

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

February 18, 2004 Session

**PATRICIA M. BRYANT v. BAPTIST HEALTH SYSTEM HOME CARE OF
EAST TENNESSEE**

**Direct Appeal from the Circuit Court for Knox County
No. 2-128-98 Harold Wimberly, Judge**

Filed May 25, 2004

No. E2003-00432-WC-R3-CV - Mailed April 12, 2004

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 awarded the employee 22.5 percent permanent partial disability. The employer contends the award was excessive and the trial court was in error in dismissing its counterclaim seeking expenses and penalties under the Workers' Compensation Fraud Act as the employee testified falsely in a discovery deposition. Judgment does not dispose of the counterclaim and is merely interlocutory and not subject to interim appeal. Appeal dismissed.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Appeal Dismissed and Case
Remanded**

ROGER E. THAYER, SP. J., delivered the opinion of the court, in which WILLIAM M. BARKER, J., and H. DAVID CATE, SP. J., joined.

Reuben N. Pelot IV, Knoxville, Tennessee, for the appellant, Baptist Health System Home Care of East Tennessee.

J. Anthony Farmer, Knoxville, Tennessee, for the appellee, Patricia M. Bryant.

MEMORANDUM OPINION

The employer, Baptist Health System Home Care of East Tennessee, has appealed from the trial court's action in awarding the employee, Patricia M. Bryant, 22.5 percent permanent partial disability and also in dismissing its counterclaim where the hospital sought expenses, damages and penalties pursuant to the provisions of the Workers' Compensation Fraud Act, Tenn. Code Ann. § 56-47-101, *et. seq.* The basis of the counterclaim is the undisputed evidence the employee testified

falsely during the course of a discovery deposition about whether she had worked after leaving the hospital's employment.

While the record on appeal is sufficient to review the trial court's action concerning the 22.5 percent award of permanent disability, we are unable to reach the issue with regard to the counterclaim. The record certified to this Court does not contain any order or final judgment stating or directing that the counterclaim was dismissed. We have searched the record several times in the hope of finding an order reflecting this action and the trial court's reasoning why the counterclaim was dismissed. Such document is not present in the technical record. The final judgment recites the case came on to be heard on the "Complaint, responsive pleadings, counter-claim," etc., but the judgment then only adjudicates the claim for workers' compensation benefits and does not contain any language disposing of the counterclaim.

When an appellant or any party seeks review of issues before an appellate court, the party must prepare a record which conveys a fair and complete account of what transpired in the trial court. If the record is incomplete, the appellate court is precluded from considering the issue raised. *In re Adoption of E.N.R.*, 42 S.W.3d 26 (Tenn. 2001); *Word v. Word*, 937 S.W.2d 931 (Tenn. Ct. App. 1996).

Under the state of the record, the trial court has not disposed of all claims or issues and under Rule 54, Tenn. R. Civ. P., the judgment in the present case is merely interlocutory, subject to revision and not subject to interim appeal. *Fagg v. Hutch Mfg. Co.*, 755 S.W.2d 446 (Tenn. 1988). While interlocutory orders may be appealed by permission of the trial and appellate courts under certain circumstances, no application has been filed pursuant to Rule 9, Tenn. R. App. P.

For these reasons the appeal in the present case is hereby dismissed and the case is remanded to the trial court for further consideration. Costs of the appeal are taxed to the appellant, Baptist Health System Home Care of East Tennessee.

ROGER E. THAYER, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

**PATRICIA M. BRYANT V. BAPTIST HEALTH SYSTEM HOME CARE
OF EAST TENNESSEE
Knox County Circuit Court
No. 2-128-98**

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No. E2003- 00432-WC-R3-CV

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 appellant, Baptist Health System Home Care of East Tennessee, for which execution may issue if necessary.