FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-59

ZAHAVA SOYA,

Appellant,

v.

HEALTH FIRST, INC. and CCMSI,

Appellees.

On appeal from an order of the Office of the Judges of Compensation Claims.
Robert L. Dietz, Judge.

Date of Accident: December 13, 2019.

February 21, 2022

ROBERTS, J.

In this workers' compensation case, Claimant appeals the Judge of Compensation Claims' (JCC's) order denying compensability of her injuries from an unexplained fall at work. We reverse, as follows.

Claimant, a massage therapist, was leaving work for the day; she exited the massage room, walked across a carpeted floor in the massage waiting room toward the women's locker room entrance, and fell into the door separating the waiting room and the locker room. She was wearing rubber-soled shoes, carrying non-work

items (her purse, a teacup, a small bag of homemade chocolates), and walking at a normal pace. She does not know exactly how the fall happened. The Employer/Carrier (E/C) retained an engineer to inspect the flooring area; he found no anomalies with its surface or configuration and noted that it was slip-resistant.

The JCC denied compensability under *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. 1st DCA 2019) (en banc), tracking its language almost exactly in reasoning that the injury did not arise out of employment because "an accident is compensable under *Valcourt* only if the employment necessarily exposed the claimant to conditions that would substantially contribute to the risk of injury to which the Claimant would not normally be exposed during her non-employment life." Review of this ruling is de novo. *Id.* at 1135. In *Valcourt-Williams*, a "remote" employee was hurt falling over her pet dog as she reached for a coffee cup in her kitchen during a workday break; this court held that the injury did not arise out of work because the risk existed in her non-employment life: "it is undisputed that features of Valcourt-Williams's 'non-employment life'—her dog, her kitchen, her reaching for a coffee cup—caused the accident." 271 So. 3d at 1136.

But the increased hazard analysis under *Valcourt-Williams* applies only where there is a contributing cause outside of employment (e.g., the dog). Its application here, where the cause was unknown, was overbroad. Where an accident's cause is unknown, it is error to deny compensability on grounds that the accident "could have happened elsewhere," *Ross v. Charlotte Cnty. Pub. Sch.*, 100 So. 3d 781, 782 (Fla. 1st DCA 2012), because doing so

> overlooks the express language of section 440.10(2), Florida Statutes (201[9]), providing that 'compensation shall be payable irrespective of fault as a cause for the injury,' and the rationale underlying this court's holdings in *Caputo* [*v. ABC Fine Wine & Spirits*, 93 So. 3d 1097 (Fla. 1st DCA 2012)] and *Walker* [*v. Broadview Assisted Living*, 95 So. 3d 942 (Fla. 1st DCA 2012)], that where an unexplained fall happens while Claimant is "actively engaged" in the duties of employment, and where there is

> no other established basis for the fall [e.g., a pre-existing condition, or a dog], the causal relationship between the employment and the accident is met.

Id. Clumsiness is covered. *Taylor v. Sch. Bd. of Brevard Cnty.*, 888 So. 2d 1, 5 (Fla. 2004) ("Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of the employment, the employee receives an award.").

Ross et al. were not abrogated by *Valcourt-Williams*; *Valcourt-Williams* abrogated personal comfort, pre-1994-law cases, 1994 being the year that the Legislature first defined "arising out of." *See* § 440.02(32), Fla. Stat. (Supp. 1994); Ch. 93-415, § 2, at 69, Laws of Fla.; *Vigliotti v. K-mart Corp.*, 680 So. 2d 466, 468 (Fla. 1st DCA 1996) ("[B]y specifying that a claimant's employment must constitute a 'major' contributing cause, the Legislature clearly intended to alter prior case law construing the phrase 'arising out of.'"). We reject the E/C's argument that these "unexplained fall" cases were not truly unexplained but identified a cause in that Ms. Ross either "tripped" or "lost her balance," Ms. Walker "slipped," Mr. Caputo's fall was from a ladder, and Ms. Lanham "tripped"; despite the opinions' use of these words, none of these opinions identifies an incipient cause of the accident (nothing they tripped *over* or slipped *on*), other than being obligated to be present on the worksite at the time of the accident. *See Lanham v. Dep't of Env't Prot.,* 868 So. 2d 561, 563 (Fla. 1st DCA 2004) ("In that the record discloses there was only one cause of claimant's injuries, rather than competing causes, claimant was not required to present additional evidence going to the issue of whether the work-related accident was the major contributing cause of the injuries.").

We also reject the E/C's attempt to argue that Claimant was not "actively engaged" in work at the time of her accident; walking through Employer's building on her way out was an unavoidable part of her job. *See Vigliotti v. K-mart Corp.*, 680 So. 2d 466, 467 (Fla. 1st DCA 1996) (covering employee injured from slipping on floor when leaving after clocking out). To hold otherwise

> would result in claimants, such as Vigliotti, bringing suit in tort against their employers for injuries they have suffered during working hours, while they are on the employers' premises, but when they are not literally performing work. We see nothing, however, in the extensive revisions to the Workers' Compensation Law to indicate the Legislature intended to broaden tort liability of employers in this fashion as a solution to the workers' compensation crisis. *See, e.g.,* § 440.015, Fla. Stat. (Supp. 1994).
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> We have considered carefully K-Mart's contention that the phrase "work performed" must be construed to include only actual performance of primary job duties by an employee. As previously noted, this construction would broaden the potential tort liability for every employer in Florida. Moreover, this construction would contravene the legislative intent to ensure the prompt delivery of benefits to the injured worker by an efficient and self-executing system. § 440.015, Fla. Stat. Indeed, K-Mart's construction would lead to expensive and time consuming judicial inquiry in a broad range of cases that are now undoubtedly handled administratively without the intervention of attorneys. Scenarios discussed in the briefs and at oral argument included a roofer injured while climbing down a ladder at the end of his shift and a clerical worker injured while taking a restroom break. Under K-Mart's view, employers would be completely free to argue in such cases that work performed did not contribute to the injury, and hearings would then be required on this issue. Such a procedure would be neither efficient nor self-executing.

Id.

Consequently, the order on appeal is REVERSED, and the case REMANDED for further proceedings in accordance with this opinion.

RAY, J., concurs; BILBREY, J., specially concurs with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

BILBREY, J., specially concurring.

The majority opinion and my dissent in *Sedgwick CMS v. Valcourt-Williams*, 271 So. 3d 1133 (Fla. 1st DCA 2019) (en banc), unfortunately created confusion about what is a compensable workplace accident. The majority opinion here helps resolve that confusion, and I join it in full.

In *Valcourt-Williams*, the majority overruled only four cases.[1] Those four cases all involved injuries that occurred before "arising out of" was defined by the Legislature. *See* Ch. 93-415, § 2, Laws of Florida. The definition is now codified in section 440.02(36), Florida Statutes, which states, "'Arising out of' pertains to occupational causation. An accidental injury or death arises out of employment if work performed in the course and scope of employment is the major contributing cause of the injury or death."

In my *Valcourt-Williams* dissent I discussed various other cases, asking how they could be squared with the majority's holding that the workplace trip and fall there was not

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[1] Two of those cases were *Holly Hill Fruit Products, Inc. v. Krider*, 473 So. 2d 829 (Fla. 1st DCA 1985), and *Bayfront Medical Center v. Harding*, 653 So. 2d 1140 (Fla. 1st DCA 1995), where the claimants were injured after leaving the workplace while on break to buy cigarettes or food. The other two were *Gray v. Eastern Airlines, Inc.*, 475 So. 2d 1288 (Fla. 1st DCA 1985), and *Pan American World Airways v. Wilmont*, 492 So. 2d 1373 (Fla. 1st DCA 1986), where the claimants were injured off-duty during flight layovers, Gray while playing basketball and Wilmont while lighting a cigarette during dinner.

compensable. I was concerned that the majority had overruled or cast doubt on important precedent on workplace falls and other injuries. In dissenting, I believed that I had received no answer.[2]

The majority opinion today, as well as our recent decision in *Silberberg v. Palm Beach County School Board*, 1D20-75 (Fla. 1st DCA Feb. 16, 2022), answers many of my concerns. Workplace slip and falls, as well as other common workplace injuries, remain compensable under our caselaw predating *Valcourt-Williams* so long as the injury "arises out of employment" no matter if the claimant was "literally performing work at the time" of the injury. *See Vigliotti v. K-mart Corp.*, 680 So. 2d 466, 467 (Fla. 1st DCA 1996); *see also Silberberg*, slip op. at 13 ("[T]he mundane exertion of walking to get around at work is enough to establish a work cause because the 'any exertion' test does not look at the quality or quantity of the activity. 'Any exertion' means any effort in furtherance of work will do.").

It should also be recognized that *Valcourt-Williams* cited with approval *Sentry Insurance Company v. Hamlin*, 69 So. 3d 1065 (Fla. 1st DCA 2011). *Valcourt-Williams*, 271 So. 3d at 1134. In *Hamlin* we stated, "Work connection determines coverage under chapter 440, not fault." *Id.* at 1069*; see also Taylor v. Sch. Bd. of Brevard Cnty.*, 888 So. 2d 1 (Fla. 2004). So the majority here correctly holds that the Employer/Carrier's attempt to inject fault must fail. *See* § 440.10(2), Fla. Stat. Fault should be a consideration only in limited cases when a claimant was injured while under the influence of drugs or alcohol or when a claimant was injured while engaging in a willful act with the intent to injure or kill. *See* § 440.09(3), Fla. Stat. To hold otherwise would violate the statutory system created by the Legislature and impair "the quick and efficient delivery of disability and medical benefits to an injured worker" as well as delaying "the worker's return to gainful

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[2] A dissenting opinion, no matter how strongly worded, has no precedential value. *See Munnerlyn v. Wingster*, 825 So. 2d 481, 483 (Fla. 5th DCA 2002); *see also Miller v. State*, 980 So. 2d 1092, 1094 (Fla. 2d DCA 2008) ("Only the written, majority opinion of an appellate court has precedential value.").

reemployment at a reasonable cost to the employer." § 440.015, Fla. Stat.

"This Court has made it clear that, if there is no pre-existing condition that contributed to the accident or injury, and the accident occurred while the claimant was engaged in work activities, then the claimant has established occupational causation." *Lopez v. All Star Investigations, Inc.*, 128 So. 3d 265, 267 (Fla. 1st DCA 2013); *see also Walker v. Broadview Assisted Living*, 95 So. 3d 942, 943 (Fla. 1st DCA 2012) (holding that when a claimant with no preexisting conditions was engaged in work activities, "[b]ecause there were no competing causes of the accident and injury, Claimant's work activity was de facto the major cause"). Under the "premises rule" injuries at the workplace are compensable if the injury occurred "while preparing to begin a day's work or while doing other acts which are preparatory or incidental to performance of his or her duties, and which are reasonably necessary for such purpose." *Vigliotti*, 680 So. 2d at 469 (quoting *Doctor's Bus. Serv., Inc. v. Clark*, 498 So. 2d 659, 662 (Fla. 1st DCA 1986)); *see also Silberberg*, slip op. at 13 (noting that a fall while walking at work, including "going into work" or "leaving work" arises out of employment). Here, the Claimant had no idiopathic or preexisting conditions.[3] And the Claimant leaving work at the end of a workday was incidental to the performance of her duties and was reasonably necessary.

The majority's holding in *Valcourt-Williams* can be limited to what it explicitly did — restating the need for an injury to arise out of employment for the injury to be compensable and overruling four outlier cases with injuries too attenuated from employment for employment to be the major contributing cause of the injury. The three categories of risk from *Hamlin* remain a consideration

[3] *Silberberg* correctly notes the distinction between the terms idiopathic and preexisting conditions. *Id.,* slip op. at 8–9, n.6. Since no idiopathic or preexisting conditions were alleged to have contributed to Claimant's fall, the distinction is immaterial here.

in evaluating whether an injury arises out of employment.[4] *Id.* at 1069–70. The particular facts in *Valcourt-Williams*, that the injury occurred 1) in the claimant's home, 2) during a personal comfort break, 3) due to falling over her dog (mobile and sentient), could suggest that the majority in *Valcourt-Williams* decided under the *Hamlin* framework that the injury there arose from a personal risk. *See Silberberg*, slip op. at 15–17. This would align with the majority in *Valcourt-Williams* overruling four outdated cases in which employment was not the major contributing cause of the injury.

The majority opinion today along with our opinion in *Silberberg* resolves many of my concerns in *Valcourt-Williams* and shows how *Valcourt-Williams* can be read with our prior caselaw. Therefore, I join the majority opinion.

Michael J. Winer of Winer Law Group, Tampa, for Appellant.

Jamey S. Rodgers and William H. Rogner, Winter Park, for Appellees.

Mark Touby of Touby, Chait & Sicking, P.L., Coral Gables, for Amicus.

[4] As we stated in *Hamlin*, "In workers' compensation, all risks causing injury to a claimant can be brought within three categories: risks distinctly associated with employment, risks personal to the claimant, and 'neutral' risks—that is, risks having no particular employment or personal character." *Id.* at 1069–70.