UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1913

September Term, 2015

ATLANTIC GENERAL HOSPITAL, ET AL

v.

PATRICIA GRINNAN

Nazarian,
Reed,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: February 10, 2017

Patricia Grinnan, appellee, is a former employee of appellant, Atlantic General Hospital ("the Hospital"). In December 2009, in the course of her employment for the Hospital, appellee fell and injured her right shoulder. Appellee suffered additional injuries to her right shoulder while at work in May and September of 2010. Appellee had surgery on her shoulder in both 2010 and 2011 to repair the damage from those accidents. In February 2014, appellee reinjured her shoulder while cleaning snow off her car. Appellee's doctor recommended an MRI and physical therapy. The Hospital asserted that it was not liable for any further medical treatment because appellee's new injury was a subsequent intervening event. The case proceeded before the Workers' Compensation Commission ("the Commission") on the issues of causation and the need for medical treatment. The Commission found that appellee's injury was causally related to her December 2009 work injury; therefore, the Hospital[1] was ordered to authorize the MRI and physical therapy. The Hospital appealed the Commission's decision to the Circuit Court for Worcester County. The Hospital's expert witness initially submitted a report where he concluded that appellee's current injury was caused by both the 2009 and 2014 accidents. However, he later changed his opinion and testified that the 2014 accident was the only cause of appellee's current condition. After a bench trial, the court found the expert's initial conclusion more convincing and affirmed the Commission's decision.

The Hospital appealed, and now presents one question for our review:

[1] Both the Hospital and its insurer, Maryland Group Self-Insured Hospitals, are appellants in this case. For the purposes of this opinion, we will refer to them collectively as the Hospital.

> Did the circuit court err in holding that the Hospital was responsible for ongoing benefits to appellee where appellee's disability was due in part to a subsequent injury?

For the following reasons, we answer no and affirm the judgment of the circuit court.

BACKGROUND

On December 19, 2009, appellee slipped and fell on a wet floor while working at the Hospital. The fall caused an injury to appellee's right shoulder, tearing the supraspinatus tendon of her rotator cuff. On May 1, 2010, while working for the Hospital, appellee injured the same shoulder again when she picked up a bag of laundry. Appellee met with Dr. Bontempo in connection with both shoulder injuries. After an MRI revealed rotator cuff tears, Dr. Bontempo performed surgery on the shoulder in July of 2010. In September 2010, appellee was terminated from her job with the Hospital; however, she reinjured her right shoulder while cleaning out her work locker. Dr. Bontempo conducted another MRI, which again showed a tear of the right rotator cuff. Appellee then visited Dr. Leigh Ann Curl who performed surgery on the shoulder in August 2011. Appellee claimed that she felt fully healed after that surgery. In February of 2014, appellee felt a rip and stabbing pain in the same shoulder while removing snow off her car. Initially, appellee did not obtain treatment for her injury because she wanted it authorized through Workers' Compensation. In May 2014, appellee visited Dr. Curl who ordered x-rays and an MRI of the right shoulder. Dr. Curl also ordered physical therapy for appellee. The Hospital denied liability for appellee's most recent injury, and the matter proceeded before the Maryland Workers' Compensation Commission, where

appellee testified about her injury. On November 20, 2014, the Commission issued its order on the two issues presented, causation and need for medical treatment. The order read as follows:

> The Commission finds on the first issue presented that the need for medical treatment is ca[u]sally related to the accidental injury sustained on December 19, 2009. The Commission finds on the second issue presented that authorization for an MRI to the right shoulder and for physical therapy is allowed. Average weekly wage: $1,356.91.

The Hospital appealed this decision to the Circuit Court for Worcester County. For purposes of the trial, the Hospital had appellee examined by Dr. Robert Riederman. After examining appellee, Dr. Riederman issued a report that concluded, among other things, the following:

> I do not believe that [appellee's] current right shoulder condition is causally related to the reported incident that occurred on May 1, 2010.
>
> **[Appellee's] right shoulder condition dates back to the initial injury of December 19, 2009.** The treatment that she received . . . including the two shoulder surgeries, postoperative care, and postoperative physical therapy was all reasonable, medically necessary, and appropriate, though causally related to the initial injury of December 19, 2009. I do not believe that any of the treatment she received was causally related to the reported incident that occurred on May 1, 2010.
>
> * * *
>
> Should [appellee] elect to undergo this additional treatment as documented in her telephone conversation with Dr. Curl that took place on January 6, 2015, this additional surgery would be **causally related partially to the injury of December 19, 2009**, and partially to the re-injury that occurred in February 2014.

(Emphasis added).

On July 7, 2015, approximately three and a half months after issuing his report, Dr. Riederman gave a *de bene esse* deposition. The circuit court held a bench trial on August 20, 2015. During the trial, Dr. Riederman's deposition testimony was played for the court. Dr. Riederman's opinion was the only expert testimony presented at trial. At his deposition, Dr. Riederman initially reiterated what he concluded in his report, and stated that appellee's current injury was partially related to the December 2009 injury and partially related to the February 2014 injury. However, Dr. Riederman then testified that "if anything has to be done for [appellee], as Dr. Curl has discussed, the option of further surgery, the new treatment in 2015 would be for the 2014 injury, not for what happened in 2009." At first, Dr. Riederman insisted that he had not changed his opinion from the time he made his report. On cross-examination, however, Dr. Riederman eventually admitted that his opinion was now different. Dr. Riederman explained that when he made his original report, he had only been asked about whether appellee's current shoulder condition was related to her May 2010 injury. He claimed that he changed his opinion, because he was not originally focused on the 2009 or 2014 injuries when he made his report. He then reiterated that appellee's current symptoms were due only to her 2014 injury.

On September 15, 2015, the court issued an Opinion and Order affirming the decision of the Commission. The court found that Dr. Riederman's reasoning for changing his opinion was "nonsensical." The court concluded that Dr. Reiderman's

original opinion was "the persuasive, believable, and credible evidence." The Hospital filed a Motion to Alter or Amend the judgment, which was denied on October 21, 2015. The Hospital filed a timely notice of appeal.

DISCUSSION

The Hospital does not take issue with the circuit court's finding that appellee's ongoing right shoulder condition is due in part to both the December 2009 work-related injury and the February 2014 re-injury. Instead, the Hospital contends that the December 2009 injury is not the proximate cause of appellee's need for treatment in light of the subsequent intervening accident in February 2014. Accordingly, the Hospital argues that it cannot legally be held liable for any further treatment to the right shoulder.

Appellee contends that under Maryland law, a "subsequent injury, whether an aggravation of the original injury or a new and distinct injury, is not a superseding cause if it was the natural result of the original injury." Appellee points to Dr. Riederman's original report as support for the conclusion that her new injury was causally related to her December 2009 work injury.

The Hospital is essentially arguing that under Maryland case law, a subsequent intervening accident such as the one the appellee suffered when she injured her shoulder wiping snow off her car serves to bar the Hospital from further liability on a previously-sustained work accident. The Court of Appeals has explained that "where an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine whether the trial court's conclusions are 'legally correct'

under a *de novo* standard of review." *Schisler v. State,* 394 Md. 519, 535 (2006). Accordingly, we shall review this issue *de novo*.

The Hospital relies primarily on the case of *Martin v. Allegany Cty. Bd. of Cty. Comm'rs*, 73 Md. App. 695 (1988), to support its contention that it cannot be held liable for a subsequent non-work injury. In that case, the appellant, Martin, injured his back in 1980 while working for the County. *Id.* at 696. Martin was awarded benefits as a result of the accident. *Id.* Martin later went to work for the City, where he injured his back twice on the job in 1984 and 1985. *Id.* He sought additional temporary total disability benefits from the Workers' Compensation Commission. *Id.* The Commission's order was appealed to the circuit court,[2] where a jury found that Martin's present total disability was causally related to all three of his work accidents. *Id.* at 696-97. On remand to the Commission, Martin was awarded benefits to be paid entirely by the County based on the 1980 accident. *Id.* at 697. No part of the award was apportioned to the later accidents. *Id.*

On appeal, this Court held that the Commission's order was inconsistent with the jury verdict. *Id.* at 698-99. In reaching this conclusion, we stated:

> The jury's verdict was that appellant's disability was caused by three separate accidents. The case involves temporary disability rather than permanent disability. Therefore, the responsible employer was not entitled to have the award apportioned to account for the other two accidents. [Md. Code (1991, 2016 Repl. Vol.), Labor and Employment Article ("LE"), §

[2] It is unclear what the Commission's order was in *Martin v. Allegany Cty. Bd. of Cty. Comm'rs*, 73 Md. App. 695, 696 (1988).

> 9-656][3] The question remains, however, which employer was liable for the disability. The Commission imposed liability on appellant's employer at the time of the first injury, appellee County. It should have imposed liability on the employer at the time of the third accident; namely, the City.

Id. at 699. We explained that LE § 9-656 "provides for apportionment of an employer's liability in cases of permanent disability where the employee's disability is due in part to some disease or infirmity that existed before the compensable accident. The subsection contains language stating that it is inapplicable to cases of temporary total or temporary partial disability." *Id.* Accordingly, this Court held that it is the final accident contributing to the disability which is to serve as the basis for liability. *Id.* at 700. Therefore, the employer during the 1985 injury was required to pay the benefits. *Id.*

The Hospital claims that this case presents the same scenario, and therefore should receive the same result. We disagree. The distinction between *Martin* and the instant case was made clear by the recent case of *Elec. Gen. Corp. v. Labonte*, 229 Md. App. 187 (2016), *cert. granted*, __ Md. __ (Dec. 2, 2016). In *Labonte*, the claimant initially injured his back at work in 2004. *Id.* at 192. The Workers' Compensation Commission ordered the employer to pay for the claimant's medical treatment and out-of-work benefits. *Id.* In 2006, the claimant got into an altercation with a police officer where he was slammed against the hood of a car and injured his back again. *Id.* When the claimant saw a doctor regarding the new injury, he was told that he had aggravated a pre-existing injury. *Id.* The claimant filed a request with the Commission for temporary total disability. *Id.* at

[3] Formerly Md. Ann. Code Art. 101, § 36(7).

193. This request was denied because the Commission found that the injury had been caused by the subsequent 2006 altercation with the police officer. *Id.* The claimant responded by filing a request for permanent partial disability. *Id.* The Commission found that the claimant's current disability was partially due to his pre-existing condition from the 2004 work accident. *Id.* As a result, the Commission ordered the employer to pay the claimant weekly pay, but denied the claimant's request for payment of medical bills. *Id.* Several years later, the claimant filed another claim for medical treatment and expenses due to the worsening of his permanent partial disability. *Id.* The Commission found that the subsequent intervening event, *i.e.*, the police altercation, broke the causal nexus between the accidental work injury and the claimant's current condition. *Id.* at 193-94. Accordingly, his requests for medical treatment and expenses were denied. *Id.* at 194. The claimant appealed to the circuit court and the case proceeded to a jury trial. *Id.* Both sides had experts present conflicting testimony about whether the current back injury was the result of the 2004 accident. *Id.* At the conclusion of the trial, the jury returned a verdict finding:

> 1) the [claimant's] current back condition is causally related to the September 2, 2004 work injury; 2) the [claimant's] back condition has worsened one hundred (100) percent as a result of the accidental work injury since the Commission's October 15, 2007, Order; 3) the [claimant's] request for medical treatment was reasonable, necessary, and causally related to his work injury; and 4) the [claimant's] request for payment of medical expenses incurred on February 16, 2012, was also reasonable, necessary, and causally related to the work injury.

Id. at 194-95.

On appeal to this Court, the employer argued that when a worker's disability is due in part to a subsequent intervening injury, the employer is not responsible for ongoing benefits or treatment. *Id.* at 195. Like the Hospital in the instant case, the employer in *Labonte* relied primarily on *Martin* for this assertion. *Id.* The claimant countered that it was well-settled Maryland law that a pre-existing condition can deteriorate despite the existence of a subsequent injury. *Id.* The claimant also asserted that the case was distinguishable from *Martin*, because *Martin* involved a temporary disability, not a permanent disability. *Id.*

This Court agreed with the claimant that "his subsequent intervening accident did not, *per se,* preclude further liability on the part of his employer for the permanent partial injury he sustained on the job." *Id.* at 196. We observed that the pattern jury instructions informed the jury that in order for there to be compensation, the jury needed proof that the injury could have been caused by the work accident, and nothing else after the accident occurred to cause the injury. *Id.* at 197. This Court then concluded that the evidence was sufficient to support the compensability of the claimant's work injury. *Id.* In particular, we noted that the work injury led to modified duty at work for two years and required surgery. *Id.* Conversely, the subsequent injury only kept claimant out of work for one month and only required medicine for treatment. *Id.* We also stated that even though there was conflicting expert testimony presented, the fact finder is free to believe some testimony and disagree with other testimony. *Id.* at 197-98.

This Court also clearly distinguished *Labonte* from *Martin*, because the *Martin*

case involved a temporary disability, and not a permanent disability. *Id.* at 199. We thus concluded:

> Therefore, it is clear that permanent disability benefits, unlike temporary disability benefits, can be caused by both an initial work accident and a subsequent accident so as to preserve the liability of the employer for that portion of the disability that is attributable to the initial accident.

Id. at 201.

Applying *Labonte* to the instant case, we hold that appellee's subsequent accident does not preclude further liability for the Hospital. According to the Commission's December 4, 2012 Award of Compensation, the December 2009 injury resulted in permanent partial impairment in appellee's right shoulder. The Hospital's counsel acknowledged this during the trial before the circuit court, stating that appellee had "been found to have a permanent disability, and she was compensated for that[.]" Under the holding in *Labonte*, permanent disability benefits can be caused by both an initial work accident and a later non-work accident in which the liability of the employer is still preserved. Therefore, the subsequent injury in this case did not bar recovery for appellee. Accordingly, the court did not err when it found that the Hospital was still responsible for appellee's medical treatment.

The Hospital's arguments regarding proximate cause are similarly fruitless. The Hospital has pointed to the proximate cause standard set forth in *Reeves Motor Co. v. Reeves*, 204 Md. 576 (1954). In *Reeves*, the Court of Appeals stated that "[i]t is established in this State that in Workmen's Compensation cases proximate cause means

that the result could have been caused by the accident and no other efficient cause has intervened between the accident and the result." *Id.* at 581. The Court in *Reeves* determined that the claimant's work injury was not the proximate cause of his current disability; however, as we explained in *Labonte*, it is factually distinguishable from the case at bar:

> Essentially, the employer and insurer argued that the work injury was no longer the cause of Mr. Reeves' disability because it was only "[a]s a result of [the December 27, 1951,] operation to prevent dislocation[ ] [that] the shoulder became partially immobilized." According to Mr. Reeves' employer and insurer, it was the surgery, not the work accident, which caused "the claimant ... [to] now [be] suffering from a forty per centum permanent partial disability of the arm." The Court of Appeals framed the issue as "whether there is any legally sufficient evidence to justify submitting to the jury the question of whether there was any causal connection between the [work] accident of November 10, 1951, and [Mr. Reeves'] . . . temporary total . . . and . . . permanent partial disability." Ultimately, the Court held that because Mr. Reeves' own doctor did not testify that the operation was necessitated by the work injury, "there is no evidence of causal connection between the accident relied on and the operation and subsequent disability."

229 Md. App. at 198 (Internal citations omitted).

In the instant case, unlike *Reeves*, there was evidence of a causal connection between appellee's permanent partial disability and her work accident on December 19, 2009. In addition to appellee's testimony regarding her injury, Dr. Riederman provided expert testimony that her current condition was caused in part by the December 2009 injury. Although Dr. Riederman later changed his opinion in his video deposition, the court believed his original opinion was more convincing. As we have expressed before, "[a] fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a

witness's testimony, or to completely discount a witness's testimony. Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency, and we do not weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact." *Pryor v. State*, 195 Md. App. 311, 329 (2010) (Internal citations omitted). Accordingly, we hold that the evidence presented at trial was sufficient to satisfy the *Reeves* standard, and thus, the work accident was the proximate cause of appellee's ongoing disability.

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