[Cite as *Stephens v. U.S. Tsubaki Power Transm., L.L.C.*, 2026-Ohio-4256.]

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

Todd M. Stephens Appellant v. U.S. Tsubaki Power Transmission, et al. Appellees	Court of Appeals No. E-26-018 Trial Court No. 2025 CV 0101 **DECISION AND JUDGMENT** Decided: October 27, 2026

* * * * *

Joseph E. Gibson, for appellant.

Meredith L. Ullman, for appellee, U.S. Tsubaki Power Transmission

D. Andew Wilson, Ohio Attorney General, and
Andrew D. Pappert, Assistant Attorney General, for appellee, Ohio Bureau of Workers' Compensation

* * * * *

DUHART, J.

{¶ 1} This is an appeal by appellant, Todd Stephens, from the February 26, 2026 judgment of the Erie County Court of Common Pleas ("trial court") granting summary judgment in favor of appellee, U.S. Tsubaki Power Transmission, LLC ("the employer"). For the reasons that follow, we affirm the trial court's judgment.

{¶ 2} Stephens sets forth three assignments of error:

> 1. The Trial Court erred in granting [the employer's] Motion for Summary Judgment, as this is much too harsh of a result for failing to timely disclose his expert in a timely manner.
>
> 2. The Trial Court erred in granting [the employer's] Motion for Summary Judgment as [Stephens] did not require medical or other expert testimony to establish his case.
>
> 3. The Trial Court erred in granting [the employer's] Motion for Summary Judgment as reasonable minds could differ as to whether [Stephens] was so under the influence of a controlled substance that he was impaired such that he removed himself from the workforce.

Background

{¶ 3} Stephens was employed by the employer from mid-November 2021 until August 5, 2022. Stephens was aware that if he had an accident at work, he would be tested for drugs after the accident.

{¶ 4} On August 5, 2022, Stephens was disassembling metal parts for the employer by putting the parts in a vise, which was attached to a table, tightening the vise, and then hitting the parts with a hammer. He was working at this task all day. At some point, Stephens told his supervisor that the vise was getting loose. Thereafter, Stephens was tightening the vise when it slipped and he fell, injuring his hip. Stephens reported the accident to the supervisor who was on duty. An hour or two later, Stephens went to a medical facility with another employee, where a urine drug test was performed. Stephens tested positive for cocaine and marijuana.

Court and Administrative Proceedings

First Complaint

{¶ 5} On March 20, 2023, Stephens filed a complaint in the trial court, case No. 2023CV0098, against the employer and the administrator of the Bureau of Workers' Compensation ("BWC"). In the complaint, Stephens alleged that on August 5, 2022, while working for the employer and during the course of and arising out of his employment, he sustained an injury to his right hip. He alleged that he timely filed a claim with the BWC for his injury, which was initially allowed but ultimately denied. He attached to his complaint two of the orders issued by Ohio Industrial Commission officers (marked as exhibits A and B), from which Stephens timely appealed.

{¶ 6} Stephens further alleged in his complaint that a third and final order was issued, on January 27, 2023, by a staff hearing officer who denied Stephens the right to participate in benefits provided by the Workers' Compensation Act. Stephens timely appealed from this final order.

Exhibit A

{¶ 7} This exhibit provides, inter alia, that on October 19, 2022, a hearing was held before a district hearing officer on the employer's appeal of the August 8, 2022 order which allowed Stephens' BWC claim for contusion of the right hip. The district hearing officer ordered the August 8, 2022 order vacated, and denied Stephens' claim pursuant to R.C. 4123.54(A)(2). The district hearing officer specifically set forth in the order:

> . . . [R.C. 4123.54(A)(2)] states that an employee is not entitled to compensation or benefits if the employee's injury was caused by the employee being intoxicated, under the influence of a controlled substance

not prescribed by a physician, or under the influence of marijuana if being intoxicated, under the influence of a controlled substance not prescribed by a physician, or under the influence of marijuana was the proximate cause of the injury.

This decision is based upon the lab report, filed 08/30/2022, which documents that [Stephens] tested positive for cocaine and marijuana based upon a sample collected on 08/05/2022. This decision is further based upon the report from W. Kent Soderstrum, M.D., dated 09/18/2022. Dr. Soderstrum opines [Stephens'] impairment due to the presence of cocaine and marijuana in his system was the proximate cause of the subject injury.

Exhibit B

{¶ 8} This exhibit provides, inter alia, that on January 5, 2023, a hearing was held before a staff hearing officer on Stephens' appeal of the district hearing officer's order from the October 19, 2022 hearing which disallowed Stephens' BWC claim. The staff hearing officer set forth in the order:

It is the order of the Staff Hearing Officer that the order from the 10/19/2022 District Hearing Officer hearing (issued on 10/21/2022) is affirmed.

Prior to a hearing on the merits, Counsel for the Injured Worker requested a continuance in order to obtain a medical report in response to the evidence relied upon by the District Hearing Officer in denying the instant claim. The Staff Hearing Officer has considered the arguments raised by Counsel for Injured Worker, but the Staff Hearing Officer does not find that there is sufficient evidence of extraordinary and unforeseen circumstances upon which to grant the requested continuance.

The order of the Administrator, issued on 08/08/2022, remains vacated.
. . .

The Staff Hearing Officer orders that the claim be DISALLOWED in its entirety.

Per the statement made by the Claimant on the instant FROI-1 Application and to . . . [the] treating physicians on 08/05/2022, the Claimant fell onto a concrete floor when the "vise came loose." The Staff Hearing Officer has reviewed all evidence submitted by the Claimant [and] does not find that

> the Claimant sustained a compensable workplace injury. Specifically, the Staff Hearing Officer relies upon R.C. 4123.54 (A) (2) in denying the instant claim.
> . . .
>
> Post-accident urine testing was . . . performed on the date of the alleged injury (08/05/2022). The 08/29/2022 Lab Report documents that the Claimant tested positive for marijuana and cocaine. Per the 09/18/2022, report from [Dr. Soderstrum], the testing levels revealed that the Claimant was impaired at the time of the alleged injury. Based upon said evidence, the Staff Hearing Officer concludes that said impairment was the proximate cause of the Claimant's alleged industrial injury and, therefore, the instant claim is not properly allowable under R.C. 4123.54 (A) (2).

Answers/Dismissal

{¶ 9} The employer and the administrator of the BWC ("the administrator") filed answers to Stephens' complaint. Then, in March 2024, Stephens filed a notice of dismissal without prejudice, pursuant to Civ.R. 41(A).

Second Complaint and Subsequent Proceedings

{¶ 10} On March 3, 2025, Stephens refiled his complaint with the trial court, in case No. 2025CV0101, against the employer and the administrator. Once more, Stephens alleged that he was injured while working for the employer and was entitled to receive benefits provided by the Workers' Compensation Act.

{¶ 11} The employer and the administrator again filed answers to Stephens' complaint. In addition, the employer and the administrator served on Stephens' counsel requests for production of documents and interrogatories. The case proceeded, and on June 11, 2025, a case management conference was held. A magistrate's decision was filed that same day, which set forth in relevant part:

> The Court FINDS that after reviewing the case file and discussing the matter with counsel, the following ORDERS (are agreed to by counsel) . . . shall be issued for the orderly progression of the case:
>
> IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:
>
> . . .
>
> 3. [Stephens] shall identify the expert witnesses []he intends to call at Trial and provide a copy of the experts[’] reports no later than September 30, 2025.
>
> 4. [The employer] shall identify the experts [it] intends to produce at Trial and provide a copy of the experts[’] report (including the completion of any IME) not later than December 5, 2025.
>
> 5. The deadline for filing all dispositive motions is October 31, 2025.
>
> 6. This matter shall come back before the Court for a Final Case Management Conference/Settlement Conference on February 4, 2026 . . .

{¶ 12} On September 12, 2025, the employer filed a motion to compel Stephens to respond to interrogatories and requests for production of documents which were served on Stephens’ counsel on April 11, 2025. On September 15, 2025, the magistrate ordered Stephens to respond to outstanding discovery by October 10, 2025.

{¶ 13} On October 10, 2025, the employer filed a motion for an extension of the deadline for dispositive motion because although the employer received Stephens’ responses to its discovery requests on October 8, 2025, the responses were incomplete. The employer needed additional time to obtain complete responses, request medical records and schedule Stephens’ deposition. On October 14, 2025, the magistrate ordered that the dispositive motion deadline be extended until December 19, 2025.

{¶ 14} On November 12, 2025, the employer took Stephens’ deposition.

{¶ 15} On November 17, 2025, the employer filed its disclosure of its expert witness, Dr. Soderstrum, and represented in its filing that it provided the doctor's report to counsel.

{¶ 16} On December 10, 2025, the employer filed a second motion for an extension of the dispositive motion deadline. The next day, the magistrate ordered that the dispositive motion deadline be extended until January 7, 2026.

Motion for Summary Judgment and Related Filings

{¶ 17} On January 6, 2026, the employer filed its motion for summary judgment arguing that Stephens was intoxicated at the time of the accident and his injury was a result thereof. The employer cited R.C. 4123.54(A)(2), which prohibits the award of workers' compensation benefits for an injury caused by the employee being intoxicated or under the influence of drugs. The employer attached several documents to its motion, including the affidavit of Dr. Soderstrum, the doctor's curriculum vitae ("CV") and the doctor's expert report, authored September 18, 2022.

{¶ 18} In the affidavit, Dr. Soderstrum averred, in relevant part:

> . . .
>
> 5. Based on my review of the materials and my expertise, I prepared an expert report dated September 18, 2022, which sets forth my findings, opinions, and the basis for those opinions. In reviewing the records and drug test, I found within a reasonable degree of medical certainty that Stephens was intoxicated and that his intoxication was the proximate cause of his injury on August 5, 2022. A true and accurate copy of my expert report is attached hereto . . .
>
> In his expert report, Dr. Soderstrum set forth, inter alia:
> . . .

Quantitative urine drug test results from the post-accident urine drug test obtained on August 5, 2022[,] and reported on August 29, 2022[,] was positive for the presence of cocaine metabolites over the screening cutoff level of 300 ng/ml and was confirmed (benzoylecgonine) by gas chromatography/ mass spectrophotometry at a level of 175 ng/ml (confirmatory cutoff = 150 ng/ml), as well as for the presence of marijuana metabolites over the screening cutoff level of 50 ng/ml and was confirmed (carboxy-tetrahydrocannabinol) at 73 ng/mL, (confirmatory cutoff = 15 ng/mL).
. . .

1. . . . [B]ased on my review of the available medical records and accepting as factual the findings, but not the opinions of the examining physicians, I find that there is sufficient medical evidence to substantiate that the illegal substances caused Mr. Stephens to be impaired at the time of the accident. Cocaine causes altered levels of alertness, feelings of wellbeing, euphoria, inappropriate feelings of competence and can be associated with anxiety and restlessness. Cocaine and its metabolites are completely eliminated from the body in 3 days and symptoms of cocaine withdrawal are characterized by hypersomnia, psychomotor retardation, agitation, depression, anxiety, and poor concentration. The presence of cocaine metabolites in the urine is indicative of recent use of cocaine and would be expected to be associated with either altered levels of alertness, feelings of wellbeing, euphoria, inappropriate feelings of competence and can be associated with anxiety and restlessness or hypersomnia, psychomotor retardation, agitation, depression, anxiety, and poor concentration, depending on whether the individual is experiencing the immediate effects of cocaine or the effects of decreasing levels of cocaine. Either way, the presence of cocaine metabolites in the body is expected to be associated with impairment of one's ability to safely function in the workplace and would decrease one's judgement and/or one's ability to respond to unexpected situations. *The observed level of 175 ng/mL of benzoylecgonine (above the threshold value of 150 ng/ml) in the urine sample strongly supports that Mr. Stephens' use of cocaine was recent.*

Although there is no established correlation between the levels of marijuana metabolites in the blood and the level of impairment, the presence of marijuana in the body is documented to cause impairment in one's judgement and/or one's ability to respond to unexpected situations. With reference to The Medical Review Officer's Manual, Medical Review Officer Certification Council's Guide to Drug Testing, 5th Edition, simulator studies have shown impaired performance after marijuana use persisting longer than the euphoric effects. Peak levels of . . . active marijuana ingredients tetrahydrocannabinol (THCA) are usually found in

> the urine within 5 hours after usage and the excretion half-life for THCA is between 14 and 38 hours depending on the level of usage. Although THCA is known to leach out of adipose tissues for a significant period after last use, this results in low levels of THCA in the urine, below the cutoff threshold values for positive drug tests. *The observed confirmed presence of marijuana metabolites at 73 ng/ml, more than 4 times above the threshold value of 15 ng/ml[,] in the urine sample strongly supports that Mr. Stephens' use of marijuana was recent.* It is therefore more likely than not that marijuana and its metabolites caused Mr. Stephens to be impaired at the time of the accident.
> . . .
>
> 2. . . . [B]ased on a review of the available medical records, and my special expertise in matters related to positive drug tests as a certified Medical Review Officer Certification Council (MROCC) Medical Review Officer I find that there is sufficient evidence to conclude, within a reasonable degree of medical probability, that Mr. Stephens' impairment due to the presence of cocaine and marijuana in his system was the proximate cause of the alleged injury. Cocaine and its metabolites cause impairment that would be expected to contribute to Mr. Stephens' inattention to his surroundings and alter his ability to respond to the unexpected incident of the vise coming loose, which resulted in his fall to the floor. Likewise, Mr. Stephens' impairment due to the presence of marijuana in his system would be expected to contribute to Mr. Stephens' inattention to the stability with which the vise was fastened and would impair his ability to respond to the unexpected event of the vise coming loose, which resulted in his fall to the floor. It is therefore within reasonable medical probability that Mr. Stephens' level of impairment was the proximate cause of the observed injury.
>
> (Emphasis added.)

{¶ 19} On January 7, 2026, the magistrate issued an order setting forth certain deadlines with respect to the employer's summary judgment motion, including "[a]ll evidentiary material the parties desire this Court to consider shall be properly filed with the Clerk no later than February 20, 2026."

{¶ 20} On February 10, 2026, Stephens filed his response to the summary judgment motion, to which he attached the affidavit of Harry B. Plotnick, Ph.D., J.D., Dr.

Plotnick's CV and the doctor's expert report. Stephens argued that "[t]he sole issue in this case is whether [he] is entitled to participate in the Ohio Workers' Compensation system for the condition of 'left hip strain[.]'" [1] He asserted that there was no dispute that he tested positive for illicit drugs on the day of his injury, but "the information on which [the employer] relies does not give rise to the presumption that he was so impaired at the time of the work injury that the drugs, and not his work, is the cause of his injury." He noted R.C. 4123.54(A)(2) addresses work injuries when there is a positive drug test, but he argued the employer failed to establish that the drugs were the sole cause of the work injury, as reasonable minds could differ as to whether he "was so impaired as a result of drug use that the injury was presumptive [sic] caused by the drug use as alleged."

{¶ 21} Stephens also cited R.C. 4123.54(B) and argued that there was a fact issue as to whether the drug test he took was reasonable or not under the circumstances, as the only apparent basis for the drug test was his injury. He claimed there was no evidence of a suspicion of drug use, the characteristic scent of marijuana, any slurring of words or other signs of impairment. He maintained "the methodology of the testing itself, and the analysis is flawed to the point where reasonable minds can differ as to whether [he] was truly impaired at the time of the injury, and whether this impairment was due to illicit substances, and also directly caused by the injury."

{¶ 22} Stephens asserted the "[m]edical evidence indicates that the lab results and the analysis employed by Dr. Soderstrum are not sufficient such that there can be only one conclusion as to the cause of [Stephens'] injury." Stephens relied "upon to [sic] the

[1] All of the other filings in the record indicate that Stephens injured his right hip.

Affidavit of Dr. Harry Plotnik, [sic] M.D., J.D. and his report wherein he opines that there is insufficient information available to conclude that [Stephens] was impaired by cocaine or marijuana at the time that he sustained his injury." Stephens observed that Dr. Soderstrum's opinion could be persuasive, but there was contrary medical evidence by Dr. Plotnick which constituted an issue of material fact.

{¶ 23} Stephens also set forth arguments that his deposition testimony raised questions of fact as to the safety of the workplace, the adequacy of his work training and the proper maintenance of the work equipment.

{¶ 24} On February 11, 2026, the employer and the administrator filed a joint response to Stephens' motion for leave to file notice of expert instanter.[2] In their filing, the employer and the administrator set forth, in relevant part, that

> [Stephens] has filed for leave to notice his expert 36 days before trial and four months and ten days late of the court scheduled deadline to identify his expert. [He] has named an expert, heretofore never mentioned prior to February 9, 2026. Additionally, the expert addresses a subject matter never previously declared by [Stephens]. [His] excuse for the late filing is excusable neglect and difficulties in obtaining an expert, yet [he] has failed to rationalize the neglect, or to describe the difficulties.
> . . .
>
> Time and time again, [Stephens] has failed to prosecute his case, but now at the last minute, is attempting to back door an expert report merely stating, "[Stephens] requests relief pursuant to Civil Rule 6(B)(2), as [his] failure to act was due to excusable neglect and difficulties in obtaining expert testimony." The report was only submitted after [the e]mployer filed a motion for summary judgment based on an intoxication defense, and pointed out [Stephens] does not have an expert regarding intoxication to rebut [the employer's] motion.
>
> . . . [Stephens] has failed to comply with the majority of the case deadlines.
> . . .

[2] The record does not include any motion by Stephens for leave to file notice of expert.

> [Stephens] also asserts that he had difficulties in obtaining expert testimony. The [e]mployer's intoxication defense has been known since the administrative phase of this case. . . [Stephens] has had since October 2022 to secure an expert. [He] has not even offered evidence/explanations of the difficulties he faced in securing an expert, nor did he request additional time to secure an expert. . .
>
> [The employer and administrator] ask this Court to deny [Stephens'] motion for leave to declare his expert instanter and preclude [him] from presenting any expert addressing intoxication.

{¶ 25} Also on February 11, 2026, the employer and administrator filed a joint motion for leave to file their motion in limine with respect to Stephens' expert. They claimed that Stephens did not disclose this expert in initial disclosures under Civ.R. 26(B)(3), or in discovery responses, or pursuant to the June 11, 2025 magistrate's order which required Stephens to disclose his experts and provide expert reports by September 30, 2025.

{¶ 26} On February 19, 2026, the employer filed its reply to its summary judgment motion.

{¶ 27} On February 24, 2026, Stephens filed a motion for extension of time to file deposition transcripts, claiming counsel was in the process of scheduling the trial testimony of Dr. Anthony Tesmond, D.O., the medical provider who first rendered medical attention to Stephens.

{¶ 28} On February 26, 2026, the trial court issued its judgment entry granting summary judgment to the employer. In its judgment entry, the trial court set forth that in ruling on the motion, it considered the summary judgment pleadings, the record, which included Stephens' deposition, the affidavit of Dr. Soderstrum, and the applicable law.

The trial court held, in pertinent part:

1. This is a Worker's Compensation appeal filed by Todd Stephens . . . The case is a re-filing of [a] former case . . ., which [Stephens] subsequently voluntarily dismissed;

2. [Stephens] filed a claim for Worker's Compensation for an alleged injury to his right hip while employed by [the employer]. The claim was denied administratively;

3. [The employer] moves for Summary Judgment arguing [Stephens'] use of cocaine and marijuana were the direct and proximate cause of his injury . . . pursuant to R.C. []4123.54 (A) . . . under the direct causation standard and not under the rebuttable presumption standard set forth in R.C. []4123.54 (B);
. . .

7. [The employer] supports the Summary Judgment Motion with the Soderstrum Affidavit and Stephens Deposition. [Stephens] testified he was a press operator . . . [for the employer and] worked for a little under a year . . . He was generally aware that if he had an accident at work, he'd be drug tested . . . He was disassembling parts working with a vise. He was tightening the vise, the vise moved and he lost his footing, slipped and hurt his hip. . . He went to . . . [a] medical facility a few hours later and submitted to a urine drug test . . . He understands the test was positive for cocaine and marijuana . . . [and] acknowledged smoking marijuana, which he does 3-4 times per week; but he disavowed using cocaine. His explanation for having cocaine in his system is that it m[u]st have been in the marijuana. . .;

8. Dr. Soderstrum attests "within a reasonable degree of medical certainty that Stephens was intoxicated and that his intoxication was the proximate cause of his injury on August 5, 2022." . . . Dr. Soderstrum reviewed all the relevant records, including the urine drug test;

9. This Court holds Defendant met its initial Summary Judgment burden. See e.g., [*Szakal*] *v. Akron Rubber Dev.*[,] . . . 2003-Ohio-6820 [(8th Dist.)]; *Del Resurio v. Fresh Mark[] Inc.*[,] . . . 2026-Ohio-274 [(5th Dist.)]. The burden then shifted to [Stephens] to point to evidentiary materials, which show there is a genuine issue of material fact;

10. . . . [The employer] . . . is . . . proceeding under . . . [R.C. 4123.54](A)(2) which requires direct causation. The arguments relating to lack of probable cause to test or challenges to the manner of testing only relate to

denying the claim based upon the rebuttable presumption under (B), they are irrelevant here because [the employer] is proceeding under (A) (2), direct causation. *Del Rosario* [at] ¶[] 16 ("We find because Fresh Mark did not pursue a rebuttable presumption under subsection (B), Del Rosario's arguments relating to a qualifying chemical test are irrelevant.");

11. [Stephens] attached an Affidavit from . . . Dr. Plotnick, which incorporated a report dated February 5, 2026 wherein Dr. Plotnick attests "there is insufficient information available upon which to conclude, within the requisite legal standard of a reasonable degree of scientific certainty, that Mr. Stephens was impaired by cocaine or marijuana at the time he sustained his injury.";

12. Ordinarily, this Affidavit would create a genuine issue of material fact to defeat Summary Judgment. However, there's a huge problem-this report is untimely;

13. This case was re-filed . . . [and a] Case Management Conference was conducted. As a result, . . deadlines were established . . .;

14. . . . [The employer timely] identified Dr. Soderstrum . . .;

15. [Stephens] did not identify Dr. Plotnik [sic] or provide a copy of his report until the response to Summary Judgment some 36 days before Trial and well beyond the . . . deadline;
. . .

17. [Stephens] failed to provide Civ. R. 26 (B) (3) initial disclosures; . . . did not list Dr. Plotnik [sic] as an expert witness in his discovery responses; . . . made no expert disclosures (and nothing identifying Dr. Plotnik [sic]) by the specific expert disclosure deadline . . . [Stephens'] counsel failed to appear for the February 4, 2026 Final Case Management Conference and while participating by telephone, never disclosed that [Stephens] had an additional expert;

18. The intoxication defense was the bas[i]s for denial of the claim administratively. This case is a re-filing. [Stephens] has had several years to retain an expert to opine on whether his use of cocaine/marijuana was the cause of his injury;

19. The last-minute expert identification is not fair and it is unprofessional. With some limited exceptions based on unforeseen circumstances, this Court does not tolerate the failure to meet agreed upon deadlines. Not only has the need for expert testimony on intoxication as causation been known

> for years; [Stephens] never bothered to ask for an extension of the deadline. [Stephens] had avenues to make a proper, timely expert disclosure and, in effect, "dropped the ball";
> . . .
>
> 21. This Court is not considering the Plotnik [sic] Affidavit for Summary Judgment purposes. It is excluded from consideration based on the above; it was not timely provided and identified;
>
> 22. Without that Affidavit, [Stephens] has failed to show there's a genuine issue of material fact. Reasonable minds could only conclude on the record properly before this Court that [Stephens'] cocaine and marijuana use was the cause of his injury[.]

{¶ 29} Stephens appealed the trial court's grant of summary judgment to the employer.

First Assignment of Error

{¶ 30} Stephens argues the trial court erred in granting the employer's motion for summary judgment because it was too harsh of a result for his failure to timely disclose his expert. He asserts that Civ.R. 6(B)(2) allows him to submit Dr. Plotnick's affidavit after the trial court's deadline, on a showing of excusable neglect. He notes that neglect, under Civ.R. 6(B)(2), has been defined as conduct which falls substantially below what is reasonable under the circumstances.

{¶ 31} Stephens contends that he filed for "Leave to Submit Expert Reports *Instanter*" ("motion for leave") and he intended to supplement with Dr. Plotnick's affidavit to sufficiently oppose summary judgment. He submits that "given the Ohio Supreme Court's admonition that cases should be decided on their merits, where possible, rather than procedural grounds, *Appellee [sic] moves for the acceptance of Dr. Plotnik's*

[sic] affidavit to sufficiently oppose summary judgment." (Emphasis added.) In support, he cites "***State ex rel. Lindenschmidt*** 72 Ohio St.3d t 466 [sic]."

{¶ 32} Stephens claims that "[a]side from the timely disclosure of the other medical information during discovery, [he] did not provide the Dr. Plotnik [sic] information due to a clerical error." He asserts that "[c]ounsel reasonably thought the Plotnik [sic] Affidavit would be submitted and accepted by the Clerk of Court." He further argues that "[t]he unique circumstances of having produced the other medical information, coupled with a clerical error in not marking the same on the fir's [sic] calendar constitutes excusable neglect for allowing [Stephens] to use the Plotnik [sic] Affidavit."

Stephens' Issue and Assertions

{¶ 33} Although Stephens mentions that the trial court erred in granting the employer's motion for summary judgment as it was too harsh for his failure to timely disclose his expert, the crux of this assigned error is that the trial court erred in excluding and not considering Dr. Plotnick's information. As such, we will limit our review to the issue of the trial court's exclusion of this evidence.

{¶ 34} In support of his assigned error, Stephens makes three assertions: (1) he filed a motion for leave; (2) Civ.R. 6(B)(2) allows him to submit Dr. Plotnick's affidavit after the trial court's deadline, on a showing of excusable neglect; and (3) he did not provide Dr. Plotnick's information due to a clerical error, which constitutes excusable neglect.

{¶ 35} The law relevant to Stephens' assertions follows.

Law

Time

{¶ 36} Civ.R. 6(B)(2)(d) provides that "[t]he [trial] court *may act on motion* made after the particular date or the expiration of the specified time if the moving party failed to act because of excusable neglect." (Emphasis added.)

The Record on Appeal/Determination and Judgment on Appeal

{¶ 37} App.R. 9 states in relevant part:

> (A) Composition of the Record on Appeal; Recording of Proceedings.
>
> (1) The original papers and exhibits thereto filed in the trial court, the transcript of proceedings, if any, including exhibits, and a certified copy of the docket and journal entries prepared by the clerk of the trial court shall constitute the record on appeal in all cases.

App.R. 12 provides, in relevant part:

> (A) Determination.
>
> (1) On an undismissed appeal from a trial court, a court of appeals shall do all of the following:
>
> (a) Review and affirm, modify, or reverse the judgment or final order appealed;
>
> (b) Determine the appeal on its merits on the assignments of error set forth in the briefs under App.R. 16 [and] the record on appeal under App.R. 9 . . .

{¶ 38} The appellant has the burden on appeal to establish that the trial court erred, by referring to matters in the record. *S.T. v. J.H.*, 2023-Ohio-1698, ¶ 35 (6th Dist.), citing *Matter of A.G.*, 2019-Ohio-1786, ¶ 70 (5th Dist.). "A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail*, 54 Ohio St.2d 17.

402 (1978), paragraph one of the syllabus. Nor can the record on appeal "be enlarged by factual assertions" set forth in an appellate brief. *Dissolution of Doty v. Doty*, 1980 WL 350992, * 2 (4th Dist. Feb. 28, 1980).

Admission/Exclusion of Evidence

{¶ 39} The admission or exclusion of evidence rests within the sound discretion of the trial court. *State v. Smith*, 2021-Ohio-3997, ¶ 33 (6th Dist.), citing *State v. Sage*, 31 Ohio St.3d 173, 180 (1987). As such, a reviewing court will not reverse a trial court's decision concerning the exclusion of evidence absent an abuse of discretion. *Id.*, citing *State v. Hymore*, 9 Ohio St.2d 122, 128 (1967). Abuse of discretion connotes that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

Analysis

{¶ 40} Regarding Stephens' first assertion, that he filed a motion for leave, we find, after reviewing the record, that no such motion was filed by Stephens in the trial court. Rather, the record indicates that in Stephens' appellate brief, he "moves for the acceptance of Dr. Plotnik's [sic] affidavit to sufficiently oppose summary judgment" and mentions that his counsel thought that Dr. Plotnick's affidavit would be accepted by the clerk of court.

{¶ 41} While we acknowledge that the employer and the administrator filed, with the trial court, a response to Stephens' motion for leave, we note that the employer, in its appellate brief, sets forth Stephens "*attempted* to submit a never before noticed expert at

the same time he filed his [r]esponse" to the motion for summary judgment. (Emphasis added.)

{¶ 42} Notwithstanding, it is Stephens' burden on appeal to establish that the trial court erred *by referring to matters in the record*. *See S.T.*, 2023-Ohio-1698 (6th Dist.). We find that Stephens did not satisfy that burden because he has not referred to matters in the record, as there is no motion for leave in the record. Thus, Stephens has not established that the trial court erred in excluding Dr. Plotnick's materials.

{¶ 43} Concerning Stephens' second and third assertions, which refer to Civ.R. 6(B)(2), this rule provides that a trial "court *may act on motion* made after the particular date or the expiration of the specified time." Having found that the record does not include a motion for leave made by Stephens in the trial court, we therefore find that Civ.R. 6(B)(2)(d) does not apply because that rule requires that the trial court act on motion made. Thus, we find Stephens' second assertion, that Civ.R. 6(B)(2) allows him to submit Dr. Plotnick's affidavit after the trial court's deadline on a showing of excusable neglect, is without merit. Likewise, we find no merit in the third assertion, that Stephens did not timely provide Dr. Plotnick's information due to a clerical error which constitutes excusable neglect under Civ.R. 6.[3]

{¶ 44} For the foregoing reasons, we find that the trial court did not abuse its discretion by excluding from evidence Dr. Plotnick's affidavit, CV and report due to the

[3] We note that in Stephens' third assertion, he refers to matters not in the record; we disregarded those matters.

untimely disclosure of this expert by Stephens. Accordingly, we find Stephens' first assignment of error not well-taken.

Second and Third Assignments of Error

{¶ 45} In his second assigned error, Stephens argues that the trial court erred in granting the employer's motion for summary judgment because he did not need medical or other expert testimony to establish his case. He contends that under Ohio law, a worker almost always requires medical expert testimony to prove the injury is directly caused by the job, but some exceptions apply. He asserts that except for questions of cause and effect which are so apparent they are matters of common knowledge, the issue of causal connection between an injury and a subsequent physical disability involves scientific inquiry and must be established by opinions of medical experts who are competent to express these opinions. In support, he cites six cases.[4]

{¶ 46} Stephens further argues that his injury is self-evident: he was working on a part in a vise and the part slipped and he fell. He submits that "[t]here should be little doubt that when some [sic] falls he can be injured . . . [and] [i]f presented to the jury, reasonable minds can differ as to whether he was injured." He also claims that the issue of whether his being under the influence of a controlled substance was the cause of his injuries rather than his employment, is an issue for the jury as well, so summary

[4] None of the citations comply with Sixth Dist.Loc.R. 19(B) which states, inter alia: ". . . [c]ase citation and other legal authorities . . . must include the volume and page number of the case, and the particular page or paragraph number where the point of law is found. Citations shall conform to the Writing Manual A Guide to Citations, Style, and Judicial Opinion Writing issued by the Supreme Court of Ohio (2024)."

judgment should not have been granted. Stephens insists that reasonable minds can differ as to whether he was injured in the course and scope of his employment, even without Dr. Plotnick's affidavit or testimony.

{¶ 47} In his third assigned error, Stephens argues that the trial court erred in granting the employer's motion for summary judgment because reasonable minds could differ as to whether he was so under the influence of a controlled substance that he was impaired, such that he removed himself from the workforce. Stephens cites to no legal authority.

Standard of Review

{¶ 48} Appellate courts review summary judgment de novo, using the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). A trial court can grant a motion for summary judgment only when the moving party demonstrates:

> (1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made, who is entitled to have the evidence construed most strongly in his favor.

Harless v. Willis Day Warehousing Co., 54 Ohio St.2d 64, 66 (1978); Civ.R. 56(C).

{¶ 49} The party who seeks summary judgment must specifically delineate the basis upon which the motion is brought and identify portions of the record that demonstrate the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996); *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988), syllabus. When a properly supported motion for summary judgment is made, the adverse party may not rest

on allegations or denials in the pleadings but must respond with specific facts showing that there is a genuine issue of material fact. Civ.R. 56(E); *Riley v. Montgomery*, 11 Ohio St.3d 75, 79 (1984). The adverse party must do so using "pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact. . ." Civ.R. 56(C). A "material" fact is one which would affect the outcome of the lawsuit under the applicable substantive law. *Needham v. Provident Bank*, 110 Ohio App.3d 817, 827 (8th Dist. 1996), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Law and Analysis

{¶ 50} The version of R.C. 4123.54 in effect at the time of the accident states in pertinent part:

> (A) Except as otherwise provided . . . every employee, who is injured . . . wherever the injury has occurred . . . is entitled to receive the compensation for loss sustained on account of the injury, . . . and the medical, nurse, and hospital services and medicines, . . . as are provided by this chapter. The compensation and benefits shall be provided, as applicable, directly from the employee's self-insuring employer as provided in section 4123.35 of the Revised Code or from the state insurance fund. An employee . . . is not entitled to receive compensation or benefits under this division if the employee's injury . . . is either of the following:
>
> (1) Purposely self-inflicted;
>
> (2) Caused by the employee being intoxicated, under the influence of a controlled substance not prescribed by a physician, or under the influence of marihuana if being intoxicated, under the influence of a controlled substance not prescribed by a physician, or under the influence of marihuana was the proximate cause of the injury.
>
> (B) For the purpose of this section, provided that an employer has posted written notice to employees that the results of . . . any chemical test described under this division may affect the employee's eligibility for

> compensation and benefits pursuant to this chapter . . . of the Revised Code, there is a rebuttable presumption that an employee is intoxicated, under the influence of a controlled substance not prescribed by the employee's physician, or under the influence of marihuana and that being intoxicated, under the influence of a controlled substance not prescribed by the employee's physician, or under the influence of marihuana is the proximate cause of an injury under either of the following conditions:
>
> (1) When any one or more of the following is true:
>
> . . .
>
> (b) The employee, through a qualifying chemical test administered within thirty-two hours of an injury, is determined to have a controlled substance not prescribed by the employee's physician or marihuana in the employee's system at a level equal to or in excess of the cutoff concentration level for the particular substance as provided in section 40.87 of Title 49 of the Code of Federal Regulations, 49 C.F.R. 40.87, as amended.
> . . .
>
> (C)(1) For purposes of division (B) of this section, a chemical test is a qualifying chemical test if it is administered to an employee after an injury under at least one of the following conditions:
>
> (a) When the employee's employer had reasonable cause to suspect that the employee may be intoxicated, under the influence of a controlled substance not prescribed by the employee's physician, or under the influence of marihuana . . .

{¶ 51} Here, the employer moved for summary judgment under R.C. 4123.54(A)(2), and the trial court rendered its judgment based upon that subsection of the statute. Stephens, in his response to the employer's motion, recognized the employer's arguments regarding this subsection, and relied on Dr. Plotnick's report where he opined that there was not sufficient information available to conclude that Stephens was impaired by cocaine or marijuana at the time he sustained his injury. Stephens also presented arguments based on R.C. 4123.54(B). We note that this exact issue was

considered in *Del Rosario*, 2026-Ohio-274 (5th Dist.). While that case is not binding on this court, we find it persuasive.

{¶ 52} In *Del Rosario*, the employee was working for Fresh Mark Inc. ("Fresh Mark") when he injured his hand. *Id.* at ¶ 2. He was taken to the hospital for treatment where a drug screen was performed; he tested positive for marijuana. *Id.* The employee filed a workers' compensation claim; the claim was denied. *Id.* at ¶ 3. Following hearings and more denials of his claim, the employee filed an appeal with the Stark County Court of Common Pleas. *Id.* at ¶ 4-5. Fresh Mark then filed a motion for summary judgment arguing the employee was under the influence of a controlled substance not prescribed by a physician, which was the proximate cause of the accident, so the employee was not entitled to receive workers' compensation benefits. *Id.* at ¶ 5. Fresh Mark's summary judgment motion was granted, and the employee appealed. *Id.* at ¶ 5-6.

{¶ 53} At the appellate level, the court cited R.C. 4123.54(A)(1) and (2) and noted that under this subsection, the burden of proof was on Fresh Mark. *Id.* at ¶ 12. The court also cited R.C. 4123.54(B)(1)(b), which provides there is a rebuttable presumption that an employee was under the influence if the employee, through "a qualifying chemical test," was determined to have a controlled substance in his system. *Id.* at ¶ 13. The court observed the burden of proof to overcome the rebuttable presumption was on the employee. *Id.* The court noted that the employee argued that the chemical test to which he was subjected was not a "qualifying chemical test" under R.C. 4123.54(C) since Fresh Mark did not have reasonable cause to suspect that he was under the influence as there

was no evidence that he had acted in an erratic manner. *Id.* at ¶ 14-15. The court further noticed that Fresh Mark countered that a "qualifying chemical test" did not come into play since it did not move for summary judgment under the "rebuttable presumption" subsection (R.C. 4123.54(B)). *Id.* at ¶ 16. The appellate court set forth:

> . . . In granting the motion for summary judgment, the trial court found: "Since the unrefuted evidence provided demonstrates that [the employee] was under the influence of marijuana to the extent that the impairment would be medically considered to be the proximate cause of his injury in this case, the Court finds that [the employee] is not entitled to receive compensation pursuant to R.C. 4123.54(A)(2)." . . . *We find because Fresh Mark did not pursue a rebuttable presumption under subsection (B), [the employee's] arguments related to a qualifying chemical test are irrelevant.*
>
> By not invoking the rebut[able] presumption under subsection (B), Fresh Mark had the burden of proof to prove [(1)] impairment and [(2)] proximate cause under subsection (A)(2). . .
>
> . . .
>
> [The employee's] drug test came back positive for [marijuana] . . . which is 48 times the confirmation cutoff level . . . There was no evidence of [him] having a prescription for marijuana use. Therefore, at the time of his injury, [he] was under the influence of marijuana that was not prescribed by a physician. The record supports the first part of R.C. 4123.54(A)(2).
>
> The second part of R.C. 4123.54(A)(2) is proximate cause. Fresh Mark submitted the report of its expert [doctor] . . . [who] noted [the employee's] post-accident drug test was "POSITIVE for Marijuana Metabolites (THC) at a VERY HIGH level" and there was no valid prescription . . . [The doctor] explained the results . . . and opined . . . as to proximate cause:
>
> > . . . [I]t is medically reasonable to conclude that the documentation of marijuana as well over the standard cutoff level still present in the [employee's] system would be considered to be impairing and the proximate cause of the alleged industrial claim in this case, when considering a standard of reasonable medical probability.
>
> **{¶ 54}** The record supports the second part of R.C. 4123.54(A)(2).

(Emphasis added.) *Id.* at ¶ 16, 17, 19-22.

{¶ 55} The appellate court concluded that "[a]fter reviewing the undisputed evidence in a light most favorable to [the employee], we do not find any genuine issues of material fact to exist regarding his use of marijuana and that the use was the proximate cause of the accident, thus precluding his claim for workers' compensation benefits under R.C. 4123.54(A)(2)." *Id.* at ¶ 24.

{¶ 56} Here, the employer moved for summary judgment based on R.C. 4123.54(A)(2), arguing that Stephens was not entitled to workers' compensation benefits. The employer supported its motion with, inter alia, the opinions of its expert, Dr. Soderstrum, that Stephens was intoxicated and that his intoxication was the proximate cause of his injury. We find, from this evidence, that the employer satisfied its initial burden on summary judgment of demonstrating that no genuine issue of material fact exists. The burden then shifted to Stephens to provide specific facts showing the existence of a genuine issue for trial. Stephens, in response to the employer's summary judgment motion, relied on the affidavit and report of Dr. Plotnick, attached to the response, to refute Dr. Soderstrum's opinions, and Stephens presented arguments pursuant to R.C. 4123.54(B).

{¶ 57} With respect to Stephens' reliance on Dr. Plotnick's opinions, having found in the first assignment of error that the trial court did not abuse its discretion in excluding and not considering Dr. Plotnick's information, no material related to Dr. Plotnick is in the record on appeal.

{¶ 58} With respect to Stephens' R.C. 4123.54(B) arguments, we reject these arguments on the authority of *Del Rosario*, as the employer moved for summary judgment based on R.C. 4123.54(A)(2).

{¶ 59} Without an expert report and having provided no specific facts or evidence showing the existence of a genuine issue for trial, we find that Stephens did not meet his burden. We therefore find that the trial court did not err in granting summary judgment to the employer. Accordingly, we find Stephens' second and third assignments of error not well-taken.

Conclusion

{¶ 60} The February 26, 2026 judgment of the Erie County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J

JUDGE

Charles Sulek, J
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.