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

KATHY BODE v. THE HARTFORD INSURANCE COMPANY

Appeal from the Chancery Court for Hamilton County
No. 130249 W. Frank Brown III, Chancellor

No. E2014-01749-SC-R3-WC-MAILED-AUGUST 24, 2015
FILED-NOVEMBER 25, 2015

The employee successfully pursued a Request for Assistance ("RFA") through the Department of Labor and Workforce Development ("DOL") for treatment of deep vein thrombosis resulting from a fall at work in February 2006. In January 2013, she filed a second RFA alleging that she required knee replacement surgery as a result of the same incident. DOL denied her request, and she filed this action in the Chancery Court for Hamilton County. The trial court dismissed her claim based on the expiration of the statute of limitations, laches, waiver, and estoppel. She has appealed that decision. 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. Upon review, we find that the evidence preponderates against the trial court's granting of the motion for summary judgment on the statute of limitations and reverse the judgment on that issue. Additionally, there are genuine issues of fact as to the equitable defenses. Therefore, we remand the case for further consideration consistent with this ruling.

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

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

Douglas M. Cox, Chattanooga, Tennessee, for the appellant, Kathy Bode.

Robert J. Uhorchuk, Chattanooga, Tennessee, for the appellee, The Hartford Insurance Company.

OPINION

Factual and Procedural Background

Kathy Bode ("Employee") was employed by Hixson Pike Medical Association ("Employer") on February 28, 2006. On that day, she slipped and fell on some ice at her place of work while she was in the course and scope of her employment. In February 2006, Employer had five medical doctors in its practice: Luke E. Spiekermann, M.D.; Jerold L. Selzer, M.D.; Johannes J. Duplooy, M.D.; George M. Osborn, M.D.; and Mario Mariani, M.D. Employer had actual notice of the incident because Dr. Spiekermann and Dr. Selzer saw Employee fall and came to her assistance. Employer's office manager was also notified of the fall on that date. Employer did not offer a panel of physicians but, instead, rendered direct medical care. Dr. Spiekermann assisted Employee back into the office and cleaned and bandaged her knee and then, several weeks later, ordered a brace for her knee, which she wore for six weeks.

Employee was hospitalized from May 31, 2006, to June 4, 2006, for deep vein thrombosis ("DVT") in her lung and leg, which she alleged was related to the fall and the injury to her knee. No panel of physicians was provided, but Dr. Duplooy provided her care while she was in the hospital. At the request of Dr. Duplooy, Stephen A. Chitty, IV, M.D., a Chattanooga pulmonologist, provided a consult on June 3, 2006. Dr. Chitty's diagnosis was that Employee suffered from right pulmonary embolism with right lower extremity DVT. He noted that "risk factors are recent knee trauma, tobacco, obesity and hormone replacement." Employee asserted that she only saw Dr. Chitty during her hospitalization in June 2006. Sometime prior to April 2008, Dr. Chitty referred her to John Boldt, M.D.

Dr. Duplooy continued to provide medical treatment to Employee through October 3, 2006. On August 4, 2006, Employee saw Dr. Duplooy for an ear infection; however, his office notes indicate that Employee complained of continued knee pain and noted a referral to Thomas W. Brown, III, M.D., an orthopedic specialist, for treatment of her knee. Employee first saw Dr. Brown on August 17, 2006. He continued to see her for the next several years. Dr. Brown performed Supartz injections to alleviate pain and then performed three arthroscopic procedures. Dr. Brown provided an affidavit that stated that his care was causally related to the fall in February 2006 and that Employee, as of the date of his affidavit on March 25, 2014, had not yet reached maximum medical improvement.

Employer was aware of the injury on February 28, 2006. The injury was not reported by Employer at the time of the fall. Employee returned to work after her June 4, 2006 discharge from the hospital for treatment of her DVT. Employer did not report the injury to its Workers' Compensation carrier, the Hartford Insurance Company

("Carrier"), at the time of the fall or after her discharge from the hospital. On August 22, 2006, Employer reported the injury to Carrier. Employee had surgery for an unrelated condition in November 2006. Employee was terminated when her FMLA leave was exhausted in January 2007.

Employee filed an RFA with DOL on July 31, 2007, seeking benefits for her DVT since neither Employer nor Carrier were paying medical benefits for the treatment of her DVT. She filed a Request for Benefit Review Conference at the same time. Employee alleges that at the time she filed the RFA in July 2007, she did not have any outstanding bills for services for the injury to her knee. All treatment for her knee, except for one visit with Dr. Brown, had been rendered by Employer.

On August 1, 2007, by letter to counsel for Employee, the Division of Workers' Compensation acknowledged receipt of the Request for Benefit Review Conference related to the work-related injury that occurred on February 28, 2008. The letter states that the Request was being filed as "Incomplete" and "Pending" because "it appears that the Claimant has not yet reached Maximum Medical Improvement. The letter further states that the "receipt of the letter has satisfied the Statute of Limitations" and that the Claimant is advised that the BRC must be held within sixty days of the Request or of Maximum Medical Improvement, whichever is later.

Audrey Headrick, a workers' compensation specialist, issued an order on October 10, 2007, directing Employer to provide medical treatment for the DVT and designated Dr. Chitty as the authorized treating physician. Employer appealed, and the Commissioner's designee affirmed the October 10 order. On November 14, 2007, counsel for Carrier sent a letter to counsel for Employee stating Carrier's intention to comply with the order. The letter stated, in pertinent part,

> Based on the orders, [Carrier] is authorizing Dr. Stephen A. Chitty, IV, M.D., as the treating physician. Please notify his office to contact and submit billing through [Carrier]. You are also requested to present any and all medical bills that you claim are covered by the order directly to [Carrier] for payment in compliance of the order.

The letter then provided contact information. It is undisputed that neither Dr. Chitty nor Employee submitted any bills or claims to Carrier.

Employer asserts that Employee submitted all invoices related to Dr. Brown to her private insurance. Employee denies that statement of fact. The deposition of Employee on page 116 begins with a response to an unidentified question. The response states: "All I did was give them my insurance card and . . . tell them that this is due to an accident through workers' comp." The next question confirms that she gave them her insurance card.

Employee returned to see Dr. Brown in November 2007 at which time an MRI revealed a torn meniscus. Employee denies any injury to her right knee between February 2006 and November 2007. Dr. Brown reports seeing Employee on nineteen occasions between November 2007 and July 2012. In July 2012, Dr. Brown recommended a total knee replacement.

On January 23, 2013, Employee filed a second RFA with DOL, seeking to have Carrier pay for the proposed knee replacement surgery and for all previous treatment provided by Dr. Brown. In support of the request, Employee submitted a C-32 medical report signed by Dr. Brown. In that document, Dr. Brown failed to answer the question on the C-32 that asks if the injury arose out of employment. He stated in response to "Patient History," which is defined as the "pertinent history of injury," that the "Plaintiff fell on [her] right knee while at work." DOL found that Employee had failed to establish a causal nexus between the accident and the proposed treatment and issued an order denying the requested benefits. Employee appealed, and the order was affirmed by the Commissioner's designee. DOL simultaneously issued a benefit review report waiving the requirement of a Benefit Review Conference. The letter of April 9, 2013, stated that the administrative process was exhausted and Employee had ninety days to file a lawsuit. Employee filed this action against Carrier in the Chancery Court for Hamilton County on April 9, 2013.

Carrier filed its answer to the complaint, and the parties proceeded with discovery. On March 10, 2014, Carrier filed a motion for summary judgment, supported by various documents from DOL, two brief excerpts from Employee's discovery deposition, and a Statement of Undisputed Facts. Carrier contended that Employee's civil action was barred by the applicable statute of limitations, see Tennessee Code Annotated section 50-6-203(b)(1), and by the equitable doctrines of laches, waiver, and estoppel. Employee filed a response to Carrier's motion, supported by additional documents from DOL, an affidavit of Dr. Brown with attached medical records, and her own affidavit. Dr. Brown's records indicate that his initial diagnosis, rendered on August 17, 2006, was chondromalacia of the right knee. According to Dr. Brown's records, he did not see Employee again until November 12, 2007. At that time, he added a diagnosis of a torn medial meniscus. Dr. Brown's March 25, 2014 affidavit states that the treatment he provided from August 2006 until July 2012 was "reasonable and causally related to her February 28, 2006[ ] fall at work."

In her response to Employer's motion, it was Employee's position that the statute of limitations had been tolled because she received medical treatment directly from Employer as late as October 2006 and had been referred by Employer to Dr. Brown in August 2006. In addition, she asserted that her failure to submit any requests for payment of medical expenses after the DOL's October 10, 2007 order did not provide a basis for application of the equitable defenses raised by Carrier.

The trial court issued a written memorandum and order with findings of fact and conclusions of law. It found that Employee's July 31, 2007 Request for Benefit Review Conference was untimely on its face, having been filed more than one year after the injury at issue. It found that treatment rendered by Dr. Brown did not toll the statute of limitations because he was not an authorized treating physician, and the cost of his care was not paid by Employer or Carrier. The trial court noted that Employee made no effort to inform Employer or Carrier of Dr. Brown's course of treatment for nearly seven years. It found that delay prevented Employer or Carrier from investigating the causal relationship between Employee's fall at work and Dr. Brown's subsequent diagnosis of chondromalacia or the reasonableness and necessity of his medical treatment. It therefore found Carrier's equitable defenses to be valid. It granted Carrier's motion and dismissed Employee's complaint. Employee has appealed from that order, contending that the trial court erred by finding that her claim was barred.

Analysis

We have previously discussed the standard of review for summary judgment in workers' compensation cases:

> Rule 56 of the Tennessee Rules of Civil Procedure provides the applicable standard of review when a workers' compensation claim is decided on a motion for summary judgment. A motion for summary judgment should be granted only when the moving party demonstrates that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law.

Federated Rural Elec. Ins. Exch. v. Hill, No. M2009-01772-WC-R3-WC, 2010 WL 5313731, at *3 (Tenn. Workers' Comp. Panel Oct. 7, 2010) (citations omitted).

Since the complaint in this matter was filed after July 1, 2011, the standard for review is set forth in Tennessee Code Annotated section 20-16-101 (Supp. 2013). See Sykes v. Chattanooga Hous. Auth., 343 S.W.3d 18, 25 n.2 (Tenn. 2011). The appellate court must review the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 89 (Tenn. 2000). The standard of review is de novo with no presumption of correctness attached to the trial court's conclusions. Teter v. Republic Parking Sys., Inc., 181 S.W.3d 330, 337 (Tenn. 2005).

Statute of Limitations

Because the injury in this case occurred prior to July 1, 2014, Tennessee Code Annotated section 50-6-116, as applicable to this claim, requires a liberal construction of

the workers' compensation statute as to persons entitled to benefits. See Matthews v. Hardaway Contracting Co., 163 S.W.2d 59, 60 (Tenn. 1942).

Section 50-6-203(b) of the Workers' Compensation Law, as it read on the date of this injury, stated:

> (1) In those instances where the employer has not paid workers' compensation benefits to or on behalf of the employee, the right to compensation under Workers' Compensation Law, . . . shall be forever barred, unless the notice required by § 50-6-202 is given to the employer and benefit review conference is requested on a form prescribed by the commissioner [of the Department of Labor and Workforce Development] and filed with the division [of Workers' Compensation] within one (1) year after the accident resulting in injury.
>
> (2) In those instances where the employer has paid workers' compensation benefits, either voluntarily or as a result of an order to do so, within one (1) year following the accident resulting in injury, the right to compensation is forever barred unless a form prescribed by the commissioner requesting a benefit review conference is filed with the division within one (1) year from the latter of the date of the last authorized treatment or the time the employer ceased to make payments of compensation to or on behalf of the employee.

Tenn. Code Ann. § 50-6-203(b).

Employee filed her request for a benefit review conference on July 31, 2007. It is undisputed that more than one year passed from the date of injury to the date of filing of the request for a BRC. However, subsection (2) of Tennessee Code Annotated section 50-6-203(b) provides that if Employer has paid benefits within one year of the injury, the right to compensation is barred unless a request for a BRC is filed within one (1) year of the latter of the date of authorized treatment or payments. In Crowder v. Klopman Mills, Division of Burlington Industries, Inc., 627 S.W.2d 930, 932 (Tenn. 1982), it was held that voluntary payments made within the statute of limitations may include medical services provided through physicians employed by the employer or his carrier and would run from the date the services were last furnished rather than the date of the payment of the services.

By affidavit filed in opposition to the Motion for Summary Judgment, Employee states that her Employer ordered ice packs and a brace for her in March 2006. Dr. Duplooy provided care when she was admitted to the hospital in May 2006. The affidavit also states that Dr. Duplooy's clinical notes of August 4, 2006, refer to Employee's "persistent right knee pain" with a notation of an orthopedic referral to Dr. Brown.

The evidence submitted by the parties establishes that Employee had a compensable incident in February 2006. She was never provided a panel of physicians, and Employer undertook to directly provide medical care for her knee at least through August 4, 2006. Employee filed her RFA and Request for Benefit Review Conference on July 31, 2007, which was within one year of the last day treatment was provided. It does not appear that a statute of limitations argument was raised at that time. Certainly, there is no mention of that subject in either the initial order compelling benefits or the subsequent affirming order. The trial court erred in finding that the claim for benefits had to be filed within one year of the date of injury. Pursuant to Tennessee Code Annotated section 50-6-203(b)(2), Employee had one year from the date that benefits were provided to file her claim.

From the record, it appears that Employee has provided sufficient evidence to show that she filed her claim within one year of the date medical services were last provided. Accordingly, the judgment of the trial court on the statute of limitations is reversed.

Equitable Defenses

Our Court of Appeals provided a detailed examination of the equitable doctrine of laches in Grand Valley Lakes Property Owners Ass'n, Inc. v. Burrow, 376 S.W.3d 66, 84 (Tenn. Ct. App. 2011):

> "Unreasonable delay in pursuing rights calls the equitable doctrine of laches into play to prevent assertion of stale claims." Tennessee Pine Co. v. Via, No. W1999-00558-COA-R3-CV, 2000 WL 34411147, at *5 (Tenn. Ct. App. Aug. 25, 2000) (citing Nunley v. Nunley, 925 S.W.2d 538, 542 (Tenn. Ct. App. 1996)). However, delay, by itself, is not sufficient to invoke the doctrine of laches. Id. The determinative test "is not the length of time that has elapsed, but whether, because of such lapse of time, the party relying on laches as a defense has been prejudiced by the delay." Id. (quoting Nunley, 925 S.W.2d at 542). "Generally, the doctrine of laches applies to actions not governed by a statute of limitations." Briceno v. Briceno, No. M2006-01927-COA-R3-CV, 2007 WL 4146280, at *4 (Tenn. Ct. App. Nov. 21, 2007) (citing Gleason v. Gleason, 164 S.W.3d 588, 592 (Tenn. Ct. App. 2004); Dennis Joslin Co. v. Johnson, 138 S.W.3d 197, 201 (Tenn. Ct. App. 2003)). Where the action is governed by a statute of limitations, the doctrine of laches may shorten that time period if the plaintiff is guilty of gross laches by unreasonably acquiescing in adverse rights for a long duration of time, causing "prejudice to the defendant such as the loss of evidence and witnesses or a considerable accumulation of interest resulting from the unjustified delay of the plaintiff." Id. (citations omitted). "It is an equitable defense which requires the finder of fact to

> determine whether it would be inequitable or unjust to enforce the claimant's rights." In re Estate of Baker v. King, 207 S.W.3d 254, 264 (Tenn. Ct. App. 2006).

The trial court in this case made the following findings concerning the issue of laches:

> [E]mployers and workers' compensation carriers have . . . the right to receive records of a physician's treatment of an injured employee. Neither Dr. Brown's medical records nor Affidavit show that Carrier received [Employee's] records from Dr. Brown. [Tennessee Code Annotated section 50-6-]204(a)(1) limits medical benefits to those that are "reasonably required." Carriers are able to have injured employees submit to an examination by a physician of [their] choice. Carriers can request a second opinion on surgery. All of these "rights" of [Carrier] have been denied due to [Employee's] actions. It is now too late to restore [Carrier] to any meaningful rights in this case. Her submission of Dr. Brown's bills to her health insurance is certainly an indication that the claim was not based upon a workers' compensation claim.

Finally, the trial court found that Carrier was denied the opportunity to check the causation issue before Dr. Brown began his series of surgeries.

Employee insists that Dr. Brown is an authorized treating physician since Employer chose not to timely report the injury and chose to have its own doctors provide medical care, including the referral to Dr. Brown.

It was Employer who failed to report the claim to Carrier, and it was Employer who chose to send Employee to Dr. Brown. Tennessee Code Annotated section 50-6-102(11) contains a definition of "Employer." It states that "[i]f the employer is insured," the definition of employer "shall include the employer's insurer, unless otherwise provided in this chapter[.]" Therefore, notice of the referral to Dr. Brown by Employer was notice to Carrier.

In Frye v. Postal Employees Credit Union, 713 S.W.2d 324, 326 (Tenn. Ct. App. 1986), the Court of Appeals noted that laches presents "mixed questions of law and fact. Two essential elements of fact are negligence and unexcused delay. . . ." (quoting Freeman v. Martin Robowash, Inc., 457 S.W.2d 606, 611 (Tenn. Ct. App. 1970)). Mere delay is insufficient to raise the doctrine of laches. In re Darwin's Estate, 503 S.W.2d 511, 514 (Tenn. 1973). Additionally, in Corn v. HHS and Farmer, No. M2004-02319-SC-WCM-CV, 2006 WL 1815094, at *2 (Tenn. Workers' Comp. Panel June 21, 2006), the Special Workers' Compensation Panel stated that an employee is required to provide notice of a work-related injury. Once notice is provided, "continued

notice to the employer is not necessary, even where subsequent procedures are required. . . ." Id., at *4.

In the present case, taking all facts in the light most favorable to Employee, we find that there are genuine issues of material fact and this is not a proper action for Summary Judgment. The case is remanded to the trial court for further proceedings.

Conclusion

The judgment of the trial court as to the statute of limitations is reversed and this case is remanded for trial on the issue of equitable defenses, timeliness of submission of medical expenses, and causation.[1] Costs are taxed to The Hartford Insurance Company, for which execution may issue if necessary.

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JUDGE

[1] The trial court raised the issue of whether Employee was required to file her claim within ninety days of the DOL letter dated August 1, 2007. However, since the trial court found that the claim was barred by the statute of limitations, the court found it unnecessary to address the ninety-day window. Therefore, the issue of the claim pursuant to Tennessee Code Annotated section 50-6-203(g)(l) is not properly before this Court.