

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

Richard N. Tunks

Court of Appeals No. L-12-1297

Appellant

Trial Court No. CI0201103769

v.

Chrysler Group LLC, et al.

**DECISION AND JUDGMENT**

Appellees

Decided: November 22, 2013

\* \* \* \* \*

Steven M. Kalniz, for appellant.

James F. Nooney and Colleen L. Diedrich, for appellees.

\* \* \* \* \*

**JENSEN, J.**

{¶ 1} This appeal follows a jury verdict, journalized by the trial court on September 19, 2012, finding that plaintiff-appellant, Richard N. Tunks, is not eligible to participate in the workers' compensation fund with respect to a cervical spine injury he allegedly suffered in the course of his employment with appellee, Chrysler Group, LLC.

Tunks claims error with respect to certain evidentiary rulings rendered by the trial court during the course of the trial. For the reasons that follow, we affirm the decision of the trial court.

### **I. Background**

{¶ 2} Tunks claims to have suffered three cervical spine injuries resulting from two separate incidents that occurred in the course of his employment with Chrysler. The first occurred on October 20, 2001. He allegedly suffered an injury to his C6-7 discs while using a torque gun at work. MRIs conducted on November 14, 2001 and October 22, 2002, revealed a disc bulge at C6-7. Neurosurgeon, Edmund Lawrence, M.D., ultimately fused those discs on November 15, 2002. Tunks sought workers' compensation benefits in connection with this injury, and his claim was allowed.

{¶ 3} The second incident occurred on June 19, 2003. Tunks bumped his head on the undercarriage of a vehicle. He reported the incident to his employer, but initially did not believe himself to be injured. He began experiencing neck pain, however, and reported this pain to Chrysler on July 3, 2003. An August 6, 2003 MRI revealed bulges at C3-4, C4-5, and C5-6. Dr. Lawrence fused the C3-4 discs on May 28, 2004. Chrysler, which is self-insured for purposes of providing workers' compensation coverage, certified Tunks' claim for workers' compensation benefits.

{¶ 4} Tunks' neck pain persisted. An MRI performed on January 14, 2009 again revealed bulging at the C4-5 discs. Dr. Lawrence performed fusion surgery on

November 18, 2009. On March 31, 2009, Tunks moved the Industrial Commission (“IC”) to amend the initial claim he made in connection with the June 19, 2003 incident to allow the C4-5 injury as an additional condition.

{¶ 5} After a hearing, the district hearing officer allowed Tunks’ additional claim on June 19, 2009. Chrysler appealed that ruling. On August 4, 2009, a staff hearing officer also allowed Tunks’ claim. Chrysler again appealed, but its appeal was denied on September 9, 2009. The IC refused Chrysler’s request for reconsideration on September 28, 2009. Having exhausted the administrative appeals process, Chrysler appealed to the Lucas County Court of Common Pleas.

{¶ 6} The case was tried to a jury on August 29, 2012. Before trial, Chrysler filed a motion in limine to exclude evidence regarding “all prior administrative proceedings and determinations,” including “the allowance of [Tunks’] claims and determinations of the cause of the injuries asserted therein at C6-7, and the allowance and causation of [Tunks’] ‘herniated disc C3-4.’” The trial court granted Chrysler’s motion, finding that evidence of the prior administrative claims was not relevant under Evid.R. 402 and that even if relevant, the probative value was outweighed by the danger of unfair prejudice under Evid.R. 403(A). The trial court clarified, however, that Tunks was free to present evidence that he suffered prior cervical spine injuries that he contends were caused by workplace injuries.

{¶ 7} At trial, both Tunks and Chrysler presented the videotaped trial depositions of their respective expert witnesses who provided opinions as to whether Tunks’ C4-5

discs were injured as a result of the June 19, 2003 bump to his head. Dr. Lawrence testified on Tunks' behalf, and Gerald Steiman, M.D., a neurologist who conducted an independent medical examination of Tunks at Chrysler's request, testified for Chrysler. In light of its ruling on Chrysler's motion in limine, the trial court redacted the trial depositions to eliminate references to the fact that the claims relating to the C3-4 and C6-7 injuries had been allowed or certified.

{¶ 8} On direct examination by Tunks' counsel, Dr. Lawrence discussed both his interpretation of the MRIs of Tunks' cervical spine, as well as the findings set forth in the radiology reports from those studies. He acknowledged that in some places, the reports describe "bulges," and in other places, they describe "herniations." He testified that disc "herniations," "bulges," "protrusions," and "ruptures" are synonymous, but come in different sizes: small, medium, and large. He explained that Tunks' C6-7 discs were herniated following the 2001 incident and the C3-4 discs were herniated after the 2003 injury. Both injuries required fusion surgeries. He said that he saw injury to the C4-5 discs in the 2003 MRI, but they did not reach a surgical level until 2009 at which point they, too, were fused. Dr. Lawrence testified that the 2001 injury did not cause the bulging disc at C4-5, however, he opined that the C4-5 injury resulted from the 2003 head bump. He acknowledged that Tunks had congenital spinal stenosis, a narrowing of the spine present from birth, but did not view this condition as the source of Tunks' neck injuries.

{¶ 9} On cross-examination of Dr. Lawrence, counsel for Chrysler made no attempt to elicit opinions calling into question whether the C6-7 injury was caused by the torque gun in 2001 or whether the 2003 incident necessitated the fusion of the C3-4 discs. But while Dr. Lawrence testified that he was sure that the damage at C3-4 resulted from the head bump, with respect to the damage to C4-5, he said “I think I’m pretty sure” and “I kind of think [the C3-4 and C4-5 discs] got injured at the same time.”

{¶ 10} Dr. Steiman, on direct by Chrysler, did not agree with Dr. Lawrence’s view that “herniations” and “bulges” are synonymous. He explained that disc injuries generally take three forms: (1) “extrusions,” which are typically caused by trauma, (2) “protrusions,” which are typically caused by arthritis, and (3) “bulges,” which are typically caused by obesity. Extrusions and protrusions are herniations; bulges are not. Dr. Steiman indicated that his review of the MRIs for the period between 2001 and 2009 revealed bulges, but no herniations. He observed congenital spinal stenosis which he said was becoming worse over time, spurring, thickening of ligaments, arthritic changes, and scarring from previous surgeries. He testified that the C4-5 bulge was caused not by the 2001 or 2003 incidents, but by Tunks’ spinal stenosis, obesity, and natural degeneration of tissue.

{¶ 11} On cross-examination, Tunks elicited from Dr. Steiman that he did not agree that the injuries to the C3-4 or C6-7 discs were “herniations.” Dr. Steiman also

testified that the bulge at C4-5 was present in 2001. When asked whether he disagreed that the 2003 head bump caused injury to Tunks' C3-4 discs, he responded that he had not been asked to render opinions about the cause of the C3-4 injury.

{¶ 12} The jury ultimately concluded that the June 19, 2003 injury was not the cause of the C4-5 disc bulge and found that Tunks was not entitled to participate in the Ohio workers' compensation fund for that condition. Tunks appeals that verdict and assigns one error for our review:

The trial court erred in granting defendant's first motion in limine and thereby prohibiting plaintiff from presenting evidence and arguments to the jury regarding the allowance and determination as to the cause of the C6-7 and C3-4 disc injuries.

## **II. Standard of Review**

{¶ 13} Although the trial court conducts a de novo determination of matters of law and fact on an appeal under R.C. 4123.512 regarding a claimant's right to participate in the workers' compensation scheme, our review of the trial court's decision is very limited. *Oswald v. Connor*, 16 Ohio St.3d 38, 42, 476 N.E.2d 658 (1985). "If the evidence before [the trial] court is sufficient to support the result reached, [the reviewing] court will not substitute its judgment." *Id.* at 42, quoting *Swanton v. Stringer*, 42 Ohio St.2d 356, 359, 328 N.E.2d 794 (1975).

{¶ 14} The particular issue presented in this appeal revolves around whether the trial court properly excluded evidence that Tunks' claim for his C6-7 injury was allowed

and that Chrysler certified his claim for his C3-4 disc injury. We review the trial court's rulings on evidentiary matters under an abuse of discretion standard. *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, ¶ 14. An abuse of discretion is more than an error of law. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). “‘Abuse of discretion’ suggests unreasonableness, arbitrariness, or unconscionability. Without those elements, it is not the role of [the] court to substitute its judgment for that of the trial court.” *Valentine v. Conrad*, 110 Ohio St.3d 42, 2006-Ohio-3561, 850 N.E.2d 683, ¶ 9.

### **III. Law and Analysis**

{¶ 15} In connection with his assignment of error, Tunks frames the issues for our review as follows:

A. Whether the prior allowance of and determination as to the cause of the C3-4 and C6-7 disc herniations are barred from relitigation by defendant under the doctrine of res judicata.

B. Whether the evidence of the prior allowance and determination as to cause [sic] of the C3-4 and C6-7 disc herniations is relevant and admissible as to the proximate cause of the C4-5 disc bulge at issue.

C. Whether the evidence of the allowance and the determination as to the cause of the C3-4 and C6-7 disc herniations is relevant and admissible to rebut the opinions of defendant's expert and defendant's arguments at trial.

D. Whether it is unfairly prejudicial to plaintiff to exclude evidence of the allowance and determination as to the cause of the C3-4 and C6-7 disc herniations.

E. Whether exclusion of evidence of the allowance and determination as to the cause of the C3-4 and C6-7 disc herniations is admissible to avoid the danger of confusing and misleading the jury.

{¶ 16} The issues identified by Tunks essentially require us to determine whether the trial court's ruling (1) permitted Chrysler to relitigate the C3-4 and C6-7 claims; (2) excluded relevant, admissible evidence; and (3) confused and misled the jury and unfairly prejudiced Tunks. Because they are interrelated, we combine our analysis of these issues.

{¶ 17} Under Evid. R. 402, relevant evidence is generally admissible and irrelevant evidence is inadmissible. Evid.R. 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." A trial court may exclude otherwise relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403(A).

{¶ 18} "To establish a right to workers' compensation, a claimant must show by a preponderance of the evidence that his injury occurred in the course of his employment, and that his harm or disability directly and proximately resulted from that injury." *Cook v. Mayfield*, 45 Ohio St.3d 200, 204, 543 N.E.2d 787 (1989), quoting *Fox v. Indus.*



*Comm.*, 162 Ohio St. 569, 125 N.E.2d 1 (1955), paragraph one of the syllabus. The totality of the circumstances must be considered in determining whether a causal relationship exists between the incident and the injury complained of. *Stevens v. Harsco Corp.*, 101 Ohio App.3d 164, 167, 655 N.E.2d 230 (3d Dist.1995). Where complicated medical problems are at issue, testimony from a qualified expert is necessary to establish a proximate causal relationship between the incident and the injury. *White Motor Corp. v. Moore*, 48 Ohio St.2d 156, 159, 357 N.E.2d 1069 (1976).

{¶ 19} The sole issue at trial was whether the C4-5 injury was caused when Tunks bumped his head on June 19, 2003. Both experts agreed that the 2001 incident played no role in the C4-5 injury. We agree with the trial court that evidence that Tunks' workers' compensation claim was allowed for that injury was, therefore, not relevant and was not admissible. The jury was not confused or misled by the trial court's exclusion of this irrelevant evidence and Tunks suffered no prejudice. We also agree with the trial court that Chrysler would have been unfairly prejudiced if the jury had been told that Tunks' claim had been allowed for an unrelated injury resulting from an unrelated incident.

{¶ 20} Tunks also argues that the fact that his C3-4 injuries resulted from trauma makes it more likely that his C4-5 injuries were traumatically-induced. He claims that he was not able to present this to the jury. He also urges that by excluding evidence that the C3-4 injury was certified, the trial court deprived him of the opportunity to discredit Dr.

Steiman's opinion that Tunks' injury was not induced by trauma. And he contends that by not informing the jury that Chrysler certified the C3-4 claim, the trial court essentially permitted Chrysler to relitigate the validity of that claim.

{¶ 21} The question for the jury's consideration was very limited: was the C4-5 injury caused by the head bump or was it not? That Chrysler certified the C3-4 injury did not make it more probable that the C4-5 injury was caused by the June 19, 2003 incident. Tunks presented medical records and Dr. Lawrence's testimony in support of his claims that his cervical spine injuries were caused by workplace incidents. Significantly, Dr. Lawrence himself hedged on whether the 2003 head bump caused the C4-5 injury, testifying "I think I'm pretty sure" and "I kind of think [the C3-4 and C4-5 discs] got injured at the same time." Tunks also cross-examined Dr. Steiman at length about his opinions and challenged Dr. Steiman about the foundation for his opinions. He was given ample opportunity to provide the jury with a timeline and history of his injuries and to discredit Dr. Steiman's theory of what caused them.

{¶ 22} In addition, contrary to Tunks' argument, Chrysler made no attempt to relitigate the C3-4 claim. In fact, Dr. Steiman, *when asked by Tunks*, indicated that he had not been asked to determine the cause of the C3-4 injury and ultimately offered no opinion. This case is distinguishable from the cases cited by Tunks. Chrysler did not seek to avoid or discontinue benefit payments for claims that were previously allowed or

certified, as the employers had in *State ex rel. Baker Material Handling Corp. v. Indus. Comm.*, 69 Ohio St.3d 202, 631 N.E.2d 138 (1994) and *State ex rel. Pepsi-Cola Bottling Co. v. Morse*, 72 Ohio St.3d 210, 648 N.E.2d 827 (1995).

{¶ 23} This case is also distinguishable from *Hickle v. Hayes-Albion Corp.*, 3d Dist. Seneca No. 13-06-24, 2007-Ohio-4236, where the employee claimed that his first injury (which was treated by a laminectomy) resulted in his second injury (post-laminectomy syndrome). In that case, the employer's expert expressly testified that the injury forming the basis for the previously-allowed claim was not caused by the workplace incident at issue.

{¶ 24} *Wein v. Seaman Corp.*, 116 Ohio App.3d 189, 687 N.E.2d 477 (9th Dist.1996), also cited by Tunks, is also distinguishable. There, the employer certified the claimant's first claim, which the Bureau of Workers' Compensation ("BWC") then allowed, but did not certify his amended claim. A BWC hearing officer allowed the amended claim and the IC denied the employer's appeal. *Id.* at 191. On appeal to the common pleas court, in addition to proving that he was entitled to benefits for the injuries identified in his amended claim, the trial court also required the claimant to prove that his initial injury entitled him to benefits. *Id.* The appellate court concluded that this was error because the employer had not timely appealed the allowance of the initial claim; only the amended claim was at issue.

{¶ 25} In the present case, Tunks claimed that a single incident produced two distinct injuries, one of which allegedly did not manifest itself until almost six years after

the incident. The court did not require Tunks to prove his entitlement to benefits for the original claim for the C3-4 injury. Moreover, Chrysler did not even ask Dr. Steiman to provide an opinion as to whether the head bump caused the previously-certified C3-4 injury.

{¶ 26} Finally, we again agree with the trial court that to have permitted evidence of the resolution of Tunks' prior administrative claims would have been unfairly prejudicial to Chrysler. Under the facts of this case, evidence that Tunks filed previous claims that were allowed would prejudice Chrysler in the same way that Tunks would be prejudiced if there had been evidence presented to the jury that he had filed prior claims that had been disallowed. The trial court did not abuse its discretion in excluding the evidence.

#### **IV. Conclusion**

{¶ 27} We find Tunks' sole assignment of error not well-taken. The trial court did not abuse its discretion in excluding evidence of the allowance or certification of Tunks' prior administrative claims. The judgment of the Lucas County Court of Common Pleas is, therefore, affirmed. The costs of this appeal are assessed to appellant pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

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JUDGE

Stephen A. Yarbrough, J.

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JUDGE

James D. Jensen, J.  
CONCUR.

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JUDGE

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