IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
April 27, 2009 Session

DONNY RAY THOMPSON v. CITY OF LAWRENCEBURG, ET AL.

Direct Appeal from the Circuit Court for Lawrence County
No. CC-1859-05 Jim. T. Hamilton, Judge

No. M2008-02662-WC-R3-WC - Mailed - October 16, 2009

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated § 50-6-225(e)(3) for a hearing and a report of findings of fact and conclusions of law. The trial court found Employee to be permanently and totally disabled as a result of a compensable injury. It apportioned benefits 70% to Employer and 30% to the Second Injury Fund. Employer appealed. Employer and Employee then reached an agreement to compromise Employer's portion of the claim for a lump sum payment. The appeal was voluntarily dismissed. Employee thereafter filed a motion requesting that the Fund immediately commence paying its share of the judgment. The trial court granted that motion. The Fund has appealed, contending that the order violates several provisions of the workers' compensation law. We agree, reverse the order at issue, and remand the case to the trial court for further proceedings.

Tenn. Code Ann. § 50-6-225(e) (2008) Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which SHARON G. LEE, J., and E. RILEY ANDERSON, SP. J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter, Michael E. Moore, Solicitor General, and Diane Stamey Dycus, Deputy Attorney General, for the appellant, Tennessee Department of Labor and Workforce Development, Second Injury Fund.

John Jay Clark, Columbia, Tennessee, for the appellee, Donny Ray Thompson.

MEMORANDUM OPINION

Factual and Procedural Background

Donny Ray Thompson ("Employee") was a police officer for the City of Lawrenceburg ("Employer"). He injured his back on April 2, 2004, while attempting to restrain an unruly child.

Prior to that time, he had undergone five back surgeries. It does not appear that those procedures were related to work injuries. Employee had an additional surgical procedure as a result of the April 2004 injury. The trial court found that he was totally and permanently disabled. Benefits were apportioned 70% to Employer and 30% to the Second Injury Fund ("Fund"). Employee was forty-nine years old at the time judgment was entered. The award therefore amounted to 1111.29 weeks of benefits. Employer was liable for the first 777.9 weeks ($311,176.75), the Fund for the remaining 333.39 weeks ($133,361.47).

Employer appealed. Mediation was conducted in accordance with Supreme Court Rule 37. Subsequent to mediation, Employer and Employee reached an agreement to settle Employer's portion of the judgment for a lump sum payment of $150,000.00. The Fund was not a party to the settlement and did not agree to the settlement agreement. Employer and Employee filed a stipulation of dismissal of the appeal. The stipulation does not refer to the mediated settlement. The stipulation was approved and Employer's appeal was dismissed. The record contains no evidence that the proposed settlement was approved by either the trial court or the Department of Labor.

Employee and Employer then filed a "Satisfaction of Judgment" in the trial court. Shortly thereafter, Employee filed a motion to compel the Fund to begin paying its portion of the judgment.

The trial court's findings of fact are not in dispute in this appeal. The Fund does not contest the trial court's conclusion that Employee is permanently and totally disabled. Moreover, there is no contest regarding the apportionment of Employee's award for permanent total disability. The Fund does contest, however, the trial court's order directing it to immediately commence payment of its portion of the award based on the notice of satisfaction of judgment filed by Employer. The Fund contends that, as a matter of law, the trial court lacked authority to direct the Fund to immediately commence payment of its portion of the award based on the unapproved lump sum settlement between Employee and Employer. Accordingly, the Fund's appeal solely involves resolution of a legal question, and the Court reviews the trial court's decision de novo without a presumption of correctness. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000); *Bernard v. Metro. Gov't of Nashville & Davidson County*, 237 S.W.3d 658, 662 (Tenn. Ct. App. 2007).

Standard of Review

This appeal presents a question of law only. We therefore review it de novo, with no presumption of correctness attaching to the trial court's conclusions. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003); *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

Analysis

The Fund argues that the settlement agreement violates Tennessee Code Annotated section 50-6-207(4)(A)(ii), which provides that no more than one hundred weeks of a permanent total disability award may be paid as a lump sum. It cites *McMillin v. McKenzie Special School District*, No. W2000-02165; WC-R3-CV, 2001 WL 34090141, at *4 (Tenn. Workers' Comp. Panel July 12, 2001) for the principle that the one hundred week maximum commutation is mandatory, and may not be waived by the parties. It also refers to the purpose of periodic payments under the workers'

compensation statute to serve as a substitute for lost wages. *See*, *e.g.*, *Vogel v. Wells Fargo Guard Servs.*, 937 S.W.2d 856, 862 (Tenn. 1996), and argues that the settlement in this case subverts that purpose. Finally, the Fund notes that the settlement has not been approved by the trial court in accordance with Tennessee Code Annotated section 50-6-206 or Rule 15 of the Tennessee Rules of Appellate Procedure.

We note, in addition to these concerns, the Supreme Court has held that the liability of the Fund cannot be established by a settlement to which it is not a party. *Sweeten v. Trade Envelopes, Inc.*, 938 S.W.2d 383, 385 (Tenn. 1996).

Employee argues that the law does not require a "compromise of a judgment" to be approved by a trial court because such a procedure would be "duplicative and a waste of our court's time." He also argues, somewhat curiously, that requiring court approval of a "post judgment settlement" conflicts with Rule 37 of the Rules of the Supreme Court. Section 11(b)(1) of the rule provides "[i]f mediation results in an agreement on all of the issues on appeal, parties' counsel shall file in the Supreme Court a motion to remand the case to the trial court for approval of the settlement . . . ." Of course, the "compromise" ostensibly resolved all issues between Employee and Employer, as illustrated by the fact that Employer has made no filings in this appeal.

We find Employee's argument that his "compromise" of the judgment was not a settlement requiring court approval to be specious. Tennessee Code Annotated section 50-6-206(a)(1) provides in pertinent part: "*all settlements*, before the settlements are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or chancery court of the county where the claim for compensation is entitled to be made." Tenn. Code Ann. § 50-6-206(c)(1) (emphasis added). The statute does not distinguish between settlements reached before or after entry of a judgment. The agreement at issue here substantially altered the rights and obligations of Employer and Employee set out in the trial court's judgment. Further, Employee argues that it altered the obligations of the Fund as well. By any reasonable definition of the term, it is a settlement. That settlement was not approved by the trial court, because it was not presented to the court for approval. Pursuant to section 50-6-206(a)(1), it is therefore not binding on any party.

Employee argues that the "satisfaction of judgment" signed by the trial court amounts to a *de facto* approval of the settlement. This contention is untenable for several reasons. First, and simplest, the document does not purport to be an approval of the settlement agreement. The only reference to the actual terms of the agreement is contained in a paragraph which pro-rates the award for purposes of federal social security payments. Secondly, the document does not contain any findings by the trial court that the agreement conforms with the requirements of section 50-6-206(a).

Indeed, if this settlement had been presented to the trial court, in accordance with the statute, the trial court could have approved it only by amending its finding that Employee was permanently and totally disabled. Without such a finding, the settlement would violate section 50-6-207(4)(A)(ii), because more than one hundred weeks of benefits were being paid as a lump sum. In that case, the Fund would have no liability, because the apportionment in this case was based upon section 50-6-208(a), which requires a finding of permanent total disability. Additionally, the amount of the settlement, $150,000.00, is less than one-half of the amount awarded in the judgment.

Approval of such a settlement in a case of permanent and total disability would conflict with the requirement of section 50-6-206(a)(1) that the trial court find "the employee receives substantially, the benefits provided by the Workers' Compensation Law . . .."

We further note that it was factually impossible for Employer to satisfy the judgment in this case without that judgment being amended. The judgment required Employer to pay 777.9 weeks of benefits. Only those benefits which had accrued as of the date of the judgment were awarded as a lump sum. The judgment was entered by the clerk of the court on March 24, 2008. The purported satisfaction of the judgment was entered on September 28, 2008, twenty-six weeks and five days later. Under the terms of the judgment, as entered, Employer could not satisfy its obligation until approximately 2019.

Conclusion

We hold that the alleged mediated settlement is void because it was not approved by the trial court in accordance with Tennessee Code Annotated section 50-6-206(a), and because it conflicts with the requirements of that section, and section 50-6-207(4)(A)(ii). Because the purported settlement is void, the satisfaction of judgment is also void. The trial court's order requiring the Fund to commence payment of its portion of the award is reversed. The case is remanded to the trial court for such additional proceedings as are necessary to restore the parties to positions consistent with the judgment, and with the workers' compensation law. Costs are taxed to Donny Ray Thompson, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

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JUDGMENT

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 Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appeals to the Court that the Memorandum 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 will be paid by Donny Ray Thompson, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM