues the workers' compensation act does not authorize lump sum payments of death benefits. Alternatively, it argues the evidence preponderates against the trial court's decision. The Supreme Court addressed whether a trial court may commute a judgment to lump sum in *Jones*, stating,

[T]he statute authorizing commutation of compensation payable periodically, does not exclude from its scope death benefits to dependents. Moreover, it is illogical to conclude that a living employee providing for dependents can benefit her family from a periodic payment or a lump sum, but after her death the family can still benefit from periodic payments but not from a lump sum. Indeed, it is easy to foresee situations where this result could impose extreme hardships on surviving dependents.

856 S.W.2d at 135.

However, this Panel reviewed this issue in *Educators Credit Union v. Gentry*, No. M2003-02865-WC-R3-CV, 2005 WL 6136607 (Tenn. Workers' Comp. Panel, March 9, 2005). In *Gentry*, this Panel distinguished the specific issue of lump sum payment of death benefits to a sole surviving spouse from whether such benefits may be awarded to the surviving spouse of a deceased employee. *Id.* at *3. The Panel reviewed the application of Tenn. Code Annotated sections 50-6-210 and 50-6-229. Tenn. Code Annotated § 50-6-229(a) specifically provides for the possibility of lump sum payments, stating, "the amounts of compensation payable periodically under this chapter may be commuted to one (1) or more lump sum payments." Tenn. Code Ann. § 50-6-229(a). However, as discussed by this Panel in *Gentry*, the plain language of Tenn. Code Annotated section 50-6-210 (e), subsections (4) and (8) "require, as a matter of law, termination of death benefits upon remarriage of a surviving spouse or death or marriage of dependents." *Gentry*, 2005 WL 6136607, at *4.

In *Gentry*, the spouse was the sole dependent of the employee, and, if the spouse died or remarried, the benefits to spouse would terminate. *Id.* Due to the possibility of the spouse dying or remarrying, the trial court concluded a lump sum benefit was inappropriate as the trial court could not calculate all future payments with which to

commute to lump sum without ignoring the contingencies set forth in Tenn. Code Annotated section 50-6-210 (e)(4) and (8). *Id.* at *1. In the circumstance wherein a surviving spouse cares for a dependent child, lump sum could be calculated due to the additional dependent children within the home. *See Clayton v. Cookeville Energy, Inc.*, 824 S.W.2d 167 (Tenn. 1992) and *Perdue v. Green Branch Mining Co., Inc.*, 837 S.W.2d 56 (Tenn. 1992). We acknowledge there are circumstances wherein death benefits could be commuted to lump sum.

However, although there remain additional dependents in the present case, the payment to each dependent is independently awarded as Ms. Reynolds is not the mother of decedent's children. Due to the dependents residing in separate households, benefits paid periodically could be redistributed should one dependent die or marry. Commuting these benefits to lump sum assumes each dependent will receive all future installments of compensation. Tenn. Code Ann. § 50-6-229 (a).

In complying with the language of these statutes as previously reviewed by this Panel in *Gentry*, we conclude the trial court erred in commuting to lump sum the benefits awarded to Jason Wilson, Chyaine Paige Reynolds, and Chloe Madison Reynolds.

Conclusion

The judgment is affirmed in part and reversed in part. The case is remanded to the trial court for entry of an order consistent with this opinion. Costs are taxed to Free Service Tire Company and its surety, for which execution may issue if necessary.

DON R. ASH, SENIOR JUDGE

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AT KNOXVILLE

FREE SERVICE TIRE COMPANY v. MAE REYNOLDS ET AL.

**Chancery Court for Sullivan County
No. K0039187M**

No. E2014-02233-SC-WCM-WC-FILED-SEPTEMBER 16, 2015

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Free Service Tire Company, and Starnet Insurance Company 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 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 Free Service Tire Company, et al., and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

LEE, Sharon G., J., not participating