

COURT OF APPEALS OF VIRGINIA

Present: Judges Bray, Annunziata and Overton

FIELDCREST CANNON, INC.

v. Record No. 2567-96-2

WANDA B. MARSHALL

MEMORANDUM OPINION*
PER CURIAM
APRIL 1, 1997

FROM THE VIRGINIA WORKERS' COMPENSATION COMMISSION

(Gregory T. Casker; Daniel, Vaughan, Medley & Smitherman, on brief), for appellant.

(Geoffrey R. McDonald; Laura L. Geller; McDonald & Snesil, on brief), for appellee.

This appeal stems from a February 28, 1995 award entered by the Workers' Compensation Commission (commission) to Wanda B. Marshall (claimant) approving a Memorandum of Agreement executed by claimant and Fieldcrest Cannon, Inc. (employer) which provided benefits for claimant's right carpal tunnel syndrome. After the Supreme Court's decision in The Stenrich Group v. Jemmott, 251 Va. 186, 467 S.E.2d 795 (1996), employer moved the commission to vacate the award, arguing that the commission had no subject matter jurisdiction over the claim. The commission refused, and employer appeals. Upon reviewing the record and the briefs of the parties, we find that this appeal is without merit. Accordingly, we summarily affirm the commission's decision. Rule 5A:27.

In the case at bar we are constrained to observe the

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

doctrine of res judicata, in which "a point once adjudicated by a court of competent jurisdiction may be relied upon as conclusive upon the same matter as between the parties or their privies, in any subsequent suit, in the same court or any other court, at law or in chancery." Patterson v. Saunders, 194 Va. 607, 611, 74 S.E.2d 204, 207 (1953). "A plea of res judicata will be sustained if the prior adjudication was between the same parties or their privies and a valid final judgment was entered which resolved the claim on its merits." Waterfront Marine Constr., Inc. v. North End 49ers, 251 Va. 417, 430, 468 S.E.2d 894, 902 (1996); see Bates v. Devers, 214 Va. 667, 670-71, 202 S.E.2d 917, 920-21 (1974).

Employer argues that res judicata does not apply because the commission never had subject matter jurisdiction and that the award was therefore void ab initio. This argument is disingenuous. When the parties submitted the executed memorandum of agreement, the commission found that it had jurisdiction to award benefits. Employer had every opportunity to contest the claim, but it chose to agree to its compensability and the commission entered an award. Employer did not appeal the commission's award, therefore the award became a point "adjudicated by a court of competent jurisdiction [to be] relied upon as conclusive upon the same matter as between the parties."

The case before us today is the same matter between the same parties, and the commission's past award continues to bind the

parties.¹

Accordingly, we affirm the decision of the commission.

Affirmed.

¹We note that, were we to revisit the issue of claimant's entitlement to benefits, we would not retroactively apply Jemmott to vacate her award. As Jemmott overruled the past consistent decisions of both the commission and this Court, and as a retrospective application would result in substantial inequity to claimants whose claims in tort are now barred by the statute of limitations, Jemmott should be applied only prospectively. See City of Richmond v. Blaylock, 247 Va. 250, 252, 440 S.E.2d 598, 599 (1994); Harper v. Virginia Dep't of Taxation, 241 Va. 232, 237-40, 401 S.E.2d 868, 871-73 (1991).