

Circuit Court for Charles County
Case No. 08-C-17-000991

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 593

September Term, 2018

IN THE MATTER OF GEORGE C. VANN

Leahy,
Friedman,
Shaw Geter,

JJ.

Opinion by Friedman, J.

Filed: March 27, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following an accidental on-the-job injury in 2012, the Maryland Workers' Compensation Commission (“the Commission”) awarded George C. Vann, temporary total disability benefits from his employer, Giant Food, LLC (“Giant”). In 2017, Vann sought additional temporary total disability benefits and authorization for surgery to his left hip.

After a hearing, the Commission ruled that Vann had not proven that his hip problem was causally related to the 2012 injury and denied his request for additional temporary total disability benefits and authorization for surgery. Upon Vann’s request for judicial review, the Circuit Court for Charles County agreed with the Commission and granted Giant’s motion for judgment at the close of Vann’s case.

Vann, representing himself, filed a timely notice of appeal. We consolidate the issues he presents into the following: Whether the circuit court erred in affirming the March 29, 2017 order of the Commission, which found that Vann had not proven that his left hip injury was causally related to the accidental injury he sustained in March 2012 and denied authorization for hip surgery.¹

¹ The questions Vann presents in his brief are:

1. Whether the Charles County Circuit Court erred in its findings that the appellant’s twisting motion of his body during the accidental injury was causally related to hip during the incident at Store #304 Waldorf, Maryland on March 1, 2012.
2. Whether the appellant medical evidence and opinions rendered and acknowledged by the appellees before the court sufficiently meets the burden of proof on injury causation to the hip and missed by treating doctor(s) triggered the onset of high blood pressure and other health related problems working in pain with limited marginal care.

Seeing no reversible error, we affirm the judgment of the circuit court.

BACKGROUND

On March 1, 2012, while bagging groceries as a cashier for Giant, Vann suffered a twisting or “bending-type injury” to his lower back when a bag rack collapsed and he tried to catch it and the merchandise on it. The Commission awarded Vann temporary total disability benefits for the time period of March 22, 2012 through March 30, 2012.

In 2017, Vann raised additional issues with the Commission, including: requests for additional temporary total disability benefits for the time period of October 31, 2016 through November 7, 2016; a determination that a causal relationship existed between the 2012 incident and a degenerative injury to his left hip; and authorization for left hip replacement surgery. After a March 2, 2017 hearing, the Commission took the matter under advisement, pending its review of Vann’s medical records. On March 29, 2017, the Commission issued a written order ruling that Vann’s left hip injury was not causally related to the March 2012 incident and denying his request for additional temporary total disability benefits and authorization for surgery.

Vann petitioned the circuit court for judicial review of the Commission’s ruling. The circuit court heard the matter on April 27, 2017.

3. Whether the circuit court rulings and engagement were prejudicial in conflict in not affording due process to a self-represented appellant.

Vann, representing himself, presented only the lay testimony of himself, his wife, and his brother. When Vann attempted to introduce his doctors’ notes and reports through the testimony of his wife, the circuit court advised Vann that he had no way “to get them into evidence” and that a doctor’s testimony was required. Despite being warned by the court several times that expert medical testimony was necessary to prove a causal relationship between his 2012 work-related back injury and his current hip issues, Vann presented none.

At the close of Vann’s case, Giant moved for judgment and the circuit court granted the motion because, it found that Vann had not provided any admissible expert opinion evidence to prove that his hip issues were causally related to his 2012 back injury.²

DISCUSSION

Vann contends that the circuit court erred in declining to accept his medical records into evidence to prove a causal relationship between his 2012 back injury and the need for a hip replacement in 2017. In his view, his “credible treatment records” were sufficient to prove causation by a preponderance of the evidence, even in the absence of live medical expert testimony. We disagree.³

² In fact, Vann had acknowledged that a doctor told him in April 2014 that “arthritis was setting in” his left hip. Giant proffered that its medical expert did not dispute the fact that Vann required a hip replacement, but opined that the degenerative arthritic changes to Vann’s left hip were not causally related to the 2012 work-related back injury.

³ In his brief, Vann also suggests that the circuit court judge should have recused himself because the judge was involved with a church that had received “very isolated material donations” from Giant. Because Vann never requested that the judge recuse

If, as here, the claimant does not prevail before the Commission and seeks an essential trial *de novo* in the circuit court,

his burdens before the circuit court remain unchanged from his earlier burdens before the Commission. He must again produce a legally sufficient case, as a matter of law, even to permit the case to go to the *de novo* fact finder, lest he suffer a summary judgment or [motion for judgment] against him.

Bd. of Educ. for Montgomery Cty. v. Spradlin, 161 Md. App. 155, 195 (2005). *See also* MD. CODE, LABOR & EMPLOYMENT (“LE”) § 9-745(b) (“In each court proceeding under this title: (1) the decision of the Commission is presumed to be *prima facie* correct; and (2) the party challenging the decision has the burden of proof.”).

Because the non-prevailing claimant has the burden of proof, they “may fend off a motion for judgment by producing legally sufficient evidence” for the factfinder. *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 177 (2003). If the evidence at the close of the case, taken in the light most favorable to the non-moving party, “does not legally support the nonmoving party’s claim, the moving party is entitled to judgment.” *Id.* (quoting *Jacobs v. Flynn*, 131 Md. App. 342, 353-54 (2000)).

“When a complicated issue of medical causation arises, expert testimony is almost always required.” *Id.* at 178. Regarding the causal relationship between an earlier and a later injury, we have explained:

To the extent to which we can distill any general wisdom out of the case law, it seems to be this. A genuine jury issue as to the causal relationship between an earlier injury and a

himself, nor otherwise raised the issue before the circuit court, he failed to preserve the right to appeal on that ground, and we will not consider the issue. *See* Md. Rule 8-131(a).

subsequent trauma may sometimes be generated, even in the absence of expert legal testimony, when some combination of the following circumstances is present: 1) a very close temporal relationship between the initial injury and the onset of the trauma; 2) the manifestation of the trauma in precisely the same part of the body that received the impact of the initial injury; 3) as in *Schweitzer v. Showell*, 19 Md. App. 537 (1974) some medical testimony, albeit falling short of a certain diagnosis; and 4) an obvious cause-and-effect relationship that is within the common knowledge of laymen.

Conversely, the causal relationship will almost always be deemed a complicated medical question and expert medical testimony will almost always be required when one or more of the following circumstances is present: 1) some significant passage of time between the initial injury and the onset of the trauma; 2) the impact of the initial injury on one part of the body and the manifestation of the trauma in some remote part; 3) the absence of any medical testimony; and 4) a more arcane cause-and-effect relationship that is not part of common lay experience (the ileitis, the pancreatitis, etc.)

When all is said and done, we are perhaps reduced to a truism: the stronger the case for the causal connection even absent expert medical testimony, the lesser the need for such testimony; the weaker the non-medical case for the causal connection, the greater the need for such testimony. There is more involved, of course, than a simply inverse proportion between the strength of the non-medical-expert case of causation and the need for expert medical testimony. Some questions of causation might involve medical knowledge so recondite that expert testimony would always be required. Other questions of causation would not. There can be no hard and fast rule controlling all cases.

Id. at 179-80 (quoting *S.B. Thomas, Inc. v. Thompson*, 114 Md. App. 357, 381-83 (1997)).

Vann, without the benefit of a lawyer, provided no medical testimony in support of his claim that his left hip injury, for which he sought additional treatment and benefits, was causally related to the back injury he suffered on the job in 2012. Under the principles set

forth in *Booker* and *S.B. Thomas*, the impact of Vann’s initial injury to his back and the alleged subsequent manifestation of trauma to his hip, along with the five-year delay between the accidental back injury and the necessity of a hip replacement, required expert medical testimony regarding causation. Vann bore the burden of production to overcome the *prima facie* correct determination of the Commission and was required to present expert testimony to survive Giant’s motion for judgment. *Booker*, 152 Md. App. at 181; *S.B. Thomas*, 114 Md. App. at 385.

In the absence of any expert medical testimony as to causal relation, the circuit court could not reasonably have found that the 2012 work accident resulting in a back injury caused Vann’s degenerative hip injury five years later. Accordingly, we hold that the circuit court did not err in granting Giant’s motion for judgment at the close of Vann’s case.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR CHARLES COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.**

⁴ We are not holding that the 2012 accident did not cause Vann’s hip issues in 2017. We are saying only that Vann failed to present the circuit court with a sufficient factual basis for the court to accept his claim.