IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT JACKSON

MICHELLE QUINN,)
)
Plaintiff/Appellee,) **Shelby Circuit No. 59519 T.D.**
)
VS.) **Appeal No. 02A01-9504-CV-00068**
)
SHELBY COUNTY,)
)
Defendant/Appellant.)

FILED

September 13, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY
AT MEMPHIS, TENNESSEE
THE HONORABLE JAMES T. ALLISON, SPECIAL JUDGE

CARROLL C. JOHNSON
Memphis, Tennessee
Attorney for Defendant/Appellant

REVERSED AND DISMISSED

ALAN E. HIGHERS, J.

CONCUR:

W. FRANK CRAWFORD, P.J., W.S.

HOLLY KIRBY LILLARD, J.

In this action for personal injury, Shelby County appeals from the trial court's

judgment awarding compensation for permanent partial disability and chiropractic fees to plaintiff. The county contends that the trial court erred in finding that plaintiff suffered permanent partial disability as a result of the accident and in permitting plaintiff to recover her chiropractic fees. We find these allegations of error to be well-taken; therefore, we reverse the trial court's judgment.

Plaintiff, Michelle Quinn, was employed as a secretary in the dietary department of the Shelby County Health Care Center. Plaintiff had been a patient of Dr. Finn, an internist, since September 1992. Two weeks prior to the date of the subject accident, plaintiff had seen Dr. Finn and had complained of lower back pain and numbness in both legs. At this visit, she also reported a history of scoliosis, which is a curvature of the spine.

On October 26, 1992, plaintiff fell from a stool at her place of employment and complained of injury to her back. The night of the accident, she went to the hospital emergency room, where x-rays were taken of her neck and back.

The day following the accident, plaintiff went to see Dr. Knight, an orthopedic surgeon. She complained of lower back pain that was allegedly caused by the fall from the stool. Dr. Knight reviewed the x-rays that had been taken at the hospital and, aside from evidence of mild scoliosis, found them to be normal.

Over the course of the next few weeks, plaintiff continued to complain to Dr. Knight about back pain. Consequently, on November 24, 1992, Dr. Knight ordered a CT scan and a bone scan to be performed on the plaintiff. The CT scan came back negative, while the bone scan only indicated only mild scoliosis.

In December 1992, plaintiff was examined by Dr. Harriman, an orthopedic surgeon who practiced in the same group as Dr. Knight. Harriman reviewed plaintiff's CT and bone scans and had plaintiff perform certain physical activities in order to test her range of motion. At the conclusion of the exam, Harriman explained the nature of scoliosis to the

plaintiff and told her that the scoliosis was not caused by her fall from the stool.

Dr. Harriman next saw plaintiff on December 16, 1992. His examination revealed that her strength tests were normal, and that there were no other significant problems. In Dr. Harriman's opinion, there were no orthopedic problems with plaintiff. He suggested that she undergo psychological evaluation. On January 15, 1993, Dr. Harriman again examined plaintiff and observed that she had a full range of motion in her back, her EMG test was normal, another CT scan was normal, and there were no other apparent problems. Dr. Harriman's opinion was that plaintiff suffered no impairment.

In October 1993, plaintiff was injured in a car accident when her vehicle was struck in the rear. After the accident, plaintiff saw Dr. Finn for neck and back pain. In January 1994, Dr. Finn ordered a CT scan, which indicated that there was a mild disk bulge in her back. Dr. Finn referred plaintiff to Dr. Joe Hudson, a neurosurgeon, who concluded that plaintiff's symptoms were attributable to scoliosis. He noted that the January 1994 CT scan showed that there was a questionable disk herniation. After examining plaintiff and reviewing MRI results, Dr. Hudson concluded that plaintiff had a small disk protrusion in her back. However, his opinion was that the protrusion was insignificant and would not cause her any clinical problems.

Pursuant to the suggestion of her attorney, plaintiff submitted to examination by Dr. Joseph Lipkowitz, a chiropractor, in April 1994. After performing a range of motion tests and taking x-rays, Lipkowitz concluded that plaintiff had a 28% impairment of the whole person due to her fall from the stool.

In July 1994, Dr. Harriman again examined the plaintiff and observed that plaintiff had a full range of motion, and did not experience pain when pressure was applied to her back. Dr. Harriman concluded that plaintiff had no permanent impairment.

The county has an on-the-job injury policy, which provides for payment of medical

expenses and disability in the event that an employee suffers an injury on the job as a result of his or her employment. With the exception of $4,005.00 in chiropractic fees, the county paid all of plaintiff's medical bills. The county declined to pay the chiropractic bill because the county's policy expressly provides that chiropractic fees are not compensable.

The trial court assigned 10% permanent partial disability to plaintiff and awarded damages to her in the amount of $9,396.40. The trial court further held that the county was responsible for payment of plaintiff's chiropractic fees in the amount of $4,005.00.

The county argues on appeal that plaintiff failed to prove that any injury she suffered was caused by the fall from the stool. According to the county, any injury to plaintiff's neck and back was either preexisting due to scoliosis or was sustained in the automobile accident. In addition, the county argues that the medical testimony adduced at trial proves that plaintiff suffered no permanent impairment. Finally, the county contests the trial court's award of chiropractor's fees on the basis that the county's on-the-job injury policy provides that the county will neither recognize nor pay for treatment rendered by chiropractors. This section states:

> #10. The County will not accept responsibility for payment of any expenses incurred as a result of visit to a chiropractor. Furthermore, a statement from a chiropractor will not meet the requirement of a physician evaluation validating the injury or any absence from work due to the injury.

In the case *sub judice*, plaintiff has the burden of proving causation by a preponderance of the evidence. Tindall v. Waring Park Assoc., 725 S.W.2d 935 (Tenn. 1987). In Tindall, the Court explained:

> This Court has consistently held that causation and permanency of a work-related injury must be shown in most cases by expert medical evidence. Furthermore, 'by "causal connection" is meant not 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.' Although absolute certainty is not required for proof of causation, medical proof that the injury was caused in the course of the employee's work must not be speculative or so uncertain regarding the cause of the injury that attributing it to the plaintiff's employment would be an arbitrary determination or a mere possibility. 'If, upon undisputed proof, it is conjectural whether disability resulted from a cause operating within petitioner's employment, or a

> cause operating without employment, there can be no award.' If, however, equivocal medical evidence combined with other evidence supports a finding of causation, such an inference may nevertheless be drawn by the trial court under the case law.

Id. at 937 (internal citations omitted).

At the trial in this matter, plaintiff relied almost exclusively on the testimony of her chiropractor, Dr. Lipkowitz, in attempting to establish causation and permanent impairment. However, we find that the testimony of plaintiff's chiropractor attributing the cause of plaintiff's injury to the fall from the stool was both speculative and uncertain.

It is uncontroverted that plaintiff complained of neck and back pain prior to her fall from the stool. In addition, plaintiff suffered from scoliosis, a condition to which two highly qualified medical specialists attributed her back pain. The x-rays and CT scans showed no physical abnormality other than scoliosis prior to the car wreck. Moreover, plaintiff was not examined by her chiropractor prior to the car wreck. It is therefore speculative what, if any, portion of her alleged back injury was due to the fall from the stool. In light of the foregoing evidence, we find that plaintiff failed to carry her burden of proof as to causation.

We hold that the evidence preponderates against the trial court's conclusion that plaintiff's alleged disability arose from an accident that occurred within the scope of her employment. In addition, we find that the trial court erred in requiring the county to pay

plaintiff's chiropractic fees in contravention of its on-the-job injury policy. Accordingly, the judgment below is reversed and the suit is dismissed. Costs incident to this appeal are

taxed to plaintiff.

HIGHERS, J.

CONCUR:

CRAWFORD, P.J., W.S.

LILLARD, J.