

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE  
June 11, 2004 Session

**SANDRA W. DUNCAN v. STATE OF TENNESSEE**

**Direct Appeal from the Tennessee Claims Commission  
No. 40064601 Vance W. Cheek, Jr., Commissioner**

**Filed August 27, 2004**

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**No. E2003-01898-WC-R3-CV - Mailed July 22, 2004**

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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 claim of the Appellant for workers' compensation benefits was rejected upon a finding that she was injured as the result of her own misconduct when she became embroiled in an altercation with a fellow employee. We hold that summary judgment is inappropriate and remand the case for a merit trial

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Circuit Court  
Reversed and Remanded**

WILLIAM H. INMAN, SR. J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP. J., joined.

Harry F. Burnette, Chattanooga, Tennessee, attorney for Appellant, Sandra W. Duncan.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Dawn Jordan, Assistant Attorney General, for Appellee, State of Tennessee.

**MEMORANDUM OPINION**

It is provided by statute that "no compensation shall be allowed for an injury . . . due to the employee's willful misconduct." Tenn. Code Ann. § 50-6-110(a). The burden of proof is on the employer to show that an injury was due to misconduct, a question of fact. *Coleman v. Coker*, 321 S.W.2d 540 (Tenn. 1959); *Overall v. Southern Subaru Star Inc.*, 545 S.W.2d 1 (Tenn. 1976). The term "willful misconduct" is not statutorily defined, *Wright v. Gunther Nash Mining Constr. Co.*,

614 S.W.2d 796 (Tenn. 1981).

In the case at Bar the employee appeals the dismissal of her action for workers' compensation benefits upon a motion for summary judgment alleging that her injuries arose out of a physical altercation with a fellow employee. The Plaintiff appeals, and presents for review the propriety of the grant of summary judgment. For the reasons hereafter expressed, we find that summary judgment is inappropriate and therefore reverse and remand the case for a plenary merit trial.

### **The Evidence**

On January 20, 1993, the Plaintiff, an employee of Chattanooga State Technical Community College, was injured as a result of an altercation with another employee, and was later diagnosed with Multiple Sclerosis, a condition allegedly causally related to blows delivered by a male supervisee, Alphonso Tolivar, from whom she, through another employee, sought keys to a lab room. Because the key was on a ring with other keys, Mr. Toliver wanted to relinquish one key. He had previous experience in giving the full key ring, only to have some keys later turn up missing. This was not satisfactory to the Plaintiff and the argument became heated; during the exchange, Mr. Tolivar lunged forward and aggressively confronted Ms. Duncan. He came within inches of her face, and cursed her (using crude language) for requesting the keys. According to her testimony, she instinctively tried to move him away or brush him back with her hand, defending her face, as he thrust his finger towards her. She said that she did not know if he was going to hit her, kill her, kick her or bite her. Tolivar said she slapped him, and then he struck her forcefully on the side of the head. Ms. Duncan fell against a workbench, which protected her from the floor, and she said Tolivar violently struck her again on the head. As Tolivar clenched his fist and drew back for another punch, another employee intervened and restrained Tolivar.

Ms. Duncan later began a series of examinations and treatments with Dr. Adelle Ackell for problems related to this incident and the fact that she "saw stars" after her hit in the head. On July 8, 1993, it was suspected that she had developed Multiple Sclerosis [hereafter "MS"]. On July 26, 1993, she was definitely diagnosed with MS, a condition which manifested itself allegedly due to the blows to the head which Ms. Duncan suffered on January 20, 1993. The issue of causation was not determined.

A summary judgment procedure onerates the moving party to show the absence of a genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523 (Tenn. 1991); *Jones v. Home Indem. Ins. Co.*, 651 S.W.2d 213, 214 (Tenn. 1983). A determination of a motion for summary judgment requires that any reasonable doubt about the existence of a genuine issue as to any material fact be resolved against the movant. *Downen, supra*; *Poore v. Magnovox Co. of Tennessee*, 666 S.W.2d 48, 49 (Tenn. 1984). The court must view the pleadings, depositions, answers to interrogatories, admissions and affidavits in a light most favorable to the opponent of the motion, and all legitimate conclusions from the record should be drawn in favor of the opponent of the motion. *Downen, supra*; *Price v. Mercury Supply Co.*, 682 S.W.2d 924 (Tenn. Ct. App. 1984). Both parties utilize depositions taken

in the US District Court Action and the Chancery action later discussed.

Given the equitable and liberal nature of the Tennessee Workers' Compensation law, the courts have generally disfavored summary judgment in such action, *Reese v. Burlington Industries, Inc.*, 1990 WL 5285 (Tenn. 1990)([t]his Court has repeatedly pointed out that summary judgment is peculiarly inappropriate for the disposition of workers' compensation cases); *Berry v. Consolidated Systems, Inc.*, 804 S.W.2d 445 (Tenn. 1991)([s]ummary judgment is almost never an option in a contested workers' compensation action); *Downen*, 811 S.W.2d at 524 (summary judgment motions should be entered with caution in workers' compensation cases); *Burns v. American Stairway, Inc.*, 199 WL 115563 (Tenn. 1992)(this Court has repeatedly stated that disposition on summary judgment is particularly disfavored in workers' compensation cases).

The premise of Defendant's Motion for Summary Judgment is that the Plaintiff was the "aggressor" in the episode with Mr. Tolivar. This theory is not determinative of the issue of whether the Plaintiff's claim is barred in accord of willful misconduct. In *Woods v. Harry B. Woods Plumbing Co.*, 967 S.W.2d 768 (Tenn. 1998), relied on heavily by the Appellant, Mr. Woods, along with his nephew and son, was performing plumbing work at a house under construction. Mr. Langley, a floor renovator, had placed a sign on the front door indicating that the entryway should not be used, and he placed tape across the doorway between the kitchen and the entryway. Mr. Woods and his son ducked under the tape and proceeded to walk across the entryway floor to gain access to the basement stairs. Mr. Langley then approached Mr. Woods' son with a knife and threatened to kill him. A heated exchange took place, and Mr. Woods, his nephew and his son left the house and walked toward their vehicles. Mr. Woods then walked toward Mr. Langley's van and "charged" Mr. Langley. Mr. Langley drew an automatic pistol and shot Mr. Woods several times.

The Court noted that the argument between Mr. Woods and Mr. Langley originated in an argument concerning work that Mr. Langley was performing at the same job site. The entire focus of the dispute was related to the employment setting, and the Court held that the accident arose out of employment as contemplated by the Tennessee Workers' Compensation Act.

The Court went further and held that the Workers' Compensation Act does not provide for an initial aggressor defense. The Court noted, specifically:

The primary purpose of our Workers' Compensation Act ("Act") is to afford workers compensation for job related injuries regardless of fault. *See generally* Tenn. Code Ann. § 50-6-103; *Partee v. Memphis Concrete Pipe Co.*, 155 Tenn. 441, 295 S.W. 68 (1927). The Act has further been interpreted as providing for a speedy trial so as to assure quick and efficient benefits to injured workers. *Stovall v. General Shoe Corp.*, 204 Tenn. 358, 321 S.W.2d 559 (1959). Moreover, the Act is based on a mutual renunciation of common law rights and defenses. Tenn. Code Ann. § 50-6-108; *see Liberty Mut. Ins. Co. v. Stevenson*, 212 Tenn. 178, 368 S.W.2d 760 (1963).

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An analysis requiring a determination of who threw the first punch, whether a sufficient cooling-off period had occurred between separate incidents and whether a worker reacted in excessive manner is contrary to the quick and efficient administration of disability benefits. See *Geeslin*, 294 S.W.2d at 153 (noting “difficulty in characterizing one of the participants as the initial aggressor and the other as the innocent victim when faced with an escalating dispute that culminates in physical violence”). Moreover, the Act is purely a creature of the general assembly, and any change in its structure must come from the general assembly and not from the courts. *Lindsey v. Hunt*, 215 Tenn. 406, 384 S.W.2d 441 (1964), rev’d on other grounds, *Betts v. Tom Wade Gin*, 810 S.W.2d 140 (Tenn. 1991). In the absence of an express statutory authorization, we hold the common law aggressor defense as it relates to workers compensation claims under the Act is abolished in Tennessee and does not bar the decedent’s recovery.

The issue of willful misconduct was not involved in *Woods*.

Assaults with an “inherent connection” to employment are compensable. *W. S. Dickey Mfg. Co. v. Moore*, 347 S.W.2d 493 (Tenn. 1961); *Whaley v. Patent Button Co.*, 202 S.W.2d 649 (1947); *Woods*, *supra*. Assaults as a result of a private dispute are not compensable. *Brimhall v. Home Ins. Co.*, 694 S.W.2d 931 (Tenn. 1985). If the dispute over the keys was an “inherent connection” to employment, the Appellant’s claim may be compensable; otherwise, it is not. This issue was not adjudicated by the Commission. We note that the claimant testified that she slapped Mr. Tolivar in a reflexive way when he was shouting obscenities “inches from her face.” These are issues not reachable by summary judgment. We also note that the Defendant’s description of the episode, “was a fight between two people,” is a stretch; the Appellant admits, as stated, that she slapped Mr. Tolivar reflexively, but denies that she slapped him a second time. She also says that Mr. Tolivar knocked her into a bench, and struck her again.

Tennessee Code Annotated § 9-8-307(d) provides that “the state will not be liable for willful, malicious or criminal acts by state employees . . . .” The Commission held that this statute was applicable to workers’ compensation cases. We disagree. The Workers’ Compensation Act provides for its exclusivity, Tenn. Code Ann. § 50-6-108(a), and a claim for workers’ compensation benefits is governed exclusively by the provisions of the Act.

The Appellee argues that the prior litigation filed by the Appellant against her employer, which involved a different party, and different issues, collaterally estops the Appellant in this action because certain findings were made. The record does not reflect these findings.

In sum, we hold that there are genuine issues of material fact as to whether there was “deliberate and intentional” wrong doing by the Appellant, *see, Glass v. Sullivan*, 94 S.W.2d 318 (Tenn. 1936), which precipitated the described episode.

Reversed and remanded for trial, with costs assessed to the Appellee.

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WILLIAM H. INMAN, SENIOR JUDGE

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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 appellee, State of Tennessee, for which execution may issue if necessary.