IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
Special Workers' Compensation Panel
June 10, 2005 session

TINA CARTWRIGHT v. MACON COUNTY GENERAL HOSPITAL and THE RECIPROCAL GROUP

Direct Appeal from the Chancery Court of Macon County
No. 3675, Hon. C.K. Smith, Chancellor

No. M2004-01901-WC-R3-CV - Mailed: August 2, 2005
Filed - September 8, 2005

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. The employer appeals, arguing that the trial court should have granted the employer's Rule 60 motion for relief from judgment. The trial court considered testimony that a legal assistant was given incorrect information by the clerk's office but held that the employer failed to show grounds for excusable neglect. The Panel has concluded that the judgment of the trial court should be affirmed.

Tenn. Code Ann. § 50-6-225(e)(3) Appeal as of Right; Judgment of the Circuit Court Affirmed.

TURNBULL, SP. J. delivered the opinion of the court, in which DROWOTA, C.J., and DANIEL, SR. J. joined.

Michael Lee Parsons, Ruth, Howard, Tate & Sowell, TN, for the appellants, Macon County General Hospital and The Reciprocal Group.

B. Keith Williams and Jason Glynn Denton, Lannom, Williams & Kane, TN, for the appellee, Tina Cartwright.

MEMORANDUM OPINION

FACTS AND PROCEDURAL BACKGROUND

The appellee, Tina Cartwright, worked for the defendant, Macon County General Hospital, as a paramedic for seventeen years. Cartwright injured her left shoulder while working within the scope of her employment. The injury occurred on February 26, 2002, when Cartwright loaded a patient weighing over three hundred pounds into an ambulance. At the time of her injury, Cartwright was a thirty-seven-year-old college graduate.

Cartwright filed a complaint against Macon County on August 16, 2002. Macon filed an answer over a year later on September 20, 2003; trial commenced on April 21, 2004. At trial, Cartwright was found to be permanently and totally disabled, and judgment was entered in her favor on May 14, 2004. Cartwright certified that a copy of the proposed judgment was mailed to the defendants' counsel, Michael Lee Parsons, on May 13, 2004.

Parsons received a copy of Cartwright's proposed judgment and instructed his legal assistant, Sherry McNeil, to request a copy of the entered judgment from the Clerk & Master. According to Parsons' affidavit, McNeil contacted the clerk's office by telephone on two separate occasions, and both times McNeil was told by a deputy of the Clerk & Master that the judgment had not been entered. In fact, the judgment had been entered on May 14, 2004. Parsons learned of the judgment on July 6, 2004, when Cartwright's counsel gave him a copy of the entered judgment and filed an execution on the judgment.

On July 14, 2004, and pursuant to Rule 60.02, the defendants filed a motion for relief from judgment asking only that the judgment be set aside and re-entered so that a timely appeal could be made. The motion insists that reliance on telephone communications by the assistant with the Clerk and Master's office was excusable neglect.

The Chancery Court heard and denied Parsons' motion for relief from judgment on July 16, 2004. At the hearing, Parsons testified that McNeil spoke with an unknown person in the clerk's office. He testified that

McNeil was told that the judgment was being held up but would be mailed to Parsons' office at some time. The Clerk & Master, Gwen Linville, testified that the judgment was made part of the records, and she saw no reason why anyone in her office would have said the judgment was not entered. Chancellor Smith denied the motion because he found that Parsons had a duty to find out about the judgment and that Parsons failed to act with due diligence.

STANDARD OF REVIEW

The standard of review on appeal is whether the Chancellor abused his discretion. The disposition of motions under Rule 60.02 is best left to the discretion of the trial judge. Underwood v. Zurich, 854 S.W.2d 94, 97 (Tenn. 1993); McCracken v. Brentwood United Methodist Church, 958 S.W.2d 792, 795 (Tenn. Ct. App. 1997). The abuse of discretion standard does not permit an appellate court to merely substitute its judgment for that of the trial court. Henry v. Goins, 104 S.W.3d 475, 479 (Tenn. 2003); Eldridge v. Eldridge, 42 S.W.3d 82, 85 (Tenn. 2001).

ANALYSIS

The defendants present the sole issue of whether the trial court abused its discretion in denying the defendants' Rule 60 motion to vacate and re-enter the judgment.

The Tennessee Rules of Appellate Procedure provide that an "appeal as of right to the Supreme Court . . . shall be taken by timely filing a notice of appeal with the clerk of the trial court . . . ." Tenn. R. App. P. 3. "[T]he notice of appeal required by Rule 3 shall be filed with and received by the clerk of the trial court within thirty days after the date of entry of the judgment . . . ." Tenn. Rule. App. P. 4. Appellate courts are prohibited from extending the time for filing a notice of appeal prescribed in Rule 4. Tenn. Rule App. P. 2. Because the defendants failed to file an appeal within thirty days after the date of entry of the judgment, their only avenue for relief from judgment became a motion in accordance with Rule 60.

Rule 60.02 provides: "On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final

judgment, order, or proceeding for . . . mistake, inadvertence, surprise or excusable neglect . . . ." Tenn. R. Civ. Proc. 60.02(1). A party seeking relief under Rule 60.02 has the burden to present facts explaining why the movant was justified in failing to avoid mistake, inadvertence, surprise or neglect. Toney v. Mueller Co., 810 S.W.2d 145, 146 (Tenn. 1991). The granting of a Rule 60 motion relating to timeliness of an appeal is available only in unusual and compelling circumstances. First National Bank v. Goss, 912 S.W.2d 147, 151 (Tenn. Ct. App. 1995).

The defendants argue that the Panel should find excusable neglect because McNeil placed two phone calls to the clerk's office and each time was given allegedly incorrect information by the same office. We disagree and find the evidence insufficient to disturb the Chancellor's ruling. The Chancellor weighed the testimony about the two phone calls McNeil placed, considered the diligence of the opposing party, and determined that the defendants had a duty to be informed of the judgment. The evidence that McNeil was misinformed by the clerk's office is scant and does not support a finding that the Chancellor abused his discretion. Absent a local rule requiring the clerk to certify to counsel every entered order, the burden is on counsel to determine the date of entry of every order should the date be critical to the timeliness of appeal. A court speaks only through its minutes. *Thomas v. State*, 337 S.W.2d, (Tenn. 1960). Furthermore, the defendants were on notice that final judgment was forthcoming when they received a certified copy of Cartwright's proposed judgment and elected not to submit an alternate judgment.

CONCLUSION

While we find it unfortunate that the defendants may have received incorrect information from the clerk's office, we cannot grant Rule 60 relief for excusable neglect on these grounds. Accordingly, this Panel affirms the judgment of the trial court. Costs of appeal are taxed to the appellants, Macon County General Hospital and The Reciprocal Group.

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John A. Turnbull, Special Judge

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
JUNE 10, 2005 SESSION

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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 the Appellants, Macon County General Hospital and The Reciprocal Group, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM