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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2013

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Stericycle, Inc.

v.

Sonja Patterson

**Appeal from Jefferson Circuit Court
(CV-11-901265)**

PITTMAN, Judge.

Stericycle, Inc., appeals from a judgment determining that Sonja Patterson suffers from a 57 percent permanent partial disability and awarding her benefits, pursuant to the Alabama Workers' Compensation Act, § 25-5-1 et seq., Ala. Code

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1975 ("the Act"). Stericycle argues that the trial court's medical-causation and disability determinations are not supported by substantial evidence.

Factual and Procedural Background

Stericycle is engaged in the business of medical-waste management, collection, and removal. Patterson was employed as a route truck driver; her duties were to collect containers of medical waste from designated sites and transport them to a disposal site. On January 19, 2011, Patterson drove a Stericycle truck to Shelby Baptist Hospital in Alabaster; loaded three containers of medical waste, each weighing approximately 50 pounds, onto a hand truck; and was pushing the loaded hand truck up a ramp to the Stericycle truck when she felt a "pop" and experienced pain in her lower back. No one witnessed the accident. It is undisputed that Patterson returned to the Stericycle office and reported the accident to her supervisor the same day.

The following day, Patterson was examined by Dr. Michael Mueller at St. Vincent's Occupational Health Center. Dr. Mueller diagnosed Patterson as suffering from a lumbar strain, prescribed pain medication, returned her to work under light-

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duty restrictions, and scheduled a follow-up visit for January 26, 2011. Stericycle accommodated Patterson's restrictions and assigned her administrative duties. When Patterson reported to Dr. Mueller at the follow-up visit that she was still having pain, Dr. Mueller scheduled three physical-therapy sessions for her. At the first session, Steven Estrada, the physical therapist, reported that Patterson's symptoms were inconsistent and "positive for symptom magnification." Following the third session, Estrada reported that Patterson had "had no significant subjective or objective change since the first visit. Still appears to be positive for symptom magnification." Patterson saw Dr. Mueller for another follow-up visit on February 10, 2011. Dr. Mueller's office notes for that day state: "22 days post injury; maximum therapy and meds; positive pain behavior and symptom magnification." Dr. Mueller indicated that Patterson could return to work without limitation on February 14, 2011.

At Patterson's request, Stericycle provided her with an alternative treating physician, Dr. Michelle Turnley, a physiatrist. Dr. Turnley dictated the following office note following her examination of Patterson on March 1, 2011:

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"She describes some intermittent, nonpersistent right and left leg weakness in the non-radicular distribution [that] comes on both after prolonged sitting and prolonged standing. ... She ... does move slow[ly] and possibly some symptom magnification. ... She has significantly diminished lumbar range of motion but she self-limits.... She has a negative straight-leg raise. She does have severe pain with FABER's [flexion, abduction, and external rotation] bilaterally. She gets teary-eyed. ... [A lumbar-spine X-ray] reveals no fractures, no acute abnormalities and fairly good disc-space integrity."

Dr. Turnley diagnosed Patterson as suffering from a slow-to-resolve lumbar strain and prescribed anti-inflammatory and muscle-relaxant medications. At a follow-up visit on March 25, 2011, Patterson reported that the medications had not helped her. Dr. Turnley changed Patterson's medication to a narcotic pain reliever and ordered a magnetic resonance image ("MRI") of Patterson's lumbar spine to check for underlying disk disease. Dr. Morgan Eiland performed the MRI on March 29, 2011. His report states:

"FINDINGS: At L2-3, the disc is intact. There are degenerative facet changes. There is no spinal or foraminal stenosis. At L3-4, there is disc dessication with a broad-based disc bulge and a midline annular tear. Facet and ligamentum flavum hypertrophy are present. There is bilateral recess stenosis but no significant foraminal stenosis. At L4-5, there is disc dessication with a broad-based disc bulge and a midline annular tear. Facet hypertrophy is present. This causes bilateral

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recess lateral recess stenosis without foraminal stenosis. At L5-S1, the disc is rudimentary. It is intact. There is no spinal or foraminal stenosis elsewhere. No thecal sac or nerve root compression is present elsewhere. Bone marrow signal is normal.

"IMPRESSION: Degenerative changes as described. These are most significant at L3-4 and L4-5 where there is lateral recess stenosis. There are annular tears at both levels."

On April 4, 2011, Dr. Turnley placed Patterson at maximum medical improvement ("MMI"), released her to return to work with no restrictions, and concluded that Patterson had "[zero] percent physical impairment."

Before Patterson could return to work as a truck driver, she had to be cleared by passing a Department of Transportation ("DOT") physical examination. On April 7, 2011, she reported to Dr. Mueller for the examination. Patterson testified that when she showed Dr. Mueller how far she could bend forward, he informed her that he "could not sign off on" the examination; no examination was ever conducted.

Dr. Turnley referred Patterson to Dr. Martin Jones, an orthopedic spine surgeon, who saw Patterson on April 21, 2011. Noting that Patterson had "some disc bulging and an annular tear," but that there was "no evidence of large disc herniation," Dr. Jones recommended an epidural block and

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physical therapy and concluded that Patterson could return to work that day without limitations. On May 26, 2011, Patterson returned to Dr. Jones, complaining of back pain and pain and numbness in both legs. Dr. Jones recorded the following office note:

"[Patterson] says she is barely able to get around. She is using a cane today. ... She is not working at all. Her physical therapy suggested moderate atypical pain behavior.

"IMPRESSION AND PLAN: At this point she seems just about incapacitated and it is hard to understand why based on her x-rays and her MRI scan. But in any event, my recommendation is to get a CT/myelogram and an EMG/nerve conduction study of her legs to see if anything else shows up at that point and then go from there."

Dr. Ruth Snow, who performed the CT/myelogram, reported that the test showed "mild degenerative disc and facet joint changes in the lumbar spine; lateral recesses are mildly narrowed at L3-4; there is mild left lateral recess narrowing at L4-5; [and] L5 is a transitional element, as is T12." Dr. Gordon Kirschberg, who performed the EMG/nerve-conduction study, stated: "This is a normal electrodiagnostic study without evidence of neuropathy, radiculopathy, or specific entrapment being seen. There was poor voluntary recruitment

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of all muscle groups [in] both legs, which is a functional or non-organic sign."

Patterson returned to Dr. Jones on June 23, 2011. Dr. Jones's office note for that day states:

"[Patterson] says she is no better. She is still bound to the cane. Her myelogram is unremarkable other than just mild degenerative changes. Her EMG/nerve conduction study is normal.

"I do not have any explanation for her symptomatology and suspect that there are secondary issues. She is at MMI, zero impairment rating to the body as a whole, and can return to full duty."

Stericycle paid for Patterson's medical treatment but paid her no temporary-disability benefits. On April 12, 2011, Patterson filed a complaint seeking benefits for a permanent total disability.

Only two live witnesses testified at trial -- Patterson and Eric Fields, the district transportation manager for Stericycle. Patterson, who was 44 years old at the time of trial, stated that she had never experienced, or been treated for, back pain before her workplace accident in January 2011. Aside from the deposition testimony of Dr. Martin Jones (who merely reiterated the findings and conclusions contained in the records pertaining to his treatment of Patterson), no

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physician or other health-care provider testified. Patterson's medical records were admitted by agreement of the parties. Counsel for the parties signed and submitted the following stipulations "to be used at the trial of this matter":

"1. On January 19, 2011, there existed between the parties the relationship of an employer and employee.

"2. On said date, the parties were subject to the Workers' Compensation Laws of Alabama.

"3. On said date, [Patterson] alleged to receive an injury to her back that arose out of and in the course of her employment with [Stericycle]. Proper notice of said alleged accident and injury were given.

".....

"7. The only issue to be decided by the court in this matter is the nature and extent of permanent disability benefits, if any, owed to [Patterson]."

(Emphasis added.)

The trial court's judgment, in a section entitled "Evidence Before the Court -- Stipulations of Evidence by the Parties," states, in pertinent part:

"The parties stipulate to the Court that at the time of the occurrence made the basis of [Patterson's] claim, [Patterson] was an employee of [Stericycle] as the term 'employee' is defined at Ala. Code § 25-5-1(5) (1975). The parties stipulate

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that [Stericycle] is a covered employer as the term 'employer' is defined at Ala. Code § 25-5-1(4) (1975) and was not excluded by the provisions of Ala. Code § 25-5-50(1975).

"The parties further stipulate that the date of the injury made the basis of [Patterson's] claim was on January 19, 2011, and that the alleged injury was the result of an accident arising out of and in the course of [Patterson's] employment with [Stericycle]. The parties stipulate that [Patterson] gave proper and timely notice of her claim to [Stericycle] as required by the provisions of Ala. Code § 25-5-78 (1975)."

(Emphasis added.) Stericycle did not file a postjudgment motion challenging the trial court's statement that the parties had stipulated that Patterson's alleged injury arose out of and in the course of her employment.

Standard of Review

Our review is governed by the Act, which states, in pertinent part: "In reviewing the standard of proof ... and other legal issues, review by the Court of Civil Appeals shall be without a presumption of correctness." Ala. Code 1975, § 25-5-81(e) (1). See also Ex parte Trinity Indus., Inc., 680 So. 2d 262, 268 (Ala. 1996). "In reviewing pure findings of fact, the finding of the circuit court shall not be reversed if that finding is supported by substantial evidence." Ala. Code 1975, § 25-5-81(e) (2). Substantial evidence is

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"'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., 680 So. 2d at 269 (quoting West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989), and citing § 12-21-12(d), Ala. Code 1975).

Discussion

Medical Causation

Citing Ex parte Southern Energy Homes, Inc., 873 So. 2d 1116 (Ala. 2003), and Ex parte Price, 555 So. 2d 1060 (Ala. 1989), Stericycle contends that Patterson failed to present substantial evidence of medical causation. The judgment states, however, that the parties had stipulated that Patterson's injury was "the result of an accident arising out of and in the course of [Patterson's] employment with [Stericycle]." Therefore, Patterson did not have the burden of proving medical causation. See Werner Co. v. Davidson, 986 So. 2d 455, 461-62 (Ala. Civ. App. 2007).

"'For an accident to "arise out of employment" the employment must have been the cause and source of the accident and the resultant injuries must be traceable to a proximate cause set in motion by the employment, not by some other agency. Foster v. Continental Gin Co., 261 Ala. 366, 74 So. 2d 474

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[(1954)]. And an injury to an employee "arises in [the] course of employment" within the compensation act when it occurs within the period of his employment, at a place where he may reasonably be, and while he is reasonably fulfilling duties of his employment or engaged in doing something incident to it. Southern Cotton Oil Co. v. Bruce, 249 Ala. 675, 32 So. 2d 666 [(1947)].'"

Ex parte Trinity Indus., 680 So. 2d at 265 n.2 (emphasis added; quoting Alabama Textile Prods. Corp. v. Grantham, 263 Ala. 179, 183, 82 So. 2d 204, 207 (1955)). See generally 1 Terry A. Moore, Alabama Workers' Compensation § 10:2 at 314-15 (1998).

"'A stipulation is a judicial admission, dispensing with proof, recognized and enforced by the courts as a substitute for legal proof.'" K.D. v. Jefferson Cnty. Dep't of Human Res., 88 So. 3d 893, 896 (Ala. Civ. App. 2012) (quoting Spradley v. State, 414 So. 2d 170, 172 (Ala. Crim. App. 1982)). The trial court's conclusion that the parties had stipulated that Patterson's injury arose out of and in the course of her employment dispensed with the necessity of proving medical causation, as the parties implicitly recognized in their stipulation that "[t]he only issue to be decided by the court in this matter is the nature and extent of permanent disability benefits, if any, owed to

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[Patterson]." A stipulation is a "'voluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate [the] need for proof or to narrow [the] range of litigable issues.'" Evans v. Alabama Prof'l Health Consultants, Inc., 474 So. 2d 86, 88 (Ala. 1985) (quoting Black's Law Dictionary 1269 (rev. 5th ed. 1979), quoting in turn Arrington v. State, 233 So. 2d 634, 636 (Fla. 1970)). "Parties may agree to try their case upon a theory of their choosing and their agreements will be binding. Reese Funeral Home v. Kennedy Electric Co., 370 So. 2d 1030 (Ala. Civ. App. 1979); Rule 47, A[la]. R. A[pp]. P." Cotton v. Terry, 495 So. 2d 1077, 1080 (Ala. 1986). "'[O]ne who has stipulated to certain facts is foreclosed from repudiating them on appeal.'" K.D. v. Jefferson Cnty. Dep't of Human Res., 88 So. 3d at 897 (quoting Spradley, 414 So. 2d at 172). See also Vann Express, Inc. v. Phillips, 539 So. 2d 296, 298 (Ala. Civ. App. 1988).

The dissent finds fault, on two grounds, with our determination that the parties' stipulation subsumed the issue of medical causation. First, the dissent contends that this case is virtually identical to Wilson v. Berry Industries Co.,

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451 So. 2d 339 (Ala. Civ. App. 1984), a decision holding that the trial court was not precluded by the language of the parties' stipulation from determining (a) that the stipulation had not obviated the need to establish causation and (b) that the employee had failed to prove causation. Second, the dissent contends that the trial court's judgment, when read as a whole, indicates that the trial court did not interpret the parties' stipulation to subsume the issue of medical causation because, the dissent says, the trial court made its own finding of fact with respect to medical causation. We will address those contentions in turn.

Berry, supra, is similar to the present case in that the parties stipulated, without specifically mentioning the issue of causation, that "'the only issue to be tried to the Court is the issue ... of permanent disability[,] be it partial or total.'" 451 So. 2d at 340. In Berry, the trial court explicitly determined that the employee had not established causation and denied benefits, thereby implicitly determining that the parties' stipulation had not encompassed the issue of causation. This court affirmed the judgment, stating the following:

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"The terms of the stipulation in this particular case did not require that the trial court award compensation to the employee. There was no admission of liability. In view of the language of the stipulation, the trial court could hold as it did and still be consistent with the stipulation."

451 So. 2d at 341 (emphasis added). Berry does not support the conclusion that the issue of medical causation remained extant in the present case; it supports the opposite conclusion. That is so because, in contrast to the judgment in Berry, the trial court's judgment in the present case specifically states that the parties had stipulated that Patterson's injury "was the result of an accident arising out of and in the course of [Patterson's] employment with [Stericycle]," thereby indicating that the trial court interpreted the parties' stipulation that the "only issue to be decided by the court in this matter is the nature and extent of permanent disability benefits, if any, owed to [Patterson]" to mean that the issue of medical causation had been resolved by the parties and need not be decided by the court. Berry indicates that, if the judgment is consistent with the trial court's interpretation of the parties' stipulation, then the trial court's interpretation is to be

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upheld. In the present case, the judgment is consistent with the trial court's interpretation.

With respect to the dissent's second contention -- that the judgment, when read as a whole, indicates that the trial court did not interpret the parties' stipulation to encompass the issue of medical causation because the trial court made its own finding of fact with respect to medical causation -- we acknowledge that, under the anomalous heading "Findings of Law" in its judgment, the trial court made the following reference to causation:

"The MRI and myelogram conducted by the authorized treating physicians noted that [Patterson] has an annular bulge in her discs located at the L3-4 and L4-5 levels of the lumbar spine. The MRI specifically showed a broad based disc bulge and midline annular tear at both the L3-4 and L4-5 levels of the lumbar spine.

"The court finds these results to be substantial evidence of the type and nature of an injury that was caused by the type of accident described in this case. The medical records indicate that these physical findings are consistent with the history contained in the records of [Patterson's] having suffered an on-the-job injury."

(Emphasis added.) The dissent maintains that the emphasized statement constitutes a finding of fact that Patterson's January 19, 2011, work exertion caused two bulging disks and

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two annular tears in her lumbar spine. We think the meaning of the emphasized statement is far less certain. It appears to us that the trial court's oblique reference to causation constituted, at most, a superfluous observation that the "type" of lumbar-spine abnormalities shown on Patterson's MRI could be attributed to the "type" of work exertion that Patterson described as having occurred on January 19, 2011. That observation hardly constitutes a straightforward, conclusive finding that Patterson's work exertion on January 19, 2011, actually caused two bulging disks and two annular tears in her lumbar spine. See 2 Moore, Alabama Workers' Compensation § 24:52 at 591 (stating that a trial court's judgment "should include a conclusive finding of every fact responsive to the issues presented to and litigated by the trial court" (emphasis added; footnote omitted)).

Further, the trial court's lengthy recitation of the evidence in this case, including evidence of Patterson's medical treatment, diagnoses, and continuing pain following her work exertion on January 19, 2011, did not necessarily signal the trial court's understanding that it was required to make a determination as to medical causation, as the dissent

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contends. The same evidence was also relevant to the trial court's ultimate disability determination.

Finally, the dissent maintains that the conduct of the parties indicates that they did not intend their stipulation to resolve the issue of medical causation. If that is true, then it is surprising, to say the least, that neither party called an expert witness to testify at trial and that the sole expert who testified by deposition was not asked a single question touching on medical causation. Moreover, the facts that Stericycle (a) argued in its posttrial brief that Patterson had not established medical causation and (b) neglected to challenge the trial court's statement that the parties had stipulated that Patterson's alleged injury "arose out of and in the course of [her] employment" apparently reflect Stericycle's failure to appreciate the legal import of the phrase "arising out of and in the course of ... employment." That phrase has had a well-established meaning in Alabama jurisprudence for almost a century, see Garrett v. Gadsden Cooperage Co., 209 Ala. 223, 224-25, 96 So. 188, 190 (1923), and counsel should be presumed to know its legal

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significance or to bear the consequences of their oversight, not to be rewarded for failing to raise the issue.

We conclude that the trial court was authorized to interpret the parties' stipulation -- that "[t]he only issue to be decided by the court in this matter is the nature and extent of permanent disability benefits, if any, owed to [Patterson]" -- to mean that it was unnecessary to determine the issue of medical causation. That the trial court, in fact, construed the stipulation to obviate the need to decide medical causation is apparent from the trial court's statement that the parties stipulated that Patterson's injury was "the result of an accident arising out of and in the course of [her] employment with [Stericycle]" and from the absence of any conclusive finding of fact with respect to medical causation in the trial court's judgment.

Disability

With respect to disability, the trial court determined:

"The medical records ... indicate that the various health care providers suspect that [Patterson], upon clinical examination, demonstrated a certain degree of symptom magnification. That is, the outward manifestations of pain displayed by [Patterson] were more, in the health care providers' opinion, than one would expect given the objective findings and impressions resulting from the MRI,

myelogram, and nerve conduction tests conducted regarding [Patterson's] lower back injury.

"The court in Jim Walter Resources, Inc. v. Budnick, 619 So. 2d 926 (Ala. Civ. App. 1993), has written the following with regard to the court's consideration [of a] plaintiff's subjective complaints of physical pain and its consideration of medical opinions:

"'An injured employee's own subjective complaints of pain are legal evidence which may support a finding of disability. See, e.g., Bankhead Forest Industries, [Inc. v. Lovett], 423 So. 2d 899 (Ala. Civ. App. 1982)]; Hester v. Ridings, 388 So. 2d 1218 (Ala. Civ. App. 1980).'

". . . .

"While the court notes that [Patterson's] health care providers were perplexed by the degree of subjective pain complaints manifested by [Patterson], none of the said health care providers testified that [Patterson] should not have experienced any pain as a result of her accident.

"The court notes that in the medical record cited herein from Dr. Michelle Turnley ... [Patterson] indicated that she was experiencing 'severe pain' and got 'teary eyed' as she attempted to perform Flexion, Abduction, and External Rotation exercises. The court also takes into account [Patterson's] presentation in court while testifying. [Patterson] walked with a decided limp as she ambulated from counsel table to the witness stand. She climbed the step to the witness stand with great care and sat slowly. [Patterson] ambulated as though she was much older than her 44 years. The court, therefore, finds that [Patterson's] subjective manifestations of pain are credible and are a factor in determining the degree

of permanent disability suffered in this case by [Patterson].

"The court in Carquest Auto Parts & Tools of Montgomery, Alabama, Inc. v. Waite, 892 So. 2d 422 (Ala. Civ. App. 2004), discussed other factors which the Court may consider in rendering its decree as follows:

"It is well settled that the trial court has the duty to determine the extent of disability and is not bound by expert testimony in making that determination; yet, in making its determination, the trial court must consider all the evidence, including its own observations, and it must interpret the evidence to its own best judgment. Specifically, a trial court is not bound to accept a physician's assigned impairment rating and is free to make its own determination as to an employee's impairment." Compass Bank v. Glidewell, 685 So. 2d 739, 741 (Ala. Civ. App. 1996) (citation omitted).

"....."

"In the case before the Court, [Patterson] is a person of limited work experience. She has worked as a cashier and as a truck driver. Both jobs require either standing or sitting for long periods of time which, [Patterson] testified, causes her back pain to increase. However, the Court also notes that [Patterson] did not testify that she was unable to work, only that she was not physically able to pass her DOT requirements in order to resume her occupation as a truck driver.

"[Patterson] continues to perform her household chores. [Patterson] cooks, and she tends to a young grandchild. [Patterson], though she does not have her [commercial driver's license], continues and is

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able to drive her car and has some training as a cosmetologist.

"Applying th[e] standard [for permanent total disability], the court does not find [Patterson] to be permanently totally disabled. Rather, the court hereby finds [Patterson] to suffer an unscheduled permanent partial impairment as defined at Ala. Code § 25-5-57(a) (3) (g).

"The court also finds that [Patterson's] percentage of vocational disability is hereby determined to be 57% and is payable in arrears from the date of the determination of maximum medical improvement as determined by Dr. Martin Jones on June 23, 2011."

Citing Southern Energy Homes, supra, Stericycle argues that the trial court's disability determination is not supported by substantial evidence. Stericycle maintains that, in determining whether Patterson was permanently disabled, the trial court focused solely on Patterson's testimony and her outward manifestations of pain during the trial, thereby discounting without explanation, it says, evidence that every physician who had treated Patterson had reported that her complaints of pain were inconsistent with the objective medical findings, had assigned her an impairment rating of "zero," and had noted that she had displayed either "positive pain behavior," self-limiting effort, or "symptom magnification."

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In Southern Energy Homes, the employee claimed to have hurt her back in April 1996 when she fell off a ladder; she also claimed to have reported the accident to her supervisor. Five days later, however, when she asked to see a doctor, she was told by the employer that it was not aware that she had been injured on the job. The employee's medical records contained no mention of the alleged ladder accident or resulting back pain until more than eight months later, after the employee had filed a workers' compensation claim and had left her employment.

An orthopedic surgeon subsequently diagnosed the employee with degenerative disk disease. He noted that, although it was possible that the employee's back pain could have resulted from the ladder accident, the employee's complaints of pain were inconsistent with the physical findings in an MRI that revealed degenerative changes. The employee's physical therapist also noted symptoms inconsistent with physical findings. A neurologist stated that the employee's nerve-conduction study was normal, concluded that the employee had engaged in symptom magnification, and assigned the employee no permanent-impairment rating.

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The trial court awarded the employee permanent-total-disability benefits, and this court affirmed. Our supreme court granted the employer's petition for certiorari review and reversed, holding, among other things, that there was "a lack of evidence indicating that [the employee] sustained a permanent total disability." 873 So. 2d at 1123. The court stated:

"Permanent total disability is the inability to perform one's trade and the inability to find other gainful employment.'" Jim Walter Res., Inc. v. Budnick, 619 So. 2d 926, 927 (Ala. Civ. App. 1993) (citing § 25-5-57(a)(4)d., Ala. Code 1975). None of [the employee's] doctors placed restrictions on her work status after May 1998. Three of the physicians as well as the physical therapist who treated [the employee] stated that [her] symptoms and complaints were not consistent with the medical testing and her behavior at various times. Most importantly, none of the doctors, psychologists, or experts stated after examining [the employee] that [she] was incapable of gainful employment."

Id.

Although there are similarities between Southern Energy Homes and the present case, Southern Energy Homes is distinguishable from the present case because, in this case, the trial court believed Patterson's testimony that she had experienced unrelenting pain since January 19, 2011, expressly determining that Patterson's "subjective manifestations of

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pain [were] credible." The trial court was not required to explain why it found the physicians' impairment ratings or symptom-magnification determinations unpersuasive. See Bostrom Seating, Inc. v. Adderhold, 852 So. 2d 784, 793-94 (Ala. Civ. App. 2002).

"When evidence is presented ore tenus, it is the duty of the trial court, which had the opportunity to observe the witnesses and their demeanors, and not the appellate court, to make credibility determinations and to weigh the evidence presented. Blackman v. Gray Rider Truck Lines, Inc., 716 So. 2d 698, 700 (Ala. Civ. App. 1998). The role of the appellate court is not to reweigh the evidence but to affirm the judgment of the trial court if its findings are reasonably supported by the evidence and the correct legal conclusions have been drawn therefrom. Ex parte Trinity Indus., Inc., 680 So. 2d [262] at 268-69 [(Ala. 1996)]; Fryfogle v. Springhill Mem'l Hosp., Inc., 742 So. 2d 1255 (Ala. Civ. App. 1998), aff'd, 742 So. 2d 1258 (Ala. 1999). The "appellate court must view the facts in the light most favorable to the findings of the trial court." Ex parte Professional Bus. Owners Ass'n Workers' Comp. Fund, 867 So. 2d 1099, 1102 (Ala. 2003).'"

Ex parte Caldwell, 104 So. 3d 901, 904 (Ala. 2012) (quoting Ex parte Hayes, 70 So. 3d 1211, 1215 (Ala. 2011)). Based on that standard of review, we cannot reweigh the evidence if the trial court's findings are supported by sufficient evidence.

In Compass Bank v. Glidewell, 685 So. 2d 739 (Ala. Civ. App. 1996), this court stated:

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"It is well settled that the trial court has the duty to determine the extent of disability and is not bound by expert testimony in making that determination; yet, in making its determination, the trial court must consider all the evidence, including its own observations, and it must interpret the evidence to its own best judgment. Specifically, a trial court is not bound to accept a physician's assigned impairment rating and is free to make its own determination as to an employee's impairment."

685 So. 2d at 741 (citations omitted). "A trial court is free to consider the totality of the evidence, including the employee's subjective complaints of pain, in making its disability determination." G.A. West & Co. v. Johnston, 92 So. 3d 74, 87 (Ala. Civ. App. 2012) (citing Caseco, LLC v. Dingman, 65 So. 3d 909, 925 (Ala. Civ. App. 2010)).

The factors that the trial court considered and recited in its judgment in determining the extent of Patterson's disability are supported by substantial evidence. We conclude that the trial court did not err in determining that Patterson has suffered a 57% permanent partial disability.

The judgment of the Jefferson Circuit Court is affirmed.
AFFIRMED.

Thomas, J., concurs.

Thompson, P.J., and Donaldson, J., concur in the result, without writings.

Moore, J., dissents, with writing.

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MOORE, Judge, dissenting.

I respectfully dissent.

At the outset of the trial, Stericycle, Inc. ("the employer"), through its attorney, stipulated in open court that Sonja Patterson ("the employee") "alleged to receive an injury to her back that arose out of and in the course of her employment with the employer]" on January 19, 2011, and that "the only issue to be decided by the [Jefferson Circuit Court] in this matter is the nature and extent of permanent disability benefits, if any, owed to the [employee]."

In Wilson v. Berry Industries Co., 451 So. 2d 339 (Ala. Civ. App. 1984), the parties stipulated that the only issue to be decided involved the extent of permanent disability with any "remaining issues" to be "stipulated and agreed upon." 451 So. 2d at 340. In its judgment, the trial court in Wilson declined to award the employee any compensation, concluding that he had failed to present sufficient evidence indicating that his injury had resulted from his alleged accident. The employee appealed, arguing that the finding contradicted the stipulation of the parties. This court disagreed, stating:

"In Montgomery v. Mardis, 416 So. 2d 1042 (Ala. Civ. App. 1982), the trial court had decided that

Mardis suffered a temporary total disability. In pertinent part, it was determined on appeal as follows:

"We note that at trial the parties, by stipulation, apparently attempted to limit the court's determination to the question of whether Mardis was permanently disabled. Mardis, in his cross-appeal, argues this point, alleging that the court could not legally make a finding of temporary disability. We do not agree. Although the parties may enter into an agreement to try their case on any theory they choose, Reese Funeral Home v. Kennedy Electric Co., 370 So. 2d 1030 (Ala. Civ. App. 1979), the court is not bound by the parties' agreement as to the law to be applied in the case, or by agreements of fact which are contrary to the facts as disclosed by testimony. Garrett v. Mathews, 474 F. Supp. 594 (N.D. Ala. 1979), aff'd, 625 F.2d 658 (5th Cir. 1980). The extent and type of disability suffered by a workmen's compensation claimant, and the amount of compensation to be awarded in a given situation, are matters for the court to decide. In this case the trial court was free to make a determination of temporary or permanent disability, or lack thereof.'

"416 So. 2d at 1042. Here, the trial court found a lack of any disability which resulted to the employee from the January 1981 accident. That decision was one of the authorized solutions as stated in the Montgomery case."

451 So. 2d at 341.

In the present case, it is apparent from the wording of the parties' stipulation, quoted above, that the employer,

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like the defendant in Wilson, supra, did not admit that the employee had sustained any permanent injury or disability as a result of the January 19, 2011, accident. Therefore, according to Wilson, supra, in which the parties entered into essentially the same stipulation, the issue of medical causation, i.e., the causal link between the January 19, 2011, accident and the injury and disability claimed, remained extant.¹ In its posttrial brief submitted to the trial court, the employer specifically argued that the employee had failed to prove that the January 19, 2011, accident had medically caused any of the symptoms that she claimed prevented her from working,² further notifying the trial court of its need to

¹I do not agree that Wilson holds that a circuit court may interpret a stipulation that the only issue to be decided is the extent of permanent disability as either obviating or preserving the issue of medical causation, depending on its own inclinations, and that this court is bound by the circuit court's interpretation, as the main opinion suggests. ___ So. 3d at ___. Wilson holds only that such a stipulation does not eliminate the issue of medical causation, so that the circuit court must still decide the nature and extent of disability resulting from an injury received in a work-related accident.

²In workers' compensation disability cases, medical causation consists of two separate inquiries. First, the trial court must decide whether the work-related accident caused a personal injury to the worker. Second, the trial court must assess the physical disability resulting from that injury. See 1 Terry A. Moore, Alabama Workers' Compensation

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resolve that issue in its final judgment. Notably, the employee did not dispute that contention in any brief she filed with the trial court.

In its final judgment, the trial court concluded that the parties had stipulated that

"the date of the injury made the basis of [the employee's] claim was on January 19, 2011, and that the alleged injury was the result of an accident arising out of and in the course of [the employee's] employment with [the employer]."

A fair reading of the parties' stipulation shows that they did not agree that "the alleged injury was the result of" the January 19, 2011, accident.³ They merely agreed that the

§ 7:3 at p. 189-90 (1998). In this case, the trial court addressed both aspects by finding (a) that the employee had injured two lumbar disks as a result of her January 19, 2011, work-related accident; and (b) that the employee had suffered pain and physical limitations due to those injuries. The employer maintains that the employee did not present sufficient evidence to support the trial court's findings that the work-related accident had caused the injuries that resulted in the pain and limitations found by the trial court.

³In her complaint, the employee alleged that she had "received an injury to her back and other various parts of the body which causing [sic] total disability for a period of time and necessitating [sic] [medical] treatment in an effort to cure the injuries. These injuries also have caused anxiety, depression, and mental or emotional injury." The parties did not stipulate as to the nature of the back injury the employee received, did not stipulate that the employee had injured other parts of her body, and did not stipulate that the

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employee based her claim on an alleged work-related back injury occurring on that date. Read in isolation, therefore, that part of the judgment appears to be erroneous.

However,

"[j]udgments are to be construed like other written instruments. The rules applicable to the construction and interpretation of judgments are those applicable to the construction and interpretation of contracts. Hanson v. Hearn, 521 So. 2d 953 (Ala. 1988). Separate provisions of judgments, like provisions of contracts, should be construed in pari materia, and the entire judgment -- all provisions considered -- should be read as a whole in the light of all the circumstances, as well as of the conduct of the parties. Id."

Moore v. Graham, 590 So. 2d 293, 295 (Ala. Civ. App. 1991).

Thus, in construing the meaning of the trial court's statements in its judgment regarding the parties' stipulations, we must consider the remainder of its judgment in light of the circumstances, as well as the conduct of the parties.

Following the paragraphs regarding the stipulations of the parties, which are contained on pages 1 and 2 of the trial court's judgment, the trial court, in the next 6 pages,

employee's physical injuries had caused the mental injuries alleged in the complaint. At trial, the employee based her claim exclusively on an alleged back injury.

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recites the evidence regarding the nature of the employee's back condition and the medical diagnoses and treatments she obtained following her January 19, 2011, accident. The trial court then makes the following findings of fact and conclusions of law:

"The Court hereby finds that [the employee] suffered an acute injury to her back ... in an accident arising out of and in the course of her performance of her employment. As such, Ala. Code § 25-5-81(c) (1975) provides that [the employee] is entitle[d] to benefits upon establishing by a preponderance of substantial evidence, proof of her claim. ...

"....

"Under the stipulations of fact by which this claim has been submitted to the Court, the issue to be decided is whether or not the evidence warrants a finding of permanent total disability, some degree of permanent partial disability, or no permanent disability at all.

"[The employer] has argued that in light of the opinions rendered by the authorized treating physicians that [the employee] suffers from no degree of physical impairment based on objective diagnostic testing and therapeutic treatment that a finding of no entitlement to benefits is warranted in this case.

"[The employee], on the other hand argues that her subjective complaints of pain, caused by an injury to her lower back, warrants a finding of permanent disability.

"The evidence before the Court is of a 44 year old female with no prior history of health problems or back ailments who suffered a back injury while pushing a heavy load on an incline during the course of performing the duties of her employment with [the employer]. The MRI and myelogram conducted by the authorized treating physicians noted that [the employee] has an annular bulge in her discs located at the L3-4 and L4-5 levels of the lumbar spine. The MRI specifically showed a broad based disc bulge and midline annular tear at both the L3-4 and L4-5 levels of the lumbar spine.

"The Court finds these results to be substantial evidence of the type and nature of an injury that was caused by the type of accident described in this case. The medical records indicate that these physical findings are consistent with the history contained in the records of [the employee] having suffered an on the job injury."

(Emphasis added.) In those findings and conclusions, the trial court expressly determines that the employee sustained an acute injury to her back resulting in two annular tears and two lumbar disk bulges.⁴ The trial court then concludes that

⁴The main opinion asserts that the trial court's "oblique reference to causation hardly constitutes a straightforward, conclusive finding that [the employee's] work exertion on January 19, 2011, actually caused two bulging disks and two annular tears in her lumbar spine." ___ So. 3d at ___. The reference to medical causation is not "oblique." The trial court finds, unequivocally, that the act of pushing the load up the incline caused the employee's annular tears and disk bulges. No other reasonable construction of the judgment can be indulged.

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the employee sustained a painful condition from those injuries that resulted in a permanent partial disability.

The main opinion describes the foregoing findings relative to the nature of the injury sustained by the employee to be nothing more than "a superfluous observation." ___ So. 3d at ___. I disagree. The voluminous findings written over 10 pages of the judgment indicate that the trial court understood that the parties' stipulation did not encompass any agreement as to the nature of the injury and disability resulting from the January 19, 2011, accident. Those detailed findings, constituting the vast majority of the trial court's determination, indicate that the trial court interpreted the parties' stipulation in such a manner that it was still required to determine the type of back injury resulting from the January 19, 2011, accident, as well as its lasting disabling effects.

Like with contracts, the terms of a judgment "should be construed in pari materia and a construction adopted that gives effect to all terms used." Sullivan, Long & Hagerty v. Southern Elec. Generating Co., 667 So. 2d 722, 725 (Ala. 1995). When construing a document, this court must presume

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""that every word, sentence, or provision was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used."" Ex parte Uniroyal Tire Co., 779 So. 2d 227, 236 (Ala. 2000) (quoting Sheffield v. State, 708 So. 2d 899, 900 (Ala. Crim. App. 1997)). By concluding that the stipulation obviated entirely the issue of medical causation, the judges joining in the main opinion violate those rules of construction by rendering the trial court's findings as to the nature of the injury the employee received and the resulting physical disability from that injury totally meaningless and not essential to its ultimate determination of a 57% permanent partial disability and the award of compensation.

Furthermore, like the trial court, the parties have not treated the stipulation as an admission that the January 19, 2011, accident medically caused the employee the permanent injuries and permanent disability found by the trial court. In response to the employer's argument on appeal that the evidence does not sustain the findings of the trial court as to medical causation, the employee does not even mention the

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stipulations in her brief to this court,⁵ much less maintain that the issue of medical causation was settled by agreement before or at the outset of the trial.⁶ The employee apparently recognizes that the stipulations were not intended to, and did not, resolve the question as to the nature of the injury and disability caused by the January 19, 2011, accident, which issues were actually litigated and determined by the trial court. Considering those circumstances, and the parties' conduct both during and after the trial and the entry

⁵The employee notes only that the parties stipulated to the admission of medical evidence into the record. The argument that the parties stipulated to medical causation is asserted for the first time on appeal in the main opinion without the benefit of briefing by either party. I understand that this court can affirm a judgment on legal grounds not asserted by the trial court or the parties, but I do not believe that rule applies in these circumstances, in which the court's members dispute the intent and meaning of the trial court's judgment.

⁶Both parties apparently understand that the judgment addresses the issue of medical causation because both parties address the substantive issue as to whether the evidence supports the pertinent findings. In her brief to this court, the employee takes the position that she presented sufficient evidence in the form of medical records to support her claim. She does not argue that she failed to present further evidence of medical causation in the form of deposition testimony of medical experts because she relied on some stipulation that medical causation would not be in issue, as the main opinion suggests. ___ So. 3d at ___.

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of the judgment, as well as the language used in light of the Wilson opinion, the stipulations should not be interpreted as eliminating the issue of medical causation and preventing appellate review of the sufficiency of the evidence on that point.⁷

⁷The employer does not specifically argue that the trial court misinterpreted its stipulations, but only because the employer (as well as the employee) reads the judgment in its entirety as I do, as actually addressing medical causation and making findings of fact on that issue, not as a determination that the issue can be avoided based on the stipulations of the parties. The employer instead directs its argument to the sufficiency of the evidence to support the findings actually made by the trial court. Pursuant to Rule 52(b), Ala. R. Civ. P. ("When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the court an objection to such findings or has made a motion to amend them or a motion for judgment or a motion for a new trial."), the employer did not have to file a postjudgment motion in order to preserve its argument that the evidence did not support the trial court's medical-causation findings. Therefore, the employer would not be, as the main opinion states, "rewarded for failing to raise the issue," ___ So. 3d at ___, if this court actually addressed its argument on appeal.

Moreover, I see no need to denigrate employer's counsel for any alleged "oversight" or "failure to appreciate the legal import" of the trial court's statements regarding the parties' stipulations, ___ So. 3d at ___, given the context in which those statements were made and in light of the remainder of the judgment, which does, in fact, address medical causation.

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"To establish medical causation, the [employee] must show that the accident was, in fact, a contributing cause of the employee's [injury]. It is not necessary that the employment-related injury be the sole cause, or the dominant cause, of the [injury], so long as it was a contributing cause. If the employee suffers from a latent preexisting condition that inevitably will produce injury or death, but the employment acts on the preexisting condition to hasten the appearance of symptoms or accelerate its injurious consequences, the employment will be considered the medical cause of the resulting injury."

Associated Grocers of the South, Inc. v. Goodwin, 965 So. 2d 1102, 1110 (Ala. Civ. App. 2007) (citations omitted).

The findings of fact entered as part of the judgment made by the trial court indicate that the trial court determined that the strain from the January 19, 2011, accident caused the employee "a broad based disc bulge and midline annular tear at both the L-3 and L-4 levels of the lumbar spine" because those "physical findings are consistent with the history contained in the records of [the employee] having suffered an on the job injury." However, as the employer argues, no medical expert opined in testimony or in documents that the January 19, 2011, accident, caused those injuries. The medical records all indicate that those conditions were degenerative in nature. Moreover, no medical expert opined that the January 19, 2011,

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accident had aggravated those underlying conditions so as to cause the disabling symptoms of which the employee complained.

In Ex parte Price, 555 So. 2d 1060, 1062 (Ala. 1989), the supreme court stated: "As the finder of facts, ... the trial court is authorized to draw any reasonable inference from the evidence, including conclusions of medical facts that are not within the peculiar knowledge of medical experts." Id. at 1062 (emphasis added; citing Warrior Stone & Contracting Co. v. De Foor, 241 Ala. 227, 229, 2 So. 2d 430, 430 (1941) (stating that "[e]xpert opinions of witnesses are not conclusive on the triers of the fact, though uncontroverted, but the same may be disregarded unless it is a matter for experts only and the triers of fact cannot be assumed to have or be able to form a correct opinion concerning such matter" (emphasis added))). In this case, by finding that the employee sustained annular tears and disk bulges from pushing a heavy load up an incline, the trial court invaded the province of medical experts because the "type and nature" of lumbar-spine injuries that can be caused by pushing a heavy load up an incline, and whether the employee's injuries actually fit within that category, are within their peculiar

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knowledge. See Lambert v. Lisanti Foods, Inc., 624 So. 2d 625 (Ala. Civ. App. 1993) (absent expert testimony, trial court properly denied benefits to worker who claimed that repetitive unloading of truck caused back problems).

Because the trial court based all of its subsequent disability findings on its determination that the January 19, 2011, accident caused the employee's lumbar abnormalities, and because that factual determination is unsupported by substantial evidence, see Ala. Code 1975, § 25-5-81(e)(2), the judgment of the trial court is due to be reversed.⁸

⁸Because I believe the judgment should be reversed on those grounds, I do not address the remainder of the arguments presented by the employer except to state that the facts of this case almost exactly mirror those in Ex parte Southern Energy Homes, Inc., 873 So. 2d 1116 (Ala. 2003), in which our supreme court concluded that a finding of permanent total disability could not be sustained when all of the treating physicians found no objective reason for the employee's subjective complaints of pain, which the physicians attributed to malingering or symptom magnification, and all of the physicians returned the employee to work with no permanent-impairment rating and no restrictions. I find that the attempt in the main opinion to distinguish Ex parte Southern Energy Homes, Inc., on the ground that the trial court in this case expressly found the employee's subjective complaints to be credible to be unpersuasive. The trial court in Ex parte Southern Energy Homes, Inc., at least impliedly made the same credibility determination or it would not have rejected the medical experts' opinions in order to find that the employee in that case had a permanent total disability.