IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
MAY 1, 2006 Session

SHERILYN A. BIALECKE, *ET AL.* v. CHATTANOOGA PUBLISHING COMPANY, *ET AL.*

Direct Appeal from the Chancery Court for Hamilton County
No. 04-0886 W. Frank Brown, III, Chancellor

Filed August 18, 2006

No. E2005-2560-WC-R3-CV - Mailed May 26, 2006

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 findings of fact and conclusions of law. Kenneth Bialecke was killed in a car wreck while going to work early one morning. His widow and minor children sued his employer and its insurance carrier seeking workers' compensation death benefits. After hearing the proof presented at trial, the Chancellor dismissed the cause of action, finding that Mr. Bialecke's death did not arise out of and did not occur in the course of his employment, because the fatal accident occurred as the employee was on his way to his place of employment and, therefore, he had not yet begun his work day. After carefully reviewing the record and applicable authorities, we conclude that the Chancellor's judgment should be affirmed.

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

SHARON G. LEE, J., delivered the opinion of the court, in which E. RILEY ANDERSON, J., and ROGER E. THAYER, SP.J., joined.

George E. Koontz and Robert Jeffrey Wolford, Chattanooga, Tennessee, for Appellants, Sherilyn A. Bialecke, Lindsey E. Bialecke, Keagan A. Bialecke, and Aubrey McKenna Bialecke.

J. Bartlett Quinn and Charles D. Lawson, Chattanooga, Tennessee, for Appellees, Chattanooga Publishing Company and American Zurich Insurance Company.

MEMORANDUM OPINION

I. Background

At the time of his death, Kenneth Bialecke worked as the single copy sales manager for Chattanooga Publishing Company ("employer") in Chattanooga, Tennessee. A salaried employee, he supervised the selling of newspapers to stores and in newspaper racks. Because he was required to use his personal vehicle for business purposes from time to time, Mr. Bialecke received an automobile allowance, but he was not compensated for his travel to and from work.

In order to facilitate the sale of single copies, the employer utilized approximately 35 independent contractors to distribute newspapers to outlets located along certain routes. If an independent contractor assigned to a particular route quit, the route became known as an "open route." When Mr. Bialecke was unable to find someone to cover an "open route," it was his responsibility as manager to do it himself. In such instances, Mr. Bialecke reported to the employer's office by 4 a.m. to pick up the required number of newspapers for delivery. While working the route, he removed the money and old papers from the racks and, subsequently, returned the coins to the employer's office to be counted and credited against the employer's bill for the week.

For approximately ten days prior to the date of the accident, Mr. Bialecke personally covered a reorganized route in the Lookout Valley area and Marion County. While this route did not contain many stops, it was long. During this period, Mr. Bialecke worked at least 14 hours per day, with no days off. He also completed work at home and received many work-related calls at night that interrupted his sleep.

On the morning of June 18, 2004, at approximately 3:30 a.m., Mr. Bialecke, in his personal vehicle, left his residence in order to pick up the newspapers for the route at the employer's loading dock. He traveled one of the three routes he could take from his home to the employer's business location. Tragically, approximately five to ten minutes after he left home, Mr. Bialecke was involved in a fatal one-car motor vehicle accident. The investigating police officer testified the physical facts at the scene of the accident indicated to him that Mr. Bialecke had fallen asleep at the wheel.

Mr. Bialecke's widow and minor children filed this action against the employer and its insurance carrier, American Zurich Insurance Company, seeking workers' compensation benefits. After a bench trial, the trial court dismissed the cause, concluding that Mr. Bialecke's death occurred while he was traveling to work and, under controlling Tennessee law, his death was not compensable. Mr. Bialecke's family then filed this appeal. The issue before us is whether Mr. Bialecke's death, which occurred while he was on his way to work, is compensable under the Tennessee Workers' Compensation Act.

II. Standard of Review

In a workers' compensation action, it must be established by a preponderance of the evidence that the injury is an "injury by accident arising out of and in the course of employment which causes either disablement or death." Tenn. Code Ann. § 50-6-102 (12). This issue is a factual determination rather than a legal one. *McCammon v. Neubert*, 651 S.W.2d 702, 704 (Tenn. 1983). Our standard of review of factual issues in a workers' compensation case is *de novo* upon the record, accompanied by a presumption of correctness of the trial court's factual findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *see also Rhodes v. Capital City Ins. Co.*, 154 S.W.3d 43, 46 (Tenn. 2004); *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 825-26 (Tenn. 2003). Our standard of review of questions of law is *de novo* without a presumption of correctness. *Id.*

III. Analysis

For the plaintiffs to prevail, the death of Mr. Bialecke must have arisen out of and have been in the course of his employment. Tenn. Code Ann. § 50-6-102(12); *Cunningham v. Shelton Sec. Serv., Inc.*, 46 S.W.3d 131, 135 (Tenn. 2001). The phrases "arising out of" and "in the course of" are not synonymous; rather, they embody distinct concepts which are primarily basic to liability under the Tennessee Workers' Compensation Act ("Act"), Tenn. Code Ann. § 50-6-103; *Blankenship v. American Ordnance Systems, LLS*, 164 S.W.3d 350, 354 (Tenn. 2005). The "arising out of" employment refers to the cause or origin of the injury, while "in the course of" employment refers to the time, place and circumstances. *McCurry v. Container Corp. of America*, 982 S.W.2d 841, 843 (Tenn. 1998); *Hill v. Eagle Bend Mfg.*, Inc., 942 S.W.2d 483, 487 (Tenn. 1997); *McAdams v. Canale*, 200 Tenn. 655, 661, 294 S.W.2d 696, 699 (1956).

An accident occurs in the course of employment if "it takes place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaging in doing something incidental thereto." *Blankenship*, 164 S.W.3d at 354 (citation omitted). The employee must be performing a duty he was employed to do. *Fink v. Caudle*, 856 S.W.2d 952, 958 (Tenn. Workers' Comp. Panel 1993). The mere presence of the employee at the place of injury because of employment will not alone result in the injury being considered as arising out of the employment. *Scott v. Shinn*, 171 Tenn. 478, 483, 105 S.W.2d 103 (Tenn. 1937). To be compensable, the injury or death of an employee must arise out of a risk peculiar to the employment, or from some particular danger to which the work exposed him. *Blankenship*, 164 S.W.3d at 354. Injury or death of an employee from an exposure which is no more or different than that of any other member of the public similarly situated in place and time is not compensable. *See Thornton v. RCA Service Co.*, 188 Tenn. 644, 221 S.W.2d 954 (1949). "[A]n injury purely coincidental, or contemporaneous, or collateral, with the employment ... will not cause the injury ... to be considered as arising out of the employment." *Jackson v. Clark & Fay, Inc.*, 197 Tenn. 135, 270 S.W.2d 389, 390 (1954). The term "employment" is construed liberally and "extends to all activities that the employment expressly or impliedly entitles the worker to do." *Tallent v. M.C. Lyle & Son*, 216 S.W.2d 7, 9 (Tenn. 1948). Any reasonable doubt as to whether or not an injury arose out of employment is to be resolved in favor of the employee. *White v. Werthan Indus.*, 824 S.W.2d 158, 159 (Tenn. 1992); *Hall v. Auburntown Indus., Inc.*, 684 S.W.2d 614, 617 (Tenn. 1985).

The general rule in Tennessee is that an injury sustained by an employee driving to or from work is not compensable under the state's workers' compensation laws ("going and coming rule"). *Phillips v. A & H Const. Co., Inc.*, 134 S.W.3d 145 (Tenn. 2004); *Howard v. Cornerstone Med. Assoc., P.C.*, 54 S.W.3d 238, 240 (Tenn. 2001); *Webster v. Teledyne Lewisburg & Argonaut Ins. Co.*, 674 S.W.2d 725, 728 (Tenn. 1984); *Sharp v. Northwestern Nat'l Ins. Co.*, 654 S.W.2d 391, 392 (Tenn. 1983); *Smith v. Royal Globe Ins. Co., Inc.*, 551 S.W.2d 679, 681 (Tenn. 1977); *Douglas v. Lewis Bros. Bakeries*, 477 S.W.2d 202, 203 (Tenn. 1972). Injuries incurred while commuting are simply not deemed to have occurred within the course of employment, *id.*, an explicit requirement for compensability under Tennessee's Act. *See* Tenn. Code Ann. § 50-6-102(13); *Smith v. Camel Mfg. Co.*, 192 Tenn. 670, 241 S.W.2d 771 (1951); LARSON, WORKERS' COMPENSATION LAW § 15.11. As noted in *Sharp*, 654 S.W.2d at 392, driving to work is one of the things "a worker must do in preparation for the work day, such as dressing; ... While this travel is some modicum of benefit to the employer, travel to and from work is primarily for the benefit of the employee: if he doesn't present himself at the work place, he is not compensated for his labors."

Tennessee has recognized certain exceptions to the "going and coming" rule. These exceptions include the following: (1) the "special errand rule," where the employee is directed to perform some task, special act, or mission off the business premises at the direction of the employer; (2) the "company vehicle rule," where the company provides the employee with a vehicle to drive to and from work; and (3) the "traveling employee rule," where an integral part of an employee's job requires traveling. *See e.g., Hubble v. Dyer Nursing Home*, No. W2005-00503-SC-R3-CV, 2006 WL 940295 (Tenn. Apr. 12, 2006) (applying special errand exception); *Stephens by Stephens v. Maxima Corp.*, 774 S.W.2d 931, 934 (Tenn. 1989) (stating that an employee may be compensated for an off-premises injury "while performing some special act, assignment or mission at the direction of the employer); *Eslinger v. F & B Frontier Const. Co.*, 618 S.W.2d 742, 744 (Tenn. 1981) (applying an exception to the general rule where injuries were sustained by employees traveling in a company car while going to or coming from work) ("It is well settled law in this State that where transportation is furnished by an employer as an incident of the employment, an injury suffered by the employee while going to or returning from his work in the vehicle furnished arises out of and is within the course of the employment"); *Pool v. Metric Constructors, Inc.*, 681 S.W.2d 543, 544 (Tenn. 1984) (applying the traveling employee exception).

Mr. Bialecke's family contends that his death was compensable and we will address each of their arguments in turn.

A. Dual Purpose Doctrine

Plaintiffs claim that because Mr. Bialecke had money belonging to the employer and work-related items with him at the time of his accident, his injuries are compensable. In response, defendants assert that Mr. Bialecke was not required to turn in the money in his possession on the morning of his accident. Thus, they argue that Mr. Bialecke's transporting of the money and work-related items was only "incidental" to his trip to work - a trip he would not have taken in the absence of his personal motive to drive to work. Defendants contend that Mr. Bialecke was not in the process of "delivering materials" to the workplace when he was killed; rather, he was merely

bringing certain items with him on his way to work. Accordingly, defendants contend that the "dual purpose doctrine," applicable when an injury occurs "during a trip which serves both a business and a personal purpose," LARSON'S WORKERS' COMPENSATION LAW, § 16.02, does not apply under the facts of this case.

In *Armstrong v. Liles Construction Co., Inc.*, 389 S.W.2d 261 (Tenn. 1965), the deceased was killed in an automobile accident while on his way to work. He had often used his own car in his work, and it had been his custom to pick up various pieces of small equipment needed on the job on his way home from the job site. On the day of his death, he had several small items in his car which he had purchased the previous evening and which he was taking to work with him. The Tennessee Supreme Court held that the employee was not entitled to compensation in such a case when an accident occurs "while the employee is on business which is primarily his own, that is, a trip that he, personally, would make independent of the need for assistance to his employer." *Id.* at 263. The Court noted that "it is insufficient if the employer's business is merely incidental to what the employee was doing for his own benefit, and an injury suffered by an employee on such a trip does not arise out of, or in the course of, employment." *Id.* Additionally, the Court stated that "[t]he Tennessee Compensation Laws were intended solely to compensate a worker for injuries arising out of employment and in the course of the employment. It would be broadening the laws too much to allow a worker to gain compensation simply because on his way home he picks up some small article for his employer's use." *Id.* Our Supreme Court found that the trip in question was "primarily for the benefit of the deceased and only of incidental benefit to his employer," and, therefore, held that the injuries sustained by the deceased on his way to work were not compensable. *Id.* at 265-266.

In *Transportation Ins. Co. v. Rees*, No. 01501-9606-CV-00123, 1997 WL 203591 (Tenn. Apr. 25, 1997), the Tennessee Supreme Court refused to find an exception to the general rule of noncompensability when the employee claimed that he had been attempting to place a work-related call on his cell phone at the time of his accident while driving to work. The Court held that even if the employer provided the phone to the employee, his use of it on the commute would not make the injury compensable because it neither arose out of nor occurred within the course and scope of his employment. The Court specifically noted that if it adopted the employee's position, "then most any injury, wherever it occurred - at home, at work, or at play - would be compensable under workers' compensation - that is, so long as the worker was carrying a portable telephone." *Id.* In the same case, the employee also claimed that he was really already at work when the accident occurred because his truck was an "extended office." In response, the Court indicated that if it adopted the "extended office" theory, "[a]ny employee carrying business papers in his vehicle would be covered by workers' compensation." *Id.*

In our view, the fact that Mr. Bialecke possessed work-related items in his vehicle at the time of the accident did not change the circumstances of the trip to work itself. At the time of his death, Mr. Bialecke was on a route selected by himself, traveling by his own transportation, at a time selected by him, and would have made the trip regardless of whether he had such work-related items in his possession. Therefore, the "delivery" of the work-related items was "incidental" to a trip that would have been taken in any event. The carrying of the items did not necessarily place Mr. Bialecke at the scene of the accident, and his death did not follow as a result of exposure occasioned

by the nature, conditions or surroundings of his employment. At the time and place, and under the circumstances there prevailing, the hazards to which Mr. Bialecke was exposed were those similarly encountered by the public generally. Thus, plaintiffs' claim under the dual purpose doctrine is without merit.

B. Street Risk Doctrine

Plaintiffs argue that the "street risk doctrine," which allows in certain circumstances that an employee may show entitlement to workers' compensation benefits when his "employment exposes [him] to the hazards of the street ...," applies to the facts of this case. *Braden v. Sears, Roebuck &* Co., 833 S.W.2d 496, 498 (Tenn. 1992) (citation omitted). In the instant case, however, there was no incident such as a physical assault motivated by an obvious link between Mr. Bialecke and his employer, the type of injury to which the "street risk doctrine" is to be applied. *Id.* at 498-99. Accordingly, we find that plaintiffs' reliance on this doctrine is misplaced.

C. The "Tiredness" Theory

Plaintiffs further assert that Mr. Bialecke's death resulted from his work schedule and numerous job responsibilities. Mrs. Bialecke testified that her husband had fallen asleep on the floor during the evening before his accident. Other witnesses testified that Mr. Bialecke had fallen asleep at some of the employer's staff meetings. He often worked more than 12 hours per day and even worked some at home after he put in a full day. Steve Jones, a traffic investigator with the Chattanooga Police Department, testified that he had observed no skid or yaw marks at the accident scene, revealing to him that Mr. Bialecke had not tried to try to slow, stop or swerve the car before it left the roadway and impacted a tree. According to Officer Jones, such "facts" usually mean the driver had fallen asleep at the wheel and had no control of the car before the collision occurred.

Defendants presented proof that Mrs. Bialecke had given birth to her third child in May 2004 and that the child had not been sleeping the entire night. Additionally, Mrs. Bialecke testified that at the time of Mr. Bialecke's death, she and the baby had not been sharing a room with her husband in an attempt to not disturb him.

Where an accident is unexplained, the conclusion will ordinarily be that a plaintiff has failed to carry the burden of proving that the accident arose out of the employment. *See Central Sur. & Ins. Corp. v. Court*, 162 Tenn. 477, 36 S.W.2d 907 (1931). In *Phillips*, 134 S.W.3d at 153, the Tennessee Supreme Court ruled that an accident which is caused or exacerbated by an employment hazard is compensable, but the claimant must prove the causal connection between the employment hazard and the injury. *Id.; Kreis, Inc. v. Arons*, No. 03501-9701-CH-00005, 1997 WL 600071, *3-*4 (Tenn. Sept. 30, 1997). By "causal connection" is not meant proximate cause as used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing his work. *See Tapp v. Tapp*, 192 Tenn. 1, 236 S.W.2d 977, 979 (1951). An accidental injury arises out of employment when there is apparent to

the rational mind, upon consideration of all of the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. *GAF Bld. Materials v. George*, 47 S.W.3d 430, 432 (Tenn. Workers' Comp. Panel 2001); *Fink*, 856 S.W.2d at 958.

While lay testimony as to the amount of sleep an employee had may properly be considered, *Payne v. PML, Inc.*, No. W2004-01064-SC-WCM-CV, 2005 WL 2662544, * 5 (Tenn. Workers' Comp. Panel, Oct. 19, 2005), plaintiffs were required to establish by expert medical proof the causal relationship between Mr. Bialecke's employment duties and the motor vehicle accident. *Talley v. Virginia Ins. Reciprocal*, 775 S.W.2d 587, 591 (Tenn. 1989); *Tindall v. Waring Park Ass'n*, 725 S.W.2d 935 (Tenn. 1987). *See also, Reeser v. Yellow Freight System, Inc.*, 938 S.W.2d 690 (Tenn. 1997). The contention by the plaintiffs requires evidence linking the demands of the job with the resulting injury. *See Clark v. Nashville Machine Elevator Co., Inc.*, 129 S.W.3d 42 (Tenn. 2004). "[C]ompensation will not be awarded where the cause of death is a matter of speculation or conjecture." *See King v. Jones Truck Lines*, 814 S.W.2d 23, 27 (Tenn. 1991). We cannot find that the plaintiffs have established a sufficient causal relationship between Mr. Bialecke's work activities and his death. Further, the Supreme Court has refused to recognize such an exception to the general rule of noncompensability in a comparable case in which an exhausted worker was injured driving home after working long hours. *See Victory v. Cooper Co.*, No. 01-5-019008CU00068, 1991 WL 97306 (Tenn., June 10, 1991). Therefore, we hold that the plaintiffs cannot prevail on this issue.

D. Employee's Own Conveyance Rule

Plaintiffs assert Mr. Bialecke's death was compensable because he was transporting his vehicle to utilize for the benefit of his employer. According to the plaintiffs, the moment Mr. Bialecke left his driveway, he commenced work and work-required duties because he had to transport his vehicle to his employer's premises in order to deliver newspapers. *See* LARSON, WORKERS' COMPENSATION LAW, § 15.05. Plaintiffs rely on cases from other jurisdictions. *See e.g., Smith v. Workmen's Compensation Appeals Board,* 69 Cal.2d 814, 447 P.2d 365, 73 Cal. Rptr. 253 (1969); *Whaley v. Workmen's Compensation Appeals Board*, 267 Cal. App.2d 754, 73 Cal.Rptr. 348 (1968); *Gilbert v. Star Tribune/Cowles Media*, 480 N.W.2d 114 (Minn. 1992); *Alitalia Linee Aeree Italiane v. Tornillo*, 91 Md.App. 191, 603 A.2d 1335 (1992); *Begley v. International Terminal Operating Co.*, 114 N.J. Super. 537, 227 A.2d 422 (1971). While the cases cited by plaintiffs perhaps indicate a national trend toward increasingly liberal construction of workers' compensation cases, such a position finds no support at this time in Tennessee jurisprudence.

The evidence before this court reveals that while Mr. Bialecke chose to personally run this "down" or "open" route, within his discretion, he was authorized to secure someone else to perform this task. There is no proof in the record before us that he had attempted to locate a carrier to perform this duty instead of covering it himself. Accordingly, under the unique facts of this case, we cannot find that Mr. Bialecke was "required" by his employer to bring his vehicle to work for the employer's use. *See Gilbert*, 480 N.W.2d at 115. Additionally, the testimony at trial revealed that Mr. Bialecke had chosen the flat rate "automobile allowance" over receiving reimbursement for "business miles." In *Groton v. The Travelers Ins. Co.*, No. 01S01-9607-CH-00154, 1997 WL

255400 (Tenn., May 16, 1997), an employee who used his own vehicle in his work was paid mileage for driving from the office to job sites and back, but was not paid for his commute to and from work. He suffered fatal injuries from a car crash that occurred while he was traveling to his office. The Court found that none of the recognized exceptions applied because the employee "was simply going to work when he was injured." *Id.* Likewise, in this case, we find that Mr. Bialecke's "business miles" would have begun when his vehicle left the loading dock with the newspapers, not when it left the driveway of his residence. *See Phillips v. A & H Const. Co., Inc.*, 134 S.W.3d 145 (Tenn. 2004); *Howard v. Cornerstone Med. Assoc., P.C.*, 54 S.W.3d 238, 240 (Tenn. 2001); *Sharp v. Northwestern Nat'l Ins. Co.*, 654 S.W.2d 391, 392 (Tenn. 1983); *Cotham v. Perry Co.*, No. M2002-01723-WC-R3-CV, 2003 WL 1798116 (Tenn. Workers' Comp. Panel, Apr. 7, 2003) (off duty officer, still armed and in uniform, involved in fatal accident in personal vehicle on commute home; widow was not entitled to receive compensation under theory that he was always on call and there was no evidence that officer was responding to a call when the accident occurred).

E. Totality of the Circumstances

Relying on *Pool*, 681 S.W.2d at 544, plaintiffs assert that there is an exception to the general rule of noncompensability when an employee was expressly compensated for his travel to remote job sites and carried his own tools. The Supreme Court has allowed coverage where the journey itself "is a substantial part of the services for which the workman was employed and compensated." *Id.* The reason for this exception is that "the employment imposes the duty upon the employee to go from place to place at the will of the employer in the performance of duty and the risks of travel are directly incident to the employment itself." *Smith*, 551 S.W.2d at 681. However, Mr. Bialecke was not compensated for his travel to and from work and was not required to use his own tools. Thus, under the facts of this case, Mr. Bialecke's travel to work could not be considered "a substantial part of the services for which [he] was employed and compensated." *See Pool*, 681 S.W.2d at 544.

III. Conclusion

After careful review, we agree with the findings of the trial court that Mr. Bialecke's death was not a compensable accident. The employee was not on a special errand, performing some task that was not part of his normal job duties. He was not driving an automobile owned by his employer. Mr. Bialecke's traveling to and from the job was not "a substantial part of the services" for which he was employed and compensated. His employer controlled neither the manner nor the means which Mr. Bialecke used in reporting for work. Mr. Bialecke was not a "traveling employee" who traveled extensively to further the employer's business. The employee was not injured while working away from the job site, as he never made it to his employer's office in order to pick up the required newspapers. Mr. Bialecke's travel that fateful morning was not primarily intended to deliver coins or unsold newspapers or his vehicle to his employer. Accordingly, none of the exceptions to the "going and coming" rule apply in this case.

Mr. Bialecke died as a result of injuries received in a motor vehicle accident on his way to work. We are mindful of the terrible loss suffered by Mr. Bialecke's family. Although Mr.

Bialecke's death was tragic and regretful, the Tennessee Workers' Compensation Act does not impose liability on an employer for injuries sustained by an employee while traveling to or from work except under very limited circumstances. We do not find that any of the exceptions to the general rule apply in this case. We therefore affirm the judgment of the trial court. Costs of the appeal are taxed to the plaintiffs.

SHARON G. LEE, JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

SHERILYN A. BIALECKE, ET AL. v. CHATTANOOGA PUBLISHING COMPANY

Chancery Court for Hamilton County
No. 04-0886

Filed August 18, 2006

No. E2005-02560-SC-WCM-CV

ORDER

This case is before the Court upon the motion for review filed by Sherilyn A. Bialecke pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), 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.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Sherilyn A. Bialecke, et al., for which execution may issue if necessary.

PER CURIAM

E. Riley Anderson, J. - Not Participating

VIA E-MAIL ONLY

TO: ANNE BRUSH, DEPUTY CLERK, KNOXVILLE

FROM: WILLIAM M. BARKER, JUSTICE

RE: SHERILYN A. BIALECKE, ET AL. V. CHATTANOOGA PUBLISHING COMPANY - HAMILTON CHANCERY NO. E2005-02560-SC-WCM-CV

MOTION FOR REVIEW: DENIED