REL: April 22, 2022

ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2021-2022

2200840

Carl Green

v.

T.R. Miller Mill Company, Inc., and Yother Construction Management

Appeal from Escambia Circuit Court (CV-20-900031)

2200851

Carl Green

v.

Yother Construction Management

Appeal from Escambia Circuit Court (CV-02-206)

2200840, 2200851, 2200863, and 2200864

2200863

Yother Construction Management

v.

Carl Green and T.R. Miller Mill Company, Inc.

Appeal from Escambia Circuit Court
(CV-02-206)

2200864

Yother Construction Management

v.

T.R. Miller Mill Company, Inc., and Carl Green

Appeal from Escambia Circuit Court
(CV-20-900031)

MOORE, Judge.

These appeals arise out of a judgment entered by the Escambia Circuit Court ("the trial court") denying a workers' compensation claim filed by Carl Green against T.R. Miller Mill Company, Inc. ("T.R. Miller"),

and determining that Yother Construction Management ("Yother") remains liable to Green to provide continuing medical treatment for a right-hand injury sustained by Green in 2000.

Procedural Background

In 1994, Green injured his right hand in a work-related accident while working for BE & K Construction Company ("BE & K"). As a result of the accident, Green developed reflex sympathetic disorder ("RSD"), a form of complex-regional-pain syndrome, in his injured right upper extremity. Green settled his workers' compensation claim against BE & K, which was approved by the Mobile Circuit Court in a 1996 judgment, and eventually returned to work, for Yother, in 2000. On November 24, 2000, Green fell on his right hand and arm while alighting from a forklift he was operating for Yother and aggravated his preexisting RSD. Green sought workers' compensation benefits from Yother, and, in 2004, Green settled his workers' compensation claim against Yother. Pursuant to the terms of the settlement, which was approved by the trial court in a judgment entered in case number CV-02-206, Yother agreed to provide future reasonably necessary medical treatment for the injury to Green's

right upper extremity in accordance with Ala. Code 1975, § 25-5-77, a part of the Alabama Workers' Compensation Act ("the Act"), Ala. Code 1975, § 25-5-1 et seq.

In 2020, Green commenced a workers' compensation action against his employer, T.R. Miller, alleging that he had injured his right hand and right upper extremity in a December 26, 2019, accident. That action was assigned case number CV-20-900031. After Yother filed a motion in case number CV-02-206 requesting a hearing to determine its continuing liability to pay for medical treatment for Green's right upper extremity, the trial court consolidated case number CV-02-206 and case number CV-20-900031.

On December 9, 2020, the trial court conducted a hearing in the consolidated cases to determine the compensability of Green's alleged December 26, 2019, injury. During that hearing, the parties also tried the issue of which employer, Yother or T.R. Miller, should be liable for any benefits owed to Green on account of the claimed injury. On March 9, 2021, the trial court entered an order in the consolidated cases determining that Green had suffered a recurrence of his 2000 injury. The

trial court denied Green's claim for compensation against T.R. Miller, ordered Yother to continue to provide medical treatment to Green, and scheduled the matter for a "final hearing" to determine attorney's fees and "all other remaining issues." After careful consideration, we determine that the March 9, 2021, order is a final judgment because it resolved all the controversies among the parties, leaving only the issue of attorney's fees for adjudication. See State Bd. of Educ. v. Waldrop, 840 So. 2d 893 (Ala. 2002).

On April 7, 2021, Green filed a postjudgment motion, and, on April 8, 2021, Yother filed a postjudgment motion. On May 6, 2021, the trial court conducted a "final hearing" on the case and received medical records from Green relating to his treatment since December 9, 2020. The trial court did not rule on the pending postjudgment motions within 90 days of their filings, so they were denied by operation of law on July 6, 2021, and July 7, 2021, respectively. See Rule 59.1, Ala. R. Civ. P. On July 20, 2021, the trial court entered an order in the consolidated cases denying any claim for attorney's fees or costs and purporting to adopt the March 9, 2021, order as its final judgment. Cf. McCarn v. Langan, 293

So. 3d 383, 386 (Ala. Civ. App. 2019) (holding that entry of a duplicate judgment does not affect the finality of original judgment that fully adjudicated claims of the parties). The latter part of the order purporting to adopt the March 9, 2021, order as its final judgment is a legal nullity. See Alabama Elec. Co. v. Dobbins, 744 So. 2d 928, 931 (Ala. Civ. App. 1999) (holding that order entered after trial court has lost jurisdiction over a postjudgment motion, pursuant to Rule 59.1, is a legal nullity).

Green filed a notice of appeal in case number CV-20-900031 and in case number CV-02-206 on July 26 and July 28, 2021, respectively; Yother filed its notices of appeal on August 2, 2021. Although Green and Yother identified the July 20, 2021, order as the judgment from which they were appealing, we treat the notices of appeal as arising from the final judgment entered on March 9, 2021. See Madison v. Lambert, 428 So. 2d 25, 26 (Ala. 1983) (holding that misstatement regarding date of entry of final judgment that did not prejudice appellee would not require dismissal of appeal); Cox v. Poer, 45 Ala. App. 295, 297, 229 So. 2d 797, 799 (Civ. 1969) (quoting Strain v. Irwin, 199 Ala. 592, 593, 75 So. 151, 152 (1915), quoting in turn 2 Cyc. 839) ("'"A misrecital of the date of

judgment should not necessarily be held fatal to the bond, provided the other elements of the description show with reasonable certainty that it can be no other than that appealed from."'"). The notices of appeal were timely filed within 42 days of the date the postjudgment motions were denied by operation of law, see Rule 4(a)(1) & Rule 4(a)(3), Ala. R. App. P., and, thus, invoked the appellate jurisdiction of this court. See Ala. Code 1975, § 12-3-10.

Preliminary Matters

Green's arguments on appeal relate solely to his appeal from the judgment in favor of T.R. Miller entered in case number CV-20-900031, which we have designated as appeal number 2200840. Yother was not a party to that judgment, see Ex parte Glassmeyer, 204 So. 3d 906, 908 (Ala. Civ. App. 2016) (recognizing that an order of consolidation does not automatically make the parties to one consolidated action parties to the other action), so, although Green identified both T.R. Miller and Yother as appellees, we consider T.R. Miller to be the only proper appellee in appeal number 2200840. See Rule 3(c), Ala. R. App. P. (providing that only an "adverse party" may be named as an appellee). Additionally,

Green has not argued any error as to the judgment entered in his favor in case number CV-02-206. Thus, we dismiss his appeal from that judgment, which we have designated as appeal number 2200851.

Yother's arguments on appeal relate solely to its appeal from the judgment entered in case number CV-02-206, which we have designated as appeal number 2200863. T.R. Miller was not a party to that judgment, so, although Yother identified both Green and T.R. Miller as appellees, we consider Green to be the only proper appellee in appeal number 2200863. Also, because Yother was not a party to the judgment entered in case number CV-20-900031, we dismiss its appeal from that judgment, which we have designated as appeal number 2200864. See Triple J Cattle, Inc. v. Chambers, 621 So. 2d 1221, 1223 (Ala. 1993) ("To have standing to appeal a judgment, one must have been a party to the judgment below.").

Issues

Green and Yother both argue that the trial court erroneously concluded that Green had suffered a recurrence of his 2000 injury as a result of the December 26, 2019, accident. In appeal number 2200840,

Green asserts that the trial court erred in denying his claim for workers' compensation benefits against T.R. Miller. In appeal number 2200863, Yother contends that the trial court erred in determining that Yother is liable for continuing medical treatment for Green's injury to his right upper extremity.

Standard of Review

In a workers' compensation case, the findings of fact made by a trial court, which are based in part on ore tenus testimony, are presumed correct, and a judgment entered in accordance with those findings will be affirmed so long as the findings are supported by substantial evidence. See Ala. Code 1975, § 25-5-81(e)(2). On the other hand, we review the trial court's legal conclusions without any presumption of correctness. See Ala. Code 1975, § 25-5-81(e)(1).

Discussion

In cases involving successive occupational injuries covered by the Act, this court has adopted the "last-injurious-exposure rule," pursuant to which

> " 'liability [for workers' compensation benefits] falls upon the carrier [or employer] covering [the] risk at the time of the

> most recent injury bearing a causal relation to the disability.' North River Insurance Co. v. Purser, 608 So. 2d 1379, 1382 (Ala. Civ. App. 1992). The trial court must determine whether the second injury is 'a new injury, an aggravation of a prior injury, or a recurrence of an old injury; this determination resolves the issue of which insurer [or employer] is liable.' Id.
>
> "A court finds a recurrence when 'the second [injury] does not contribute even slightly to the causation of the [disability].' 4 A. Larson, The Law of Workmen's Compensation, § 95.23 at 17-142 (1989). '[T]his group also includes the kind of case in which a worker has suffered a back strain, followed by a period of work with continuing symptoms indicating that the original condition persists, and culminating in a second period of disability precipitated by some lift or exertion.' 4 A. Larson, § 95.23 at 17-152. A court finds an 'aggravation of an injury' when the 'second [injury] contributed independently to the final disability.' 4 A. Larson, § 95.22 at 17-141. If the second injury is characterized as a recurrence of the first injury, then the first insurer [or employer] is responsible for the medical bills; however, if the injury is considered an aggravation of the first injury, then it is considered a new injury and the employer at the time of the aggravating injury is liable for the medical bills and disability payments. North River, supra."

United States Fid. & Guar. Co. v. Stepp, 642 So. 2d 712, 715 (Ala. Civ. App. 1994); see also Kohler Co. v. Miller, 921 So. 2d 436 (Ala. Civ. App. 2005) (applying last-injurious-exposure rule to settle controversy between successive employers as to liability for workers' compensation benefits).

The trial court applied the last-injurious-exposure rule to determine that Green's current disability was caused by a recurrence of his preexisting RSD. For various reasons, Green and Yother contend that the trial court erred in that determination. We address each argument in turn.

A. The No-Preexisting-Injury Rule

Green and Yother first maintain that the trial court misapprehended the last-injurious-exposure rule. Green and Yother maintain that, for the purposes of workers' compensation law, an employee does not have a preexisting injury if, at the time of the work-related accident, the employee is working normally. See Blue Bell, Inc. v. Nichols, 479 So. 2d 1264, 1268 (Ala. Civ. App. 1985). Therefore, they say, if an employee is working normally at the time of a second injury, a trial court applying the last-injurious-exposure rule cannot determine that the subsequent disability results from a recurrence of a preexisting injury because, legally speaking, the preexisting injury does not exist. In its judgment, the trial court rejected this argument, concluding that the

line of cases citing the "no-preexisting-injury rule" do not apply when the last-injurious-exposure rule controls. We agree.

The no-preexisting-injury rule can be traced to Ingalls Shipbuilding Corp. v. Cahela, 251 Ala. 163, 36 So. 2d 513 (1948). See Alamo v. PCH Hotels & Resorts, Inc., 987 So. 2d 598, 604 (Ala. Civ. App. 2007) (Moore, J., concurring specially). In Cahela, the supreme court reviewed a judgment entered by the Jefferson Circuit Court awarding Cahela workers' compensation benefits based on a 30% permanent partial disability. In the judgment, the circuit court determined that Cahela had aggravated an underlying arthritic condition based on evidence indicating that, before the work-related accident, Cahela had been working normally in heavy manual labor but that, afterward, Cahela had become unable to perform any duty placing strain on his back and expert testimony opining that the work-related accident had activated or accelerated Cahela's latent arthritic condition. 251 Ala. at 171, 36 So. 2d at 519.

On appeal, Cahela's employer, Ingalls Shipbuilding Corporation ("Ingalls"), argued that the circuit court had erred in failing to apply Ala.

Code 1940, tit. 26, § 288, now codified at Ala. Code 1975, § 25-5-58, which provides: "If the degree or duration of disability resulting from an accident is increased or prolonged because of a preexisting injury or infirmity, the employer shall be liable only for the disability that would have resulted from the accident had the earlier injury or infirmity not existed." Ingalls maintained that the circuit court had erred in failing to reduce its liability for workers' compensation benefits on account of Cahela's preexisting arthritic condition. In its opinion, the supreme court noted that § 288 closely paralleled another statute, Ala. Code 1940, tit. 26, § 279(E)(1), now codified at Ala. Code 1975, § 25-5-57(a)(4)e., which provides:

> "If an employee has a permanent disability or has previously sustained another injury than that in which the employee received a subsequent permanent injury by accident, as is specified in this section defining permanent injury, the employee shall be entitled to compensation only for the degree of injury that would have resulted from the latter accident if the earlier disability or injury had not existed."

The supreme court decided to construe both of those statutes, which we will refer to as "the apportionment statutes," to determine whether the judgment should be reversed. 251 Ala. at 171, 36 So. 2d at 519.

Before Cahela, a line of cases had recognized that

> "if the accident acted upon the particular individual who was in apparent good health, but who had a dormant infirmity which did not interfere with his work, and after the accident he was unable to work, or was partially disabled, [those facts] furnished some evidence of causal connection between the accident and the disability following the accident."

251 Ala. at 171-72, 36 So. 2d at 520 (citing Gadsden Iron Works v. Beasley, 249 Ala. 115, 30 So. 2d 10 (1947); New River Coal Co. v. Files, 215 Ala. 64, 109 So. 360 (1926); Walker v. Minnesota Steel Co., 167 Minn. 475, 209 N.W. 635 (1926); and Warlop v. Western Coal & Mining Co., 24 F.2d 926 (8th Cir. 1928)). The Cahela court concluded that those cases had determined that a compensable injury occurs when a work-related accident aggravates or accelerates a latent preexisting injury, but it pointed out that those cases had not "discuss[ed] the question of whether the amount of compensation is affected by an accident working on a latent infirmity." 251 Ala. at 172, 36 So. 2d at 520. The supreme court explained that the case did not involve the compensability of Cahela's injury, "[b]ut our inquiry is to what extent it is compensable in the light of sections 288 and 279(E), subd. 1, supra." 251 Ala. at 173, 36 So. 2d at 521 (emphasis added). The court held:

> "We must give those statutes effect. We find no cases referring to such provisions. It is our view that they do not refer to latent conditions which may not spring into activity during the compensable period, and at the time of the accident are causing no apparent physical effect on the health or activity of the employee. We think the term disability in section 279(E), subd. 1, and infirmity in section 288, supra, refer to a condition which affects [a worker's] ability to work as a normal man at the time of and prior to the accident, or which would probably so affect him within the compensable period."

Id. Accordingly, the supreme court affirmed the judgment, which did not reduce or apportion the compensation award on account of Cahela's latent arthritic condition.

Cahela holds that, for the purposes of the apportionment statutes, a "preexisting injury or infirmity" and "an earlier disability or injury" do not include what it described as "latent conditions." Id. This court cited and applied the rule of law established in Cahela in a line of cases holding that an award of workers' compensation benefits may not be reduced or apportioned under § 25-5-57(a)(4)e. or § 25-5-58 on the basis of an employee's preexisting condition that was not affecting the ability of the employee to work normally at the time of an accident. See, e.g., Gold Kist, Inc. v. Nix, 519 So. 2d 556, 557 (Ala. Civ. App. 1987); Thompson & Co. Contractors v. Cole, 391 So. 2d 1042, 1045 (Ala. Civ. App. 1980). For

example, in Patterson v. Clarke County Motors, Inc., 551 So. 2d 412, 416 (Ala. Civ. App. 1989), a case involving an employee, Aubrey Patterson, who claimed that a work-related accident had led to the loosening of his hip prosthesis, this court held that, "[e]ven if the ongoing reaction between the bone and the cement was causing loosening of Patterson's prosthesis prior to the accident, we find no evidence that such pre-existing condition affected his job performance so as to invoke § 25-5-58 ...." And, in Merico, Inc. v. Sparks, 567 So. 2d 315, 316 (Ala. Civ. App. 1990), this court rejected an argument that § 25-5-58 required a permanent-total-disability award to be reduced, holding that "§ 25-5-58 is to be liberally construed and does not apply if any previous injury has not demonstrated itself as disabling or has not prevented the employee from performing his job in a normal manner."

In North River Insurance Co. v. Purser, 608 So. 2d 1379, 1382 (Ala. Civ. App. 1992), this court, in adopting the last-injurious-exposure rule, stated:

> "It appears that in the absence of express statutory authority, public policy may best be served by adopting the 'last injurious exposure' rule in Alabama. First, this will allow Alabama to conform with the majority of other jurisdictions.

> [4 A. Larson, The Law of Workmen's Compensation] at § 95.20 [(1989)]. Second, it spares litigants the difficult task of apportioning blame in successive-injury cases. Third, it is easier to administer than its alternatives, thus resulting in judicial economy. Fourth, it is more consistent with Alabama's normal rule for pre-existing injuries, i.e., that the employer (and the employer's insurance carrier) 'takes an employee as he finds him at the time of employment.' Patterson v. Clarke County Motors, Inc., 551 So. 2d 412, 416 (Ala. Civ. App. 1989); see also Merico, Inc. v. Sparks, 567 So. 2d 315 (Ala. Civ. App. 1990)."

(Emphasis added.) This court meant that, like the no-preexisting-injury rule, as applied in cases like Patterson and Sparks involving § 25-5-58 and 25-5-57(a)(4)e., the last-injurious-exposure rule also does not apportion liability when a preexisting occupational injury has been aggravated in subsequent employment. Purser does not hold that, when applying the last-injurious-exposure rule, a trial court must presume that an employee who has been working normally in subsequent employment has no preexisting injury that can recur or be aggravated. In fact, the central inquiry in cases involving successive injuries is whether the successive injury the employee sustained while working in subsequent employment should be characterized "as a new injury, an aggravation of a prior injury, or a recurrence of an old injury." Purser,

608 So. 2d at 1382. The last-injurious-exposure rule would have practically no application if a trial court is required to find every injury to be a new injury when an employee has been working normally at the time of the second injury.

Moreover, this court has never applied the no-preexisting-injury rule in the manner suggested by Green and Yother. Cf. Patterson v. Liz Claiborne, Inc., 872 So. 2d 181, 186 (Ala. Civ. App. 2003) (affirming judgment determining that worker's disabling back pain was a recurrence of a 1998 work-related injury and not a new injury resulting from an incident in 2000, although worker "contend[ed] that she had no problems with her back for the year before the April 7, 2000, incident"). In Hooker Construction, Inc. v. Walker, 825 So. 2d 838 (Ala. Civ. App. 2001), this court cited the no-preexisting-injury rule in an opinion affirming a judgment of the Mobile Circuit Court determining that, in 1999, Steve Walker had aggravated a preexisting back injury, which had been caused by a 1986 work-related accident, when he fell while roofing a house. Walker had been working normally at the time of the 1999 fall,

and his treating physician opined that he had aggravated his preexisting back injury in that accident. This court said:

> "Evidence showed that before the 1999 accident Walker had not gone to [his treating physician] in almost a year and that he was able to perform his duties while working. Therefore, based on this evidence and on the testimony regarding [the treating physician's] assessment of the second injury, we uphold the trial court's findings."

825 So. 2d at 845 (emphasis added). This court held only that the evidence indicating that Walker was working normally, when coupled with the expert testimony from his treating physician, was sufficient to sustain the finding of an aggravation, not that the circuit court was required to disregard the preexisting back injury as being legally nonexistent.

In United-Johnson Brothers of Alabama, LLC v. Billups, [Ms. 2200122, Sept. 17, 2021] ___ So. 3d ___ (Ala. Civ. App. 2021), this court noted Walker and its citation of the no-preexisting-injury rule, but, again, the court did not establish a rule of law that a preexisting injury does not exist for purposes of the last-injurious-exposure rule if the employee was able to work normally before the second injury. This court specifically held that "differentiating between whether an employee has suffered an

aggravation of an injury or a recurrence of an injury is a fact-based inquiry ...." ___ So. 3d at ___. We noted that the factual findings contained evidence from which the Jefferson Circuit Court could have found either a recurrence of the preexisting injury or an aggravation of the preexisting injury. Ultimately, this court concluded that, in the absence of a transcript of the trial testimony, we would presume that the circuit court had received evidence sufficient to sustain its factual determination that the employee, Luther Billups, had aggravated his preexisting back injury by suffering new damage to the physical structure of his body that caused him to experience different and increased symptoms. ___ So. 3d at ___.

Although neither Purser, nor Walker, nor Billups supports Green and Yother's argument, we acknowledge that some cases have cited the no-preexisting-injury rule outside of the apportionment context, particularly when discussing medical causation. See 1 Terry A. Moore, Alabama Workers' Compensation § 6:18 n.4 (2d ed. 2013) (citing numerous cases).

> "By importing the apportionment legal fiction into medical-causation discussions, some appellate opinions ...

> fostered the misimpression that if an employee is working normally before and at the time of the accident, and hence has no preexisting condition, then, as a matter of law, any subsequent injury or disability must be considered to be caused by the accident. See, e.g., Tarver v. Diamond Rubber Products Co., 664 So. 2d 207, 210 (Ala. Civ. App. 1994) ...."

Alamo, 987 So. 2d at 605 (Moore, J., concurring specially). However, Cahela itself specifically recognized that the issues of compensability and apportionment are separate and distinct subjects, requiring different treatment. According to Cahela, evidence indicating that an employee was working normally before an accident but became disabled after the accident constitutes circumstantial evidence of medical causation; however, that same evidence precludes application of the apportionment statutes as a matter of law. See also Ex parte Lewis, 469 So. 2d 599, 600 (Ala. 1985) (explaining Cahela). No legal authority has ever substantiated the unwarranted extension of the no-preexisting-injury rule outside of cases involving the apportionment statutes.

This court has repeatedly had to correct this misunderstanding of the law regarding preexisting conditions. See Wiggins v. ARC, Inc., 599 So. 2d 1204, 1206 (Ala. Civ. App. 1992) (rejecting widow's contention that employee's preexisting arteriosclerotic heart disease must be disregarded

as a cause of his fatal heart attack because he was working normally before going into cardiac arrest); Dempsey v. White Consolidated Indus., Inc., 620 So. 2d 38, 41 (Ala. Civ. App. 1993) (concluding that trial court could determine that preexisting injury was root of disability even though employee was working normally before falling at work). In Smith v. Brett/Robinson Construction Co., 215 So. 3d 1113 (Ala. Civ. App. 2016), Brenda Smith, a construction superintendent, tripped and fell while working and claimed that she had injured her left knee in the accident. The Baldwin Circuit Court determined that the left-knee injury had resulted solely from a preexisting arthritic condition and not from the fall. Smith appealed, contending, among other things, that, because she was able to perform her job duties before the accident, "'she did not have arthritis before the fall as far as the law is concerned.'" 215 So. 3d at 1118. This court stated:

> "As Smith points out, '"[i]t is well settled that no preexisting condition is deemed to exist for the purposes of a workers' compensation award if the employee was able to perform the duties of his job before suffering the injury made the basis of the claim."' Reeves Rubber, Inc. v. Wallace, 912 So. 2d 274, 279 (Ala. Civ. App. 2005) (quoting BE & K Constr. Co. v. Reeves, 898 So. 2d 738, 746-47 (Ala. Civ. App. 2004)). That does not mean, however, that Smith was not required to

> prove that it was the workplace accident that actually caused her arthritis to manifest or to become aggravated."

Id. This court further rejected the contention that the evidence indicating that, before the injury, Smith had worked normally but that, afterward, she had suffered debilitating pain was conclusive on the question of medical causation, stating:

> "The trial court in the present case was authorized to consider evidence indicating that Smith had not suffered from knee pain until after the workplace accident; that does not mean that the trial court was required to ignore medical evidence indicating that the current condition of Smith's knee is due to arthritis."

Id.

When deciding which of two successive injuries cause a disability for purposes of the last-injurious-exposure rule, a trial court essentially decides a question of medical causation. See Hokes Bluff Welding & Fabrication v. Cox, 33 So. 3d 592 (Ala. Civ. App. 2008); Purser, 608 So. 2d at 1382 (holding that trial court must determine which is "the most recent injury bearing a causal relation to the disability"). We take this opportunity to clarify once again that the no-preexisting-injury rule does not apply when determining medical causation, including when deciding

if a second injury is a recurrence, an aggravation, or a new injury under the last-injurious-exposure rule. When analyzing the cause of a disability for the purposes of the last-injurious-exposure rule, a trial court should not indulge a legal fiction that no preexisting injury exists if the employee was working normally. The trial court correctly declined to apply the no-preexisting-injury rule in this case.

B. Ala. Code 1975, § 25-5-57(a)(4)b.

We next address Yother's argument that the trial court erred by factoring into its analysis that Green had previously recovered financial benefits, including two workers' compensation settlements and Social Security disability benefits, on account of his RSD. In the May 6, 2021, hearing, the trial judge explained why he had alluded to those prior awards:

> "I wanted to say a couple of things with regard to the part of my order where I talked about the prior workers' compensation settlements and the Social Security Disability determination. I think the order is clear, but I just want to make sure that the record is clear that I didn't comment on those -- on that evidence for the conclusion that Mr. Green is barred because he engaged in those legal proceedings and got benefits from them. I don't mean to say that he's barred in any way. I just think that it is strong proof that the disability that he's claiming now is the result of his injury [while working

> for] T.R. Miller was, in fact, something that he was already suffering from for years. And those are sort of legal determinations that he was suffering from those symptoms and conditions."

Yother maintains that the trial court ignored Ala. Code 1975, § 25-5-57(a)(4)b., which provides, in pertinent part:

> "At any time, the employer may petition the court that awarded or approved compensation for permanent total disability to alter, amend, or revise the award or approval of the compensation on the ground that as a result of physical or vocational rehabilitation, or otherwise, the disability from which the employee suffers is no longer a permanent total disability and, if the court is so satisfied after a hearing, it shall alter, amend, or revise the award accordingly."

According to Yother, § 25-5-57(a)(4)b. "contemplates the very situation with which the [trial] court apparently takes issue: where a previously deemed permanent and total disability resolves and the employee returns to gainful employment." Yother's brief at 52 (emphasis omitted). Yother argues that the trial court disregarded § 25-5-57(a)(4)b. by "refusing to acknowledge Green's recovery from his previous disability resulting from his job accident with Yother." Id. at 53.

Section 25-5-57(a)(4)b. does recognize that an employee who has been deemed to be permanently and totally disabled may recover from a

permanent total disability and return to work, but it does not require a trial court to determine that, in those circumstances, the employee has recovered completely from the preexisting injury so that any subsequent disability cannot be classified as a recurrence of that injury. Section 25-5-57(a)(4)b. provides a previous employer only a remedy to reduce or eliminate its liability for permanent-total-disability benefits. "Under [§ 25-5-57(a)(4)b.], if an employer believes that the employee is no longer permanently and totally disabled, it may petition the court to reopen the case and change the employee's classification from permanent total disability." Ex parte Adkins, 565 So. 2d 633, 635 (Ala. 1990). This case does not involve a situation in which an employer that is liable for permanent-total-disability benefits has petitioned for a reclassification of the disability determination. Yother has not shown that the trial court committed any legal error in failing to consider § 25-5-57(a)(4)b. in its analysis.

C. Sufficiency of the Evidence

Green and Yother next argue that the evidence does not support the trial court's finding that Green's current disability was caused by a

recurrence of his preexisting RSD. By finding that Green had suffered a recurrence, the trial court essentially determined that the December 26, 2019, accident did not contribute even slightly to Green's current disability, see United States Fid. & Guar. Co. v. Stepp, 642 So. 2d at 715, and that, instead, the disability arose solely from his preexisting RSD. We review the record to determine if that finding is supported by substantial evidence.

According to the deposition testimony of Dr. Grady Maddox, an orthopedic surgeon specializing in upper-extremity injuries, RSD is a neurological condition that causes the sensory nerves in an affected extremity to become inflamed and "to go haywire," leading to extreme pain, hypersensitivity, swelling, discoloration, abnormal temperature changes of the skin, loss of bone density, weakness, and loss of range of motion. Those symptoms wax and wane over time and may be triggered by trauma, stress, or weather changes. RSD symptoms also may become acute without any known cause.

In the 1996 judgment approving Green's settlement with BE & K, the Mobile Circuit Court found that Green's RSD and associated pain

from that disorder had rendered his right hand "non-functional." Green was paid a total of $259,000 to resolve his claims for workers' compensation disability benefits and for medical care resulting from his 1994 injury. In 1995, Green applied for and received Social Security disability benefits. Green, who was 27 years old at the time of the settlement with BE & K, did not work at all for six years following the 1994 injury.

Green testified that his RSD symptoms improved and that he eventually obtained employment with Yother in 2000. Following his November 24, 2000, accident while working for Yother, Green received extensive medical care from an orthopedic surgeon, a psychologist, and pain-management specialists for an aggravation of his RSD. In the 2004 judgment approving Green's settlement of his workers' compensation claim against Yother, the trial court found that Green's 2000 injury had resulted in a 100% total disability to Green's right upper extremity and a 60% impairment to Green's body as a whole. That finding was expressly based on a note from an orthopedic surgeon, Dr. Michael

Granberry, who had treated Green on behalf of Yother. Dr. Granberry described Green's injury as follows:

> "He has RSD of the upper extremity right side, which is category [complex-regional-pain syndrome] 1 -- with the following clinical signs: he has skin color changes with both mottled appearance and cyanotic appearance on different occasions. He has change in skin temperature being cool and he has chronic edema to his arm. He also has overly moist skin, rarely is it dry. He has smooth, non-elastic skin, joint stiffness, he has some nail changes with curving talon like finger nails .... This causes him extreme pain and I have given him a rating of 75% impairment of the nervous distribution to the arm from the elbow on down. ...
>
> "Total addition shows an extremity impairment of 100%, an impairment of the whole person of 60%."

Green received $80,000 from the settlement of his claim for disability benefits.

Following the settlement with Yother, Green continued to receive regular treatment for RSD, primarily in his right hand up to his elbow, but also extending into his right shoulder and neck. That treatment consisted of, among other things, using a sling and a compression glove, physical therapy, receiving stellate ganglion blocks, psychological counseling for pain management and severe depression, and taking opioid and other medications. According to the medical records of Dr. Lee

Irvin, a pain-management specialist, he used a spinal-cord stimulator on a trial basis to treat Green, but Green reported receiving no relief from his "severe debilitating right upper extremity pain." Dr. Irvin noted in 2002 that, even after using the spinal-cord stimulator, Green "really cannot use his hand and he only extends the elbow under duress." Green's psychologist described Green as carrying his right arm as if it was in a sling with the support of his left hand, and, he said, on at least two occasions Green had stated a desire to have his right arm amputated. After exhausting all other treatment options, the medical team considered a sympathectomy, a procedure in which a ganglion nerve is permanently severed, but, ultimately, Green did not undergo that procedure.

Dr. Irvin, who began treating Green in 2001, acted as Green's primary health-care provider until 2010, when he discharged Green from his care for failing a drug screen. In 2009, Dr. Irvin issued a letter opining that Green was disabled from gainful employment. Following Green's discharge by Dr. Irvin, Yother offered Green a panel of four alternative pain-management specialists to choose from to continue his

treatment, see Ala. Code 1975, § 25-5-77, and Green selected Dr. Patricia Boltz of Boltz Pain Center, LLC, as his new primary treating physician. Upon initial evaluation by Dr. Boltz in December 2010, Green reported headaches and intermittent pain at a level of 7 out of 10 in his right hand, right arm, right shoulder, and neck, as well as tingling, numbness, swelling, and stiffness. Dr. Boltz diagnosed Green as suffering from RSD of the right hand, neck pain, myofascial pain, and a history of depression. Dr. Boltz altered Green's medication regimen and prescribed him Lortab 10, Neurontin, Wellbutrin, and Celebrex.

Between January 2011 and October 23, 2019, Green visited Dr. Boltz 128 times, an average of 14 times per year. Throughout Dr. Boltz's care, Green complained of waxing and waning pain in his right upper extremity, sometimes reaching the maximum level of severity and sometimes triggered by cold weather and stress. In 2015, Green experienced increased right-shoulder pain, but, according to Green, the shoulder pain abated with treatment. Dr. Boltz prescribed Green a variety of oral medications, injections of pain medication, and physical therapy; she also referred Green for psychological counseling.

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In 2019, Green was regularly consulting Dr. Boltz every three months. On July 29, 2019, Green visited Dr. Boltz complaining of pain of 8 to 9 on a scale of 1 to 10, swelling in his right hand, and hypersensitivity. At an October 23, 2019, appointment, Green again reported pain at a level of 8 out of 10, with burning, stinging, and swelling in his hand, although he reported that his medications were helping. At that visit, Green requested and received an injection of Toradol for his pain. Dr. Boltz scheduled a follow-up visit for Green in three months.

Green applied to work for T.R. Miller on October 24, 2019. In responses to a medical questionnaire included in the application process, Green disclosed a "1993" right-hand injury for which he had filed a claim for workers' compensation benefits and admitted that he was taking long-term prescribed medications. Green, however, denied that he had any serious health problems, that he had been assigned a permanent-impairment rating, that he had ever received employer-sponsored medical treatment, that he had ever sustained a disabling injury or illness lasting 120 days or more, and that he currently had any physical injuries that precluded him from performing certain kinds of work.

Green further denied that he had a physical or mental impairment or medical condition that substantially limited a major life activity or a history or record of such an impairment or medical condition. Green testified that he had informed T.R. Miller's company nurse that he was taking medication for RSD, so, he said, T.R. Miller was aware of his condition, but the nurse testified that Green had not disclosed to her that he had RSD. T.R. Miller subsequently hired Green on October 30, 2019.

Green commenced working as a utility worker for T.R. Miller on October 30, 2019. Green described his job as requiring heavy manual labor involving the full use of both hands. Primarily, Green repetitively loaded large cut boards into a shaker, or wood chipper, throughout his shift. Green testified that, in the eight weeks before his work-related accident, he had worked full duty, including overtime, without restrictions or accommodations and without performance complaints. Michael Beatty, T.R. Miller's human-resources and safety director, testified that no one at the T.R. Miller plant had realized that Green had RSD when Green was working there.

Green testified that, on December 26, 2019, while loading a piece of board into the shaker, his right middle finger became caught between the board and a metal bin and that his hand had been mashed. Green testified that he began "bleeding like a hog." He obtained first aid for the finger, and, according to Green, "they just put some peroxide, a sponge, and wrapped me up and everything and I tried to go back to work." Green testified that, the next day, he contacted the company nurse and requested additional medical care due to continuing pain. The nurse testified that she had observed a "little scratch" on the finger, which she described as an abrasion, and some "very slight swelling." On the second day following the accident, Green requested further evaluation and treatment of the injury, so the nurse referred him to Troy Wilcoxson, a local nurse practitioner. Wilcoxson determined that Green had suffered a laceration to his right middle finger and treated the injury with injections and a compression bandage. Wilcoxson instructed Green to maintain compression on the finger and to limit the use of his right hand.

Wilcoxson noted on January 2, 2020, that Green was not fit to return to work full time because of "significant right hand swelling from

vascular problems." On January 6, 2020, Wilcoxson released Green to return to work without restrictions, but he noted that Green "has a pre-existing vascular problem in the right hand." The company nurse testified that she had discovered that Green had preexisting RSD during the course of Wilcoxson's treatment of Green. On January 8, 2020, the plant manager for T.R. Miller sent Green a letter recounting the course of Green's treatment and stating T.R. Miller's position that "the swelling and vascular problem you were seen for on January 2, 2020, is unrelated to the laceration you received on December 26th, 2019." The letter informed Green that the laceration had been addressed, that his workers' compensation claim had been closed, and that T.R. Miller expected Green to return to work by January 13, 2020. The letter concluded: "[I]f you have not returned to work by January 13th, 2020, we will assume that you have resigned your position ...." Green did not return to work.

On January 15, 2020, Green visited Dr. Boltz as previously scheduled. Upon examination, Dr. Boltz found Green to be in acute distress, with elevated blood pressure and a high heart rate, in tears from excruciating pain rated as 10 out of 10, and with his right upper

extremity extremely swollen to the mid upper arm with multiple trigger points in the right trapezius and rhomboid muscles. Green reported that his medications were not providing any relief. Dr. Boltz diagnosed Green as having "RSD to the right hand and arm with a re-exacerbation of RSD." Dr. Boltz expressed concern that Green might develop a "frozen shoulder" or a "frozen elbow," but she did not diagnose either condition. Dr. Boltz increased the dosage of Green's medications and recommended a repeat stellate ganglion block. Dr. Boltz noted that Green had stated an intention to contact the workers' compensation insurance carrier for Yother and the workers' compensation insurance carrier for T.R. Miller to determine who would cover his medical care. Dr. Boltz saw Green again on January 30, 2020, at which point she documented that Green had stated that he believed that he had become unable to work as a result of his December 26, 2019, accident. Green saw Dr. Boltz on February 12, 2020, and on March 11, 2020, and voiced essentially the same complaints, although Green rated his level of pain to be 8 out of 10 at the March 11, 2020, visit. Green testified that he increased the frequency of his visits

with Dr. Boltz because of the increased intensity of his pain and his inability to sleep comfortably.

On April 6, 2020, Green attended an evaluation by Dr. Maddox. Before the evaluation, Dr. Maddox reviewed Dr. Boltz's records showing the symptoms Green had been experiencing throughout his right upper extremity, including his elbow, shoulder, and neck, and the course of Green's treatment over the previous nine years. Dr. Maddox testified that he had examined Green visually because, he said, Green did not want to be touched. Green testified that Dr. Maddox had consulted with him for only five minutes and that "he walked in and said his name ... and stated that they told for me just look at you and nothing I can do for you." Based on his examination, Dr. Maddox believed that Green had sustained only an abrasion to his right middle finger, without a nerve or tendon injury, in the December 26, 2019, accident, that the abrasion had properly healed without infection, and that the abrasion was not the source of Green's current severe-pain complaints, which Dr. Maddox attributed solely to Green's preexisting RSD.

Dr. Maddox noted that Green had presented with swelling of the right arm and complaining of pain at a level of 9 out of 10, just as he had at the July 2019 visit with Dr. Boltz. After further reviewing Dr. Boltz's October 23, 2019, treatment note, Dr. Maddox opined that Green's complaints both before and after the December 26, 2019, accident had been very similar, if not identical. Dr. Maddox testified:

> "[T.R. Miller's counsel:] Did you, Doctor, reach any conclusion at that point in time as to what was causing Mr. Green to experience these symptoms that he reported to you?
>
> "A. You know, it was my impression that two things were going on at once. One, he had a history of complex regional pain syndrome; two, he had a minor abrading type injury to his middle finger that, you know, he had seen people for, for the past three and a half months prior to getting to me. But I did not feel that the level of that injury was characteristic of the symptoms he was describing through his entire upper extremity.
>
> "....
>
> "[T.R. Miller's counsel:] Now, Mr. Green had described this incident to you where he cut his finger or had the abrasion at work. Do you have an opinion, Doctor, based upon your experience and training as an orthopedic surgeon and having treated you said up to five patients a year with this complex regional pain syndrome as to whether the abrasion or the injury that he sustained to the back of his finger caused any of those symptoms, that he was reporting to you of pain,

> swelling, the severe pain nine out of ten in his right hand or right arm?
>
> "....
>
> "A. Given everything I know about the patient's history and given everything about his presentation to me that day, I felt that they were not related.
>
> "[T.R. Miller's counsel:] And then, Doctor, do you have any opinion based upon your experience and training and within a reasonable degree of medical certainty as to whether the abrasion to his finger would have caused an aggravation or an exacerbation of the preexisting complex regional pain syndrome that Mr. Green had been treated for going back to 1995?
>
> "....
>
> "A. No.
>
> "[T.R. Miller's counsel:] No, you don't have an opinion or --
>
> "A. No, I don't -- I don't think they were related. Dealing with that for 25 years like he had off and on again, I just -- that's too far out to have a simple abrasion in my opinion cause that again."

Green continued to receive treatment from Dr. Boltz, and he discussed with her the possibility of using a spinal-cord stimulator to treat his ongoing symptoms. Dr. Boltz retired in July 2020. After Dr. Boltz's retirement, Green began treatment with Dr. David Thomason,

another pain-management specialist; he also went to local emergency rooms for urgent pain care approximately a dozen times and obtained mental-health care for suicidal ideations. Dr. Thomason testified that Green had reported that his RSD had significantly improved before he started working for T.R. Miller but that his symptoms had worsened following the December 26, 2019, accident. Upon questioning by Green's and Yother's attorneys, Dr. Thomason testified that it appeared that Green's RSD symptoms had worsened after the December 26, 2019, accident and that he had no reason to disagree with Dr. Boltz's assessment that the December 26, 2019, accident, as opposed to other possible triggers, had "re-exacerbated" Green's condition. Dr. Thomason further testified:

> "[Green's counsel:] Okay. Is it your opinion that the incident Mr. Green described to you from December 26, 2019, has worsened his RSD?
>
> "....
>
> "A. You know, again, I saw him for the first time in August, so I did my physical exam. It is possible, to me, that he's had underlying RSD since the '90s. And, you know, according to the -- what I can tell, his symptoms are acute at this time given the intensity of his pain, swelling, and immobility."

On cross-examination, after being shown Dr. Boltz's medical records from July 29 and October 23, 2019, Dr. Thomason testified that it appeared that Green had had active, worsening, and acute RSD symptoms before the December 26, 2019, accident, which is in contradiction to the history provided to him by Green. Dr. Thomason testified:

> "[T.R. Miller's counsel:] ... So now that you've looked at those two notes, Dr. Thomason, would you agree with me that, based on the manner in which his symptoms are described by Dr. Boltz in those two records, based on the medications he was taking, based on his reports of increased pain, based on the level of pain he described to Dr. Boltz in those two records compared to how he described it to you on August 13th of 2020 --
>
> "....
>
> "[T.R. Miller's counsel:] ... [D]o you agree that there really doesn't appear to be a change in his condition, based on how it's reported in these notes and compared to how you found him?
>
> "....
>
> "A: My impression lies with my encounter with the patient as the actual evidence that I can recall, which is, I believe, the patient reported to me that his right upper extremity was in much better condition and then following the injury it worsened. And then when I review Dr. Boltz's records, according to her impression, you know, there actually were symptoms of significant pain prior to December.

> "[T.R. Miller's counsel:] ... Okay. Well, which gets back, I guess -- I don't -- if you answered my question, I don't know that I really caught the answer. I understand that Mr. Green told you that his symptoms were much worse and that the condition of his arm was much worse following December 26, 2019. I understand that. Based on your review of Dr. Boltz's records that document his condition in July of 2019 and in October of 2019, can you discern any difference or much difference in the condition of his arm compared to what you found him -- the condition that he was in on August 13th of this year?
>
> "A. If I were just to look at these notes, no, I can't discern a difference."

Dr. Thomason testified that he could not "make a clear decision" on whether the laceration that Green sustained in the December 26, 2019, accident had caused or contributed to Green's subsequent RSD symptoms and that he did not believe that Dr. Boltz could prove a causal connection either.

At the time of trial, Green was awaiting a resolution of the dispute between Yother and T.R. Miller to receive authorization for a stellate ganglion block and other necessary medical treatment. Green stated that, after the December 26, 2019, accident, he had experienced new pain extending from his right hand to his right elbow, through his right shoulder, and into his neck and that the pain had not diminished since

the accident, even with medications and the use of a sling. Green testified that the laceration to his right middle finger had healed with some scarring but that the trauma to his hand had "tremendously aggravated" his RSD. Green testified that, before the accident, his RSD condition had improved to the point that he was able to work. In approximately 2004 or 2005, he had worked a construction job operating a jackhammer. At some point, he also worked buffing floors. In the three years leading up to his employment with T.R. Miller, Green had worked in lawn care, handling weedeaters, driving lawn mowers, and picking up trash. Green testified that, since the accident, he had not been able to work and that he had not returned to work in any capacity.

Green and Yother argue that the foregoing evidence establishes that, at the very least, Green aggravated his underlying RSD in the December 26, 2019, accident. Green and Yother contend that the evidence established that Green had worked for T.R. Miller normally, with no disabling symptoms, for eight weeks before the December 26, 2019, accident and that, since the accident, Green's RSD symptoms had spread from his right hand to his entire right upper extremity; that the

severity of his pain had significantly worsened, requiring greater and more frequent medical intervention; and that he had become completely unable to work. "A trial court may infer medical causation from circumstantial evidence indicating that, before the accident, the worker was working normally with no disabling symptoms but that, immediately afterwards, those symptoms appeared and have persisted ever since." Waters Bros. Contractors, Inc. v. Wimberley, 20 So. 3d 125, 134 (Ala. Civ. App. 2009).

Green and Yother further argue that the trial court ignored some of the medical records. When making a fact-sensitive determination regarding medical causation, the trial court must consider the totality of the evidence. See Ex parte Price, 555 So. 2d 1060 (Ala. 1989). Green and Yother specifically contend that the trial court did not consider Dr. Boltz's opinion that Green had "re-exacerbated" his RSD or Dr. Boltz's January 30, 2020, note in which, according to Green, she opined that Green had become unable to work as a result of his December 26, 2019, injury and had expressed concern that he might develop frozen shoulder and/or frozen elbow. Green and Yother maintain that, based on that

circumstantial evidence, the trial court should have agreed with Dr. Boltz's impression, and the parts of Dr. Thomason's deposition testimony, indicating that Green had aggravated his preexisting injury.

Contrary to those contentions, the trial court did not ignore the medical records or opinions of Dr. Boltz and Dr. Thomason, which were discussed throughout the trial and postjudgment proceedings. In her January 30, 2020, note, Dr. Boltz did not state an opinion that Green was unable to work as a result of his December 26, 2019, accident; she only transcribed his statement to that effect as part of her documentation of her encounter with Green. Dr. Boltz also did not diagnose Green with new injuries by expressing her concern that he might at some point develop frozen shoulder or frozen elbow if he did not receive a stellate ganglion block. Notably, Dr. Thomason later indicated that Green had not, in fact, developed those conditions. Dr. Boltz did describe the injury in terms suggesting that Green had aggravated his RSD, and Dr. Thomason did, at points in his testimony, concur with that assessment, but the trial court was not bound by those opinions. See Stein Mart, Inc. v. Delashaw, 64 So. 3d 1101, 1105-06 (Ala. Civ. App. 2010) ("[A]

physician's statement that an activity 'aggravates' an injury or condition is not equivalent to a legal determination that a particular activity has 'contributed independently to the final disability' for purposes of the last-injurious-exposure rule.").

Likewise, the trial court was not required to find medical causation from the circumstantial evidence that Green and Yother emphasize. Although a trial court may infer medical causation from such circumstantial evidence,

> "the trial court is not compelled to make such a finding. As the inference becomes weaker, due to the appearance of preaccident symptoms, a questionable change in the symptoms after the accident, the nontraumatic nature of the accident, the unusual nature of the injury, or the credibility of the employee, the trial court may exercise its discretion against a finding of medical causation. Moreover, the trial court may deny benefits when the inference is overcome by other, more convincing evidence that the employment did not aggravate the preexisting condition or contribute to the disability."

1 Moore § 7:16 (footnotes omitted); see also Wyatt v. Baptist Health Sys., Inc., 243 So. 3d 840, 848 (Ala. Civ. App. 2017) (quoting Alamo, 987 So. 2d at 605 (Moore, J., concurring specially)) (" 'Although a trial court may infer medical causation from the appearance of symptoms and the onset

of disability following a work-related accident, it is not compelled to make such a finding, especially if that inference is undermined by other factors or evidence.' "). In this case, the trial court received evidence indicating that Green had been suffering from RSD since 1994; that his previous symptoms had not been confined to his hand; that the symptoms had waxed and waned over the years, but had never abated, permitting Green to work for some periods, but not others; that Green had reported similar symptoms both before and after the December 26, 2019, accident; and that a laceration or abrasion injury of the type Green sustained in the December 26, 2019, accident would not be expected to cause or contribute to a worsening of RSD. Wilcoxson's records indicate that he considered Green's underlying RSD to be separate and distinct from the laceration or abrasion injury to his finger. Dr. Maddox testified unequivocally that Green's December 26, 2019, injury did not cause or contribute to his RSD, which, in Dr. Maddox's opinion, was the sole cause of his current disability. Parts of Dr. Thomason's testimony also supported T.R. Miller's recurrence theory. The trial court was also called to assess the credibility of Green's testimony that he had disclosed his RSD to T.R.

Miller during the application process, that he had not previously experienced symptoms beyond his right hand, and that he had not received the same type of treatment as recommended after the accident.

Green and Yother maintain that the trial court erred by relying on Kohler Co. v. Miller and Hokes Bluff Welding & Fabrication v. Cox, supra, each of which involved a recurrence of a preexisting injury, when, they say, the trial court should have followed United-Johnson Brothers of Alabama, LLC v. Billups, supra, in which this court affirmed a judgment finding an aggravation of a preexisting injury. Medical causation is a question of fact to be decided by the trial court, and every case should be decided on its own merits. Ex parte Price, supra. We find no error in the trial court's citations and references to the facts and principles enunciated in Miller and Cox in making its independent determination that Green had experienced a recurrence of his preexisting RSD injury based on the evidence presented in this case.

The trial court exercises judicial discretion when assessing the quality and quantity of the evidence to determine whether a party has satisfactorily proven medical causation. See Ex parte USX Corp., 881 So.

2d 437, 442 (Ala. 2003). It may interpret the evidence according to its own best judgment. 3-M Co. v. Myers, 692 So. 2d 134, 137 (Ala. Civ. App. 1997). At the May 6, 2021, hearing, the trial judge explained:

> "I looked at Dr. Maddox's testimony and he says this is not an exacerbation of his preexisting injury? Why couldn't you look at this case and my decision as being, I just believed that testimony to be, you know, more persuasive than the other evidence in the case and then what we're really just talking about is whether or not I abused my discretion in relying on that evidence versus the other evidence ...."

We agree. The trial court was authorized to find Dr. Maddox's expert testimony more persuasive than the other evidence. Although Green and Yother challenge Dr. Maddox's testimony on various grounds, those challenges concern only the weight to be given to his testimony, which was a question for the trial court. "In reviewing a decision of the trial court, an appellate court is not permitted to reweigh the evidence, because weighing the evidence is solely a function of the trier of fact." Ex parte McInish, 47 So. 3d 767, 778 (Ala. 2008). "Conflict in the evidence as to medical causation is an issue of fact to be resolved by the trial court, not by the appellate courts." ATEC Assocs., Inc. v. Stewart, 674 So. 2d 1296, 1298 (Ala. Civ. App. 1995).

"[I]t is the function of the appellate court to ascertain that the trial court's findings of fact are supported by substantial evidence." Ex parte McInish, 47 So. 3d at 778. Substantial evidence is "'evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.'" Ex parte Trinity Indus., Inc., 680 So. 2d 262, 268 (Ala. 1996) (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989), and citing Ala. Code 1975, § 12-21-12(d)). We conclude that the evidence, although conflicting, was sufficient to support the trial court's factual determination that Green's current disability is a recurrence of his preexisting RSD. We recognize that Green presented ample evidence from which the trial court could have determined that he had aggravated his RSD, but our standard of review

> "does not permit this court to reverse the trial court's judgment based on a particular factual finding on the ground that substantial evidence supports a contrary factual finding; rather, it permits this court to reverse the trial court's judgment only if its factual finding is not supported by substantial evidence."

Landers v. Lowe's Home Ctrs., Inc., 14 So. 3d 144, 151 (Ala. Civ. App. 2007). In reviewing a workers' compensation judgment, this court cannot

substitute its judgment for that of the trial court; instead, we must defer to the factual findings of the trial court that are based on substantial evidence. See Ex parte Staggs, 825 So. 2d 820, 822 (Ala. 2001) (holding that an appellate court "is not to consider whether in its opinion the 'substantial evidence' before the trial court might have caused the appellate court -- if it had been the fact-finder -- to find the facts to be different from what the trial court found them to be").

D. Public Policy

Finally, Green and Yother argue that the trial court's judgment offends public policy by depriving Green of needed financial support during his disability, see Ex parte Dolgencorp, Inc., 13 So. 3d 888, 893 (Ala. 2008) (authored by Parker, J., with See, Lyons, Woodall, Stuart, Smith, and Bolin, JJ., concurring in the result), and by violating the rule that an employer takes an employee as it finds him or her at the time of the employment. See Patterson v. Clarke Cnty. Motors, Inc., supra. "[T]he term 'public policy' of a State is nothing more or less than the law of the State, as found in its constitution and statutes and when they have not directly spoken, then in the decisions of the courts and in the regular

practice of government officials." Higgins v. Nationwide Mut. Ins. Co., 50 Ala. App. 691, 693, 282 So. 2d 295, 298 (Civ.), aff'd, 291 Ala. 462, 282 So. 2d 301 (1973). When we adopted the last-injurious-exposure rule, this court specifically found the rule to be consistent with the public policy regarding latent preexisting injuries as expressed in Patterson v. Clarke County Motors, Inc. We further conclude that a trial court does not violate any part of the Act or caselaw by properly applying the last-injurious-exposure rule to determine that an injured worker has sustained a recurrence of a preexisting injury and placing liability for that injury totally on a previous employer.

Green maintains that, if the judgment stands, "previously injured workers who make an effort to heal and return themselves to the workforce[] will be disincentivized to return to the work force. They will have no protection; this punishes the injured worker for trying to get well and trying to become productive members of society." Green's brief at 32. The trial court's judgment, and this opinion affirming that judgment, should not be interpreted expansively as holding that workers with a preexisting injury are precluded from recovering workers' compensation

benefits as a matter of law. The judgment at issue rests on the specific evidence in this case, as weighed by this particular trial judge. The law remains that, in appropriate circumstances, a worker with a preexisting injury who aggravates that injury or who sustains a completely new injury, may recover workers' compensation benefits just as any able-bodied worker, even in cases in which the preexisting injury previously permanently and totally disabled the worker. See, e.g., Ex parte Bratton, 678 So. 2d 1079 (Ala. 1996).

The last-injurious-exposure rule does not "punish" an injured worker who suffers a recurrence of a preexisting injury during subsequent employment; rather, the rule limits the injured worker to the recovery obtained for the original, compensable injury. See Purser, supra. The law protected Green by affording him a process to resolve the controversy over his right to workers' compensation benefits. See Ala. Code 1975, § 25-5-81. The trial court complied with due process and did not arbitrarily deny Green's claim. We do not believe that the trial court violated any public policy by neutrally applying the last-injurious-

exposure rule to determine that Green's preexisting RSD had recurred to cause his current disability.

Conclusion

Based on the foregoing, we conclude that the trial court did not commit any legal error in stating or applying the last-injurious-exposure rule in this case and that its judgment does not violate public policy. We therefore affirm the judgment.

2200840 -- AFFIRMED.

2200851 -- APPEAL DISMISSED.

2200863 -- AFFIRMED.

2200864 -- APPEAL DISMISSED.

Edwards, Hanson, and Fridy, JJ., concur.

Thompson, P.J., concurs in the result, without opinion.