IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON
March 23, 2009, Session

CHARLES CRUSE v. ROLLINS TRUCK LEASING ET AL.

Direct Appeal from the Circuit Court for Shelby County
No. 76456-4 T. D Rita L. Stotts, Judge

No. W2008-02027-WC-R3-WC - Mailed June 18, 2009; Filed July 27, 2009

Employee had a heart attack in 1996. He and Employer entered into a court-approved settlement of the claim, requiring Employer to provide future medical treatment for the injury. In 2000, Employee experienced additional coronary problems, which required bypass surgery. The trial court denied his petition to require Employer to pay for that medical care. We affirm the judgment.[1]

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

WILLIAM C. COLE, SP. J., delivered the opinion of the court, in which JANICE M. HOLDER, C. J., and WALTER C. KURTZ, SR. J., joined.

M. Scott Willhite, Jonesboro, Arkansas, for the appellant, Charles Cruse.

R. Scott McCullough, Memphis, Tennessee, for the appellees, Rollins Truck Leasing and CNA Insurance Company.

MEMORANDUM OPINION

Factual and Procedural Background

Charles Cruse ("Employee") had a heart attack in 1996 when a battery exploded near him while he was at work for Rollins Truck Leasing ("Employer"). He underwent coronary bypass surgery as a result. His workers' compensation claim was settled in August 1997. The order approving the settlement stated: "[Employee] will be reimbursed for all medical expenses related to the work accident he has paid. Future medical treatment with Dr. Joseph Weinstein will remain

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[1] 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.

open for the remainder of [Employee's] life pursuant to the Tennessee Workers' Compensation Statutes." Some additional medical treatment was provided pursuant to that provision.

In October 2000, testing revealed additional or new blockage in two of Employee's coronary arteries. Dr. Weinstein referred Employee to Dr. Jerry Gooch, a cardiac surgeon. Dr. Gooch performed bypass surgery. Employer denied that the procedure was related to the 1996 event and declined to pay for it.

Dr. Weinstein did not testify. Employee filed an affidavit from Dr. Weinstein, however, which states: "I am of the opinion that [Employee's] coronary angioplasty and coronary artery bypass graft surgery was causally related to his initial on the job myocardial infarction which resulted from a battery exploding in 1996." In addition, the record contains a letter of October 15, 2001, from Dr. Weinstein to Employee's attorney, which states:

> Following an accident at work when a battery exploded in 1996, [Employee] suffered a myocardial infarction. This set into motion multiple procedures, including but not limited to percutaneous transluminal coronary angioplasty and coronary artery bypass graft surgery. . . . I feel that the coronary artery bypass graft surgery was causally related to the initial accident.

Employer placed Dr. Gooch's deposition into evidence. Dr. Gooch opined: "The major cause of [the need for bypass surgery] was [Employee's] genetic history and his smoking. And I also noticed he had hypertension and maybe high cholesterol, too." Employee had smoked approximately a pack a day for over thirty years and had continued to smoke after the 1996 heart attack. On cross-examination, Dr. Gooch stated that he was aware of Employee's previous heart attack but not that the heart attack was a work injury. He stated that the blockages, which were the cause of the bypass surgery, were not caused or precipitated by trauma. He further testified that the arteries bypassed in 2000 were either not involved in the 1996 heart attack or were unobstructed, as shown by testing done after the 1997 angioplasty. Therefore, Dr. Gooch concluded that the blockages had developed after 1997.

The trial court denied Employee's petition for payment of medical expenses, ruling that Employee failed to meet his burden of proof. On appeal, Employee asserts that the trial court erred by denying his petition.

Standard of Review

This Court reviews a trial court's findings of fact in a workers' compensation case de novo with a presumption of correctness, "unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (Supp. 2006). When the trial court has seen the witnesses and heard the testimony, especially where issues of credibility and the weight of testimony are involved, we must extend considerable deference to the trial court's factual findings. Whirlpool Corp. v. Nakhoneinh, 69 S.W.3d 164, 167 (Tenn. 2002). We extend no deference to the trial court's findings when reviewing documentary evidence such as depositions, however. Id. As to questions of law,

our standard of review is de novo with no presumption of correctness. Perrin v. Gaylord Entm't Co., 120 S.W.3d 823, 825 (Tenn. 2003).

Analysis

Employee argues that the trial court erred by ruling that his bypass surgery was not causally related to his original injury. His argument has two basic premises. First, he argues that the trial court improperly shifted the burden of proof to him to prove that the surgery was related to his original injury. Second, he argues that Dr. Weinstein's opinion, as expressed in his affidavit and letter, should be given greater weight because he is the authorized treating physician.

Employee cites Carter v. Shoney's, 845 S.W.2d 740, 743 (Tenn. 1992), and Russell v. Genesco, 651 S.W.2d 206, 211 (Tenn. 1983), for the presumption that treatment furnished by authorized physicians is necessary and reasonable. In this case, however, Employer presented affirmative evidence, in the form of Dr. Gooch's testimony, that the treatment at issue was not related to the original injury. Employee's position seems to be that the presumption described in Carter and Russell cannot be rebutted. There is no authority to support this position. To the contrary, an employer is not liable for post-judgment medical treatment made necessary by an intervening cause. See Anderson v. Westfield Group, 259 S.W.3d 690, 698-99 (Tenn. 2008). "Whether or not a particular medical treatment is 'made reasonably necessary' by Employee's work for Employer . . . is a question which must be answered based upon the proof presented at the time the treatment is proposed." Hegger v. Ford Motor Co., No. M2007-00759-WC-R3-WC, 2008 WL 4072047, at *4 (Tenn. Workers' Comp. Panel Sept. 2, 2008) (citations omitted).

Dr. Weinstein's status as a treating physician may be an appropriate reason for giving weight to his testimony. However, Dr. Gooch was also a treating physician. Because Dr. Gooch's opinions were presented by means of an evidentiary deposition, the trial court was able to evaluate the medical basis for those opinions. In contrast, Dr. Weinstein's opinions were presented by means of a letter and a short affidavit, which did not reveal the reasoning behind his conclusions. Having reviewed the evidence de novo, we are unable to conclude that it preponderates against the trial court's findings.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to Charles Cruse and his surety, for which execution may issue if necessary.

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WILLIAM C. COLE, SPECIAL JUDGE

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JUDGMENT 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, Charles Cruse and his surety, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM