IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE
March 16, 2015 Session

UNITED PARCEL SERVICE, INC. v. SABRINA BROWN

Appeal from the Chancery Court for Davidson County
No. 12-1357-I
Claudia Bonnyman, Chancellor

No. M2014-01332-SC-R3-WC – Mailed June 30, 2015
Filed August 11, 2015

The employee sustained a compensable injury to her right knee. While recovering from surgery, she reinjured the knee. Her employer asserted the reinjury was an intervening event which absolved the employer of further liability for medical care or temporary disability benefits. The trial court found the reinjury was not an intervening event, ordered medical benefits, and awarded additional temporary disability benefits. The employer has appealed, asserting the evidence preponderates against the trial court's finding. Pursuant to Tennessee Supreme Court Rule 51, 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. We affirm the judgment of the trial court.

Tenn. Code Ann. § 50-6-225(a) (2014) Appeal as of Right; Judgment of the Chancery Court Affirmed

DON R. ASH, SR. J., delivered the opinion of the Court, in which JEFFREY S. BIVINS, J., and BEN H. CANTRELL, SR. J., joined.

David T. Hooper, Brentwood, Tennessee, for the appellant, United Parcel Service, Inc.

Michael Fisher, Nashville, Tennessee, for the appellee, Sabrina Brown.

OPINION

Factual and Procedural Background

Sabrina Brown ("Employee") began working for United Parcel Service, Inc., ("Employer") in July 2008. She was employed as a pre-loader, taking packages from a conveyor and loading them onto delivery trucks. She injured her right knee on July 8, 2010. She testified she was walking toward the "break area" when she stepped onto a "soft spot," lost her balance, and fell to the ground. She felt her right knee pop as she fell. She was unable to stand up without assistance. Her supervisor assisted her in going to the pre-load office, where she waited for a time. Then the supervisor drove her to Concentra, a local clinic. Employee was able to return to work in a light duty capacity for thirty days. Thereafter, she was discharged and began to receive temporary disability payments.

Employer provided Employee with a list of physicians to become her treating doctor, from which she selected Michael LaDouceur, an orthopaedic surgeon. She first saw Dr. LaDouceur on August 18, 2010. His examination suggested she had torn her anterior cruciate ligament ("ACL"). He ordered an MRI to further study the knee, which occurred on August 26, 2010, and confirmed Employee's ACL was torn. It also revealed tears of both the lateral and medial menisci. Surgery to repair these injuries, as recommended by Dr. LaDouceur, took place on September 9, 2010. At Employee's first post-operative visit on September 14, 2010, Dr. LaDouceur found Employee had normal postsurgical findings with a stable knee. Dr. LaDouceur instructed Employee to use crutches, place no weight on her right leg, and wear a brace.

On the morning of October 5, 2010, Employee attended a scheduled physical therapy appointment. After Employee returned home, she went into her backyard. There, she noticed a sharp object, similar to a tent stake, lying on the ground. She placed both crutches on her left side, attempted to reach down to pick up the object, and lost her balance. Employee was able to grab a fence and did not fall to the ground. She felt an immediate twinge in the knee and was concerned enough to call Dr. LaDouceur's office. Dr. LaDouceur saw her the afternoon of October 5, 2010, and his examination suggested a possible failure of the ACL repair. He ordered an MRI, which appeared to show the graft was intact. Dr. LaDouceur continued conservative treatment. By December 20, Dr. LaDouceur could conduct a full examination of the knee, because swelling and muscle guarding in the knee had improved. He concluded the graft failed and recommended a second ACL surgery using a donor tendon to repair the tear.

After reviewing Dr. LaDouceur's report, Employer determined the October 5, 2010 fall was an intervening event and decided it was no longer liable for medical care or temporary disability benefits. Employee's health insurer did not approve the surgery. Employee received some limited treatment from her primary care physician. After Employer filed the present lawsuit, Employee pursued a motion to compel medical

treatment. Employee's motion to compel was granted by an order entered on February 12, 2013.

Dr. LaDouceur proceeded with surgery on April 19, 2013. He continued to monitor Employee until September 2013, when he released Employee from his care. He placed no restrictions on her activities. Dr. LaDouceur assigned 10% permanent impairment to the right leg due to Employee's work injury.

Employee returned to work for Employer as a "spa clerk." She described the job as follows: "As the packages are unloaded off the trucks, they come down the belt, I scan the package, the label on the package, and I put another sticker on it that tells them where that package goes." Employee was previously assigned to be a temporary delivery driver but was removed from this position after five or six weeks because, as she stated, "I was too slow. I had too much overtime." She returned to the spa clerk position and was working as a spa clerk when the trial occurred. Employee testified the job was not particularly physical and she was able to perform it without difficulty.

Employee experienced occasional pain, throbbing, and swelling in the knee. She testified she no longer rode a bicycle due to the effects of the injury. A long-time friend, Margaret Stevens, testified she would drop Employee at the entrance before parking her vehicle when attending events with Employee. Ms. Stevens also stated Employee was not able to hike as she had before her injury.

The trial court announced its findings from the bench. It found the October 5, 2010 injury was a direct and natural consequence of the July 8, 2010 injury. The trial court further held Employee's actions on October 5, 2010, did not constitute negligence or an intervening event which would bar recovery for her claim. It awarded 15% permanent partial disability and awarded temporary total disability benefits from the time Employer terminated those benefits until Employee reached maximum medical recovery. Judgment was entered in accordance with the trial court's findings. Employer has appealed, raising a single issue: Was the event of October 5, 2010, an independent, intervening cause which broke the chain of causation necessary for medical care and temporary total disability benefits?

Analysis

The standard of review of issues of fact in a workers' compensation case is de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of evidence is otherwise. Tenn. Code Ann. § 50-6-225(a)(2) (2014). Considerable deference is given the trial court as to credibility and weight of testimony when the trial judge had the opportunity to observe the demeanor of witnesses and to hear in-court testimony. *Madden v. Holland Group of Tenn.*, 277

S.W.3d 896, 900 (Tenn. 2009). When the issues involve expert medical testimony contained within the record by deposition, determination of the weight and credibility of the evidence necessarily must be drawn from the contents of the depositions, and the reviewing court may draw its own conclusions with regard to those issues. *Foreman v. Automatic Sys., Inc.*, 272 S.W.3d 560, 571 (Tenn. 2008). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. *Seiber v. Reeves Logging*, 284 S.W.3d 294, 298 (Tenn. 2009).

Employer in this case contends the event of October 5, 2010, was an independent, intervening cause which relieves Employer of liability for resulting medical care or temporary disability. Our Supreme Court discussed the law pertaining to intervening causes in *Anderson v. Westfield Grp.*, 259 S.W.3d 690 (Tenn. 2008):

> Equally well-established is the general rule that 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. *Rogers v. Shaw*, 813 S.W.2d 397, 399–400 (Tenn.1991) (quoting 1.A. Larson, *The Law of Workmen's Compensation* § 13.11 (1990)). The rule, commonly referred to as the direct and natural consequences rule, has been stated as: "[w]hen 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." 1 *Larson's Workers' Compensation* Law § 10 (2004). Consequently, "all the medical consequences and sequelae that flow from the primary injury are compensable." *Id*. at § 10.01. Thus, for example, an 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." *McAlister v. Methodist Hosp. of Memphis*, 550 S.W.2d 240, 245 (Tenn.1977); see *Rogers*, 813 S.W.2d at 399 (stating "death or disability due to a poor result of treatment, or complications of treatment, or negligent treatment of a work-related injury or disease is compensable"). 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. *Revell v. McCaughan*, 162 Tenn. 532, 538, 39 S.W.2d 269, 271 (1931). There is no question that the direct and natural consequences rule is an integral part of Tennessee's workers' compensation jurisprudence.
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> However firmly implanted the principle may be that a subsequent injury is deemed to arise out of the employment if it flows from a compensable injury, the rule has a limit. That limit hinges on whether the subsequent injury is the result of independent intervening causes, such as the employee's own conduct. The rule's limitation has been expressed in

general terms as "[w]hen 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, *unless it is the result of an independent intervening cause attributable to claimant's own intentional conduct*." 1 *Larson's Workers' Compensation Law* § 10 (2004) (emphasis added). "More specifically, the 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*." *Id*. (emphasis added).

Tennessee courts have applied the intervening cause principle as a way of assessing the scope of an employer's liability for injuries occurring after a compensable injury. *See, e.g., Simpson v. H.D. Lee Co.*, 793 S.W.2d 929, 931–32 (Tenn. 1990) (medication taken contrary to instructions constituted an intervening cause); *Guill v. Aetna Life & Cas. Co.*, 660 S.W.2d 42, 43–44 (Tenn. 1983) (injecting medication contrary to medical instructions was an intervening cause); *Jones v. Huey*, 210 Tenn. 162, 169, 357 S.W.2d 47, 49–50 (1962) (negligent operation of a tractor following a work-related back injury not compensable). Our cases have expressed the intervening cause principle in various ways. In one case, for example, we stated that "it will be found that if the injured employee, knowing of his weakness, rashly undertakes to do things likely to result in harm to himself, the chain of causation is broken by his own negligence." *Jones*, 357 S.W.2d at 49. In another case, we stated that "every natural consequence that flows from the [work-related injury or disease] arises out of the employment, unless it is the result of an independent intervening cause attributable to the employee's intentional conduct." *Rogers*, 813 S.W.2d at 399. In yet another case, we observed that when the primary injury arises out of the employment, "every natural consequence that flows" from that injury arises out of the employment as well, provided those consequences result "directly and without intervening cause" from the primary injury. *Guill*, 660 S.W.2d at 42. Though stated in different ways, our 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.

Anderson, 259 S.W.3d at 696-97.

Employer contends Employee's act of attempting to pick up the sharp object in her backyard amounted to intervening negligence as described in *Anderson*. The record, however, does not support Employer's assertion. Dr. LaDouceur addressed the subject in a May 31, 2011 letter to Employer's insurer, the content of which he

reaffirmed in his following deposition testimony:

> [I]t was my opinion that Ms. Brown's activities during her initial postoperative period were not inappropriate. So I didn't think that she was at fault for doing anything wrong that was out of the ordinary for postoperative ACL reconstruction. She had been compliant. The weakness in her leg is a consequence of her initial injury in July, as well as typical muscle atrophy following the type of procedure that she had did predispose her to additional injury.
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> [The] subsequent fall in early October more likely than not resulted in failure of her prior surgical graft. Had it not been for her original injury, it is unlikely that she would have sustained the injury in October. Therefore, it was my opinion that her work-related event of July 2010 is the proximate cause of her current problem.

During cross-examination, Dr. LaDouceur restated he did not consider Employee's action on the morning of October 5, 2010, to conflict with the postoperative instructions he had given her. To the contrary, he testified:

> I tell people they need to be up on crutches and moving because all of those things help improve their strength and their endurance and it does help them with their recovery. So there's -- you know, there's some inherent risk with that by, you know, say not putting somebody in a wheelchair. But I think that the potential risks of putting somebody in a wheelchair are in many respects greater because it delays recovery and can lead to other problems.
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> I would not anticipate people to fall, but it can occur and it's not uncommon.
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> [O]ne of the things that happens in therapy are those similar kinds of activities. So I mean, to actually -- not picking up a sharp object, but balancing on one leg and doing that kind of thing is part of the therapeutic routine.

Dr. LaDouceur testified Employee was compliant in her treatment and did not act inappropriately. Employee did not violate her medical restrictions, her physician considered her action to be foreseeable, and her physician considered her action to be consistent with her therapeutic program. Based on this testimony, we are unable to conclude the evidence in this record preponderates against the trial court's conclusions

the event of October 5, 2010, was a direct and natural consequence of the original injury and the Employee's action was not an independent intervening cause as contemplated in *Anderson.* Within the present case, unlike *Anderson*, the Employee did not act rashly, disregard her disabled condition, or negligently take an action which would result in harm. Therefore, the Employer is not entitled to relief.

Conclusion

The judgment of the trial court is affirmed. Costs are taxed to United Parcel Service, Inc., and its surety, for which execution may issue if necessary.

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DON R. ASH, SENIOR JUDGE

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JUDGMENT

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 will be paid by United Parcel Service, Inc., and his surety, for which execution may issue if necessary.

PER CURIAM