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

JOYCE DUBOSE,	:	APPEAL NO. C-190690 TRIAL NO. A-1802064
Plaintiff-Appellant,	:	
vs.	:	*O P I N I O N.*
STEPHANIE MCCLOUD, Administrator, Ohio Bureau of Workers'- Compensation,	:	
and	:	
SODEXO, INCORPORATED,	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Cause Remanded

Date of Judgment Entry on Appeal: October 21, 2020

Fox & Fox, Co. L.P.A., and *Stephanie D. Horn,* for Plaintiff-Appellant,

Dinsmore & Shohl LLP, and *J. Andrew Recker* for Defendant-Appellee Sodexo Inc.

BERGERON, Judge.

{¶1} This appeal from a trial court's denial of a workers' compensation claim stems, as many do, from the parties' quarrel about proximate causation. Although both expert witnesses agreed that the plaintiff-employee's physical injury played a causal role in her mental condition of depression, the defendant-employer insisted that other factors were to blame, which prompted the trial court to deny the claim. Because we find that the trial court misapplied the dual causation standard and that competent testimony of record did not support a finding of independent causation, we reverse the trial court's decision as against the manifest weight of the evidence.

I.

{¶2} In May 2007, as plaintiff-appellant Joyce Dubose cleaned a hospital room for her employer, Sodexo, Inc., an expanding chair threw her against the wall, injuring her right knee. Diagnosed at the emergency room with a sprain and meniscus tear, Ms. Dubose was eventually certified for a worker's compensation claim allowing for three conditions: a right knee sprain/strain, a tear of the medial meniscus of the right knee, and substantial aggravation of preexisting degenerative joint disease of the right knee. Continuing to struggle with the ramifications of this incident, in October 2009, Ms. Dubose underwent a total knee replacement.

{¶3} For nearly six years after her surgery, Ms. Dubose's knee replacement alleviated her pain and allowed her to return to work. But problems resurfaced in 2015, with Ms. Dubose again experiencing pain and loss of function in her right knee. She developed a limp and encountered problems with falling. By December of 2015, her pain increased to the point that it precipitated another emergency room visit, and the medical staff advised her not to return to work. Seeking to alleviate this

pain, Ms. Dubose underwent a second knee replacement several months later, which she hoped would repair serious problems with the original procedure. When several months of post-surgical rehabilitation and physical therapy failed to improve her condition, her surgeon delivered discouraging news: there was nothing more he could do to help. He explained that she would be unable to return to work and advised her to apply for Social Security Disability payments. He also referred her to a pain management specialist, who prescribed oxycodone to alleviate some of her symptoms.

{¶4} Unable to work and suffering chronic pain, Ms. Dubose began to show symptoms of depression. She felt "cut off from the world" by her inability to work, continually worried about her lack of income, and distressed by the prospect of being a "burden" to those around her. In 2017, Ms. Dubose met with psychologist Dr. George Lester, who diagnosed her with Depressive Disorder, not otherwise specified (NOS). At Sodexo's request, Ms. Dubose attended a second psychological evaluation with Dr. Michael Murphy, who confirmed Dr. Lester's diagnosis. Thereafter, Ms. Dubose requested an additional allowance of Depressive Disorder NOS for her workers' compensation claim—which the Industrial Commission of Ohio denied. Ms. Dubose appealed to the court of common pleas, and the matter proceeded to a bench trial.

{¶5} In addition to Ms. Dubose's testimony, the trial court considered depositions from the two psychologists: Dr. Lester on behalf of Ms. Dubose, and Dr. Murphy on behalf of Sodexo. Notwithstanding their shared diagnosis, the two experts disagreed on the roots of Ms. Dubose's depression. Dr. Lester concluded that her depression directly resulted from her workplace injury—specifically from the complications with the knee replacement that mandated a second surgery and left

Ms. Dubose disabled and unable to work. He pointed to Ms. Dubose's lack of treatment for mental health problems prior to her second surgery, as well as the importance she ascribed to work and self-sufficiency.

{¶6} Dr. Murphy, on the other hand, blamed Ms. Dubose's depression on a litany of alternate stressors, ranging from the death of her brother in the 1980s to a 2017 bladder procedure. Dr. Murphy testified that, in his opinion, these alternate stressors meant Ms. Dubose "probably would have problems with depression in the absence of that [knee] injury." But critically, on cross-examination, Dr. Murphy admitted that the injury was a causal factor:

> Q. But [the injury] is one of the factors that has contributed to or caused [Ms. Dubose] to have this depressive order as you've diagnosed it, correct?
>
> A. Correct.
>
> Q. And you hold that opinion to a reasonable degree of psychological probability as well, correct?
>
> A. Yes.

{¶7} Faced with a record in which both experts agreed that a causal relationship existed between Ms. Dubose's knee injury and her depression, the trial court nonetheless rejected her request to participate in the Workers' Compensation program for Depressive Disorder NOS. This appeal followed.

II.

{¶8} On appeal, Ms. Dubose raises two assignments of error. First, she maintains that the trial court incorrectly applied the standard of dual causation to her case, resulting in a judgment against the manifest weight of the evidence. Next,

she asserts that the testimony of Dr. Murphy represented an equivocal medical opinion unworthy of any probative value under *State ex rel. Eberhardt v. Flxible Corp.*, 70 Ohio St.3d 649, 640 N.E.2d 815 (1994). For the following reasons, we sustain Ms. Dubose's first assignment of error, rendering her second assignment moot.

A.

{¶9} To establish a right to participate in the workers' compensation fund, "a claimant must show by a preponderance of the evidence that the injury arose out of and in the course of employment and that a direct and proximate causal relationship existed between the injury and the harm or disability." *Williams v. Chrysler First Fin. Serv. Co.*, 2017-Ohio-7778, 97 N.E.3d 1123, ¶ 21 (6th Dist.). In the case of a "flow through" injury like Ms. Dubose's, a claimant must "establish that the previously allowed injury was the proximate cause of the new injury." *Jones v. Med. Mut. Of Ohio,* 8th Dist. Cuyahoga No. 82924, 2004-Ohio-746, ¶ 9, citing *Fox v. Indus. Comm.*, 162 Ohio St. 569, 125 N.E.2d 1 (1955), paragraph one of the syllabus. For a mental condition to be compensable, a claimant must demonstrate that the mental condition has "arisen from" the claimant's allowed, physical injury. R.C. 4123.01(C)(1); *see Armstrong v. John R. Jurgensen Co.,* 136 Ohio St.3d 58, 2013-Ohio-2237, 990 N.E.2d 568, ¶ 17. Consequently, to succeed in her claim before the trial court, Ms. Dubose needed to establish that her depression arose from, and was proximately caused by, her knee injury.

{¶10} Courts define proximate cause as " 'that which in a natural and continuous sequence, unbroken by any new, independent cause, produces that event and without which that event would not have occurred.' " *Jones* at ¶ 5, citing *Aiken v. Indus. Comm.*, 143 Ohio St. 113, 117, 53 N.E.2d 1018 (1994); *see Oswald v.*

Connor, 16 Ohio St.3d 38, 42, 476 N.E.2d 658 (1985). In *Murphy v. Carrollton Mfg. Co.,* the Ohio Supreme Court explained that "when considering the issue of proximate cause in the workers' compensation context, the definition of and principles governing the determination of 'proximate cause' in the field of torts are applicable." *Murphy v. Carrollton Mfg. Co.*, 61 Ohio St.3d 585, 587, 575 N.E.2d 828 (1991). "It is a well-established principle of tort law that an injury may have more than one proximate cause." *Id.* Therefore, " '[i]n Ohio, when two factors combine to produce damage or illness, each is a proximate cause' " for purposes of workers' compensation. *Id.* at 588, quoting *Norris v. Babcock & Wilcox Co*, 48 Ohio App.3d 66, 67, 548 N.E.2d 304 (9th Dist. 1998).

{¶11} The issue of proximate causation—including dual causation—is generally "a factual question to be resolved by the fact-finder." *Carrollton* at 590. As such, an appellate court "will not reverse the trial court's judgment unless it is against the manifest weight of the evidence." *Jones* at ¶ 4. When conducting a manifest weight of the evidence review, an appellate court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed * * * ." Internal punctuation omitted. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist. 2001). Judgments supported by "competent, credible evidence going to all the essential elements of the case will not be reversed." *Id.* at ¶ 14, quoting *C. E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279, 280, 376 N.E.2d 578 (1978).

{¶12} However, Ms. Dubose's first assignment of error implicates more than just the trial court's factual findings on proximate causation: Ms. Dubose also contends that the trial court applied the improper legal standard for dual causation to her claim. Whether the trial court applied the proper legal standard poses a question of law, which we review de novo. *See Matter of P.R.P,* 2018-Ohio-216, 104 N.E.3d 827 (12th Dist.) ("This court employs the de novo standard of review on questions relating to the proper appropriate legal standard or test."); *Ohio Edison Co. v. Pub. Util. Comm.*, 78 Ohio St.3d 466, 469, 678 N.E.2d 922 (1997) ("Determining whether the commission applied the proper legal standard is a question of law."). Accordingly, we turn first to the legal standard employed by the court before focusing our attention on the record evidence.

B.

{¶13} We begin our review with an examination of the trial court's order denying Ms. Dubose's claim. In its order, the trial court correctly noted that R.C. 4123.01(C)(1) excludes psychiatric conditions like Ms. Dubose's unless the condition arises from a compensable physical injury. *See Armstrong,* 136 Ohio St.3d 58, 2013-Ohio-2237, 990 N.E.2d 568, at ¶ 17 (" 'Arisen from,' as used in R.C. 4123.01(C)(1), contemplates a causal connection between the mental condition and the claimant's compensable physical injury."). It properly cited the *Carrollton* dual causation standard and referenced the testimony of Dr. Lester and Dr. Murphy on that issue (though it offered no explicit determination as to which of the two expert conclusions it found more credible).

{¶14} The trial court went astray, however, by invoking the "remote cause" doctrine from a 1927 case, *Armour & Co. v. Ott,* 117 Ohio St. 252, 158 N.E. 189 (1927), which dealt with issues of causation and foreseeability in the context of a

negligence claim. The trial court cited *Armour* specifically for the proposition that "[i]n an action to recover damages for injuries sustained through the negligence of another, the law regards only the direct and proximate results of the negligent act, as creating a liability against the wrongdoer * * * [and] an injury that could not have been foreseen or reasonably anticipated as the probable result of an act of negligence, is not actionable." *Id.* at 257. The trial court then reasoned: "Whether designated as remote cause, intervening cause, supervening cause, lack of foreseeability * * * the Court finds that the Plaintiff has not sustained her burden of proof of the [*Armstrong*] 'nexus' required for participation in the Workers' Compensation program."

{¶15} At this point of its analysis, the trial court committed legal error and lost its way. Initially, the trial court conflated the standard for proximate causation in a workers' compensation claim with the standard for liability in a negligence claim. *Contrast Carrollton,* 61 Ohio St.3d at 587-588 (outlining the standard for dual causation in a workers' compensation case) *with Armour* at 257 (finding plaintiff's complaint insufficient to allege an injury foreseeable from defendant's negligent act). The proper question in this case was not whether Ms. Dubose's long-term disability and depression were *foreseeable* from her original injury, nor whether other, non-injury factors contributed to Ms. Dubose's depression (a perfectly acceptable form of dual causation under *Carrollton*). Instead, the court should have assessed whether Ms. Dubose's depression stemmed from her knee injury (which both experts agreed was at least a causal factor) or from another "independent cause" that broke the "natural and continuous" causal chain from knee injury to depression. *Jones,* 8th Dist. Cuyahoga No. 82924, 2004-Ohio-746, ¶ 5.

{¶16} Next, the trial court characterized Ms. Dubose's "inability to work" as a "supervening cause" that destroyed the requisite *Armstrong* nexus between her mental condition and her physical injury. But this conclusion cannot be squared with the facts of Ms. Dubose's case. No party contests that Ms. Dubose stopped working only after pain and loss of function in her knee rendered work impossible. Nor does any party suggest that she should have disobeyed her surgeon's instructions in this regard, or that she had any ulterior motive in leaving her job (much to the contrary, the testimony indicates that she enjoyed work and found it fulfilling). Ms. Dubose's inability to work is thus a link, rather than a break, in the causal chain to her depression. So far as her knee injury caused her inability to work, and her inability to work caused her depression, Ms. Dubose's claim for Depressive Disorder NOS meets the *Armstrong* nexus requirement and should be allowed.

{¶17} Having determined that the trial court applied the wrong legal standard when it considered foreseeability and characterized "inability to work" as a "supervening cause," we next turn to the record to consider whether the evidence suggests another independent cause that could justify denial of Ms. Dubose's claim. See *Eastley,* 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, at ¶ 20 (describing the appellate court's duty to "weigh[] the evidence and all reasonable inferences" when reviewing for manifest weight). Here, we find only the testimony of Dr. Murphy, who maintained that Ms. Dubose "probably would have problems with depression" regardless of her knee injury.

{¶18} We do not question Dr. Murphy's extensive qualifications as an expert witness, nor the probative value of his testimony at large. But in light of Dr. Murphy's concession that Ms. Dubose's knee injury *was* a contributing factor to her depression, we do not find his insistence that she "probably would have problems"

anyway to withstand scrutiny. Seemingly without regard to Ms. Dubose's consistent statements (and medical records) that her depression symptoms began after her 2016 surgery, Dr. Murphy attributed her depression to myriad alternate stressors stretching back to the 1980s. No misfortune was spared by Dr. Murphy's analysis, including decades-old elements (like the death of Ms. Dubose's son in 2000) and factors with clear causal relationships to Ms. Dubose's knee injury (like her use of oxycodone for pain management). But this kitchen-sink appraisal lacked any probative medical analysis regarding Ms. Dubose. Yes, she suffered various adversities throughout her life—but adversity alone does not trigger depression. We all have different ways of handling and responding to setbacks. Notably, Dr. Murphy never identified a specific independent cause of Ms. Dubose's depression, effectively shrugging his shoulders and suggesting that the condition was "due to just kind of confluence of the factors."

{¶19} In essence, Dr. Murphy asked the trial court to believe that when an individual faces difficult circumstances in life, that individual is bound to develop depression—so much so that a traumatic physical injury and resulting disability must be disregarded as a proximate cause of the individual's depression. This conclusion is "pure conjecture," and it is "inadmissible to establish proximate cause." *See Davis v. Johnson Controls Battery Group, Inc.,* 6th Dist. Lucas No. L-08-1065, 2009-Ohio-2159, ¶ 37, quoting *Steinmetz v. Latva*, 6th Dist. Erie No. E-02-025, 2003-Ohio-3455, ¶ 28. Of course, there are cases in which an individual's mental condition can clearly be linked to non-injury factors. *See, e.g., Phipps v. Internatl. Paper Co.,* 12th Dist. Clinton No. CA2013-02-003, 2013-Ohio-3994, ¶ 18, 25 (upholding a finding of no proximate causation where more than 25 years passed between plaintiff's physical injury and depression diagnosis). But this is not one of those cases on the state of

this record. Ms. Dubose consistently testified about the importance of work in her life and the onset of her depression symptoms specifically when she was forced to stop working. Both experts agreed that Ms. Dubose's knee injury was a contributing factor to her depression, testimony that has been found sufficient to "cross[] the proximate cause barrier" in other cases. *See Norris v. Babcock & Wilcox Co.,* 48 Ohio App.3d 66, 67, 548 N.E.2d 304 (9th Dist. 1988). Dr. Murphy's speculative testimony on alternate stressors was not competent to establish an independent cause of depression—and besides this testimony, the record is barren of any evidence breaking the causal chain between Ms. Dubose's knee injury and her depression. Consequently, we find that Ms. Dubose met her burden to show direct and proximate causation, and her claim should be allowed.

{¶20} Because we find the trial court's decision to deny Ms. Dubose's workers' compensation claim to be against the manifest weight of the evidence, her second assignment of error is moot. We therefore sustain the first assignment of error, reverse the trial court's judgment, and remand the cause with instructions that Ms. Dubose be allowed to participate in the Workers' Compensation program for the condition of Depressive Disorder NOS.

Judgment reversed and cause remanded.

MYERS, P.J., and **CROUSE, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.