UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1949

September Term, 2014

JUDITH BRITTON

v.

HEBREW HOME OF GREATER WASHINGTON DC

Wright,
Nazarian,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: December 1, 2015

On March 8, 2004, while employed by Hebrew Home of Greater Washington ("Hebrew Home") as a geriatric nurse's assistant, Judith Britton, appellant, sustained an accidental injury to her back, for which she was treated and released. As a result, appellant filed a workers' compensation claim against Hebrew Home, employer, and Sisco, Inc., insurer, appellees herein. She was awarded compensation.

In March 2013, appellant, complaining of low back pain, again sought medical treatment, which was denied by appellees. Appellant sought the Workers' Compensation Commission's ("Commission") approval for the treatment on the ground that it was causally related to the 2004 accidental injury. By order dated January 14, 2014, the Commission denied authorization for medical treatment on the ground that appellant's complaints were not causally related to the 2004 accidental injury.

Appellant sought judicial review in the Circuit Court for Montgomery County. A jury agreed with the Commission. Appellant appeals to this Court and contends that the circuit court erred in "allowing Appellee to argue misleading and untrue facts to the jury regarding Appellant's treatment." We shall affirm.

Background

In May 2000, appellant sustained a work related injury while working for Hebrew Home. She was treated by Dr. Philip Schneider, an orthopedic surgeon. He diagnosed appellant's condition as herniated disc and degenerative disease. On March 14, 2001, he removed a herniated disc from appellant's back and performed a spinal fusion. In October 2001, appellant returned to work but continued to have pain for which Dr. Schneider treated her with medications, acupuncture, and physical therapy.

After the March 8, 2004 accidental injury, appellant again saw Dr. Schneider. Dr. Schneider, appearing by videotaped deposition, testified that appellant's pain was worse after the 2004 accident. He treated her conservatively and discharged her on September 17, 2004.

On December 5, 2006 and April 3, 2007, appellant saw Dr. Schneider, complaining of back pain. He treated her with medication on both occasions. On March 21, 2013, appellant again visited Dr. Schneider, complaining of low back pain. Dr. Schneider recommended medication, acupuncture, and physical therapy. The March 21, 2013 visit and recommended treatment is the subject of this workers' compensation claim.

At trial, Dr. Schneider opined, to a reasonable medical probability, that although appellant's original injury in 2000 had "never fully healed," her complaints in March 2013 were causally related to both the 2000 and 2004 injuries.

Appellant testified on her own behalf. She described her injuries in 2000, 2004, and her treatment in 2000, 2001, 2006, 2007, and 2013. On cross examination, appellees' counsel questioned appellant about her visits to Dr. Schneider in those same years. On redirect examination, the following occurred:

[APPELLANT'S COUNSEL]:

> Q. Judy, you were asked about seeing Dr. Schneider in 2006, 2007, and then in 2013. But is it true that you saw Dr. Schneider in 2009? Do you recall seeing him?
>
> A. I'm not sure.
>
> Q. Okay. Do you recall going six years or more without seeing Dr. Schneider at any point?

A. I can't remember.

Q. Okay. Let me ask you this, did you make any attempts to see Dr. Schneider?

A. I did. When I go, I use the health insurance.

THE COURT: Counsel, come to the bench.

(Bench conference follows:)

[APPELLANT'S COUNSEL]: Well, my line of questioning would adhere to, Your Honor, there's been an implication that because my client hadn't seen Dr. Schneider for such a long period of time, that it's because her injuries were not so severe. When in fact, she's made several attempts to see Dr. Schneider; and that's just the point that I'm trying to get across.

THE COURT: Okay. Counsel?

[APPELLEES' COUNSEL]: Your Honor, I think it's over reaching. There are no attempts to see Dr. Schneider.

[APPELLANT'S COUNSEL]: By virtue of the fact that the employer has not authorized that treatment, she has not been able to. That's –

[APPELLEES' COUNSEL]: Your Honor, that's only since 2013. That's been –

THE COURT: Nice try. I'm going to sustain. You can't do that. If you want the Court of Appeals to change their law, if you want the General Assembly to change the law that folks in these kind of cases, other kind of cases, can bat [sic] about insurance, you may do so. I don't care one way or another –

[APPELLANT'S COUNSEL]: I had no idea she was going to say the word insurance.

THE COURT: well, again, I'm not –

[APPELLANT'S COUNSEL]: That's not why I went there.

THE COURT: – describing it to you. I'm simply going to do something gentle like saying jury, kindly disregard the last question and the

last answer. And not make a big scene and not sua sponte grant a mistrial. Don't do that again, okay? I'm listening.

[APPELLANT'S COUNSEL]: May I have a brief word with my client, Your Honor? Because I think if the questioning is to why she didn't go to Dr. Schneider –

THE COURT: Does she have some reason other than?

[APPELLANT'S COUNSEL]: Right. But I don't think that she understands that –

THE COURT: She may not.

[APPELLANT'S COUNSEL]: – what she says –

THE COURT: No. No, I'm –

[APPELLANT'S COUNSEL]: If I may just let her know that she can't use that wording, but that I'd like her to be able to testify as to why she didn't go Dr. Schneider more. And the answer is that she was not authorized.

THE COURT: Okay.

[APPELLEES' COUNSEL]: Your Honor, I don't want counsel to speak to his client, to coach.

THE COURT: He's not going to –

[APPELLEES' COUNSEL]: He had the opportunity in the beginning of the trial. You made it very clear not to use the word insurance or have his client use that. I don't think that there needs to be additional counseling.

THE COURT: What's she going to say other than what you just said?

[APPELLANT'S COUNSEL]: She would testify that she has made several attempts over the years to return to Dr. Schneider but has not been able to.

THE COURT: Because?

[APPELLANT'S COUNSEL]: Because it was not authorized.

THE COURT: Okay, thank you.

(Bench conference concluded.)

THE COURT: Ladies and gentlemen, disregard the last question and the last answer.

Please continue. Do we have any other questions of the lady?

[APPELLANT'S COUNSEL]: I do not, Your Honor. Thank you.

In the above quote, the reference by appellees' counsel to the court's prior instruction concerning the word insurance relates to a colloquy between the court and counsel that occurred during *voir dire*. After advising the court that the physicians who would testify would do so by deposition, counsel for appellant stated that the doctors, when testifying, used the word. Counsel inquired whether the court would ask a question concerning insurance as part of the *voir dire*. The court replied that it was not going to use that word because "it's the law." Appellant's counsel then stated that he would not use that word.

Discussion

In closing argument, appellees' counsel argued that, between September 2004 and 2013, appellant saw Dr. Schneider only in 2006 and 2007. Counsel argued that there were long periods of time between appellant's treatments and the length of time between the 2004 injury and the 2013 visit was too long to causally connect the two.

The sole "issue presented" in appellant's brief is whether the circuit court erred in permitting appellees' counsel to make that argument because, although not in evidence, appellant had sought treatment in addition to that mentioned in argument.

The short answer to appellant's question is that it was not preserved for appellate review. There was no objection to appellees' argument. *See, e.g.,* Maryland Rule 8-131*;* *Osburn v. State*, 301 Md. 250, 253 (1974).

Appellant does not limit her arguments to the issue presented, however. He also argues that the court erred in (1) *sua sponte* calling for a bench conference after the reference to insurance; (2) denying appellant's counsel's request to meet with his client in order to "rehabilitate" her; (3) ruling that a reference to insurance was inadmissible; and (4) prohibiting appellant from testifying that she saw Dr. Schneider in 2009 and 2011.

Preliminarily, we note that an appellate brief is required to contain a statement of the questions presented, "indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail." Maryland Rule 8-504(a) (3). Nevertheless, we shall address appellant's arguments.

With respect to argument (1), a trial court is permitted wide latitude in managing the conduct of a trial. Here, during *voir dire*, the court and counsel discussed references to insurance and agreed that it would not be mentioned. When a party acquiesces in a court ruling, there is no basis for appeal. *See, e.g., Grandison v. State*, 305 Md. 685, 765(1986). Later, when insurance was mentioned, the court did not err in calling a bench conference to discuss the matter. As to argument (2), appellant's counsel advised the court that, if appellant would further testify as to why she did not see Dr. Schneider, her answer would be the same as previously stated. Thus, there was no prejudicial error. As to argument (3), appellant agreed that any reference to insurance was inadmissible. At the bench

conference, appellant did not object to exclusion of any reference to insurance. Finally, as to argument (4), appellant was not prohibited from testifying that she visited Dr. Schneider more often than the visits in evidence. She had already testified that she did not remember additional visits, but appellant's counsel was not prohibited from attempting to refresh her recollection if records existed that could have been used for that purpose. Appellant's counsel chose not to pursue further examination of appellant.

As a result of the above, we perceive no reversible error and affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.