

[Cite as *Krull v. Ryan*, 2010-Ohio-4422.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RONI A. KRULL,	:	APPEAL NO. C-100019
	:	TRIAL NO. A-0804931
Plaintiff-Appellee,	:	
	:	<i>DECISION.</i>
vs.	:	
MARSHA RYAN, ADMINSTRATOR,	:	
OHIO BUREAU OF WORKERS'	:	
COMPENSATION,	:	
Defendant-Appellant,	:	
and	:	
RAMSEY-COHRON MECHANICAL	:	
EQUIPMENT, INC.,	:	
Defendant.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part and Reversed in Part

Date of Judgment Entry on Appeal: September 22, 2010

Fox & Fox Co., L.P.A., Bernard C. Fox, Jr., and M. Christopher Kneflin, for Plaintiff-Appellee,

Richard Cordray, Ohio Attorney General, and *Thomas J. Straus*, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} Defendant-appellant, Marsha Ryan, the administrator of the Ohio Bureau of Workers' Compensation ("the bureau"), appeals a decision of the Hamilton County Court of Common Pleas allowing plaintiff-appellee, Roni A. Krull, to participate in the workers' compensation fund for the additional conditions of left-knee and left-elbow sprain. We find merit in the bureau's assignment of error, and we reverse the trial court's judgment in part.

I. Facts and Procedure

{¶2} The record shows that Krull was employed as an electrician at Ramsay-Cohron Mechanical Equipment. He was working on a large cooling tower on a raised platform. The platform that he was standing on gave way, and Krull fell approximately 25 feet to the concrete below. He landed with his hands out in front of him, and he was unable to get up after the fall. He suffered numerous injuries and was taken to the emergency room.

{¶3} The bureau allowed his claims for numerous conditions. They included "Colles' fracture-closed, right; fracture navicular, wrist-closed, right; contusion of lower leg, right; contusion of chest wall, right; left hand forearm contusion; left wrist sprain; right ulnar styloid fracture non-displaced; right hip contusion; right hip joint effusion; lumbar sprain."

{¶4} Subsequently, Krull filed claims for the additional conditions of left-knee sprain and left-elbow sprain. Krull was treated by Dr. Matthew Grunkemeyer, a board-certified orthopedic surgeon. Krull's primary complaints during Grunkemeyer's initial examination were the right-wrist and other factures, as well as tenderness in his upper

and lower limbs. Though he suffered some pain in his left elbow, he did not initially report it because his primary concern was his more significant injuries.

{¶5} As the fractures resolved themselves, Krull began to report pain in other parts of his body, including his left elbow. Several months after the fall, Grunkemeyer diagnosed Krull with a left-elbow contusion. But nowhere in his records did he diagnose Krull with a left-elbow sprain.

{¶6} The bureau and the Industrial Commission denied Krull's claims for the additional conditions. He filed a complaint in the court of common pleas, alleging that he was entitled to participate in the workers' compensation fund for those conditions. The bureau eventually conceded on the left-knee sprain. But it continued to contest the issue of the left-elbow sprain.

{¶7} Following a bench trial, the common pleas court found that both conditions had been proximately caused by Krull's initial fall. The court held that he was entitled to participate in the worker's compensation fund for both the left-knee sprain and the left-elbow sprain. This appeal followed.

{¶8} In its sole assignment of error, the bureau contends that the trial court erred in allowing the additional condition of left-elbow sprain. It argues that expert testimony was necessary to prove that the left-elbow sprain was caused by the fall, and that Krull's expert testimony was insufficient to prove causation. This assignment of error is well taken.

II. Standard of Review

{¶9} In an appeal under R.C. 4123.512 from an order of the Industrial Commission, the trial court reviews the issue of whether the claimant can participate in

the workers' compensation fund de novo.¹ We review the case under a manifest-weight-of-the-evidence standard. Thus, we should not reverse a judgment if it is supported by competent, credible evidence.² We must uphold the trial court's judgment unless we determine that the evidence was insufficient for a reasonable person to come to the conclusion reached by the trial court.³

III. Causation

{¶10} To establish a right to workers' compensation for harm or disability resulting from an accidental injury, the claimant must show by a preponderance of the evidence a causal relationship between the injury and the harm or disability.⁴ A jury may determine the issue of proximate cause on the basis of probabilities.⁵ Where the issue of causal connection involves questions that are matters of common knowledge, the claimant need not present medical testimony to submit the case to the jury.⁶

IV. Necessity of Expert Testimony

{¶11} Krull argues that a sprain is a common injury that most people suffer at some time in their lives. Thus, the issue of what causes a sprain was within the trier of fact's common knowledge, and therefore, expert testimony on the issue was not necessary. We disagree.

¹ *Benton v. Hamilton Cty. Educational Serv. Ctr.*, 123 Ohio St.3d 347, 2009-Ohio-4969, 916 N.E.2d 778, ¶14; *Ward v. Kroger Co.*, 106 Ohio St.3d 35, 2005-Ohio-3560, 830 N.E.2d 1155, ¶7.

² *Rutherford v. Adecco USA, Inc.*, 1st Dist. No. C-080642, 2009-Ohio-2046, ¶11; *Wilson v. Conrad* (Apr. 16, 1999), 1st Dist. No. C-980582.

³ *Rutherford*, supra, at ¶11.

⁴ *White Motor Corp. v. Moore* (1976), 48 Ohio St.2d 156, 357 N.E.2d 1069, paragraph one of the syllabus; *Fox v. Indus. Comm.* (1955), 162 Ohio St. 569, 125 N.E.2d 1, paragraph one of the syllabus.

⁵ *Fox*, supra, at paragraph two of the syllabus.

⁶ *White*, supra, at paragraph two of the syllabus; *Perry v. LTV Steel Co.* (1992), 84 Ohio App.3d 670, 674-675, 618 N.E.2d 179.

{¶12} In *Rogers v. Armstrong*,⁷ this court held that “where subjective, soft-tissue injuries are alleged, the causal connection between such injuries and the * * * accident alleged to have caused them is beyond the scope of common knowledge, and that such causal connection must be established by expert testimony.” Relying on that case, another court added, “It is when the internal complexities of the body are at issue that we generally initiate the metamorphosis in the evidential progression where medical testimony moves from the pale of common knowledge matters and within layman competency where expert testimony is not required, to those areas where such testimony is more appropriate and indeed most necessary for the trier of fact to understand the nature and cause of the injuries alleged.”⁸

{¶13} Krull points out that *Rogers v. Armstrong* was not a workers'-compensation case. But it sets forth a valid evidentiary principle that courts can apply in any type of case. Additionally, other courts have applied the same rule in workers'-compensation cases.⁹

V. Sufficiency of Expert Testimony

{¶14} Krull did present expert testimony in this case. The question is whether that testimony was sufficient to prove that the left-elbow sprain was caused by the fall. “Expert opinion testimony is only competent if it is held to a reasonable degree of medical certainty.”¹⁰ Specifically, proof of proximate cause by medical expert testimony must be by probability, which means an event or result that is more likely than not to

⁷ 1st Dist. No. C-010287, 2002-Ohio-1131.

⁸ *Wood v. Estate of Bata*, 8th Dist. No. 90430, 2008-Ohio-1400, ¶24.

⁹ See, e.g., *Wright v. Columbus*, 10th Dist. No. 05AP-432, 2006-Ohio-759; *Howard v. Seaway Food Town, Inc.* (Aug. 14, 1998), 6th Dist. No. L-97-1322.

¹⁰ *Roberts v. Hobohm* (Dec. 26, 1997), 1st Dist. No. C-950662, citing *State v. Benner* (1988), 40 Ohio St.3d 301, 533 N.E.2d 701.

occur.¹¹ “An event is probable if there is a greater than fifty percent likelihood that it produced the occurrence at issue.”¹² Evidence that only shows that a condition could have been the result of an injury is insufficient to warrant submission of the issue to a jury.¹³

{¶15} Krull presented the testimony of Dr. Matthew Grunkemeyer, his treating physician. On direct examination, Krull’s counsel asked Grunkemeyer, “Doctor, based upon your training, education and background, your examination of Mr. Krull and your history that you took from him, do you have an opinion to a reasonable degree of medical probability as to whether or not he suffered a left elbow sprain as a result of his fall on August 22nd, 2007[?].” He replied, “Yeah I have an opinion. I think he likely did suffer an elbow sprain related to the fall.”

{¶16} If Dr. Grunkemeyer’s testimony had ended there, it would have been sufficient to establish proximate cause. But his testimony on cross-examination and redirect examination negated his previous testimony.

{¶17} On cross-examination, Dr. Grunkemeyer indicated that a sprain and a contusion are not the same, although a contusion can develop into a sprain. He also indicated that it can be difficult to distinguish between contusions and sprains. He stated that the medical records did not show that Krull had complained of elbow pain in the initial months after the fall, and that he had not diagnosed a sprain.

{¶18} Then the bureau’s counsel asked the doctor, “Now * * * I’m going to ask you based on a reasonable degree of probability and your testimony can you sit there and testify under oath that Mr. Krull suffered a left elbow sprain in regards to

¹¹ *Shumaker v. Oliver R. Cannon & Sons, Inc.* (1986), 28 Ohio St.3d 367, 369, 404 N.E.2d 44; *Roberts, supra.*

¹² *Roberts, supra*, quoting *Stinson v. England*, 69 Ohio St.3d 451, 1994-Ohio-35, 633 N.E.2d 532.

¹³ *Shumaker, supra*, at 369, citing *Drew v. Indus. Comm.* (1940), 136 Ohio St. 499, 501, 26 N.E.2d 793.

the fall?” He answered, “Right. Yes he did. He suffered a contusion to the forearm. * * * And it’s very reasonable that he could have sprained his elbow as well.” Counsel went on to ask, “But it’s not reflected in your records any place; is it?” The doctor answered, “I did not use the exact diagnosis of sprain, but he definitely had a soft tissue injury.”

{¶19} On redirect examination, Krull’s counsel asked Dr. Grunkemeyer, “[I]s it more likely than not that he suffered a left elbow sprain as a direct and proximate result of the fall on August 22nd, 2007 as you diagnosed in 2008. First do you have an opinion * * * [?]” Dr. Grunkemeyer answered, “No opinion.” The doctor went on to say, “I don’t think I ever did diagnose him with a sprain in the record. He had persistent left elbow pain, which would be consistent with a sprain and/or bursitis * * * or epicondylitis. We never really got too much into the left elbow, because all these other things were more apparent.”

{¶20} This testimony is in stark contrast to the doctor’s testimony about the left-knee sprain, which he definitively stated was caused by the fall. Dr. Grunkemeyer’s testimony, when viewed as a whole, did not show that the left-elbow sprain was caused by the fall; it only showed that it could possibly have been caused by the fall. This was insufficient as a matter of law to prove proximate causation. It also left unrebutted testimony by the bureau’s expert, who stated that Krull did not suffer an elbow sprain, but a contusion.

VI. Summary

{¶21} Because Krull failed to establish that he had suffered a left-elbow sprain as a proximate result of the fall, he may not participate in the workers’ compensation fund for that condition. We sustain the bureau’s assignment of error

and reverse that part of the trial court's judgment allowing him to participate in the fund for the left-elbow sprain. We affirm that part of the trial court's judgment allowing him to participate for the left-knee sprain.

Judgment affirmed in part and reversed in part.

HILDEBRANDT, P.J., and MALLORY, J., concur.

Please Note:

The court has recorded its own entry this date.