

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
April 26, 2000 Session

**RONALD DEVANEY V. CITY OF ROCKWOOD and TML RISK
MANAGEMENT POOL, PUBLIC RISK SERVICES, INC.**

Direct Appeal from the Chancery Court for Roane County
No. 12,954 Frank V. Williams, Chancellor

No. E-1998-00780-WC-R3-CV- Mailed September 12, 2000
FILED: OCTOBER 17, 2000

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 hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The trial court found the suit barred by the statute of limitations, and granted summary judgment in favor of the City of Rockwood and TML Risk Management Pool, Public Risk Services, Inc. We affirm.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Chancery Court is Affirmed.

HOWELL N. PEOPLES, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J., and L. Terry LAFFERTY, SR. J., joined.

Thomas F. Mabry, Knoxville, Tennessee, for the appellant, Ronald Devaney

John T. Batson, Jr., Knoxville, Tennessee, for the Appellee, City of Rockwood and TML Risk Management Pool, Public Risk Services, Inc.

OPINION

Ronald Devaney contends the Chancellor was in error in finding that he had actual or constructive knowledge of his occupational disability before October 8, 1995. The suit was filed October 8, 1996, thus Mr. Devaney seeks to show that the complaint was filed prior to the expiration of the statute of limitations. The undisputed pertinent facts are derived from Mr. Devaney's deposition and the exhibits thereto, his responses to interrogatories, his affidavit, and his response to the motion for summary judgment and exhibits.

Background Facts

Mr. Devaney worked for the City of Rockwood from May 1, 1980 until April 28, 1995 in various capacities but primarily within the Department of Sanitation. From April 28, 1995 until January 2, 1996, he was on a leave of absence. On December 15, 1997, the City of Rockwood terminated Devaney from its employ.

During the time Mr. Devaney was employed by the City of Rockwood, he suffered numerous injuries to his left leg, including (a) having it broken in three places as a result of an off-the-job accident, (b) a 1983 incident where a sanitation truck ran over his left leg, causing metal plates and screws to be placed in the leg, and (c) a 1993 fracturing in the course of physical therapy after having the metal plates and screws from the 1983 accident removed.

Besides the breaks and fractures to his left leg, Mr. Devaney has complained of numbness in his hands and left leg, chronic bronchitis, chronic obstructive lung disease, and dependence on pain medications and alcohol, which he states is due to his leg injuries.

In May 1995, Mr. Devaney initiated a workers' compensation claim based on pain in his legs, stress, depression, alcoholism and numbness in his hands. The employer denied this claim on May 18, 1995. On May 25, 1995, Dr. Evelyn Sevilla diagnosed Mr. Devaney with Sensory/Peripheral Neuropathy related to his use of alcohol. In June 1995, Mr. Devaney was diagnosed with stress and alcohol related digestive problems; he was diagnosed with severe obstructive lung disease in July 1995.

On July 31, 1995, Mr. Devaney wrote a letter to the Mayor of Rockwood detailing his "severe health problems." On August 15, 1995, he wrote another letter to the Mayor of Rockwood stating, "I have now been certified permanently disabled." This letter followed an August 6, 1995 visit with his treating physician.

Devaney applied for Veterans Administration benefits on August 9, 1995; social security disability benefits on August 14, 1995; and worker's compensation benefits on August 25, 1995.

On October 8, 1996, he filed a complaint in the Roane County Chancery Court for workers' compensation benefits based on occupational disease.

Standard Of Review

As this case is an appeal from a grant of summary judgment, our review is controlled by the standard established in Tenn. R. Civ. P. 56. Thus, there is no presumption of the correctness of the trial court's findings. McCann v. Hatchett, 19 S.W.3d 218, 219 (Tenn. 2000) citing Carvell v. Bottoms, 900 S.W.2d 23, 26 (Tenn. 1995).

We are obliged to construe the evidence in the light most favorable to the non-moving party. Bryd v. Hall, 847 S.W.2d 208, 210-11 (Tenn. 1993). Further, summary judgment should only be granted when a reasonable person could only reach one conclusion in considering the facts and the inferences to be drawn from those facts. McCann, 19 S.W.3d at 219 citing Carvell, 900 S.W.2d at 26.

Discussion

The issue is whether Mr. Devaney complied with the appropriate statute of limitations in filing his action. The applicable statute of limitations for claims of occupational disease is set forth in Tenn. Code Ann. § 50-6-306(a) as being one year from the beginning of the incapacity to work resulting from the occupational disease. In Ingram v. Aetna Cas. and Sur. Co., 876 S.W.2d 91, 95 (Tenn. 1995), it was held that:

[t]he statute of limitations begins to run on a disability claim when the employee has knowledge, actual or constructive, that he has an occupational disease *which injuriously affects his capacity to work to a degree amounting to a compensable disability.* (citing Consolidated Coal Co. v. Pride, 452 S.W.2d 349, 353 (Tenn. 1970).)

Mr. Devaney had actual knowledge that he suffered from a permanent disability in August 1995. This knowledge is evidenced by the following things that happened in August 1995: his letter to the Mayor of Rockwood; his application for Veterans Administration benefits based on a permanent disability; his application for social security disability benefits due to a permanent disability; and his application for workers' compensation benefits based on a claim of permanent disability.

With knowledge of his occupational disease attributed to Mr. Devaney in August 1995, he had until August 1996 to file his complaint. His complaint was filed on October 8, 1996. Therefore, Mr. Devaney failed to comply with the applicable statute of limitations, and his claim is barred.

Conclusion

The judgment entered below is affirmed. Costs of the appeal are taxed to the Appellant, Ronald Devaney, and sureties.

Howell N. Peoples

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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 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 facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgement of the Court.

Costs on appeal are taxed to the appellant, Ronald Devaney and Tom F. Mabry, surety for which execution issue if necessary.

10/17/00

