[Cite as *Bradley v. Ohio Dept. of Transp.*, 2012-Ohio-451.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Laura M. Bradley,	:	
Plaintiff-Appellant,	:	No. 11AP-409 (C.P.C. No. 09CVD07-11026) and
v.	:	No. 11AP-410 (C.P.C. No. 09CVD07-10972)
Ohio Department of Transportation et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on February 7, 2012

James C. Ayers Law Office, and *James C. Ayers*, for appellant.

Lee M. Smith & Associates Co., L.P.A., and *Natalie J. Tackett-Eby*, for appellee Ohio Department of Transportation.

Michael DeWine, Attorney General, and *Colleen Erdman*, for appellee Administrator, Ohio Bureau of Workers' Compensation.

APPEALS from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, Laura M. Bradley, appeals a judgment of the Franklin County Court of Common Pleas in favor of defendants-appellees, the Ohio Department of Transportation ("ODOT") and Marsha P. Ryan, Administrator of the Bureau of Workers' Compensation ("BWC"). For the following reasons, we affirm.

{¶2} On March 10, 2005, Bradley injured her right ankle while dismounting from a front-end loader. Because Bradley sustained this injury in the course of and arising out of her employment with ODOT, Bradley filed a claim with BWC for benefits and compensation. BWC allowed her claim for a sprain of the right ankle.

{¶3} Bradley subsequently moved for an additional allowance of a claim for reflex sympathetic dystrophy ("RSD") of the right foot. The district hearing officer granted Bradley's motion, finding that the additional medical condition was casually related to Bradley's March 10, 2005 injury. ODOT appealed the district hearing officer's order. Upon review, the staff hearing officer also allowed the additional claim. ODOT appealed the staff hearing officer's order, but the Industrial Commission refused to hear the appeal.

{¶4} ODOT then filed a notice of appeal with the trial court, challenging Bradley's right to participate in the workers' compensation fund for the additional claim pursuant to R.C. 4123.512(A). Bradley dismissed that action by the stipulated agreement of the parties. On July 22, 2009, ODOT refiled its notice of appeal. The next day, in a separate action, Bradley filed a complaint regarding the additional allowance of the RSD claim. As both actions related to the same matter, the trial court consolidated them.

{¶5} At a bench trial, Bradley testified regarding how she initially injured her ankle and the medical treatment she received for her injury. Bradley explained that she began seeing Dr. Aleskey A. Prok, a physician specializing in pain management, when her sprain worsened, instead of healing. Prok diagnosed Bradley with RSD.

{¶6} According to Bradley, she constantly experiences a burning sensation that runs through the middle of her right ankle. That ankle is weak and stiff, as well as very sensitive to temperature variations and touch. Once or twice a month, her ankle swells

and changes color. Although Prok has tried various treatments, nothing has alleviated these symptoms.

{¶7} Both parties presented expert witnesses through deposition testimony. Prok testified as an expert witness for Bradley. At the time of his deposition, Prok had treated Bradley for over five years. Although Prok diagnosed Bradley with RSD, Prok explained that "[t]here is really no more RSD, per se. Now there is a complex regional pain syndrome [t]ype 1, which is RSD, and complex regional pain syndrome [t]ype 2, which is causalgia." Prok deposition, at 9. According to Prok, complex regional pain syndrome type I ("CRPS") is a chronic pain condition that usually follows injury, occurs regionally, has a distal predominance of abnormal findings, exceeds in both magnitude and duration the expected clinical course of the inciting event, often results in significant impairment of motor function, and shows variable progression over time.

{¶8} No definitive test for CRPS exists. Prok believes that Bradley has CRPS because she has displayed many of the symptoms of that condition: (1) he has observed swelling in her right ankle, changed skin color in the area of the ankle, and changes in the pattern of toenail growth; (2) Bradley complains of pain in response to a benign stimulus[1] and hypersensitivity; and (3) the triple bone scan of Bradley's ankle showed changes consistent with CRPS. Moreover, Prok testified that Bradley achieved short-lived relief after he treated her with a sympathetic ganglion block. Prok asserted that this positive response also indicated that Bradley suffers from CRPS. Finally, Prok opined that Bradley's CRPS is a direct result of the ankle sprain that Bradley suffered while in ODOT's employ.

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[1] Physicians call such pain allodynia.

{¶9} Gerald S. Steiman, a physician specializing in neurology, provided expert testimony for ODOT. After examining Bradley and reviewing her medical records, Steiman concluded that Bradley does not have CRPS.

{¶10} In evaluating Bradley, Steiman relied on the objective diagnostic criteria for CRPS set forth by the American Medical Association ("AMA") in the fifth edition of Guides to the Evaluation of Permanent Impairment. These eleven criteria include: (1) three possible vasomotor changes, including mottled or cyanic skin color, cool skin temperature, and edema (swelling); (2) one possible sudomotor change, i.e., skin is dry or overly moist; (3) five possible trophic changes, including smooth or nonelastic skin texture, soft tissue atrophy, joint stiffness, nail changes, and hair growth changes; and (4) two radiographic signs, including evidence of trophic bone change or osteoporosis in radiographs and findings consistent with CRPS in a bone scan. Steiman explained that eight of these eleven criteria must be present concurrently for a physician to diagnosis a patient with CRPS.

{¶11} After examining Bradley, Steiman found that she did not exhibit any of the nine possible clinical signs. Steiman did not observe mottled or altered skin color, measurable atrophy or edema, or temperature change in Bradley's right foot and leg. Bradley's skin was neither overly dry nor overly moist. Steiman saw no asymmetry of texture, meaning that the skin relaxed equally after Steiman pinched it. Finally, Bradley did not display joint stiffness or a change in the appearance of hair growth or toenails.

{¶12} Steiman also reviewed the reports from the two MRI studies, the triple bone scan, and the EMG study performed on Bradley. Steiman did not find the results of these

tests indicative of CRPS, so he concluded that Bradley demonstrated neither of the two radiographic signs for CRPS.

{¶13} Steiman acknowledged that Bradley complained of allodynic pain and that such pain is a hallmark of CRPS. However, Steiman explained that allodynia is not an objective diagnostic criterion for CRPS. According to Steiman, allodynia, in and of itself, is not sufficient to make a CRPS diagnosis.

{¶14} On March 9, 2011, the trial court issued its findings of fact and conclusions of law. In essence, the trial court found Steiman's testimony more credible than Prok's testimony. The trial court concluded that Bradley does not have CRPS, and thus, she does not have a right to participate in the workers' compensation fund for the condition of CRPS. The trial court entered judgment in ODOT's favor on April 8, 2011.

{¶15} Bradley now appeals from the April 8, 2011 judgment, and she assigns the following errors:

> [1.] THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO APPELLANT BY ADMITTING INTO EVIDENCE, OVER REPEATED OBJECTION, AN AMA "GUIDE" AND SUBSEQUENTLY RELYING UPON THAT "GUIDE" AS THE PIVOTAL SUPPORT FOR ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW[.]
>
> [2.] THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED PROCEDURAL ERROR TO THE PREJUDICE OF APPELLANT BY TAKING 37 DAYS FROM THE DATE OF HEARING THE EVIDENCE AND THE DATE OF DECIDING THE FACTS[.]
>
> [3.] THE TRIAL COURT COMMITTED ERROR PREJUDICAL TO APPELLANT BY BROADLY DEFINING REFLEX SYMPATHETIC DYSTROPHY TO BE COMPLEX REGIONAL PAIN SYNDROME AND THEREBY REQUIRING PROOF BEYOND THAT REQUIRED BY THE ADMINISTRATOR OF THE BUREAU OF WORKERS'

> COMPENSATION WHO ALLOWED RSD AND DID NOT TAKE CRPS INTO CONSIDERATION.

{¶16} By her first assignment of error, Bradley argues that the trial court erred in admitting into evidence section 16.5e of Guides to the Evaluation of Permanent Impairment, entitled "Complex Regional Pain Syndromes (CRPS), Reflex Sympathetic Dystrophy (CRPS I), and Causalgia (CRPS II)." Bradley cites neither a legal reason justifying the exclusion of the text nor legal authority to support her argument. However, as Bradley asserts that the hearsay exception contained in Evid.R. 803(18) does not apply, we presume that Bradley challenges the admission of the text on hearsay grounds.

{¶17} The trial court has the discretion to determine whether to admit or exclude evidence. *Banford v. Aldrich Chemical Co., Inc.*, 126 Ohio St.3d 210, 2010-Ohio-2470, ¶38; *Beard v. Meridia Huron Hosp.*, 106 Ohio St.3d 237, 2005-Ohio-4787, ¶20. Thus, an appellate court will uphold a ruling on the admissibility of evidence absent an abuse of discretion. Id. Additionally, even if an abuse of discretion exists, an appellate court will not reverse the ruling unless the abuse of discretion materially prejudiced the adverse party. Id.

{¶18} Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Although hearsay is generally inadmissible, Evid.R. 803 provides certain exceptions to this general prohibition. Pursuant to Evid.R. 803(18), the learned treatise exception, the following is not excluded as hearsay:

> To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable

> authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

{¶19} Evid.R. 803(13), adopted in 2006, is modeled on Federal Rule of Evidence 803(18). Staff Note to July 1, 2006 amendment. The rationale behind this hearsay exception is that a finder of fact should have the benefit of expert learning on a subject, even though it is hearsay, so long as the authority of a treatise is sufficiently established. *Costantino v. Herzog* (C.A.2, 2000), 203 F.3d 164, 170-71. Various factors assure a learned treatise's trustworthiness: (1) authors of scholarly works usually have no connection to the litigation and, thus, no motive to misrepresent; (2) because the author's scholarly reputation is at stake, the author has a strong incentive to provide valid and reliable information; and (3) learned treatises are subject to the scrutiny of other professionals in the field, which results in the exposure of any inaccuracies. *United States v. Martinez* (C.A.6, 2009), 588 F.3d 301, 312; *Schneider v. Revici* (C.A.2, 1987), 817 F.2d 987, 991; Staff Note to July 1, 2006 amendment; Advisory Committee's Notes, Rules of Evidence for United States Courts and Magistrates (1973), 56 F.R.D. 183, 316.

{¶20} A text must be established as "reliable authority" before statements from it may be admitted into evidence under the Evid.R. 803(18) exception. A text qualifies as a "reliable authority" if it is generally accepted and trusted in the relevant professional community. *Costantino* at 171; *Schneider* at 991; Kaye, Bernstein, and Mnookin, The New Wigmore: A Treatise on Evidence: Expert Evidence (2004) 142, Section 4.4.2(d).

{¶21} Although statements admitted under the Evid.R. 803(18) exception may be read into evidence, they cannot be accepted as exhibits. This limitation precludes the possibility that a finder of fact will try to interpret the technical information in a learned

treatise without the guidance of an expert. *Dartez v. Fibreboard Corp.* (C.A.5, 1985), 765 F.2d 456, 465; *Tart v. McGann* (C.A.2, 1982), 697 F.2d 75, 78; Staff Note to July 1, 2006 amendment; Advisory Committee's Notes, 56 C.F.R. at 316. Evid.R. 803(18) restricts the use of learned treatises to the context of an expert witness's testimony so the expert witness can explain the substance of the text and how it applies to the facts of the particular case.

{¶22} In the case at bar, the trial court allowed both Prok and Steiman to testify about statements in the CRPS section of the fifth edition of Guides to the Evaluation of Permanent Impairment, published by the AMA. Specifically, both expert witnesses addressed the eleven objective diagnostic criteria set forth in that text and whether Bradley met the AMA's threshold for diagnosis with CRPS. Bradley attacks the admission of that testimony on the basis the text is not a reliable authority. However, Steiman testified that the text, and in particular the criteria, were "the most widely accepted" in the medical community and "the best format to use" in diagnosing CRPS. Steiman deposition, at 28, 30, 62. We find that this testimony provided a proper foundation for the admission of testimony regarding the contents of the text.

{¶23} Bradley posits multiple reasons why the text and the AMA criteria are not trustworthy. Even assuming the validity of those reasons, Steiman's testimony establishing the text and AMA criteria as reliable was sufficient basis for the trial court to admit testimony about them under Evid.R. 803(18). According to Evid.R. 803(18), an expert witness need only testify that a learned treatise is a reliable authority for a court to admit statements from that treatise. To hold otherwise would place the trial court "in a position of determining whether a particular learned treatise does in fact possess

sufficient assurances of trustworthiness, a determination that would place the trial judge right in the middle of a dispute he or she is truly unequipped to easily resolve. * * * [T]o impose such a gatekeeping determination on the trial court * * * would dramatically alter current practice under Rule 803(18), add significant uncertainty, as well as introduce substantial expenditure of time and money to resolve an often difficult to resolve collateral issue." 30C Wright, Leipold, Henning, and Welling, Federal Practice and Procedure Evidence (2d ed.), Section 7059, fn. 7.

{¶24} Bradley next argues that the trial court erred in admitting the CRPS section of Guides to the Evaluation of Permanent Impairment as an exhibit. Bradley is correct. As we stated above, Evid.R. 803(18) prohibits the acceptance of a learned treatise as an exhibit. However, we conclude that the erroneous admission of the text did not materially prejudice Bradley. In its findings of fact and conclusions of law, the trial court did not refer to or rely on any portion of the text that Steiman had not discussed and explained in his testimony. Consequently, the judgment did not result from a misinterpretation or misapplication of technical information in the text. As the danger that independent analysis poses did not arise, the admission of the text itself amounted to only harmless error.

{¶25} Finally, Bradley concludes her argument by stating, "[t]he court also accepted Dr. Steiman's own writing as an Appellee Exhibit which was improper." Appellant brief, at 9. No legal argument or authority supports this conclusory statement. Moreover, the issue raised by the statement exceeds the parameters of the first assignment of error. We, therefore, refuse to consider this issue. *Thompson v. Thompson*, 10th Dist. No. 11AP-212, 2011-Ohio-6286, ¶65 (refusing to address an

argument that did not correspond with any assignment of error); *Lewis v. Cleveland State Univ.*, 10th Dist. No. 10AP-606, 2011-Ohio-1192, ¶21 (disregarding a challenge to a trial court's ruling when the appellant did not advance any argument in support of the challenge).

{¶26} In sum, we find no basis on which to reverse the trial court's evidentiary rulings regarding the admission of statements from Guides to the Evaluation of Permanent Impairment. Accordingly, we overrule Bradley's first assignment of error.

{¶27} By Bradley's second assignment of error, she argues that the trial court erred by taking 37 days after the date of trial to issue its findings of fact and conclusions of law. We disagree.

{¶28} Initially, we note that the delay that Bradley complains about bears no resemblance to the years-long delay objected to in other cases. See, e.g., *Bell v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. No. 10AP-920, 2011-Ohio-6559, ¶23 (over five years); *Cantwell Mach. Co. v. Chicago Mach. Co.*, 10th Dist. No. 08AP-1040, 2009-Ohio-4548, ¶20 (five and a half years). Given the trial court's substantial docket, we find 37 days a reasonable time for a party to wait for the trial court to render a written decision after a bench trial. A trial court must be afforded sufficient time to research, write, and edit its decision. *Tate v. Owens State Community College*, 10th Dist. No. 10AP-1201, 2011-Ohio-3452, ¶31.

{¶29} However, even if we found 37 days an unreasonable length of time, the delay would not warrant reversal. Delay in rendering a decision after a bench trial does not constitute reversible error unless the appealing party demonstrates prejudice resulting from the delay. *Cantwell Mach. Co.* at ¶24. Here, Bradley contends that prejudice arises

from the difficulty the trial court would have in recalling testimony submitted 37 days previously. While delay may adversely affect memory, that danger was not present here as the pivotal evidence—the testimony of the two expert witnesses—was preserved by deposition transcript. See *Gordon v. Ohio State Univ.*, 10th Dist. No. 10AP-1058, 2011-Ohio-5057, ¶91 (Brown, J., concurring) (stating that "delay in rendering the decision was not prejudicial to the parties because pivotal testimony was presented through recorded depositions, rather than live testimony").

{¶30} We acknowledge, as Bradley points out, that the clerk of courts could not locate Prok's deposition transcript when gathering the pleadings for transmittal to this court. We do not, however, join Bradley in her assumption that the absence of the transcript at that time means that the trial court did not have the transcript when reaching its findings of fact and conclusions of law. Rather than rely on speculation, we must presume the regularity of the trial court's proceedings. *Abshire v. Mauger*, 10th Dist. No. 09AP-83, 2010-Ohio-787, ¶15.

{¶31} Bradley also contends that she was prejudiced by ODOT's failure to serve her with its proposed findings of fact and conclusions of law, and by the trial court's reliance on ODOT's proposed findings of fact and conclusions of law when drafting its decision. This alleged prejudice is unrelated to the 37-day delay, so it does not constitute a reason to sustain Bradley's second assignment of error. As this court rules on assignments of error, not mere arguments, we generally disregard any argument unassociated with an assignment of error. *Thompson* at 65. Consequently, we decline to consider whether Bradley actually suffered the alleged prejudice.

{¶32} In sum, we are not persuaded that the passage of 37 days between a bench trial and the issuance of a decision is a basis for reversal of a judgment. Accordingly, we overrule Bradley's second assignment of error.

{¶33} By Bradley's third assignment of error, she argues that the trial court erred by requiring her to prove that she suffers from CRPS when BWC allowed a claim for a different medical condition, i.e., RSD. Because the evidence adduced at trial established that CRPS and RSD are different names for the same medical condition, we find no error.

{¶34} The scope of an R.C. 4123.512 appeal is limited to the medical conditions addressed in the order from which the appeal is taken. *Ward v. Kroger Co.*, 106 Ohio St.3d 35, 2005-Ohio-3560, syllabus. "A workers' compensation claim is simply the recognition of the employee's right to participate in the fund for a specific injury or medical condition, which is defined narrowly, and it is only for that condition, as set forth in the claim, that compensation and benefits provided under the act may be payable." Id. at ¶10. Thus, the question before a finder of fact in an R.C. 4123.512 appeal is whether a claimant may participate in the workers' compensation fund for the medical condition asserted at the administrative level, and not any other additional injury. Id. at ¶8-9.

{¶35} In the case at bar, Bradley argues that CRPS and RSD are different medical conditions. Because the administrative order underlying this appeal only allowed a claim for RSD, Bradley contends that the trial court erred in considering whether she suffers from CRPS. ODOT responds that CRPS and RSD are just different names for the same medical condition. Thus, according to ODOT, the trial court did not expand its review to include a different medical condition than the one at issue at the administrative level.

{¶36} Both Prok and Steiman testified that the medical condition once known as RSD is now called CRPS. Steiman explained that CRPS "was actually first described prior to the Civil War by a French neurologist and over the years the name has changed to different things." Steiman deposition, at 19. Sometime in the 1970s or 1980s, the medical community adopted the name "reflex sympathetic dystrophy." Id. Then, in the 1990s, the International Association for the Study of Pain "proposed different nomenclature." Id. at 20. The International Association for the Study of Pain decided that the name "reflex sympathetic dystrophy" was no longer appropriate because "it became evident that the sympathetic nerve system * * * was [not] involved in this medical problem, there was no evidence that it was a reflex[,] and it certainly wasn't a dystrophy like muscular dystrophy."[2] Id. at 20. Consequently, "the name was changed to the Complex Regional Pain Syndrome, Type I and Type II. One type has to do [with] whether there's a nerve injury, [while] the second type occur[s] without a nerve injury." Id. Steiman concluded his recounting of the history of CRPS by stating:

> So basically, whether you use the term Complex Regional Pain Syndrome or Reflex Sympathetic Dystrophy, you're talking about a medical diagnosis [ ] which is characterized by pain and a number of objective physical findings in which there is no defined nerve injury.

Id.

{¶37} Based upon the above evidence, we conclude that the trial court did not consider a different medical condition than the condition set forth in the claim allowed at the administrative level. Both RSD and CRPS describe the same medical condition, just

[2] The sympathetic nervous system controls "things like your heartbeat, your blood pressure, sweating, things of that nature." Id. at 21.

by different terms. Accordingly, we overrule Bradley's third assignment of error. See *Brown v. Mabe*, 170 Ohio App.3d 13, 2007-Ohio-90, ¶8-12 (holding that the trial court erred in excluding expert testimony when the expert witness did not testify about a different medical condition, but rather, used different medical terms to refer to the same condition at issue at the administrative level).

{¶38} For the foregoing reasons, we overrule all of Bradley's assignments of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.