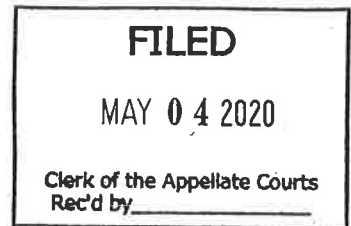


IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT KNOXVILLE

February 24, 2020 Session

**CHARLES R. GOODWIN v. MORRISTOWN DRIVER'S SERVICES, INC.  
ET AL.**

**Appeal from the Workers' Compensation Appeals Board  
Court of Workers' Compensation Claims  
No. 2017-03-1235 Lisa A. Lowe, Judge**



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**No. E2019-01517-SC-R3-WC – Mailed March 27, 2020**

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A Georgia resident, employed by a Tennessee company, filed a workers' compensation claim in Georgia for an injury he sustained in Tennessee. Later, the employee also filed a workers' compensation claim in Tennessee for the same injury. The Georgia State Board of Workers' Compensation dismissed the Georgia claim for lack of subject matter jurisdiction. The Tennessee Court of Workers' Compensation Claims held that the employee's claim was not barred based on the election of remedies doctrine. In a split decision, the Workers' Compensation Appeals Board reversed, holding that the employee's claim was barred because he had first pursued a claim for benefits in Georgia. We reverse and hold that the employee's Tennessee claim is not barred because his Georgia claim had been dismissed for lack of subject matter jurisdiction, and thus the employee had no remedy to elect.

**Tenn. Code Ann. § 50-6-217(a)(2)(B) (2019 Supp.) Appeal as of Right;  
Decision of the Workers' Compensation Appeals Board Reversed;  
Case Remanded to the Court of Workers' Compensation Claims**

SHARON G. LEE, J., delivered the opinion of the court, in which ROBERT E. LEE DAVIES, SR.J., and KRISTI M. DAVIS, SP.J., joined.

John A. Willis, Clinton, Tennessee, for the appellant, Charles R. Goodwin.

Daniel I. Hall and Brian J. Rife, Bristol, Tennessee, for the appellees, Morristown Driver's Services, Inc., and Cherokee Insurance Company.

## OPINION

### I.

On November 3, 2016, Charles R. Goodwin, a Georgia resident, was injured in a motor vehicle accident while driving a truck in Tennessee for Morristown Driver's Services, Inc., a Tennessee corporation. Mr. Goodwin reported his injury to Morristown Driver's Services, which filed a Tennessee First Report of Injury and paid for Mr. Goodwin's emergency medical treatment in Tennessee. Morristown Driver's Services paid no additional benefits.

In January 2017, Mr. Goodwin filed a claim seeking benefits with the Georgia State Board of Workers' Compensation ("the Georgia Board"). Morristown Driver's Services and its insurer, Cherokee Insurance Company ("the Defendants"), argued that the Georgia Board did not have subject matter jurisdiction to hear the claim. In October 2017, while continuing to pursue his claim in Georgia, Mr. Goodwin filed a claim for workers' compensation benefits in Tennessee.

In January 2018, after the parties had engaged in discovery, the Georgia Board held a hearing and without addressing the merits, dismissed Mr. Goodwin's claim for lack of subject matter jurisdiction. The Georgia Board ruled that although Mr. Goodwin may have received a conditional offer of employment by telephone while he was in Georgia, the parties did not consummate the employment contract until Mr. Goodwin traveled to Tennessee, completed the necessary paperwork, and passed the road test.

About six months after the Georgia Board dismissed his claim, Mr. Goodwin filed an amended claim for workers' compensation benefits in Tennessee. The Defendants moved for summary judgment, asserting that the affirmative acts taken by Mr. Goodwin to obtain workers' compensation benefits in Georgia barred him from receiving benefits in Tennessee under the election of remedies doctrine. Mr. Goodwin responded that the election of remedies doctrine did not apply because the Georgia Board lacked subject matter jurisdiction to decide the claim.

The Tennessee Court of Workers' Compensation Claims ("the trial court") denied the Defendants' motion for summary judgment, finding that no court had addressed the merits of Mr. Goodwin's claim. The trial court also determined that there had been neither vexatious litigation nor any indication that Mr. Goodwin had engaged in forum-shopping. The trial court found it disingenuous that the Defendants had successfully argued before the Georgia Board that Georgia lacked subject matter jurisdiction, and then argued in the trial court that Mr. Goodwin was barred from recovery in Tennessee. The trial court concluded that Mr. Goodwin was not trying to unfairly manipulate the Tennessee legal system and, instead, merely sought a hearing and determination on the merits of his case.

In a split decision, the Workers' Compensation Appeals Board reversed the trial court's denial of the Defendants' motion for summary judgment. The lead opinion emphasized that Mr. Goodwin's efforts to obtain benefits in Georgia were not limited to merely filing a Georgia claim. Rather, Mr. Goodwin and his counsel engaged in extensive discovery efforts and participated in the Georgia hearing where Mr. Goodwin offered testimony and documentary evidence in support of the merits of his claim. Mr. Goodwin proceeded with the claim knowing that the Defendants contested whether Georgia had jurisdiction over the claim. The lead opinion concluded that, because Mr. Goodwin knowingly elected to pursue workers' compensation benefits in Georgia, his failure to establish jurisdiction under the Georgia workers' compensation law did not prevent the application of the election of remedies doctrine in Tennessee. A separate concurring opinion offered multiple reasons why the trial court should have granted the Defendants' motion for summary judgment, including that Mr. Goodwin knowingly and with the advice of counsel had taken affirmative steps, including extensive discovery and a trial, to pursue his rights in another jurisdiction, and that this case was more analogous to *Eadie v. Complete Co.*, 142 S.W.3d 288 (Tenn. 2004), than to *Gray v. Holloway Construction Co.*, 834 S.W.2d 277 (Tenn. 1992). The dissent viewed the majority's opinion as hinging on an unduly strict and unnecessarily harsh interpretation of Tennessee's election of remedies doctrine that left Mr. Goodwin without a remedy. Because Georgia did not have subject matter jurisdiction, the dissent concluded that these facts more closely align with *Gray*.

The appeal has been referred to the Special Workers' Compensation Appeals Panel for a hearing and a report of findings of fact and conclusions of law under Tennessee Supreme Court Rule 51.

## II.

We review a trial court's ruling on a motion for summary judgment de novo without a presumption of correctness. *TWB Architects, Inc. v. The Braxton, LLC*, 578 S.W.3d 879, 887 (Tenn. 2019) (citing *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015), *cert. denied*, 136 S. Ct. 2452 (2016)). This review requires "a fresh determination about whether the requirements of Rule 56 [of the Rules of Civil Procedure] have been met." *Id.* (citing *Rye*, 477 S.W.3d at 250). Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. A party who moves for summary judgment, but who does not bear the burden of proof at trial, may satisfy its burden of production under Rule 56 either by "affirmatively negating an essential element of the nonmoving party's claim" or by showing "that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense." *Rye*, 477 S.W.3d at 264.

The legal issue presented is whether the election of remedies doctrine applies to a Tennessee workers' compensation claim when the employee had actively pursued benefits in another state that lacked subject matter jurisdiction to decide the claim.

Under the election of remedies doctrine, an employee who knowingly and voluntarily accepts workers' compensation benefits under the law of another state, "or who actively pursues a claim *in a venue that has jurisdiction*, is barred from filing a subsequent claim in Tennessee." *Gray*, 834 S.W.2d at 279 (emphasis added). A claim may be barred by the doctrine of election of remedies even when the employee receives no benefits. *Bradshaw v. Old Republic Ins. Co.*, 922 S.W.2d 503, 507 (Tenn. 1996). For the doctrine to apply, there must be one or more available remedies for the party to choose. *Barger v. Webb*, 391 S.W.2d 664, 666 (Tenn. 1965); *see also Hansen v. Pere Marquette Ry. Co.*, 255 N.W. 192, 193 (Mich. 1934) (citation omitted). The doctrine aims to prevent vexatious litigation, forum-shopping, and double recoveries. *Gray*, 834 S.W.2d at 282; *see also Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 906 (Tenn. 1999) (citations omitted).

Relying on *Gray*, Mr. Goodwin argues that his claim is not barred by the election of remedies doctrine. In *Gray*, an employee was injured in Texas while working for a Texas employer. 834 S.W.2d at 277. The employee filed a claim with the Texas Industrial Accident Board against his employer's Texas workers' compensation insurance carrier. *Id.* After the employee recovered from his first injury, he suffered a second injury while working for the employer in Tennessee. *Id.* at 277–78. The employee notified his employer of the Tennessee injury, and the employer's Texas insurance carrier paid benefits for several months for the Tennessee injury. *Id.* at 278. After the employee filed a claim with the Texas Board for the injury that occurred in Tennessee, the Texas insurance carrier stopped paying benefits because the Tennessee injury was outside the insurance policy's geographical coverage. *Id.* In Tennessee, the employee sued his employer and its Tennessee workers' compensation insurance carrier and requested that the Texas Board take no further action on the claim for his second injury. *Id.* The Tennessee trial court awarded benefits to the employee. *Id.* On appeal, the employer argued that the suit was barred by the election of remedies doctrine because the employee had elected to pursue benefits in Texas. *Id.* The Tennessee Supreme Court held that no election had occurred because the employee's claim filed in Texas, though still pending at the time for the injury that had occurred in Tennessee, was without legal basis. *Id.* at 281. Explaining that the doctrine is not meant to act as a trap or penalty for an employee's mistake, the Court stated: "If a litigant, without adequate knowledge of the facts affecting his rights, mistakenly select[s] a remedy to his disadvantage he may upon timely discovery abandon it and pursue another." *Id.* at 282 (alteration in original) (quoting *Sackett v. Farmers' State Bank*, 228 N.W. 51, 54 (Iowa 1929)).

The Defendants argue that Mr. Goodwin failed to abandon his Georgia claim before a hearing on the merits and that this case is distinguishable from *Gray* and more analogous to *Bradshaw* and *Eadie*. In *Bradshaw*, the employee filed his claim for workers'

compensation benefits in Tennessee after a Maryland court had denied his claim on the merits. 922 S.W.2d at 503–04. The Tennessee Supreme Court held that the election of remedies doctrine barred the employee’s Tennessee claim because the Maryland court had denied the employee’s claim on the merits. *Id.* at 507–08. The employee’s “affirmative action to obtain benefits in Maryland constituted a binding election that precludes him from claiming benefits under Tennessee law.” *Id.* at 508. In *Eadie*, the employee filed claims for workers’ compensation benefits in Georgia, North Carolina, South Carolina, and Tennessee. 142 S.W.3d at 290. The Tennessee Supreme Court held that “the filing of a claim in South Carolina, the request for a hearing there, and the taking of depositions in that matter constitute affirmative acts to obtain benefits in another state sufficient to constitute a binding election of remedies that bars the employee’s Tennessee claim.” *Id.* at 291–92.

The election of remedies doctrine appears to be straightforward, but confusion has arisen over its application. This is partly because in stating the rule for when the election of remedies doctrine applies, *Bradshaw* and *Eadie* omitted the “venue with jurisdiction” element set forth in *Gray*. See *Eadie*, 142 S.W.3d at 291 (quoting *Bradshaw*, 922 S.W.2d at 507). The lack of subject matter jurisdiction of any other venue was not an issue in *Bradshaw* and *Eadie*. In *Bradshaw*, the Maryland court had jurisdiction over the employee’s claim and denied the claim on the merits. 922 S.W.2d at 504. In *Eadie*, whether South Carolina had jurisdiction over the employee’s claim was not at issue, and the Tennessee Supreme Court noted that no state had denied the claim.<sup>1</sup> See 142 S.W.3d at 291. Thus, the omission of the “venue with jurisdiction” element in *Bradshaw* and *Eadie* was not a modification of the doctrine as stated in *Gray*.

In sum, an injured employee cannot elect a remedy that is unavailable. See *Barger*, 391 S.W.2d at 666. The dismissal of Mr. Goodwin’s claim in Georgia for lack of subject matter jurisdiction established that, without regard to the merits of the claim, there was no remedy available to him in that state. Mr. Goodwin’s Tennessee claim is not barred by the election of remedies doctrine because the Georgia Board had no jurisdiction to hear the claim, and thus there was no remedy to elect in Georgia. For this reason, the Defendants were not entitled to summary judgment.


### III.

The election of remedies doctrine does not apply under the facts and circumstances of this case. Although Mr. Goodwin actively pursued a workers’ compensation claim in another state, the other state lacked subject matter jurisdiction over the claim. Mr. Goodwin

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<sup>1</sup> Citing to *Eadie v. Krause*, 671 S.E.2d 389 (S.C. Ct. App. 2008), a related legal malpractice case, the Defendants argue that South Carolina lacked jurisdiction over the claim. But the Tennessee Supreme Court opinion in *Eadie* predates the South Carolina Court of Appeals opinion by more than four years. Certain facts from that malpractice case, including that South Carolina lacked jurisdiction over the workers’ compensation claim, are not discussed in the Tennessee case and, presumably, were not a part of the record.

did not have a remedy to elect in Georgia. We reverse the Workers' Compensation Appeals Board's decision granting the Defendants' motion for summary judgment and remand the case to the Court of Workers' Compensation Claims for further proceedings. Costs of this appeal are taxed to Morristown Driver's Services, Inc., and Cherokee Insurance Company, for which execution may issue if necessary.

  
SHARON G. LEE, JUSTICE

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

**MAY 04 2020**

Clerk of the Appellate Courts  
Rec'd by \_\_\_\_\_

**JUDGMENT ORDER**

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 are assessed to Morristown Driver's Services, Inc. and Cherokee Insurance Company, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM