[Cite as *Polen v. Gilmore*, 2001-Ohio-3403.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ROBERT M. POLEN	)	CASE NO. 99 520 CA
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	O P I N I O N
	)	
ED GILMORE	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas, Harrison County, Ohio
Case No. 98-376-CV-H

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant: Atty. Donald E. George
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For Defendant-Appellee: Atty. Robert B. Daane
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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: September 25, 2001

WAITE, J.

{¶1} This timely appeal arises out of a judgment entry of the Harrison County Court of Common Pleas denying the motion of Robert M. Polen ("Appellant") for a new trial. Appellant's original complaint alleged that Ed Gilmore ("Appellee") negligently caused an automobile accident injuring Appellant. The trial court granted Appellee a directed verdict due to Appellant's failure to provide expert medical testimony to prove that Appellee proximately caused Appellant's injuries. Based on the record, we must affirm the judgment of the trial court.

{¶2} On February 8, 1996, the parties were involved in an automobile accident at the intersection of Detritch Road and State Route 151 in Harrison County, Ohio. The conditions of the accident are not in dispute. On February 6, 1998, Appellant filed a negligence complaint against Appellee in the Harrison County Court of Common Pleas. On July 22, 1999, the case proceeded to jury trial. Appellant was the only witness who testified at trial. At the close of Appellant's case in chief, Appellee moved for a directed verdict. The trial court sustained the motion by judgment entry on July 22, 1999, and dismissed the case.

{¶3} On July 30, 1999, Appellant moved for a new trial pursuant to Civ.R. 59. The trial court denied the motion on October 7, 1999, and this timely appeal followed.

{¶4} Appellant's sole assignment of error asserts:

{¶5} "THE TRIAL COURT PREJUDICIALLY ERRED TO THE DETRIMENT OF APPELLANT BY GRANTING A DIRECTED VERDICT TO DEFENDANT WHEN THE EVIDENCE PROVED BOTH LIABILITY ON THE PART OF THE DEFENDANT AS WELL AS DAMAGES TO PLAINTIFF ARISING OUT OF AN AUTOMOBILE COLISION [*sic*]."

{¶6} Appellant argues that the only basis for the trial court's decision to grant Appellee a directed verdict was the lack of expert medical testimony. Appellant asserts that expert medical evidence is not required to prove proximate causation in every physical injury case. Appellant contends that expert medical testimony is not needed, "when it is a matter of common knowledge that a certain act will produce injury or pain * * *." *Zalzal v. Scott* (1981), 1 Ohio App.3d 151, syllabus; see also *Eastham v. Nationwide Mut. Ins. Co.* (1990), 66 Ohio App.3d 843, 847. Appellant argues that it is common knowledge that automobile collisions may cause physical injuries. Appellant concludes that his own testimony at trial was sufficient to overcome a motion for directed verdict.

{¶7} Appellant's argument is not persuasive. Although expert medical testimony is not absolutely required in every case in which a tort has caused physical injury, the facts of this case clearly reveal Appellant's need for expert medical testimony to prove proximate causation.

{¶8} The standard for granting a directed verdict is that the, "tort issue goes to a jury only if there is probative evidence

which, if believed, would permit reasonable minds to come to different conclusions as to the essential issue of the case." *Sanek v. Duracote Corp.* (1989), 49 Ohio St.3d 169, 172; Civ.R. 50(A)(4). The evidence must be construed most strongly in favor of the nonmovant. *Sanek* at 172. The court must not weigh the evidence or consider the credibility of the witnesses. *Id.* A directed verdict is appropriate where the party opposing it has failed to adduce any evidence on one or more of the essential elements of a claim. *Cooper v. Grace Baptist Church* (1992), 81 Ohio App.3d 728, 734. The issue to be resolved in a motion for a directed verdict is the legal sufficiency of the evidence to allow the case to proceed to a jury, and constitutes a question of law, not one of fact. *Hargrove v. Tanner* (1990), 66 Ohio App.3d 639, 695.

{¶9} Appellant was the only witness at trial. He testified that Appellee backed his car into Appellant's 1978 Chevy pickup truck on February 8, 1996. (Tr. pp. 39-40, 51). He testified that he has not had the truck repaired since the accident and that he continues to drive the truck. (Tr. p. 51). He stated that he did not feel any major pain after the accident. (Tr. p. 40). He testified that he did not seek medical treatment until six weeks after the accident. (Tr. pp. 41, 56). He testified that he told both Appellee and officers at the scene of the accident that he was not injured. (Tr. p. 56).

{¶10} Appellant also testified that he did not seek medical attention until he felt back pains after hitting a bucket of golf balls at a driving range. (Tr. pp. 41, 56). He also testified that he told a doctor that the pain began after he lifted a twenty-five pound bag of horse feed. (Tr. pp. 56, 60). Appellant testified that after the accident he continued to lift twenty-five pound bales of hay and fifty-pound bags of horse feed. (Tr. p. 55).

{¶11} Appellant testified that he had a back sprain prior to the automobile accident. (Tr. p. 58). The back sprain occurred during a period of his life when he was working in a coal mine, although it is not clear whether the injury was related to his work. (Tr. p. 58). He also testified that he had been shot prior to the accident and that he had a drinking problem prior to the accident. (Tr. p. 52).

{¶12} Appellant testified that he had been involved in a jogging and exercise program prior to the accident, and that he fully intended to jog home after the accident. (Tr. p. 56).

{¶13} Finally, Appellant testified that his back does not bother him most of the time. (Tr. p. 65).

{¶14} Appellant's testimony raises many questions about the cause or causes of his back pain. "Expert testimony is needed on complex issues outside the area of common knowledge, such as an injury's cause and effect." *Lederer v. St. Rita's Med.* (1997),

122 Ohio App.3d 587, 598; see also, *Bowins v. Euclid General Hosp. Ass'n.* (1984), 20 Ohio App.3d 29, 31. Except as to questions of cause and effect which are so apparent as to be matters of common knowledge, the issue of the causal connection between an injury and a specific subsequent physical disability involves a scientific inquiry and must be established by the opinion of medical witnesses competent to express such opinion. *Darnell v. Eastman* (1970), 23 Ohio St.2d 13, 17.

{¶15} In the case at bar, Appellant offered no expert medical evidence showing that his back injury sprang from an automobile accident, rather than as a result of a prior back strain, lifting heavy bags of feed, or swinging a golf club. Appellant's testimony, viewed in a light most favorable to his case, indicates that his back injury was primarily latent. The biological and physiological processes of a latent back injury resulting from a list of possible contributing factors are complex issues outside the common knowledge of an average juror.

{¶16} Appellant's testimony presents a mere possibility of a causal connection between the automobile accident and his back pain. "Testimony suggesting the mere possibility of a causal connection between an accident and an injury is not sufficient." *Leaman v. Coles* (1996), 115 Ohio App.3d 627, 630. "It is well-settled that the establishment of proximate cause through medical expert testimony must be by probability. At a minimum, the trier

of fact must be provided with evidence that the injury was more likely than not caused by defendant's negligence." *Shumaker v. Oliver B. Cannon & Sons, Inc.* (1986), 28 Ohio St.3d 367, 369. A jury decision based on Appellant's testimony alone would be based on random speculation, rather than on the probability that the automobile accident was the proximate cause of Appellant's injuries.

{¶17} For all the aforementioned reasons, we overrule Appellant's sole assignment of error.

{¶18} Because Appellant's evidence was insufficient as a matter of law to support a finding that Appellee proximately caused Appellant's injuries, the trial court was correct in granting Appellee's motion for a directed verdict and in denying Appellant's motion for a new trial. The trial court decisions are affirmed in full.

Donofrio, J., concurs.

Vukovich, P.J., concurs.