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Yasuda Fire & Marine Ins. Co. of Am. v. Kuntz

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

May 21, 1997, FILED

No. 01S01-9609-CH-00187

Reporter

1997 Tenn. LEXIS 289 *

YASUDA FIRE & MARINE INSURANCE COMPANY OF AMERICA, Plaintiff-Appellant, v. FRANCINE KUNTZ, Defendant-Appellee.

Notice: CONSULT THE TENNESSEE SUPREME COURT RULES FOR CITATION OF UNPUBLISHED OPINIONS.

Subsequent History: [*1] Judgment Order of May 21, 1997, Reported at: 1997 Tenn. LEXIS 297.

Prior History: CHANCERY COURT. DAVIDSON COUNTY. Hon. Irvin H. Kilcrease, Jr., Chancellor.

Disposition: AFFIRMED.

Core Terms

workers' compensation, venue, resides, insurer, improper venue, judgment of the trial court, principal place of business, principal's office, hundreds of miles, insurance carrier, injured party, county judge, trial court, trial judge, devastation, transitory, cases, chair

Case Summary

Procedural Posture

Appellant employer's insurer (insurer) sought review of an order of the Chancery Court, Davidson County (Tennessee), which dismissed the workers' compensation action against appellee employee for improper venue.

Overview

The insurer brought a workers' compensation action against the employee in the county where its principal place of business was located. The employee brought a motion to dismiss for improper venue, which was granted by the trial court, and the insurer appealed. The court affirmed the order of the trial court. Venue in a

workers' compensation action was to be determined solely by Tenn. Code Ann. § 50-6-225(c)(1). Therefore, the court held that the insurer could only commence a workers' compensation action in the county in which the employer resided, or, as a corporate resident, had its principal place of business, or where the injury occurred. The employer and its insurance carrier were treated as one for most purposes, unless otherwise expressly provided for under Tenn. Code Ann. § 50-6-102(a).

Outcome

The court affirmed the order of the trial court, which dismissed the insurer's workers' compensation action against the employee for improper venue.

LexisNexis® Headnotes

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

Workers' Compensation & SSDI > Coverage > Employment Status > Casual Employees

Civil Procedure > Preliminary Considerations > Venue > General Overview

Civil Procedure > Preliminary Considerations > Venue > Individual Defendants

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

Workers' Compensation & SSDI > ... > Judicial Review > Standards of Review > General Overview

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

Appellate review is de novo upon the record of the trial court.

Governments > Courts > Clerks of Court

Workers' Compensation & SSDI > Administrative Proceedings > Claims > General Overview

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

HN2 **Courts, Clerks of Court**

Venue in workers' compensation actions is to be determined solely by Tenn. Code Ann. § 50-6-225(c)(1), and any other authority indicating otherwise is hereby expressly overruled. The section provides as follows: The party filing the petition may, at such party's option, instead of filing the same before the county judge or chair, file the same as an original petition in either the circuit, criminal or chancery court of the county in which petitioner resides or in which the alleged accident happened, in which event summons shall be issued by the clerk of the court in which the proceeding is instituted, and shall be returned before the court within the time provided for proceedings before a county judge or county chair.

Governments > Legislation > Interpretation

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

HN3 **Legislation, Interpretation**

The Workers' Compensation Act expressly requires that it be given "equitable construction." Tenn. Code Ann. § 50-6-116. It is to be interpreted liberally in favor of those entitled to its benefits. It must be interpreted in a manner designed to protect workers and their families from the economic devastation that can follow on-the-job injuries.

Civil Procedure > Preliminary Considerations > Venue > Corporations

Workers' Compensation & SSDI > Administrative Proceedings > Claims > General Overview

Civil Procedure > Preliminary

Considerations > Venue > General Overview

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

HN4 **Venue, Corporations**

An insurer may only commence an action under the Worker's Compensation Act (Act), in the county in which the employer resides, or, as a corporate resident, has its principal place of business, or where the injury occurred. The employer and its insurance carrier are treated as one for most purposes under the Act, unless otherwise expressly provided for. Tenn. Code Ann. § 50-6-102(a).

Counsel: For Appellant: **Mary Sullivan Moore**, D. Brett Burrow, Brewer, Krause, Brooks & Mills, Nashville, Tennessee.

For Appellee: Phillip R. Newman, Sarah Hardcastle Hardison, Manier, Herod, Hollabaugh & Smith, Nashville, Tennessee.

Judges: Members of Panel: Adolpho A. Birch, Jr., Chief Justice, Supreme Court, John K. Byers, Senior Judge, Joe C. Loser, Jr., Special Judge. CONCUR: Adolpho A. Birch, Jr., Chief Justice, John K. Byers, Senior Judge

Opinion by: Joe C. Loser, Jr.

Opinion

MEMORANDUM OPINION

Loser, 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. section 50-6-225(e)(3) for hearing and reporting of findings of fact and conclusions of law. This appeal presents us with an issue involving venue in a workers' compensation case. As discussed below, the panel concludes the judgment of the trial court, dismissing the case for improper venue, should be affirmed.

The employer's insurer, Yasuda, commenced this action in Davidson County where, according to the complaint, its principal place **[*2]** of business is located. The employee moved, without supporting affidavits, to dismiss for improper venue. The trial court granted the

motion without an evidential hearing.¹

The relevant facts are undisputed. The employee is a resident of Robertson County; the corporate employer has its principal office in Sumner County, where the injury occurred; and the employer's insurer has its principal office in Davidson County.

The trial judge dismissed the complaint for improper venue because, according to the employee's brief, the employee "may not have a different residence than (sic) the employer for the purpose of determining proper venue under the Workers' Compensation Law of Tennessee." **HN1** Appellate review is de novo upon the record of the trial court. Presley v. Bennett, 860 S.W.2d 857 (Tenn. 1993).

In a significant number of past cases, our Supreme Court held that a workers' compensation action was a transitory one and that venue **[*3]** was to be determined by considering both the provision of the Workers' Compensation Act with respect to venue and the general rules relating to transitory actions. Those cases were overturned by that court's opinion in Five Star Express, Inc. v. Davis, 866 S.W.2d 944 (Tenn. 1993), wherein it said in conclusion, "... we now hold that **HN2** venue in workers' compensation actions is to be determined solely by the workers' compensation venue statute -- section 50-6-225(c)(1) -- and any other authority indicating otherwise is hereby expressly overruled."

The section provides as follows:

(c)(1) The party filing the petition may, at such party's option, instead of filing the same before the county judge or chair, file the same as an original petition in either the circuit, criminal or chancery court of the county in which petitioner resides or in which the alleged accident happened, in which event summons shall be issued by the clerk of the court in which the proceeding is instituted, and shall be returned before the court within the time provided for proceedings before a county judge of county chair. (1996 Supp.).

HN3 The Workers' Compensation Act expressly requires that it be given "equitable **[*4]** construction." Tenn. Code Ann. section 50-6-116. It is to be interpreted liberally in favor of those entitled to its benefits. Williams v. Preferred Development Corp., 224 Tenn.

174, 452 S.W.2d 344 (1970). It must be interpreted in a manner designed to protect workers and their families from the economic devastation that can follow on-the-job injuries. Betts v. Tom Wade Gin, 810 S.W.2d 140 (Tenn. 1991).

In Five Star, the "petitioner" was the employer. The present case differs only in that the "petitioner" is not the employer, but its insurer. Yasuda contends that since it is entitled to proceed in its own name, it should be considered the petitioner and allowed to maintain the action in the county where it is principally located.

If we accept that argument, Yasuda could, theoretically, have all workers' compensation claims against it adjudicated in its chosen forum in Davidson County, regardless of where the injured party resides or the injury occurred, even if the employee lives hundreds of miles away or was injured hundreds of miles away. Of course, the employee could assert that Davidson County was an inconvenient venue, but that is not the case here.

The posture **[*5]** of this case forces us to decide whether a workers' compensation insurance carrier can force an injured party to either present his claim in Davidson County or base his objection to such venue on the ground of *forum non conveniens*. Either way involves considerable time and expense and could contribute to economic devastation.

The panel agrees with the trial judge that **HN4** an insurer may only commence the action in the county in which the employer resides - or, as a corporate resident, has its principal place of business - or where the injury occurred. The employer and its insurance carrier are treated as one for most purposes under the Act, unless otherwise expressly provided for. Tenn. Code Ann. section 50-6-102(a); See also Humphreys v. Allstate Insurance Company, 627 S.W.2d 933 (Tenn. 1982). We do not construe section 50-6-225(c)(1) to expressly provide otherwise for the purpose of establishing venue.

The judgment of the trial court is accordingly affirmed. Costs are taxed to the appellant.

Joe C. Loser, Jr., Judge

CONCUR:

Adolpho **[*6]** A. Birch, Jr., Chief Justice

Joe K. Byers, Senior Judge

¹The employee has filed a separate action for benefits in Robertson County.

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