

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

JIMMY RHODES V. CITY OF MONTEAGLE

**Direct Appeal from the Circuit Court for Grundy County
No. 6446, Hon. Buddy D. Perry, Judge**

**No. M2001-01584-WC-R3-CV - Mailed - October 11, 2002
Filed - November 12, 2002**

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 trial court found the suit barred by the statute of limitations and granted summary judgment in favor of the City of Monteagle. We affirm.

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

GRAY, Sp.J., delivered the opinion of the court in which BIRCH, J., and LOSER, Sp. J. joined

Paul D. Cross, Monteagle, TN for the appellant, Jimmy Rhodes

David F. Hensley, Chattanooga, TN for the appellee, City of Monteagle

MEMORANDUM OPINION

Jimmy Rhodes, plaintiff/appellant, contends that the Circuit Judge erred in finding that there was no genuine issue as to any material fact concerning the expiration of the statute of limitations such that the City of Monteagle was entitled to a judgment as a matter of law due to the plaintiff having failed to timely file his suit in this case. The undisputed pertinent facts are derived from the deposition of plaintiff Jimmy Rhodes, the deposition and exhibits thereto of Joy Sturtevant, city recorder for Monteagle, Tennessee and the affidavit of Michele Williams, claims representative for Public Risk Services, Inc. and the response to the motion for summary judgment by the plaintiff. Public Risk Services, Inc., is not a party to this action.

BACKGROUND FACTS

Jimmy Rhodes was born on the 4th day of November, 1941. He graduated from high school in Mississippi in 1959 and he has no post secondary education. His work history is primarily in construction, operating equipment or estimating/bidding jobs. He also ran his own business, Backhoe Service. In 1992 he accepted a salaried position as utility manager with the City of Monteagle.

On the 8th day of December, 1997 Mr. Rhodes was attempting to light a gas heater in the course and scope of his employment, and he fell from a fire engine injuring his back.

The accident was reported by Mr. Rhodes to Joy Sturtevant, City Recorder, on the 9th day of December, 1997. Ms. Sturtevant completed An Employer's First Report of Work Injury. An appointment was made for Mr. Rhodes to see Dr. Gould, a physician with an office in Monteagle. On February 6, 1998 Michele Williams, a claims representative with Public Risk Services, Inc., was assigned to process Mr. Rhodes' claim. Public Risk Services, Inc., made payment to Mr. Rhodes for medical bills beginning on February 27, 1998; the last payment to Mr. Rhodes was the 26th day of October, 1998 with the total payments being \$1,949.55.

The City of Monteagle continued to pay to Mr. Rhodes his full salary from December 1997 until the 26th of January, 1999 when the city council placed him on unpaid sick leave. There was no formal policy in effect by the city for sick leave and all salaried employees were paid their regular salary while on sick leave.

Beginning in July, 1998, Mr. Rhodes frequently missed work due to deteriorating health. In fact, he missed most of the next six months. He underwent open heart surgery and suffered "mini-strokes". He would return to work for a day or two as he was able and worked his last day for the city on the 15th day of December, 1998. The city council voted to place Mr. Rhodes on unpaid sick leave on the 26th day of January, 1999.

Mr. Rhodes filed his complaint for worker's compensation benefits against the city on the 26th day of January, 2000.

STANDARD OF REVIEW

This case is an appeal from a grant of summary judgment; review is controlled by the standard established in Tennessee Rules of Civil Procedure 56. There is no presumption of the correctness of the trial court's findings. McCann v. Hatchett, 19 S.W.3d 218, 219 (Tenn. 2000). This court is obliged to construe the evidence in the light most favorable to the non-moving party. Byrd v. Hall, 847 S.W.2d 208, 210-11 (Tenn. 1993). Summary judgment should only be granted when a reasonable person could only reach one conclusion in considering the facts and the inferences is to be drawn from those facts. McCann supra, citing Carvell v. Bottoms, 900

S.W. 2d, 23 at 26.

DISCUSSION

The issue in this case is whether the compensation paid by the City to Mr. Rhodes after his accident is sufficient as “compensation” within the meaning of T.C.A. 50-6-203. The statute (T.C.A. 50-6-203(a) provides that if within the one (1) year period following the accident “voluntary payments of compensation are made to the insured person or the insured person’s dependents, an action to recover any unpaid portion of the compensation, payable under this chapter, may be instituted within one (1) year from the latter of the date of the last authorized treatment or the time the employer shall cease making such payments...”.

There is no dispute that the last payment for authorized medical treatment was the 26th day of October, 1998.

Plaintiff/appellant’s position is that the wage paid to him by the City of Monteagle were compensation as contemplated by the statute and that the statute of limitations was tolled until the 26th day of January, 2000. He concludes that the one (1) year statute of limitation period did not commence until the City ceased paying on the 26th day of January, 2000.

This court in Dial v. Stone 796 S.W.2d 143, 145 (Tenn. 1990) addressed the issues stating:

The plain language of the tolling provision of T.C.A. 50-6-203 requires for its application that (1) voluntary payment of compensation, (2) payable under this chapter, (3) be made by the employer.

Examination of the above three prong test shows that the City of Monteagle voluntarily paid wages to their salaried employee, Jimmy Rhodes, for sick leave.

The City did not make any wage payments for the December, 1997 accident and Mr. Rhodes did not ask for any worker’s compensation benefits. The City paid Mr. Rhodes his full salary while sick, just as it would have done for any salaried employee. It did not intend those payments to be considered worker’s compensation benefits. In Union Carbide Corp., Food Products Division v. Cannon 523 S.W.2d 360, 364 (Tenn. 1975) this court held, “if the conduct of the parties indicate that payments of medical expenses are not paid pursuant to an obligation imposed by workmen’s compensation statutes, they do not toll the running of the statute of limitations.”

The intent of both parties is needed to satisfy the intent consideration in Union Carbide, supra. Mr. Rhodes admitted in his deposition that he believed the payments by the City were just

his usual salary and not intended to be worker's compensation benefits. Although a liberal construction in favor of the employee might be desirable when the employer's intent is ambiguous, we see no logical reason to make a construction when the employee knew that the payments made by his employer were simply a continuation of his salary and unrelated to worker's compensation benefits. While we find the City's sick leave policy left its intent unclear on its face, the conduct of the parties indicate that neither party intended the payments to constitute worker's compensation benefits. Mr. Rhodes admits that he did not believe the payments to be such and the fact that the City paid all its salaried employees their full salaries indicates that the City never intended to make the payments to Mr. Rhodes in the form of worker's compensation benefits. Mr. Rhodes was thus barred by the statute of limitations because he filed suit more than one (1) year after receiving his last worker's compensation benefits from Public Risk Services, Inc. in October, 1998.

The judgment of the trial court is affirmed. The costs of this appeal are assessed to the appellant, Mr. Jimmy Rhodes.

Tom E. Gray,
Special Judge

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL

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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 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 appellant, Jimmy Rhodes, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM