

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

February 7, 2003 Session

**DARLENE SUE SINGLETON v. SHELBY WILLIAMS, INC.**

**Direct Appeal from the Circuit Court for Grainger County  
No. 7242 Duane O. Slone, Judge**

**Filed May 29, 2003**

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**No. E2002-01697-WC-R3-CV**

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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 defendant appeals the trial court's decision awarding the plaintiff compensation of \$85,228.80 for a sixty percent permanent partial disability to each arm. Specifically, the defendant argues that the trial court erred: in allowing the introduction of the standard medical report or deposition of Dr. William Gutch into evidence; in accepting the testimony and opinion of Dr. Gutch over that of the treating physician; and by awarding a sixty percent permanent partial disability to each arm. We affirm the judgment of the Circuit Court.

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

BYERS, SR. J., delivered the opinion of the court, in which ANDERSON, J., and THAYER, SP. J., joined.

Joseph J. Doherty, of Morristown, Tennessee, for the appellant, Shelby Williams, Inc.

James M. Davis, of Morristown, Tennessee, for the appellee, Darlene Sue Singleton.

**MEMORANDUM OPINION**

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2). Stone v. City of McMinnville, 896 S.W.2d 548 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial courts in workers' compensation cases. See Corcoran v. Foster Auto GMC, Inc., 746 S.W.2d 452 (Tenn. 1988).

## Facts

The plaintiff is forty-six years of age and worked as an upholster for the defendant company for twenty-four years. She has a 7<sup>th</sup> grade education and has problems reading and writing. Her duties for the defendant require the use of staple gun, welt gun, scissors, and wire cutter. In January of 2000, the plaintiff alleged repetitive use injuries to both arms. She testified that she provided notice of her injuries to her employer on June 8, 2000. She was then referred to Dr. Philip Bickers, who referred her to Dr. Robert Ivy for treatment. In November of 2000, Dr. Ivy performed surgery on the employee's left wrist; in January 2001, he performed surgery on the employee's right wrist. The employee later saw Dr. William Gutch at the direction of her attorney. The plaintiff returned to work without restrictions six weeks later. She testified that she has not seen Dr. Ivy or any other doctor since her return to work.

## Medical Evidence

The medical evidence for the purpose of the issues raised in this trial was provided by the deposition testimony of Dr. Robert Ivy and Dr. William Gutch.

Dr. Ivy, an orthopedic surgeon in Knoxville, testified that he first saw the plaintiff on October 30, 2000, when she was referred to him by her workers' compensation carrier. At that visit he evaluated her for complaints of pain and numbness in both of her hands. He took her history and performed a physical examination. Dr. Ivy testified that he diagnosed the plaintiff with severe bilateral carpal tunnel syndrome and recommended release surgery, which he performed on November 17, 2000 (left arm), and January 5, 2001 (right arm). He testified that the plaintiff responded well to the surgeries and he placed her at maximum medical improvement on March 2, 2001. He rated her at five percent permanent partial impairment to each upper extremity and returned her to work with no restrictions.

Dr. Gutch, a retired orthopedic surgeon who currently uses his medical license chiefly for independent medical examinations for the purpose of litigation, testified that he examined the plaintiff on October 10, 2001. He testified that he took a history from the plaintiff, reviewed her medical records (including those of Dr. Ivy,) and performed a physical examination, including tests of range of motion and grip strength. He estimated that this process took approximately one hour. Dr. Gutch testified that based upon her history and the results of his examination, he agreed with Dr. Ivy's diagnosis and treatment of the plaintiff, but he disagreed with Dr. Ivy's impairment rating. Dr. Gutch assigned the plaintiff a total impairment of eight percent to her left upper extremity and eight percent to her right upper extremity. He also restricted the plaintiff to avoid excessive and repetitive finger and wrist motion, pulling and tugging, and the use of vibratory tools.

## Discussion

Although we are required to weigh the evidence in a case in depth to determine where the preponderance of the evidence lies, we are required to make such evaluation within the confines of

established rules in evaluating the propriety of the trial court.

The defendant appeals the trial court's decision awarding the plaintiff compensation of \$85,228.80 for a sixty percent permanent partial disability to each arm. Specifically, the defendant argues that the trial court erred: in allowing the introduction of the standard medical report or deposition of Dr. William Gutch into evidence; in accepting the testimony and opinion of Dr. Gutch over that of the treating physician; and by awarding a sixty percent permanent partial disability to each arm.

In this case the trial court allowed the introduction of the C-32 and testimony of Dr. Gutch. The defendant claims on appeal that Dr. Gutch was not a practicing physician exempt from subpoena to trial as contemplated by Tenn. Code Ann. § 24-9-101(6). However, we do not agree with the defendant's interpretation of that statute. Dr. Gutch admitted at deposition that he does not currently "practice medicine", but Dr. Gutch's use of the word "practice" was a term of art in that context and not a term of law. For the purposes of the Tennessee Workers' Compensation statutes, Dr. Gutch is a practicing physician, in that he maintains a medical license and practices medicine to the extent that he performs independent medical examinations. In performing these examinations, he diagnoses patients and recommends treatment. Each of these duties constitute the practice of medicine for the purpose of the statute. The defendant also claims that the deposition testimony of Dr. Gutch should not have been allowed because there was no evidence that Dr. Gutch was unavailable for trial. This argument would have more merit had the defendant not taken the deposition and filed it with the court. Thus we affirm on the issue of allowing the introduction of the C-32 and testimony of Dr. Gutch.

The trial court then chose to accept Dr. Gutch's impairment rating over that of Dr. Ivy. It is well-settled that the trial court has the discretion to accept the opinion of one medical expert over another medical expert. Kellerman v. Food Lion, Inc., 929 S.W.2d 333 (Tenn. 1996); Johnson v. Midwesco, Inc., 801 S.W.2d 804 (Tenn. 1990). However, when the medical testimony is presented by deposition, as it was in this case, this Court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. Cooper v. INA, 884 S.W.2d 446 (Tenn. 1994); Landers v. Fireman's Fund Ins. Co., 775 S.W.2d 355 (Tenn. 1989). The trial court in this case took into account the testimony of both doctors in rendering its decision and did so entirely within its discretion. In the absence of any evidence of abuse of that discretion, we affirm on this issue.

The final issue upon which the defendant appeals is that of the amount awarded the plaintiff by the trial court. The defendant argues that the plaintiff showed no vocational disability and as such should not have received so high an award, if any at all. Contrary to the defendant's argument, however, a worker does not have to show vocational disability or loss of earning capacity to be entitled to the benefits for the loss of use of a scheduled member. Duncan v. Boeing Tenn., Inc., 825 S.W.2d 416 (Tenn. 1992). The plaintiff's injuries in this case were to her arms, scheduled members under statute. We thus affirm on this issue as well.

For the foregoing reasons, the judgment of the trial court is affirmed. The cost of this appeal is taxed to the defendant.

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JOHN K. BYERS, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE  
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**DARLENE SUE SINGLETON V. SHELBY WILLIAMS, INC.**  
**Grainger County Circuit Court**  
**No. 7242**

**May 29, 2003**

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**No. E2002- 01697-WC-R3-CV**

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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 Judgment of the Court.

The costs on appeal are taxed to the defendant, Shelby Williams, Inc., for which execution may issue if necessary.