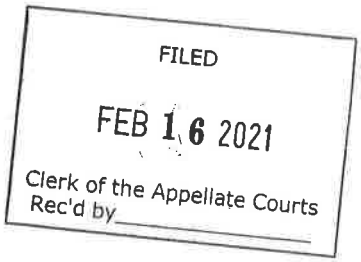
IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE
Assigned on Briefs September 29, 2020



LATOYA PARIS v. MCKEE FOODS CORP.

Appeal from the Chancery Court for Hamilton County
No. 18-0522 Pamela A. Fleenor, Chancellor

No. E2020-00358-SC-R3-WC – MAILED – JANUARY 8, 2021

The employee in this workers' compensation case appeals the trial court's ruling that the independent intervening cause principle applies to relieve her former employer of liability for continued benefits under the parties' settlement of the employee's prior claim. After the employee's original compensable injury while working for the defendant employer, the parties settled the claim. The employee was placed on lifting restrictions. The trial court held the employee negligently exceeded those lifting restrictions and this conduct constituted an independent intervening cause that relieved the original employer from liability for continued workers' compensation benefits. The trial court also held, however, that the employee's negligent conduct did not result in a new injury. On appeal, we hold that, if the employee's activity results in only an increase in pain but there is no new injury or aggravation of the original injury, the independent intervening cause principle is not applicable to relieve the original employer of liability. We reverse the trial court's holding that the independent intervening cause principle relieves the defendant employer of liability for workers' compensation benefits. We affirm the trial court's holding that there was not a new injury or an aggravation of the employee's condition and hold that the employee is entitled to statutory medical benefits, attorney fees, and costs.

Tenn. Code Ann. § 50-6-225(e) (2014) (applicable to injuries occurring prior to July 1, 2014) Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Reversed in Part, and Remanded

HOLLY KIRBY, J., delivered the opinion of the court, in which ROBERT E. LEE DAVIES and DON R. ASH, SR. JJ., joined.

Carmen Y. Ware, Chattanooga, Tennessee, for the appellant, Latoya Renee Paris

Charles W. Gilbreath II and Justin L. Furrow, Chattanooga, Tennessee, for the appellee, McKee Foods Corporation

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

In 2005, Plaintiff/Appellant Latoya Paris was employed by Defendant/Appellee McKee Foods Corporation ("McKee Foods") as a palletizer. In October 2005, Ms. Paris injured her left wrist while in the course and scope of her employment with McKee Foods. The injury was accepted by McKee Foods as compensable under Tennessee's worker's compensation laws.

Ms. Paris was treated surgically by Drs. Marshall Jemison and Robert Mastey. She underwent multiple surgeries for a triangular fibro-cartilage (TFCC) injury to her left wrist. During the course of the surgeries, hardware was placed and retained for Ms. Paris's TFCC injury.

In June 2009, Dr. Mastey determined that Ms. Paris had reached maximum medical improvement. He assigned her a three percent impairment rating of the left upper extremity. Ms. Paris underwent a functional capacity evaluation (FCE), after which Dr. Mastey placed her under the following lifting restrictions:

- Floor to knuckle – 25 pounds occasionally/10 pounds frequently
- Knuckle to shoulder – 20 pounds occasionally/10 pounds frequently
- Knuckle to overhead – 20 pounds occasionally/10 pounds frequently
- Floor to knuckle left upper extremity – 10 pounds occasionally
- Carry – 25 pounds occasionally/10 pounds frequently

On September 17, 2009, Ms. Paris and McKee Foods settled Ms. Paris's outstanding worker's compensation claim. Under the settlement agreement, McKee Foods agreed to pay the medical expenses and lost wages that resulted from Ms. Paris's injury. It also agreed to pay all "reasonable and necessary authorized future medical expenses which are directly related to the subject injury."

After leaving employment with McKee Foods, Ms. Paris found employment elsewhere. In 2012, she worked for Amazon. In December 2012, while at work at Amazon, she experienced pain in her left wrist while she was lifting an item. In light of continued pain, in May 2013, Ms. Paris visited Dr. Mastey for re-examination of her wrist. He ordered x-rays, which showed that the hardware used in Ms. Paris's previous surgeries remained properly in place and the fusion site was intact. Dr. Mastey recommended that Ms. Paris continue the previous work restrictions and use a brace as needed.

Ms. Paris did not file a worker's compensation claim with Amazon; she viewed her wrist pain as a continuation of the original injury with McKee Foods. McKee Foods took the position that the injury at Amazon was a new injury that relieved them of responsibility for future medical treatment under the settlement agreement.

By July 2015, Ms. Paris was working for a company called T.R. Moore. While setting up metal stands with road signs for construction work, she experienced a significant bout of pain in her left wrist. As a result, Ms. Paris visited the emergency room at Memorial Hospital in Chattanooga. The hospital referred Ms. Paris back to Dr. Mastey, who recommended that she elevate and ice her wrist and continue to wear a brace as needed.

McKee Foods again took the position that Ms. Paris had suffered an intervening injury; on this basis, they denied Ms. Paris's request for further treatment with Dr. Mastey. Ms. Paris then filed requests for mediation assistance with the Tennessee Bureau of Workers' Compensation. After an initial denial and administrative review, the Bureau entered an order requiring McKee Foods to permit Ms. Paris to be examined by Dr. Mastey.

When Ms. Paris saw Dr. Mastey again in November 2017, he found nothing in the physical exam or the x-rays indicating a change in the condition of Ms. Paris's wrist. After Ms. Paris and Dr. Mastey discussed how the FCE restrictions impacted her ability to find gainful employment, Dr. Mastey lifted the restrictions.

McKee Foods again denied further treatment, so Ms. Paris filed another request for mediation assistance. The parties' benefit review conference resulted in impasse. In August 2018, Ms. Paris filed the instant complaint in the Chancery Court of Hamilton County, seeking medical benefits under the McKee Foods settlement agreement.

The trial was held in November 2019. The trial court heard live testimony from Ms. Paris, reviewed the deposition testimony of Dr. Mastey, and reviewed the medical records.

Ms. Paris testified that her job at Amazon entailed picking various items and placing

them into totes she pulled on a cart. Once she filled each tote, she would pick it up and place it on a conveyor belt. Ms. Paris filled and lifted approximately twenty-five to thirty totes per day; none weighed more than thirty pounds.

On the day she was injured, Ms. Paris said, she picked up a tote that weighed twenty-nine pounds. She "felt a sharp pain" and went to see Amazon's nurse. Ms. Paris claimed she used both hands to lift the tote, relying on her right hand more than her left. She acknowledged she did not file a workers' compensation claim with Amazon and instead returned to see Dr. Mastey, explaining that her discomfort felt like "the same pain [she] had always had."

Ms. Paris testified that her job with T.R. Moore in 2015 involved carrying and placing road sign stands alongside roads and highways to alert cars of construction. The metal stands each weighed approximately forty-five to fifty pounds. Ms. Paris's job duties required her to pick up each stand and carry it approximately 1,500 yards to place it in the appropriate spot on the road. The weight of the stands was not evenly distributed; Ms. Paris testified that she carried the heavier end with her right hand and used her left hand primarily for support.

While performing these duties on July 10, 2015, Ms. Paris said, she "felt a sharp pain in [her] wrist." When she informed T.R. Moore of the incident, they told her she most likely had not suffered an on-the-job injury but instead had exacerbated her previous wrist condition. Ms. Paris said she sought to see Dr. Mastey again because the pain after this incident felt like "the same pain that [she'd] always had."

Following both the Amazon and T.R. Moore incidents, Ms. Paris's requests to see Dr. Mastey were initially denied. After the Amazon incident, by the time she was able to get in to see Dr. Mastey, her pain was just a little worse than her baseline level of pain. Similarly, after the incident with T.R. Moore, by the time Ms. Paris was finally able to get in to see Dr. Mastey, her pain had again returned to her baseline. Ms. Paris testified that her baseline level of pain was five on a scale of ten. If she did too much work around the house, she said, her wrist pain would become aggravated in much the same way. When her wrist pain became bad enough, she put on a brace. Ms. Paris said she usually ended up putting on a wrist brace at least twice a week.

McKee Foods' denial of treatment, Ms. Paris testified, had caused her to be unable to obtain employment other than seasonal work. As a result, she was unable to pay outstanding bills from her emergency room visits, and this situation left her feeling depressed. Ms. Paris said that, in 2017, Dr. Mastey offered to remove her lifting

restrictions; she denied she asked him to do so.

Dr. Mastey testified via deposition. He said he had treated Ms. Paris on and off since 2006, but she had not visited his office since 2017. Dr. Mastey described Ms. Paris's wrist pain as waxing and waning, and commented that she had "good days and bad days." While the severity of the pain would vary, Dr. Mastey testified, Ms. Paris "was always in a spectrum of wrist pain."

Dr. Mastey testified about Ms. Paris's visit after her 2012 injury at Amazon. The physical examination of her wrist, he said, showed no indication of progression of the underlying condition, and x-rays revealed no anatomical change. Dr. Mastey testified that the physical exam indicated "some discomfort" at Ms. Paris's pisotriquetral joint, which was approximately a fingerbreadth away from the original TFCC injury. He said it could be referred pain because the two points of pain were in "basically the same area." Because of the close proximity, Dr. Mastey said he could not testify definitively about whether the irritation to Ms. Paris's pisotriquetral joint was a different injury from her TFCC injury. Had Dr. Mastey believed the pisotriquetral joint irritation was a new injury, he noted, he would have ordered additional testing, and he did not do so. However, he could not rule out a new injury "in the strictest sense."

Similarly, Dr. Mastey testified that when he saw Ms. Paris in 2017, after the incident with T.R. Moore, he saw no indication there had been a new injury. He said the x-rays he took, as well as the x-rays from Memorial Hospital taken shortly after the incident, supported his conclusion that there was no new injury. After the 2017 consultation, Dr. Mastey testified, he recommended Ms. Paris address the wrist pain with bracing, nonsteroidal work, and activity modification. He also referred her to another hand specialist for a second opinion.

Dr. Mastey was asked whether Ms. Paris's work for Amazon and T.R. Moore exceeded her FCE restrictions. He agreed that the lifting done for both companies exceeded the restrictions. Dr. Mastey clarified, however, that the restrictions were for one-handed lifting. Ms. Paris could perform lifting beyond the weight limits in the FCE restrictions if she lifted primarily with her right hand and used her left for support. In general, Dr. Mastey had "no problem" with patients who wanted to try lifting beyond the prescribed restrictions, if they felt they could handle it, but he recommended Ms. Paris remain subject to the work restrictions. Dr. Mastey indicated that Ms. Paris asked him to remove the FCE restrictions at the 2017 consultation so she could more easily find work.

After argument of counsel, the trial court took the case under advisement. It issued

a memorandum opinion and judgment on December 3, 2019.

In its memorandum opinion, the trial court found Ms. Paris's testimony not credible in two specific regards. First, it found not credible Ms. Paris's assertion that she lifted heavier weights primarily with her right hand and used her left hand mainly for support. Second, it deemed not credible Ms. Paris's testimony that she did not ask Dr. Mastey to remove the FCE restrictions and that he had instead offered to do so.

The trial court held that Ms. Paris had negligently violated her FCE restrictions at both Amazon and T.R. Moore. It observed that, while Ms. Paris had experienced varying levels of pain over the years, she only visited the emergency room after the incidents at Amazon and T.R. Moore. The trial court recounted that the Memorial Hospital records of Ms. Paris's visit shortly after the T.R. Moore incident showed she described her pain as 10 on a scale of 10 and that she told hospital personnel her left wrist hurt so much it felt like it was "gonna break." It found that Ms. Paris's "subsequent wrist injuries were the result of the intervening cause of her lifting beyond her restrictions at both Amazon and T.R. Moore." Ms. Paris's decision to knowingly lift weight beyond the FCE restrictions, the trial court held, "was the direct, independent and intervening cause of her injuries both in 2012 and again in 2015." It concluded that Ms. Paris's negligence "broke the chain of causation from the initial McKee injury," thereby relieving McKee Foods of liability for her medical treatment. The trial court rejected McKee Foods' argument that Ms. Paris came into court with unclean hands.

The trial court rejected Ms. Paris's subsequent motion to alter or amend. However, in addressing the motion, the trial court clarified its earlier findings. It noted that, on one hand, Ms. Paris's testimony described her pain as the same pain she'd had since the original McKee Foods injury. On the other hand, the Memorial Hospital records recounted her saying it felt as though her wrist might break. In light of the description of the pain given to the hospital, the trial court determined that "it wasn't the same pain, it's a different event." It observed that the employer does not have the burden of proving a new injury. The trial court explained that it "didn't find that there was a second injury." Rather, it found that Ms. Paris "negligently undertook to lift beyond her restrictions, and therefore, that's the intervening cause . . . [that] breaks the chain of causation from the initial McKee injury, thereby terminating McKee's liability for the medical treatment." With that clarification, the trial court denied Ms. Paris's motion to alter or amend.

Ms. Paris timely appealed. On appeal, she raises four issues, which we have slightly restated and reordered:

1) Whether the trial court erred in applying the intervening and independent cause rule to relieve McKee Foods of liability for medical treatment for the original work injury absent a finding of a subsequent injury.

2) Whether the trial court erred in determining that Ms. Paris had negligently violated her FCE restrictions.

3) Whether the trial court erred in its finding that Dr. Mastey's deposition testimony was more credible than Ms. Paris's testimony to the extent they were inconsistent.

4) Whether Ms. Paris is entitled to past, current and future medical benefits, attorney fees, and costs.

McKee Foods opposes Ms. Paris's arguments. Should the appellate court hold that an intervening cause requires the presence of a subsequent injury or aggravation, in order to sever McKee Foods' liability for medical benefits for the original wrist injury, McKee Foods contends Ms. Paris in fact suffered a new injury. In the alternative, McKee Foods argues that the trial court erred in holding that Ms. Paris did not act with unclean hands by violating her work restrictions.

STANDARD OF REVIEW

In workers' compensation cases, "[r]eview of the trial court's findings of fact shall be *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise." Tenn. Code Ann. § 50-6-225(e)(2) (2014) (applicable to injuries occurring on or before July 1, 2014). On appeal, the appellate court performs an "in-depth examination" of the trial court's rulings. *Tryon v. Saturn Corp.*, 254 S.W.3d 321, 327 (Tenn. 2008) (citing *Wilhelm v. Krogers*, 235 S.W.3d 122, 126 (Tenn. 2007)). "When the trial court has heard in-court testimony, considerable deference must be afforded in reviewing the trial court's findings of credibility and assessment of the weight to be given to that testimony." *Id.* (citing *Whirlpool Corp. v. Nakhoneinh*, 69 S.W.3d 164, 167 (Tenn. 2002)). In contrast, appellate review of documentary evidence such as depositions requires no deference to the trial court. *Orrick v. Bestway Trucking, Inc.*, 184 S.W.3d 211, 216 (Tenn. 2006) (citing *Ferrell v. Cigna Prop. & Cas. Ins. Co.*, 33 S.W.3d 731, 734 (Tenn. 2000)). The trial court's conclusions of law are reviewed *de novo* without any presumption of correctness. *Id.*

ANALYSIS

In this case, the trial court did not find that Ms. Paris suffered a new injury in either the Amazon or the T.R. Moore lifting incident. It held, however, that there was an intervening and independent cause because Ms. Paris negligently exceeded the FCE lifting restrictions she was under as a result of the original McKee Foods wrist injury. On appeal, Ms. Paris contends there can be no finding of an independent and intervening cause absent a finding of a new and distinct injury or at least an aggravation of the original injury. We agree.

Tennessee's Workers' Compensation Act requires employers to pay compensation for personal injury by accident "arising out of and in the course of employment." Tenn. Code Ann. § 50-6-102(12) (2014) (applicable to injuries occurring prior to July 1, 2014). "[T]he 'arising out of employment' requirement refers to causation." *Anderson v. Westfield Grp.*, 259 S.W.3d 690, 696 (Tenn. 2008). In this case, the question is whether the medical treatments at issue for Ms. Paris's wrist arose out of her employment with McKee Foods.

One of the rules applied by Tennessee courts to determine causation in workers' compensation cases is the "direct and natural consequences rule." *Id.* This rule has been stated as: "When the primary injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from the injury likewise arises out of the employment." *Id.* (quoting 1 Arthur Larson et al., *Larson's Workers' Compensation Law* § 10 (2004) (*Larson's*)). Under the direct and natural consequences rule, "all the medical consequences and sequelae that flow from the primary injury are compensable." *Id.* (quoting *Larson's* at § 10.01). "The rationale for the rule is that the original compensable injury is deemed the 'cause of the damage flowing from the subsequent' injury-producing event." *Id.* (quoting *Revell v. McCaughan*, 39 S.W.2d 269, 271 (Tenn. 1931)).

The direct and natural consequences rule, however, "has a limit." *Id.* The original employer will not be held liable for a "subsequent injury [that] is the result of independent intervening causes, such as the employee's own conduct." *Id.* To constitute an independent intervening cause, the employee's conduct need not be intentional or reckless; negligent conduct will suffice. *Kilburn v. Granite State Ins. Co.*, 522 S.W.3d 384, 390 (Tenn. 2017); *Anderson*, 295 S.W.3d at 698–99. The intervening cause principle is applied "as a way of assessing the scope of an employer's liability for injuries occurring after a compensable

injury." *Anderson*, 295 S.W.3d at 697.

In this case, the trial court held that Ms. Paris acted negligently by transgressing the FCE lifting restrictions while working at Amazon and T.R. Moore, and that her actions constituted an independent intervening cause. Ms. Paris essentially argues that, even if she exceeded the work restrictions and did so negligently, there is no independent intervening cause because the Amazon and T.R. Moore incidents did not result in a new injury or an aggravation of her original McKee wrist injury. Indeed, in its ruling in response to Ms. Paris's motion to alter or amend the judgment, the trial court stated specifically that neither the Amazon nor the T.R. Moore incident resulted in a "second injury."

In response, after reviewing a number of cases that discuss independent intervening cause, McKee Foods notes that "the focus of the discussion in each case was not on the subsequent injury, but how the subsequent injury came about." From this, it deduces that "[t]he employee's actions are therefore the proper focus; not whether a new injury or aggravation occurred."

We must respectfully disagree. The Tennessee Supreme Court's consistent description of the intervening cause principle indicates that the presence of a new injury, or at least an aggravation of the original injury, is a premise of the rule. *See, e.g.*, *id.* at 696 (quoting *McAlister v. Methodist Hosp. of Memphis*, 550 S.W.2d 240, 245 (Tenn. 1977)) ("[A]n injured worker may recover *for a new injury or an aggravation of a compensable injury* resulting from medical treatment on the theory that 'the initial injury is the cause of all that follows.'" (emphasis added)); *id.* at 697 (quoting *Rogers v. Shaw*, 813 S.W.2d 397, 399–400 (Tenn. 1991)) ("[A] subsequent injury, whether in the form of an *aggravation of the original injury or a new and distinct injury*, is compensable if it is the 'direct and natural result' of a compensable injury." (emphasis added)). The Court's discussion of the intervening cause principle in *Anderson* presupposed a finding of a new injury or an aggravation of the original injury. *See id.* at 697 (quoting *Larson's* at § 10) ("[T]he progressive *worsening or complication* of a work-connected injury remains compensable so long as the *worsening* is not shown to have been produced by an intervening nonindustrial cause." (first emphasis added)); *id.* ("[O]ur cases make clear that an employee's intervening conduct can break the chain of causation necessary to impose liability for *a subsequent injury* based on the direct and natural consequences concept." (emphasis added)); *see also Kilburn*, 522 S.W.3d at 389–90; *Rogers*, 813 S.W.2d at 399–400.

Thus, if the employee's activity results in only an increase in pain, but there is no new injury or aggravation of the original injury, the independent intervening cause

principle is not applicable to relieve the original employer of liability. Another workers' compensation panel held as much in *Kelton v. Bridgestone Americas Holding, Inc.*, No. M2009-01026-WC-R3-WC, 2010 WL 2695647 (Tenn. Workers' Comp. Panel July 8, 2010). In *Kelton*, the employee suffered a compensable back injury and was later involved in a car accident. *Id.* at *1. The employer argued that the car accident was an intervening cause that worsened the employee's original injury. The panel in that case held the independent intervening cause rule was inapplicable because even though "[t]here [was] evidence in the record that [the employee] sustained an increase in symptoms, at least temporarily, after the accident," a subsequent medical examination showed "no significant change from pre-accident films," and there was no testimony "that this accident actually did [cause a new injury] or even that it was probable that such an aggravation had occurred." *Id.* at *5.

This holding is consistent with Tennessee Supreme Court caselaw establishing that an employee "does not suffer a compensable injury where the work activity aggravates the pre-existing condition merely by increasing the pain." *Trosper v. Armstrong Wood Prods., Inc.*, 273 S.W.3d 598, 607 (Tenn. 2008). However, if the work activity "advances the severity of the pre-existing condition, or if, as a result of the pre-existing condition, the employee suffers a new, distinct injury other than increased pain," then it constitutes a compensable work injury. *Id.* Therefore, we respectfully disagree with the trial court's application of the independent intervening cause principle in the absence of a finding of a new injury or an aggravation of the wrist injury Ms. Paris had while working at McKee Foods.

Possibly anticipating such a ruling, McKee Foods argues in the alternative that the trial court erred in holding there was no "second injury." It contends that the evidence establishes Ms. Paris in fact suffered a new injury, or at least an aggravation of her pre-existing wrist condition.

To support this assertion, McKee Foods relies primarily on the notes in Dr. Mastey's medical records of Ms. Paris's May 2013 visit regarding her discomfort at the pisotriquetral joint, as well as Dr. Mastey's deposition testimony on her pisotriquetral joint. McKee Foods argues that since Ms. Paris's "prior injury did not involve the pisotriquetral joint" and "Dr. Mastey . . . testified that, in the strictest sense, he could not rule out a new injury," the trial court erred in holding there was no new injury.

From our review of the record, the evidence supports the trial court's conclusion that neither the Amazon nor the T.R. Moore incident resulted in a new injury. Ms. Paris testified that, after each incident, her wrist pain eventually returned to her baseline level on

its own. After the 2012 Amazon lifting incident, by the time Ms. Paris saw Dr. Mastey in 2013, her wrist pain had decreased to "a little more than [her] baseline." To be sure, the 2015 lifting incident at T.R. Moore resulted in significant pain, as demonstrated by Ms. Paris's statements to Memorial Hospital personnel in her emergency room visit. By the time Ms. Paris saw Dr. Mastey in 2017, however, her pain had subsided to its normal baseline level.

A holistic view of Dr. Mastey's testimony supports this conclusion, as well. Dr. Mastey's physical examination of Ms. Paris's wrist after her 2012 injury at Amazon showed no indication of progression of the underlying condition, and x-rays revealed no anatomical change. Likewise, Dr. Mastey's physical examination of Ms. Paris in 2017, after the T.R. Moore incident, revealed no indication of a new injury, and x-rays supported this conclusion. Dr. Mastey's notation of some "discomfort" at Ms. Paris's pisotriquetral joint, with the qualification that he could not rule out a new injury "in the strictest sense," detracts little from his overall opinion that there was neither progression of Ms. Paris's wrist condition nor anatomical change. As in *Kelton*, Dr. Mastey opined that he saw "no significant change" from Ms. Paris's condition before the Amazon and T.R. Moore incidents. 2010 WL 2695647, at *5. Instead, each lifting incident resulted only in a temporary increase in pain. *See Trosper*, 273 S.W.3d at 607.

Consequently, we hold that the evidence in the record preponderates in favor of the trial court's holding that Ms. Paris did not suffer a new injury from either the 2012 Amazon incident or the 2015 T.R. Moore incident.

McKee Foods next argues the trial court erred in failing to dismiss Ms. Paris's claim based on the equitable doctrine of unclean hands. It argues that, even in the absence of an independent intervening cause, Ms. Paris acted with unclean hands by negligently violating her FCE lifting restrictions. The trial court rejected this argument, holding that Ms. Paris's negligent violations of her work restrictions "was not such that it's unfair, one-sided unconscionable, concealing anything, [or] taking advantage of the position."

The doctrine of unclean hands derives from the equitable maxim: "He who comes into equity must come with clean hands." *Thomas v. Hedges*, 183 S.W.2d 14, 16 (Tenn. Ct. App. 1944) (quoting Henry R. Gibson, *Gibson's Suits in Chancery* § 42 (4th ed. 1937)); *see also Segal v. United Am. Bank*, No. W2004-02347-COA-R3CV, 2005 WL 3543332, at *4 (Tenn. Ct. App. Dec. 28, 2005). The doctrine has been described as follows:

> The principle is general, and is one of the maxims of the Court, that he who comes into a Court of Equity asking its interposition in his behalf, must come

> with clean hands; and if it appear from the case made by him . . . that he has himself been guilty of unconscientious, inequitable, or immoral conduct, in and about the same matters whereof he complains of his adversary, or if his claim to relief grows out of, or depends upon, or is inseparably connected with his own prior fraud, he will be repelled at the threshold of the court.

Coleman Mgmt., Inc. v. Meyer, 304 S.W.3d 340, 351–52 (Tenn. Ct. App. 2009) (quoting *Cont'l Bankers Life Ins. Co. of the S., Inc. v. Simmons*, 561 S.W.2d 460, 465 (Tenn.Ct.App.1977)); *see also Hogue v. Kroger Co.*, 373 S.W.2d 714, 716 (Tenn. 1962); Henry R. Gibson, *Gibson's Suits in Chancery* § 2.09 (William H. Inman ed., 8th ed. 2004). When the doctrine applies, it gives trial courts the discretion to decline to grant equitable relief to "parties who have willfully engaged in unconscionable, inequitable, immoral, or illegal acts with regard to the subject matter of their claims." *In re Estate of Boote*, 265 S.W.3d 402, 417 (Tenn. Ct. App. 2007) (footnote omitted).

Here, Ms. Paris does not seek equitable relief; she asserts a legal claim under the workers' compensation statutes.[1] Although in rare circumstances the doctrine of unclean hands has been applied to legal claims, it is "used chiefly in cases seeking equitable relief." *Metric Partners Growth Suite Invs., L.P. v. Nashville Lodging Co.*, 989 S.W.2d 700, 703 (Tenn. Ct. App. 1998). It is unlikely that the equitable doctrine is applicable in workers' compensation cases at all.[2]

Regardless, "application of the doctrine is clearly within the discretion of the trial court." *Coleman Mgmt.*, 304 S.W.3d at 353. We agree with the trial court that, at worst, Ms. Paris negligently exceeded the weight limits in the FCE lifting restrictions, and this

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[1] The Supreme Court has noted that establishment of the workers' compensation laws operated as "a mutual renunciation of common law rights and defenses." *Woods v. Harry B. Woods Plumbing Co.*, 967 S.W.2d 768, 772 (Tenn. 1998); *accord* Tenn. Code Ann. § 50-6-108 (2014) (applicable to injuries occurring prior to July 1, 2014) (granting "exclusive rights and remedies"); *cf. Chastain v. Chastain,* 559 S.W.2d 933, 935 (Tenn. 1977) (declining to apply unclean hands to a statutory divorce action).

[2] McKee Foods asserts that the doctrine of unclean hands has been applied to workers' compensation cases, citing *Williams v. S. & W. Construction Co.*, 66 S.W.2d 992 (Tenn. 1934). However, *Williams* applied the doctrine in order to determine whether recovery was allowable against a third party, and specifically noted that it was "not deciding[] that this doctrine may be applied in a compensation case in a court of law." *Id.* at 993. We have found no other case suggesting the doctrine of unclean hands applies in workers' compensation actions, and McKee Foods has cited none.

conduct does not amount to the kind of "unconscientious, inequitable, or immoral conduct" that would warrant invocation of the doctrine of unclean hands. *Id.* at 351–52 (quoting *Simmons*, 561 S.W.2d at 465). We find no abuse of the trial court's discretion.

In sum, we reverse the trial court's holding that the independent intervening cause principle applies to relieve McKee Foods of liability under the settlement agreement with Ms. Paris and the workers' compensation statutes. We affirm the trial court's holding that Ms. Paris did not suffer a new injury or an aggravation of her existing condition. We also affirm the trial court's decision to decline to apply the doctrine of unclean hands to bar Ms. Paris's claim. These holdings pretermit the issues of whether the trial court erred in holding Ms. Paris negligently violated her FCE restrictions and whether the trial court erred in its credibility determinations.

Based on these holdings, Ms. Paris is entitled to statutory medical benefits, attorney fees, and costs. Ms. Paris also seeks attorney fees and costs on appeal. *See* Tenn. Code Ann. § 50-6-204(b)(2) (2014) (applicable to injuries occurring prior to July 1, 2014); *Denson v. VIP Home Nursing & Rehab. Serv.*, LLC, No. M2019-02145-SC-R3-WC, 2020 WL 4192101, at *5 (Tenn. Workers' Comp. Panel July 21, 2020) (interpreting section 50-6-204(b)(2) to include an award of attorney fees to the prevailing party on appeal). We conclude that Ms. Paris is entitled to attorney fees on appeal in this case and that the amount of reasonable attorney fees to be awarded to her for the appeal should be determined by the trial court.

CONCLUSION

We reverse in part and affirm in part as set forth above, and hold that Ms. Paris is entitled to an award of statutory medical benefits, attorney fees and costs. The case is remanded to the trial court for determination of the amount of reasonable attorney fees to be awarded Ms. Paris. Costs of the appeal are taxed to the Appellee, McKee Foods Corporation, for which execution may issue.

HOLLY KIRBY, JUSTICE