

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

December 14, 2009 Session

**CAROLYNE PARK-PEGRAM ET AL., v. FINDLEY & PEGRAM
COMPANY, INC.**

**Appeal from the Circuit Court for Shelby County
No. CT001911-04 James F. Russell, Judge**

No. W2009-00231-WC-R3-WC - Mailed July 13, 2010; Filed August 17, 2010

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. Emory Pegram ("Decedent") was the President of Findley & Pegram Company, Inc. ("Employer"). He died as a result of a motorcycle accident. Approximately ten minutes before the accident, he had made a bank deposit for the business. He thereafter drove past his office and home. Employer had no active projects in the direction Decedent was traveling at the time of the accident. There was, however, a potential future project in that direction. Decedent had not informed any co-workers or employees where he was going or for what purpose. He was carrying business documents, a business cell phone, and a tool. The trial court concluded that he was a traveling employee at the time of the accident, and awarded workers' compensation death benefits to his widow. The trial court also awarded post-judgment interest for the five-month period between the announcement of the court's decision and entry of the judgment. Employer has appealed. We conclude that Decedent was not a traveling employee, but was acting in the course of his employment at the time of the accident. We further conclude that the workers' compensation statute does not authorize an award of interest prior to entry of the judgment. The judgment is modified to remove the award of post-judgment interest. It is otherwise affirmed.

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

JAMES F. BUTLER, SP. J., delivered the opinion of the Court, in which CORNELIA A. CLARK, J., and DONALD P. HARRIS, SR. J., joined.

Sean Antone Hunt, Memphis, Tennessee, for the appellant, Findley & Pegram Company, Inc.

Bruce D. Brooke, Memphis, Tennessee, for the appellee, Carolyne Park-Pegram.

W. Ray Jamieson, Bartlett, Tennessee, for the appellee, The Regional Medical Center at Memphis.¹

MEMORANDUM OPINION

Factual and Procedural Background

Emory Pegram (“Decedent”) was the President of Findley & Pegram Company, Inc. (“Employer”), an HVAC contractor. Employer’s office was located at 3280 Commercial Parkway, which is located just east of Elvis Presley Boulevard in the southwestern quadrant of Memphis. He died on June 17, 2003 as a result of a motor vehicle accident. A tractor-trailer ran into Decedent, who was riding on a motorcycle. The accident occurred in Memphis, on the northbound side of what was then known as Interstate 55, just past an entrance ramp at Brooks Road. The location of the accident was less than a mile north of Employer’s office.

The accident occurred at approximately 3:10 p.m. The evidence showed that Decedent had been to the office of his accountant, Richard Armor, at approximately 2:00 p.m., where he dropped off some financial records. Mr. Armor’s office was located in Bartlett, Tennessee, which is northeast of Memphis. A deposit slip found on Decedent’s person at the accident scene showed that he had made a deposit into Employer’s account at a Union Planters Bank Branch at 3:01 p.m. The bank was located near the intersection of Elvis Presley Boulevard and East Raines Road, approximately one to two miles south of Employer’s office. To reach the scene of the accident, Decedent would have proceeded north on Elvis Presley until he reached the I-55/Brooks Road interchange, where he entered the expressway. This route took him directly past his office, and past the route to his home, which was nearby.

The motorcycle was decedent’s private property. However, he sometimes used it on company business. He also had access to a truck owned by Employer for company business. It was admitted by Employer that Decedent set his own work schedule, and was not required to use a time clock.

Decedent’s wife, Carolyne Pegram, was called to the hospital where he had been taken. She testified that he was wearing the same clothing that he had been wearing when

¹Mr. Jamieson appeared at and participated in the trial of this matter. However, on appeal, he has advised the Court by letter that he joins in the brief of appellee Carolyne Peck-Pegram.

he left for work that morning. Decedent's ex-wife, Beverly Sowell, who was also at the hospital, testified that Ms. Pegram stated at that time that she believed Decedent had stopped by their home earlier in the day and changed his clothes.

Gregory Pegram, Decedent's son, also worked for Employer. He testified that they had made a proposal, approximately one month before his father's death, to perform a project at Sacred Heart Catholic Church. Sacred Heart was located north of the scene of the accident, in the general direction Decedent was traveling. He also testified that his father occasionally performed work for some Super Cuts hair shops, some of which were located north of the accident scene. Mr. Pegram testified that he did not know where his father was going when the accident occurred, or whether his purpose was related to the business. He was not aware of any specific project that his father was working on at the time.

Mike Jesko had worked for Employer for several years. He passed away before the trial of this case, and so his discovery deposition was introduced into evidence by agreement of the parties. Mr. Jesko testified that Decedent's father, A.B. Pegram, or "Mr. A. B.," had run the business for many years. However, Mr. A. B. died in 2002. At that time, Decedent began to work more in the office than he had previously. Mr. Jesko recalled that he had a telephone conversation with Decedent between 10:30 a.m. and 11:00 a.m. on the morning of the accident. Among other subjects, Decedent discussed the Sacred Heart proposal during that conversation. Mr. Jesko had no actual knowledge concerning Decedent's destination or purpose at the time of the accident.

The trial court issued its findings and conclusions from the bench on September 2, 2008. Based upon the deposition testimony of Mr. Jesko, and Decedent's route at the time of the accident, it found that he was likely going to Sacred Heart Church for an unknown purpose related to Employer's pending bid to perform work there. It then found he was a "traveling employee" in accordance with McCann v. Hatchett, 19 S.W.3d 218 (Tenn. 2000). On the basis of those findings, it concluded that his death arose from and in the course of his employment. It awarded stipulated death benefits to Decedent's widow, and ordered payment of medical expenses to the intervening plaintiff, the Regional Medical Center at Memphis.

The parties had entered into a stipulation which required an audit of the medical bills. As a result, the judgment was not entered until January 29, 2009. An order was entered at the same time which required Employer to pay post-judgment interest from the date of the original ruling to Decedent's widow.

Employer has appealed from the judgment of the trial court, asserting that it erred by finding that Decedent was a "traveling employee," by finding that Decedent's death arose

from and occurred in the course of his employment, and by awarding interest from the date of decision rather than the date of entry of judgment.

Standard of Review

The standard of review of issues of fact 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(e)(2) (2008). 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 Group of Tenn., Inc., 277 S.W.3d 896, 900 (Tenn. 2009). "When the issues involve expert medical testimony that is 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 Systems, 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).

Analysis

Traveling Employee/Causation

The trial court stated:

[T]he Court . . . finds that this employee was not traveling in the sense that his employment duties took him to another location and another city or state. Rather here, the employee was "traveling" about town. He had traveled from an office location or from the business location of [Employer] to the office of their CPA in Bartlett, Tennessee.

* * * *

[Decedent] "traveled" all the way from the heart of Bartlett, Tennessee to the heart of Old Whitehaven to make a bank deposit. According to the evidence, he still was clearly performing job-related duties at that point.

The court then analyzed Decedent's route after leaving the bank, and found it to be consistent with going to Sacred Heart church, a location which he had mentioned in his earlier conversation with Mr. Jesko. Based upon that finding the court concluded that Decedent was acting in the course of his employment at the time the accident occurred.

We conclude that the traveling employee rule is not applicable in this case. In Howard v. Cornerstone Med. Assoc., P.C., 54 S.W.3d 238 (Tenn. 2001), the Supreme Court discussed this rule:

A “traveling employee” is an employee working away from the regular job site. In the majority of jurisdictions, an employee “whose work entails travel away from the employer’s premises” is considered to be within the course of employment throughout the entire trip. *The “traveling employee” exception is generally applied to employees who travel extensively to further the employer’s business, such as traveling salesmen. The travel is an integral part of the job and differs from an ordinary commuter’s travel, thereby exposing the traveling employee to greater risks.*

Id. at 241 (emphasis added) (citations omitted); see also McCann, 19 S.W.3d at 220 (applying the traveling employee analysis to an employee sent out of town to lay carpet for a customer). Decedent’s travel, as revealed by the evidence in the record, was generally local and intermittent, consisting of travel to and from his residence, the business office, job sites, and support businesses such as the bank, accountant, and suppliers. Such travel was not “extensive,” nor did it expose Decedent to greater risks than other Memphis commuters. It is our interpretation of McCann, Howard, and related cases that the traveling employee rule is limited to circumstances in which the employee’s job requires frequent and/or extended travel beyond the community in which the employer’s business is located. We therefore disagree with the trial court’s application of the traveling employee rule in this case.

However, the case does not turn on the question of whether or not Decedent was a traveling employee at the time of his accident. Injuries sustained by employees whose travel is local or irregular are still compensable, if the employee is acting in the course of his employment at the time the injury occurs. Cases involving such situations are addressed by the “street-risk doctrine.” Hudson v. Thurston Motor Lines, Inc., 583 S.W.2d 597, 602 (Tenn. 1979); see also Adams v. City of Kingsport, No. E2007-00630-SC-WCM-WC, 2008 WL 1915183, at *2-3 (Tenn. Workers’ Comp. Panel May 2, 2008).

There is substantial evidence in the record which supports the trial court’s conclusion that Decedent was acting in the course of his employment at the time of the accident. He had made the business bank deposit only ten minutes earlier; he was carrying some type of business records (not specifically described) and a company cell phone with him; and he had a slide-rule type of device, called a “ductolator,” used for estimating duct sizes, with him. Moreover, he had mentioned Sacred Heart, a potential customer, to Mr. Jesko earlier in the day; and he was traveling in a direction which would have permitted him to go to that location.

We recognize that there is also evidence which permits an inference that Decedent was no longer acting in the course of his employment at the time his death occurred. He had traveled past his office and home; there was no current business or contract at Sacred Heart; and he did not tell his son, wife, or any other person that he was going to Sacred Heart. He had completed his most important business-related task of the day by depositing the check. He was riding his motorcycle rather than driving a company truck; and other than Sacred Heart, there were no active or proposed jobs in the direction he was traveling.

The evidence is admittedly close, and the trial court reasonably could have found that Decedent was no longer acting in the course of his employment when the accident occurred. However, the evidence certainly does not mandate such a finding. Based upon the evidence in the record, it is equally reasonable to conclude, as the trial court did, that Decedent, having performed a significant business-related task only a few minutes earlier, was proceeding to view a potential job site, one which he had discussed with Mr. Jesko earlier that very day. We therefore conclude that the evidence does not preponderate against the trial court's finding that Decedent's death was a compensable event under the workers' compensation law.

Interest

The trial court made its findings and conclusions from the bench on September 2, 2008. However, judgment was not entered until January 2009. It appears that the delay was due to an audit conducted for the purpose of determining the amount to be paid to the intervening medical provider. The trial court ordered that interest should accrue on the benefits awarded to Decedent's widow beginning on the date the findings were issued.

In most civil actions, post-judgment interest begins to accrue "from the day on which the jury or the court, sitting without a jury, returned the verdict." Tenn. Code Ann. § 47-14-122 (2001). However, judgment interest in workers' compensation actions is governed by Tennessee Code Annotated section 50-6-225(g)(1) (2008), which provides in pertinent part: "If the judgment or decree of a court is appealed pursuant to subsection (e), interest on the judgment or decree shall be computed *from the date that the judgment or decree is entered by the trial court.*" (Emphasis added). Section 47-14-122 is general in nature, and applies to all civil actions. Section 50-6-225(g)(1), on the other hand, specifically concerns, and is limited to, actions brought under the workers' compensation law. "[S]pecific statutory provisions typically will be given force and effect over more general statutory provisions." Patterson v. Tenn. Dept. of Labor and Workforce Dev., 60 S.W.3d 60, 64 (Tenn. 2001). This principle is applicable to conflicts between general civil rules and statutes and provisions of the workers' compensation law. Martin v. Lear Corp., 90 S.W.3d 626, 629-30 (Tenn. 2002). The trial court's order as to post-judgment interest is contrary to the explicit terms of section

50-6-225(g)(1), and must be set aside.

Conclusion

The portion of the judgment awarding interest prior to the date of entry of the judgment is reversed. The judgment is affirmed in all other respects. Costs are taxed to the appellant, Findley & Pegram Company, Inc., and its surety, for which execution may issue if necessary.

JAMES F. BUTLER, SPECIAL JUDGE

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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 Memorandum 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 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 on appeal are taxed to the Appellant, Findley & Pegram Company, Inc., and its surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM