IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
February 13, 2017 Session

JAMES RUSSELL, ET AL. V. TRANSCO LINES, INC., ET AL.

Appeal from the Circuit Court for Washington County
No. 34357 James E. Lauderback, Judge

No. E2015-02509-SC-R3-WC – MAILED 5/19/2017

The issue in this workers' compensation appeal is whether a Tennessee trial court had subject matter jurisdiction over a workers' compensation claim. James and Elizabeth Russell, residents of Johnson City, Tennessee, were employed by Transco Lines, Inc. ("Employer"), an Arkansas company headquartered in Russellville, Arkansas. The Russells, who were team truck drivers, were injured on July 5, 2013, in a motor vehicle accident near Shreveport, Louisiana. Employer and its insurer, Triangle Insurance Company ("Insurer"), accepted the Russells' workers' compensation claims as compensable and paid benefits under Arkansas law. In October 2013, the Russells, through their counsel, filed a Request for Benefit Review Conference with the Tennessee Department of Labor. No additional action occurred in Tennessee, and benefits continued to be paid according to Arkansas law. After the administrative process was exhausted, the Russells filed this action in the Circuit Court for Washington County against Employer and Insurer, requesting compensation benefits under the workers' compensation laws of Tennessee. Employer argued that the trial court did not have subject matter jurisdiction over the claim and that even if it had jurisdiction, the Russells had made an election of remedies and were precluded from pursuing benefits in Tennessee. The trial court ruled for the Russells, holding that it had subject matter jurisdiction and that the Russells had not made an election of remedies. The trial court awarded Mr. Russell 65% permanent partial disability and Ms. Russell 85% permanent partial disability. Employer and Insurer appealed. 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 pursuant to Tennessee Supreme Court Rule 51. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(e)(1) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Circuit Court Affirmed

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JOHN W. MCCLARTY, J., delivered the opinion of the court, in which SHARON G. LEE, J., and ROBERT E. LEE DAVIES, SR.J., joined.

Brian J. Rife and Daniel I. Hall, Bristol, Virginia, for the appellants, Transco Lines, Inc., and Triangle Insurance Company.

Robert Bates and Tony Seaton, Johnson City, Tennessee, for the appellees, James Russell and Elizabeth Russell.

OPINION

Factual and Procedural Background

At trial, James Russell testified that he became a truck driver in 2000, and in 2003, he began driving tandem with his wife, Elizabeth Russell, who became a truck driver in 1998. Until March 2008, the couple worked for a trucking company known as Landspan. The Russells began to look for other employment when Landspan reduced the mileage assigned to its drivers as a result of economic conditions. On March 20, 2008, the Russells faxed an employment application to Employer from a Landspan terminal in California. Ms. Russell called Employer several times to follow up on the application. Ms. Russell testified that on April 17, 2008, Robert Smith, Employer's former human resources director, called the Russells at their home in Tennessee and offered them a job.[1] The Russells accepted the job offer. Mr. Smith denied that he made the Russells a job offer at that time. Although he had no personal memory of his phone call to the Russells, Mr. Smith stated that he always said the same thing on those calls. He testified that when making such calls, he simply informed the applicant that he or she was approved for orientation but did not tell the applicant that he or she had a job. Mr. Smith stated that he was the only person with authority to hire new drivers, and he did not hire employees over the telephone.

Mr. Russell testified that after receiving the call, the Russells notified Landspan of their resignation. The Russells testified that they would not have resigned from Landspan unless they knew they had been hired by Employer. Mr. Russell further stated that they cleaned out their truck and returned it to Landspan's terminal in Knoxville the same day. After completing that task, the Russells went to Pigeon Forge for a previously-planned weekend vacation. On Sunday, April 20, 2008, they obtained a rental car and drove to Russellville, Arkansas, for orientation.

[1] The deposition testimony of Mr. Smith and several other present and former employees of Employer was introduced into evidence over the objection of the Russells who filed a motion in limine to exclude the deposition testimony.

The orientation program was organized by Shannon Sampley, who, at that time, was Mr. Smith's assistant in the human resources department. Ms. Sampley described Employer's hiring process in some detail. Applicants initially submit a brief "pre-application." Upon receipt of that document, Ms. Sampley obtained driving records, motor vehicle records, and background checks on the applicants. If the results of those inquiries were satisfactory, the applicant was called and asked to attend Employer's driver orientation program. The program typically lasted three days, but the length of each training day depended on the number of participants. During orientation, participants reviewed and signed several documents. The Department of Transportation required a current physical for each participant and that each participant pass a drug screen. Training sessions were conducted concerning safety, payroll, sexual harassment, and other matters. When the orientation program was completed, applicants who had passed the drug screen and physical were "put into the system" and hired. New employees are issued badges, allowed to select their trucks, and dispatched for their first run.

Ms. Sampley testified that completion of the entire orientation program was required before an applicant could be hired. Failure to pass the drug screen or attend safety training would result in not being hired. Ms. Sampley also testified that drivers were not hired over the telephone, stating it would be "a pretty big liability to hire somebody sight unseen."

Ms. Sampley testified that a personnel file at the end of orientation contained approximately one hundred pages. Twenty-six of those pages were documents that the prospective employee had to fill out, sign, or both. One of the documents executed by Mr. and Ms. Russell was a "Workers' Compensation Jurisdiction Certificate" that stated:

> I, the named employee, hereby understand that I was hired in the State of Arkansas and that should I sustain an [on-the-job] injury, that has been deemed [compensable], that I will be covered under the State of Arkansas. This applies should I reside in a different [s]tate or if the accident occurs in a different state.

Mr. Russell testified that he and Ms. Russell selected a truck and were dispatched on their first run on April 23, 2008. Initially, they were assigned to haul freight throughout the country, going wherever Employer sent them. From 2008 through 2010, the Russells testified that they drove through Tennessee fourteen or fifteen days out of every month after retrieving a load from Memphis, Tennessee. In 2010, they were assigned a dedicated route, hauling freight from Dallas, Texas, to Columbia, South Carolina, then to Greenville, South Carolina, and back to Dallas. The route had no pickups or deliveries in Tennessee and required no travel in Tennessee. Kevin Norris, the

Russells' dispatcher, testified that the Russells were paid for a predetermined number of miles for their route. That number of miles was based on the shortest calculated distance between designated stops. However, Employer did not require its drivers to take any particular route to make their deliveries. The Russells were given permission by Employer to take freight when they went home to Johnson City, but Employer required that they park their freight in designated secure areas. Ms. Russell testified that when carrying basic freight, they parked their trailer at a Lowe's facility in Jonesborough, Tennessee, and then drove the tractor to their residence until they resumed their duties. Mr. Russell stated that he and his wife would log their stop in Jonesborough as the end of a route and that they would not resume their route until they reconnected the tractor and trailer in Jonesborough.

On July 5, 2013, while traveling from Dallas to Columbia, Ms. Russell was driving the truck while Mr. Russell slept in the back of the truck. Near Shreveport, Louisiana, Ms. Russell saw taillights on the right shoulder of the interstate and moved to the left lane to avoid the stopped vehicle. As she returned to the right lane, the truck hit a guardrail and rolled down an embankment. The Russells were removed from the vehicle by emergency medical personnel and transported to a local hospital. Eventually, they returned to Johnson City for continuing medical treatment. Ms. Russell injured her neck, back, and left arm. At the time of trial, Ms. Russell had undergone nine surgical procedures on her arm. Mr. Russell sustained compression fractures in his mid-back and injuries to his left arm.

Debbie Williams, the adjuster assigned by Insurer to handle the Russells' claims, testified that an Employer's First Report of Injury was filed with the Arkansas Workers' Compensation Commission. Ms. Williams also testified that she prepared and filed with the Arkansas Commission an AR-2 form, which stated, among other things, that the Russells' claims were being accepted as compensable. Ms. Williams explained that the practice of the Arkansas Workers' Compensation Commission was to send a copy of the AR-2 form, accompanied by a letter, to the injured employees advising them of their rights under the Arkansas Workers' Compensation Law. Copies of the letters to Mr. and Ms. Russell, dated July 18, 2013, were placed into evidence. Medical and temporary disability benefits were paid in accordance with Arkansas law.

In early October 2013, Ms. Williams received a letter of representation from the Russells' attorney, who is not licensed to practice law in Arkansas. Ms. Williams testified that she made a telephone call to the attorney's office and spoke to his paralegal, Jewel Greene. At that time, she told Ms. Greene that she was handling the claim and that it was being administered in accordance with Arkansas law. Shortly after that conversation, Ms. Williams received a second letter from the Russells' attorney, stating his position that Tennessee had jurisdiction over the claim because the contract of hire

between Employer and the Russells was made in Tennessee. Ms. Williams referred the matter to counsel in Arkansas. She later received several documents, including a Request for Benefit Review Conference that had been filed in Tennessee on behalf of the Russells.

Ms. Williams testified that the Russells filed no documents with the Arkansas Workers' Compensation Commission. Benefits were paid in accordance with Arkansas law. After January 2015, temporary disability checks issued to the Russells were not cashed. Ms. Russell testified that she and her husband chose not to accept those payments on advice of counsel.

Terry Wallace, president of Employer since April 2012, testified that, while working on their dedicated route, the Russells hauled freight for Southeastern Freight, another motor carrier. Consistent with the testimony of Mr. Norris and others, Mr. Wallace stated that drivers were paid for a pre-determined number of miles based on the shortest route rather than the actual number of miles driven. Further, he stated that although the Russells had permission to take their truck home to Johnson City, they were not paid for doing so. Mr. Wallace agreed that Employer had routes that required drivers to travel through Tennessee, but he maintained that the Russells' route did not go through Tennessee at any point. However, Mr. Wallace admitted that in 2013, the Russells were paid for a single trip to Nashville, Tennessee, to pick up a new truck. Mr. Wallace also testified that Employer had opened a small office in Chattanooga, Tennessee, in March 2013. Employer's Chattanooga office had four employees—one driver manager and three maintenance workers. Mr. Wallace testified that the function of the Chattanooga office had nothing to do with the Russells' work. Although Mr. Wallace had no personal knowledge of the Russells' hiring process, he stated that Mr. Smith was in charge of hiring drivers in 2008.

The trial court took the case under advisement and subsequently issued a memorandum opinion and order. Analyzing the evidence according to the jurisdictional factors set out in Tennessee Code Annotated section 50-6-115(b)(2), the trial court found: (1) the employment was not principally localized within the state of Tennessee; (2) the contract of hire was executed in Arkansas; and (3) "a substantial connection between this state and the particular employer and employee relationship" existed. Furthermore, the trial court concluded it had jurisdiction to hear the case, and the Russells had not made an election of remedies to receive Arkansas benefits. The trial court evaluated the medical evidence and awarded permanent disability benefits to Mr. and Ms. Russell.[2]

[2] Neither party has raised an issue concerning the amount of the awards. Therefore, we do not review the medical proof and other evidence concerning disability.

Employer appeals from the trial court's order, contending that the trial court erred by finding that it had jurisdiction pursuant to Tennessee Code Annotated section 50-6-115(b)(2)(C) and by finding that the Russells did not make a binding election of remedies. The Russells assert that the trial court erred by denying their motion in limine to exclude evidentiary depositions offered into evidence by Employer and by finding that the Russells were not hired in Tennessee.

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(e)(2) (2014) (applicable to injuries occurring prior to July 1, 2014). The trial court's factual determinations are given considerable deference because the trial judge had the opportunity to observe each witness's demeanor and to hear in-court testimony. Madden v. Holland Grp. of Tenn., Inc., 277 S.W.3d 896, 900 (Tenn. 2009) (citing Tryon v. Saturn Corp., 254 S.W.3d 321, 327 (Tenn. 2008)). "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 Sys., Inc., 272 S.W.3d 560, 571 (Tenn. 2008) (citing Orrick v. Bestway Trucking, Inc., 184 S.W.3d 211, 216 (Tenn. 2006)). 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).

Jurisdiction

The parties agree that the issue of subject matter jurisdiction is governed by Tennessee Code Annotated section 50-6-115(b)(2), which states:

> (2) If an employee, while working outside the territorial limits of this state other than temporarily, suffers an injury on account of which the employee . . . would have been entitled to the benefits provided by this chapter had the injury occurred within this state, the employee . . . shall be entitled to the benefits provided by this chapter; provided, that at the time of the injury:
>
> (A) The employment was principally localized within this state;
> (B) The contract of hire was made in this state; or

> (C) If at the time of the injury the injured worker was a Tennessee resident and there existed a substantial connection between this state and the particular employer and employee relationship.

Tenn. Code Ann. § 50-6-115(b)(2) (2014).

The trial court analyzed the evidence in light of the three elements required by Tennessee Code Annotated section 50-6-115(b)(2). First, the trial court determined that the employment was not principally located in Tennessee. The trial court noted that Employer's headquarters are in Russellville, Arkansas, and that Employer's Chattanooga, Tennessee, office had nothing to do with the Russells' work. Furthermore, the dedicated route driven by the Russells did not require entry into Tennessee. The only required activity that took place in Tennessee occurred on a single occasion in 2013 when the Russells were directed by Employer to drive to Nashville to pick up a new truck. The trial court did not err in concluding that the Russells' employment was not principally located in Tennessee pursuant to Tennessee Code Annotated section 50-6-115(b)(2)(A).

Further, the trial court found that the Russells' contract for hire did not satisfy Tennessee Code Annotated section 50-6-115(b)(2)(B) because it was made in Arkansas. The Russells argue that they were hired by Employer when Mr. Smith called their home in Johnson City, Tennessee, on April 17, 2008. Ms. Russell testified that Mr. Smith made an offer of employment during the call, which Mr. and Ms. Russell immediately accepted. Mr. Smith denied making an offer of employment over the telephone. He had no specific recollection of the call but testified that he never hired drivers over the telephone because that would be a poor way of doing business. He testified that his practice was to advise applicants that they had been approved for orientation, nothing more. Mr. Smith and Ms. Sampley both testified that new drivers were not hired until drug screens and physical examinations were passed, appropriate documentation was completed, and various presentations pertaining to safety, personnel matters, payroll and other matters were made to the applicants. Until that time, applicants did not have access to Employer's trucks and were not assigned to pick up or deliver any freight for Employer.

In Perkins v. BE & K, Inc., the Tennessee Supreme Court held that a telephone call from a Virginia employer advising a Tennessee resident of job openings did not satisfy the requirements of Tennessee Code Annotated section 50-6-115(b)(2)(B). 802 S.W.2d 215, 216 (Tenn. 1990). Similarly, in Herron v. Hornady Truck Lines, Inc., the Special Workers' Compensation Appeals Panel affirmed a trial court's dismissal of a workers' compensation action where a Tennessee resident made a telephone call to an Alabama trucking company "to inquire about employment as a truck driver." No. 03S01-9807-CH-00072, 1999 WL 152626, at *1-2 (Tenn. Workers Comp. Panel Mar. 18,

1999). In Herron, the terminal manager invited the plaintiff to apply for a position in Birmingham, Alabama, where he completed an application, took a road test, and was given a drug screen, a safety interview, and a written test. Id. at *1. The plaintiff passed these tests and was offered a job while at the Birmingham terminal. Id. The plaintiff was subsequently injured in Alabama while acting in the scope of his employment. Id. The Panel affirmed the trial court's dismissal of the plaintiff's Tennessee lawsuit based on lack of subject matter jurisdiction. Id. at *2.

In this case, the trial court reasoned that even if Mr. Smith had offered the Russells a job during the April 17, 2008, phone call, such offer was conditioned on the Russells' satisfactory completion of Employer's orientation program. The trial court relied heavily on Perkins and Herron in making its decision that the contract of employment arose in Arkansas. We conclude that the evidence does not preponderate against the trial court's decision.

In addition, Employer contends that the trial court erred by finding that a substantial relationship existed between this state and the employment relationship between Employer and the Russells. On the basis of that finding, the trial court concluded that it had jurisdiction over the Russells' claims pursuant to Tennessee Code Annotated section 50-6-115(b)(2)(C). In Madden, the Tennessee Supreme Court considered the evidence that the employee was a Tennessee resident; that the employer's corporate office was located in Tennessee; that the employee's paycheck was generated and issued in Tennessee; and that the employer's policies and procedures affecting the employment were formed in Tennessee. 277 S.W.3d at 900-01. However, the evidence also showed that the employer-employee relationship was established in Kentucky; that the employee was interviewed and accepted an offer of employment in Kentucky; and that she worked and was injured in Kentucky. Id. at 900. Based on these facts, the Court affirmed the trial court's decision that there was no substantial connection between Tennessee and the employment relationship. Id. at 902. In reaching this conclusion, the Madden court stated:

> The plain language of the statute contains two requirements: the first requirement is that at the time of the injury "the injured worker was a Tennessee resident;" and the second requirement is that at the time of injury "there existed a substantial connection between this state and the particular employer and employee relationship."
>
> In our view, the plain language of the statute makes it very unlikely that the legislature intended for the second requirement to be met in all cases where the employer is a Tennessee resident; indeed, had that been the intent, the only requirement in § 50-6-115(3) would be that "the employer was a

> Tennessee resident." The plain language of the statute requires that there also be a "substantial connection between this state and the particular employer and employee relationship." Likewise, given the legislature's inclusion of the word "substantial," it is clear that the legislature did not intend for any connection between this state and the employee and employer relationship to be sufficient. Accordingly, the key interpretative question is what is meant by a "substantial connection."

Id. at 900-01 (citation omitted).

The Madden court examined two earlier decisions that had considered the meaning of "substantial connection" in the context of the workers' compensation laws. Id. at 901-02 (citing Bryant v. Seward, 490 S.W.2d 497, 499 (Tenn. 1973); Ray v. Aetna Cas. & Sur. Co., 517 S.W.2d 194, 196-97 (Tenn. 1974)). In Bryant, the court determined that a substantial connection existed because "[t]he employment relationship of [the] employer and employee involved the performance of some work in Tennessee, the location of a portion of the business premises [was] within Tennessee" and "both the employer and employee [were] Tennessee residents." 490 S.W.2d at 499. In contrast, the court in Ray held the Tennessee workers' compensation laws did not apply where a Tennessee resident formed the contract for employment in Missouri, worked in Missouri, and was injured in Missouri. 517 S.W.2d at 196. The court in Ray clarified that "'the place of the employee's residence . . . has never either by judicial decision or statute been held entitled to apply its statute on the strength of the residence factor alone.'" Id. at 196 (citing Arthur Larson, 3 Larson's Workers' Compensation ch. XVI, § 87.60 (1972)).

Similarly, in the present case, the trial court found that:

> [A] substantial connection between the State of Tennessee and the employer and employee relationship [existed]. Both Mr. and Mrs. Russell testified that while they were driving a "dedicated route" at the time of the injury, and paid for mileage based on the "shortest route possible," they oftentimes took a loaded tractor-trailer from [Employer's] South Carolina terminal through Tennessee, stopping at their home in Johnson City, storing [Employer's] trailer loaded with freight at a secure lot in Jonesborough, Tennessee, and then traveling on to Texas. The testimony was unrefuted that [Employer] would have been aware of the location of [its] truck at all times and was aware, and had given permission to the [Russells], to store this trailer in Tennessee as they returned to the Texas terminal on this "dedicated route."

We note that as of the date of the accident, Tennessee Code Annotated section 50-6-116 (2008 & Supp. 2013) required courts to give the workers' compensation statute "an equitable construction . . . to the end that the objects and purposes of this chapter may be realized and attained." We agree with the trial court that Employer's consent for the Russells to drive and store the truck and trailer in Tennessee in a secure setting so it could track the location of the vehicle at all times provided a sufficient basis to support a finding that a substantial connection existed between Tennessee and the particular employment. Further, the Russells presented evidence of additional connections to Tennessee throughout the entire course of their employment. The record reflects that the Russells received job assignments while at their home in Tennessee and that from 2008 through 2010, they routinely retrieved loads from Memphis, Tennessee, that required their travel in Tennessee for "pretty much half the month every month." From 2010 through 2013, the Russells drove through Tennessee every other week. Each route also began and ended in Tennessee, where the Russells stored Employer's freight. Accordingly, we conclude that the trial court did not err in determining it had subject matter jurisdiction when the record supports a finding that the Russells were residents of Tennessee at the time of the injury and there was a substantial connection between Tennessee and the employer-employee relationship.

Employer argues that a holding that Tennessee has subject matter jurisdiction in this case could adversely affect the hiring practices of out-of-state employers and result in lower employment rates for Tennessee employees. Employer argues, in part, that employers may be less inclined to hire Tennessee residents if bound by the Tennessee workers' compensation laws merely by hiring Tennessee residents who park their vehicles in Tennessee on the weekends. Employer argues that a ruling for the Russells could have dire, far-reaching effects on Tennessee and workers.

We disagree. Employer oversimplifies the facts of this case. Here, the Russells lived in Tennessee, parked Employer's tractor at their residence, logged their routes as beginning and ending in Tennessee, and Employer utilized a business in Tennessee to store its freight on a regular basis. Employer did this to maintain the employment of the Russells, who, by all accounts, appear to have been upstanding employees who happened to live in Tennessee. With these considerations in mind, we reject this argument as having no basis.

Finally, Employer asserts that the trial court erred by finding that the Russells did not make a binding election of remedies by acting affirmatively to receive Arkansas benefits or by voluntarily and knowingly accepting Arkansas benefits. The election of remedies defense was concisely stated by the Tennessee Supreme Court in Eadie v. Complete Co., 142 S.W.3d 288, 291 (Tenn. 2004). There, the court stated that:

> An employee who suffers a compensable injury in another state may be barred from recovering benefits under Tennessee law through the election of remedies doctrine. This doctrine is designed to prevent forum shopping, vexatious litigation, and double recovery for the same injury. Bradshaw v. Old Republic Ins. Co., 922 S.W.2d 503, 506 (Tenn.1996) (quoting Gray v. Holloway Constr. Co., 834 S.W.2d 277, 282 (Tenn. 1992)). For the doctrine to apply, it is not necessary that the employee actually receive benefits in another state. See id. at 507. Rather, the employee is precluded from receiving benefits in Tennessee if the worker "(a) affirmatively acted to obtain benefits in another state; or (b) knowingly and voluntarily accepted benefits under the law of another state." Id. "[T]he circumstances of each case must be considered in determining whether the employee has made a binding election." [Perkins, 802 S.W.2d at 217.]
>
> Id.

In support of its assertion that the Russells actively sought Arkansas benefits, Employer points to several instances when the Russells' attorney's paralegal requested medical treatment for the Russells and copies of their medical bills and asked questions about Arkansas procedures. We note that although benefits were commenced in Arkansas immediately after the accident, the Russells were not consulted about pursuing workers' compensation in Arkansas. At the time, both Mr. and Ms. Russell were hospitalized and undergoing medical procedures. Moreover, the evidence is unequivocal that neither Mr. nor Ms. Russell signed any document pertaining to Arkansas workers' compensation benefits. The only form signed by the Russells was a HIPAA release that made no reference to a particular jurisdiction. We agree with the trial court that the evidence does not preponderate against the finding that the Russells took no affirmative action to obtain or consent to receive benefits under Arkansas law.

The Arkansas Workers' Compensation Commission sent a letter to the Russells in mid-July 2013, notifying them of their rights under Arkansas law. Thereafter, the Russells' benefits were paid under Arkansas law. Employer suggests that this constitutes knowing and voluntary acceptance. However, in October, once Ms. Williams notified the Russells' counsel that benefits were being paid under Arkansas law, the Russells' attorney sent a letter to Ms. Williams advising her that he considered Tennessee to be the proper jurisdiction. Shortly thereafter, a Request for Benefit Review Conference, along with other documentation, was filed with the Tennessee Department of Labor on behalf of the Russells. Having made their position known to Employer and Insurer at an early stage of the process, the Russells satisfactorily demonstrated their objection to proceeding under Arkansas law. The only procedural step available to the Russells at that time would have been to file an action in Arkansas and/or Tennessee to terminate Arkansas

benefits and initiate Tennessee benefits. We find no authority to support such a requirement, and Employer cites none. Therefore, we affirm the trial court's finding on this issue.

Employer refers to the Workers' Compensation Jurisdiction Certificate signed by Mr. and Ms. Russell during their orientation. We agree with the trial court's analysis of this issue:

> Defendants also rely on language contained in the plaintiffs' applications entitled "Transco Workers' Compensation Jurisdiction Certificate," which reads:
>
> > "I, the named employee, hereby understand that I was hired in the State of Arkansas, and that should I sustain an on the job injury, that has been deemed compensable, that I will be covered under the State of Arkansas. This applies should I reside in a different state or if the accident occurs in a different state."
>
> The Court finds that this language is not conclusive or determinative as to jurisdiction in this case. The language of this "Jurisdiction Certificate" is not written in such a way as to preclude the filing of a claim in another state. It merely affirms that the employee "will be covered under the State of Arkansas," regardless of where the employee lives or the accident occurs. Further, to interpret this language as to preclude an employee from filing a claim in any other jurisdiction would require the inference that the employee, in order to make such an acknowledgment, has an understanding and knowledge of every other available remedy and jurisdictional possibility for any potential, future work-related injury. This is simply not logical, nor fair to the prospective employee.

In light of our ruling, we need not address the issue raised by the Russells that the trial court erred by admitting into evidence deposition testimony.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Transco Lines, Inc., Triangle Insurance Company, and their surety, for which execution may issue if necessary.

JOHN W. MCCLARTY, JUDGE