

MICHAEL F. BELL,  
PLAINTIFF,

VS.

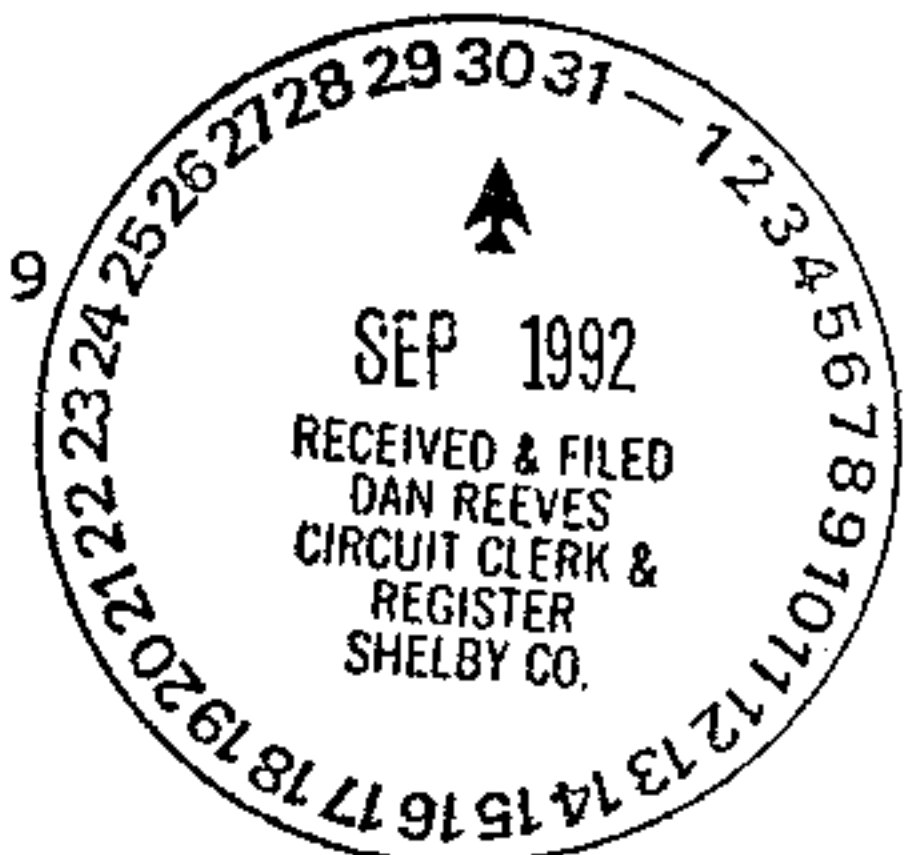
JERRY GRAY d/b/a GRAY'S  
PAINTING AND DECORATING,

DEFENDANT.

IN THE CIRCUIT COURT FOR

SHELBY COUNTY, ALABAMA

CV-91-569



JUDGMENT

This case was submitted for final judgment upon the plaintiff's Petition For Compensation, the defendant's Answer, testimony of witnesses heard ore tenus and documents received into evidence, stipulations of the parties made in open Court and dictated into the record, deposition testimony of Dr. Brice Harold Brackin received into evidence, and arguments of counsel for the parties which have been presented, and the Court, having considered the same, **FINDS, ORDERS, ADJUDGES, and DECREES** as follows:

FINDINGS OF FACT

1. The defendant contends that the parties were not subject to the Workmen's Compensation statutes of the State of Alabama in this case because, the defendant contends, he, as the employer, regularly employed less than three (3) employees in his business at the time of the plaintiff's alleged accident and injury. However, the Court **FINDS** from the testimony and from the defendant's records of payments to employees that the defendant did regularly employ three (3) or more employees at such time, and that the plaintiff, as employee, and the defendant, as employer, were subject to the Workmen's Compensation statutes at all times pertinent to this proceeding and that this Court has jurisdiction over the parties in the matters of law and fact in this case.

2. The plaintiff suffered an on-the-job injury to his right knee which was caused by an accident on Monday, July 8, 1991, when he picked up a five gallon bucket containing paint while he was engaged in the business of the defendant within the line and scope of his employment, and the defendant received timely and proper notice of said accident and injury.

At the time of said accident and injury, the plaintiff was painting trim work on a house in Bessemer, Alabama, and as he started to get up from a squatting position while he was painting

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*Eason Mitchell*

baseboard, he lifted the paint bucket and felt a burning sensation in his right knee; he attempted to continue working, but could not, because of the severe burning pain. He saw a doctor at the emergency room at Shelby Medical Center, who prescribed a brace for his leg. The doctor told him to stay off work, but he went back and worked on Wednesday, Thursday and Friday (July 10th through 12th), and then the following Monday and Tuesday (July 15th and 16th); he had continuing problems with his knee, and has not worked for the defendant since. His last pay from the defendant was a cash payment of \$320.00.

He went to see Dr. Brice Brackin, an orthopedic surgeon, on July 17, 1991. Dr. Brackin diagnosed the injury as being a torn meniscus, and thereafter, on August 28, 1991, performed a fiberoptic scope operation, which involved an incision about one quarter of an inch in the knee area and the removal of a torn portion of meniscus, or cartilage. The plaintiff was not admitted to the hospital for the surgery, but went back home on the same day.

The operation was successful, and the plaintiff continued to improve. Dr. Brackin released him to go back to work on September 16, 1991, with no restrictions noted. Dr. Brackin testified by deposition on February 19, 1992, that he last saw the plaintiff in December, 1991, and that the plaintiff then was "...still having a little bit of problem with his knee, but at that time he was tender over his quadriceps, which was not along the joint line, and I basically just wanted him increasing up you know, what he was doing. And I haven't seen him back since. . .".

Dr. Brackin testified that the plaintiff reached maximum medical improvement about mid-September, 1991, and that he could not, at this time, state what restrictions, if any, he might impose on the plaintiff, without seeing him again. Dr. Brackin further testified that "I would anticipate, you know, with this type injury, hopefully he'd make a complete recovery".

3. The defendant did not have Workmen's Compensation Insurance at the time of the plaintiff's accident and injury.

4. The plaintiff's average weekly earnings at the time of said accident and injury were \$320.00 per week.

5. The defendant has not paid the plaintiff any temporary total disability benefits in this case.

It is the FINDING of this Court that the plaintiff is entitled to receive benefits for temporary total disability from July 17, 1991, through September 15, 1991, plus one (1) day, i.e., July 9, 1991, computed as follows:  $66 \frac{2}{3}\%$  times \$320.00 (average weekly wages), or \$213.33 for 8 and  $\frac{4}{7}$  weeks, or \$1,828.54, times 2 (the penalty factor imposed by 1975 Code of Alabama 25-5-8(e)), or a



total of \$3,657.08.

6. Medical expenses reasonably and necessarily incurred in the care and treatment of the plaintiff are as follows:

- |    |   |             |
|----|---|-------------|
| A. | For the services of Dr. Brackin,                          | \$2,014.00; |
| B. | Hospital bill from Shelby Medical Center,                 | \$2,353.75; |
| C. | For tissue examination to Cytologyn & Pathology Services, | \$ 75.00;   |
| D. | For prescription drugs,                                   | \$ 56.45    |
|    | Total,  | \$4,499.20. |

The aforesaid medical expenses are reasonable charges and were incurred by, and charged to, the plaintiff and have not been paid by the defendant.

7. The plaintiff is thirty-two years old. He completed the tenth grade in school, and his past work experience has been manual labor and working in construction.

He claims that he still has pain and that he has not been able to work since his surgery in August, 1991. He testified that he is limited in walking, weight lifting, and bending and states that he can sit thirty or forty minutes and he has to move: his back starts to hurt and his leg cramps.

Dr. Brackin assigned the plaintiff no disability or physical impairment rating and anticipated a complete recovery in December, 1991. The plaintiff testified that he had been back to see Dr. Brackin again in February or March (i.e., since Dr. Brackin's deposition), and he produced no evidence to the Court to indicate that Dr. Brackin had changed his previous prognosis, or placed any restrictions on his activities, or assigned an impairment or disability rating.

He has contacted only two (2) possible employers since Dr. Brackin released him to work in September, 1991, and he has not applied for employment at the Alabama Employment Office.

He produced no vocational expert to testify in his behalf and no evidence, other than his own testimony, to show that he is not employable.

The Court **FINDS** that the plaintiff did not sustain his burden of proving that his accident of July 8, 1991, has caused him any loss of earning capacity and that he is not entitled to receive any compensation benefits extending beyond September 16, 1991, when Dr. Brackin released him back to full-time employment.

8. The plaintiff's attorney, Honorable Robert C. Thomas, having been heretofore authorized by this Court to represent the plaintiff, is entitled to a fee from the plaintiff's recovery for temporary total disability benefits of 15% for his services in this case.

#### CONCLUSIONS OF LAW

Based on the aforesaid findings of fact, the Court CONCLUDES and ADJUDGES that the plaintiff, Michael F. Bell, is entitled to recover from the defendant for Workmen's Compensation benefits under the laws of the State of Alabama.

Accordingly, it is ORDERED, ADJUDGED and DECREED by the Court that Michael F. Bell, the plaintiff, have and recover of the defendant as follows:

A. The sum of \$3,657.08 for temporary total disability benefits which have accrued and are due from the defendant.

B. The sum of \$4,499.20 for payment of medical bills which have accrued and are due from the defendant.

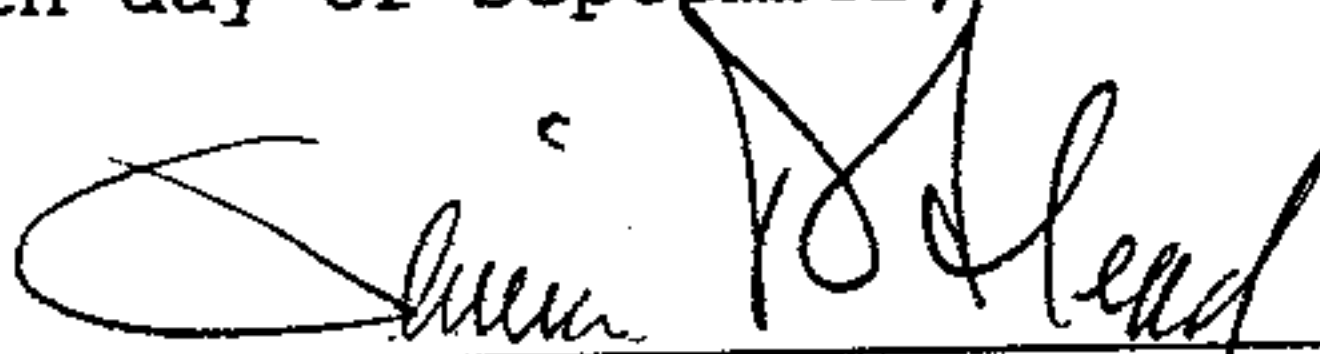
It is further ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That out of the aforesaid compensation sum awarded to the plaintiff, the plaintiff's attorney, Honorable Robert C. Thomas, is awarded 15% thereof, in the amount of \$548.56, as attorney's fees.

2. That Court costs accrued in this cause are hereby taxed against the defendant.

3. That the Clerk of this Court shall give notice to all parties in accordance with the Alabama Rules of Civil Procedure.

DONE and ORDERED this 30th day of September, 1992.



Oliver P. Head  
Circuit Judge



IN THE CIRCUIT COURT FOR SHELBY COUNTY Inst # 1993-02586  
ALABAMA

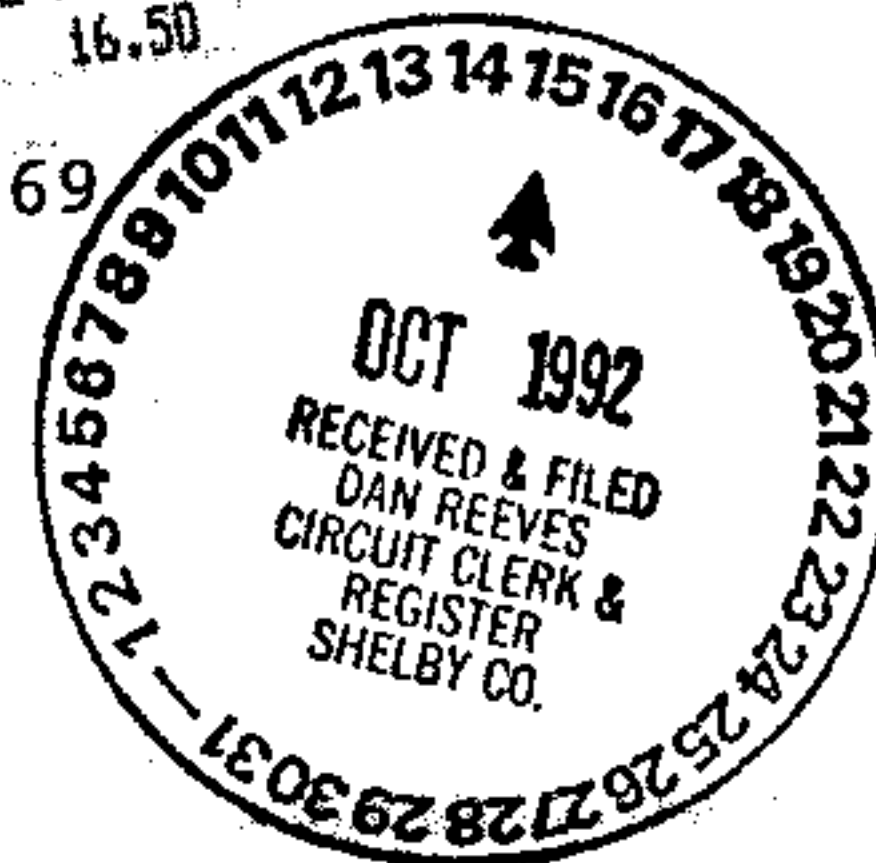
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MOTION TO AMEND JUDGMENT

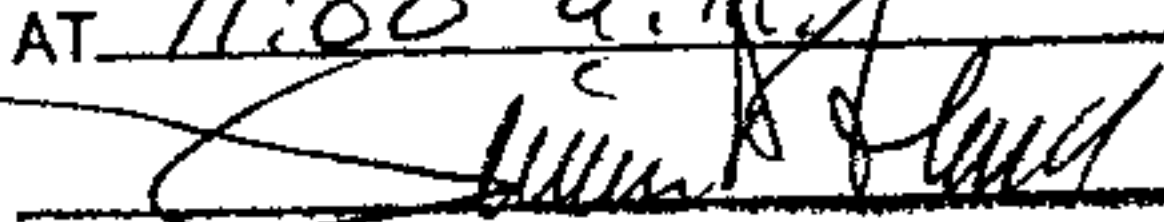
Comes now the Plaintiff in the above styled cause and asks this Honorable Court to amend its Judgment of September 30, 1992, for the following reasons:

1. That the Court in its Judgment determined that the Plaintiff had sustained an on-the-job injury and awarded Plaintiff temporary total disability benefits and medical expenses incurred by the Plaintiff through the date of the trial.


2. The Court in its order did not state whether the Plaintiff was entitled to future medical benefits.

WHEREFORE, PREMISES CONSIDERED, we asks this Honorable Court to amend its judgment to include future medical benefits for the Plaintiff a result of his on-the-job injury based on the evidence at trial and the doctor's deposition.

EASON MITCHELL, P.C.

10/14/92  
THE FOREGOING MOTION IS SET FOR ORAL  
ARGUMENT ON 11/23/92  
AT 11:00 a.m.  
  
CIRCUIT JUDGE

By:   
Robert C. Thomas, Jr.  
Attorney for Plaintiff

11/23/92  
Continued until 12/17/92 at  
10:00 a.m. on motion of the plaintiff,  
without objection by the defendant.  


12/17/92  
Granted, without  
objection.  
