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Equity Group,Tenn. Div. v. Leslie

Supreme Court of Tennessee, Special Workers' Compensation Appeals Panel, At Nashville

March 24, 1997, FILED

NO. 01S01-9606-CH-00125

Reporter

1997 Tenn. LEXIS 143 *

EQUITY GROUP, TENNESSEE DIVISION,
Plaintiff/Appellant v. SHERRI LESLIE,
Defendant/Appellee

Notice: CONSULT THE TENNESSEE SUPREME COURT RULES FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: [*1] Judgment Order of March 24, 1997, Reported at: 1997 Tenn. LEXIS 150.

Prior History: CHANCERY COURT. DAVIDSON COUNTY. HON. IRVIN H. KILCREASE, JR., CHANCELLOR.

Disposition: AFFIRMED and REMANDED.

Core Terms

right knee, disability, left knee, benefits, trial court, knee, preponderance of evidence, workers' compensation, corroborating, credibility, collapsed, percent

Case Summary

Procedural Posture

Appellant employer challenged a judgment of the Chancery Court of Davidson County (Tennessee), which was in favor of appellee employee in her workers' compensation action. The action was referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of Tennessee of findings of fact and conclusions of law.

Overview

The employee alleged and the trial court found that she injured her left knee in 1993, which resulted in a disability award. In 1994, she alleged that during the

course of her employment her left knee collapsed, causing her to fall on her right knee, which resulted in a disabling injury. She sought benefits for disability to both knees. The trial court found that both injuries were compensable. The employer argued that the evidence fell short of proving that the employee suffered an injury by accident to her right knee and that the trial court's reliance on the testimony of a doctor was misplaced because he was not credibly informed. The doctor testified that the employee's right knee injury could have been related to the 1993 injury. The employer argued that the doctor's testimony alone was not sufficient. The court held that there was corroborative lay testimony in the record. While it was true that the employee gave confusing, possibly conflicting accounts of the episode, the chancellor was the arbiter of her credibility and the weight of the testimony; the court held that the judgment was supported by a preponderance of the evidence.

Outcome

The court affirmed the judgment.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Evidence > ... > Testimony > Credibility of Witnesses > General Overview

Workers' Compensation & SSDI > Administrative Proceedings > Judicial Review > General Overview

Civil Procedure > Trials > Bench Trials

HN1  **Standards of Review, De Novo Review**

A chancellor, and not the Supreme Court of Tennessee,

is the arbiter of a witness's credibility and of the weight to be accorded her testimony. The Supreme Court of Tennessee does not substitute its judgment for that of the Chancellor, but is limited to a review *de novo* on the record to determine if the judgment is supported by a preponderance of the evidence. A determination of that having been made, the Supreme Court of Tennessee presumes the correctness of the judgment. Tenn. R. App. P. 13(d).

Counsel: For Plaintiff/Appellant: Kent E. Krause, Mary Sullivan Moore, Nashville, TN.

For Defendant/Appellee: J. Timothy Street, E. Covington Johnston, Jr., Franklin, TN.

Judges: Members of Panel: Frank F. Drowota, III, Justice, John K. Byers, Senior Judge, William H. Inman, Senior Judge. CONCUR: Frank F. Drowota, III, Justice, John K. Byers, Senior Judge

Opinion by: William H. Inman

Opinion

MEMORANDUM OPINION

INMAN, Senior Judge

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The issue is whether the trial court erred in awarding the plaintiff benefits for a disability to her right leg.

The plaintiff alleged and the court found that she injured her left knee on July 22, 1993 resulting in disability for which benefits were awarded, not here questioned. Nine months later, in April, 1994, she alleged that during the course of her employment her left knee collapsed, causing [*2] her to fall on her right knee resulting in a disabling injury.

In the course of time she sought benefits for disability to both knees.

The trial court found that both injuries were compensable, and awarded benefits based on 55 percent disability to the left knee and 40 percent to the

right knee.

The employer argues that the evidence falls short of proving that the plaintiff suffered an injury by accident to her right knee, and that the court's reliance on the testimony of Dr. Roy C. Terry was misplaced because he was not credibly informed.

Dr. Terry testified that the right knee injury "could be" related to the July, 1993 injury. From this testimony the defendant extrapolates the argument that Dr. Terry assumed both knee problems arose in 1993, contrary to the testimony of the plaintiff that she injured her right knee in 1994. The argument continues that "could be" testimony alone is not sufficient; that there must be, at least, corroborating lay testimony. This is a correct legal assertion. See *Livingston v. Shelby Williams*, 811 S.W.2d 511 (Tenn. 1991). But there is corroborative lay testimony in this record.

As stated above, the plaintiff testified that her left knee collapsed, [*3] causing her to fall on her right knee. It is true that she gave confusing, perhaps conflicting accounts of the episode, but **HN1** [↑] the Chancellor, and not us, is the arbiter of her credibility, and of the weight to be accorded her testimony. See *Walls v. Magnolia Truck Lines*, 622 S.W.2d 526, 528 (Tenn. 1981).

The plaintiff's right knee was admittedly injured in some fashion. She has a disabling condition, asserted by the employer to have been of idiopathic origin and thus not compensable because of the inadequacy of the "could be" medical testimony. We do not agree, for the reason stated.

We do not substitute our judgment for that of the Chancellor, but are limited to a review *de novo* on the record to determine if the judgment is supported by a preponderance of the evidence. A determination of that having been made, we presume the correctness of the judgment. TENN. R. APP. P., RULE 13(d). We clearly cannot find that the evidence preponderates against the judgment which is affirmed.

The judgment is affirmed and the case is remanded to the trial court for assessment of costs, which are taxed to the appellant.

William H. Inman, Senior Judge

CONCUR:

Frank F. Drowota, III, [*4] Justice

John K. Byers, Senior Judge

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