STATE OF MICHIGAN

COURT OF APPEALS

RANDALL G. PAIGE, Plaintiff-Appellee,	UNPUBLISHED May 18, 2010
v	No. 290377 WCAC
CITY OF STERLING HEIGHTS and ACCIDENT FUND COMPANY, Defendants-Appellants.	LC No. 03-000085

Before: MURPHY, C.J., and K. F. KELLY and STEPHENS, JJ.

PER CURIAM.

Defendants appeal by leave granted[1] an order of the Workers' Compensation Appellate Commission (WCAC), which found that plaintiff's work-related coronary artery disease was the proximate cause of his death in 2001. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Plaintiff, now deceased, worked as a firefighter for the City of Sterling Heights from 1974 to 1991. On October 12, 1991, plaintiff experienced the symptoms of a heart attack while on the job ministering to automobile accident victims. Within 30 minutes of returning to the station, his symptoms worsened and he was taken to the hospital. Doctors diagnosed that plaintiff had suffered a heart attack. On his doctors' advice, plaintiff did not return to work as a firefighter.

A. OPEN AWARD OF BENEFITS

After the 1991 event, plaintiff filed for worker's compensation benefits. In 1993, Magistrate Donald Miller granted an open award of benefits on the basis that plaintiff's work significantly contributed to his heart attack. In 2000, after plaintiff had been off of work for nine

[1] See *Paige v City of Sterling Heights*, unpublished order of the Court of Appeals, entered May 28, 2009 (Docket No. 290377).

years, he suffered a second heart attack and underwent bypass surgery. In 2001, plaintiff suffered a third, and fatal, heart attack.

B. DEATH BENEFITS AWARD

In February of 2002, plaintiff's relatives sought various benefits under the Worker's Disability Compensation Act (WDCA), MCL 418.101 *et seq*., including death benefits for plaintiff's son Adam, who was 17 years old when plaintiff died.[2] The act requires an employer to pay death benefits if two requirements exist: (1) the work-related injury was "the proximate cause" of the death of the employee, and (2) the employee left dependents who were dependent on the employee for support. See MCL 418.321. The parties disputed whether plaintiff's 1991 work-related heart attack was the proximate cause of his death in 2001.

At trial, three doctors testified regarding the cause of plaintiff's 2001 death. Dr. Mark Goldberg, M.D., plaintiff's treating cardiologist, testified that plaintiff's coronary artery disease had been present since plaintiff's first heart attack in 1991. Further, Dr. Goldberg opined that the failure of plaintiff's left ventricle to contract normally was related to his 1991 heart attack because the abnormality was present in 1991 in a similar location. Dr. Goldberg believed that damage to the left ventricle from any of plaintiff's myocardial infarctions could have contributed in an accumulative effect to cause the left ventricle to malfunction, which caused his death. Similarly, Eldred Zobl, M.D., a board-certified cardiologist, opined that plaintiff probably had fatal arrhythmia caused by damage to the left ventricle from his previous heart attacks and his coronary artery disease.

Defendant's expert, Gerald Jay Levinson, D.O., a cardiologist, examined plaintiff in October of 2000. Dr. Levinson believed that plaintiff's coronary artery disease resulted from his risk factors of hypertension, hyperlipidemia, smoking, obesity, gender, and family history of heart disease. Dr. Levinson stated that plaintiff's subsequent heart attacks stemmed from his coronary artery disease, not his 1991 heart attack.

Subsequently, Magistrate Andrew Sloss relied on *Hagerman v Gencorp Auto*, 457 Mich 720; 579 NW2d 347 (1998), to rule that plaintiff's 1991 heart attack need not have been the "sole" proximate cause of his death. Rather, the magistrate noted that a cause was sufficient if it created a force that was in continuous operation until the time of death. The magistrate decided:

> In the instant case, there was agreement among the medical experts that Plaintiff's death was the result of a lethal arrhythmia caused by coronary artery disease and his prior myocardial infarctions. . . .

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[2] In 1991, when plaintiff suffered his first heart attack, Adam Paige was eight years old. Under the statute, if a deceased employee leaves dependents, who are dependent upon the employee wholly or in part, they are entitled to a death benefit. MCL 418.375(2). The parties stipulated Adam's dependency.

Dr. Goldberg testified that damage to Plaintiff's heart from his work-related myocardial infarction could have contributed to his death:

> "… any damage to the left ventricle from any of his myocardial infarctions could have contributed in an accumulative effect to cause dysfunction of the left ventricle which could then contribute to his death."

The magistrate noted that Dr. Zobl testified that plaintiff's work-related and subsequent myocardial infarctions left cumulative damage to his left ventricle and believed that all three cardiac episodes were part of the same disease process that progressed to plaintiff's ultimate demise. The magistrate also observed that Dr. Levinson acknowledged that plaintiff's 1991 work-related myocardial infarction was a causal factor in his death, citing this testimony:

> Q: Okay. Is . . . coronary artery disease coupled with his left ventricular damage proximate cause of the arrhythmia that he suffered in January of 2001?
>
> A. Yes. In a simplistic generic primary sense, yes, without getting complicated. Yes.

The magistrate concluded that the 1991 infarction proximately caused his death:

> It is the inescapable conclusion from the testimony of all three doctors in this matter that Plaintiff's demise is directly traceable to the initial work-related injury in 1991. All three doctors agreed that it was a combination of underlying coronary artery disease together with the cumulative damage to the heart that began with his work-related myocardial infarction in 1991 that caused the fatal arrhythmia on January 4, 2001. I therefore conclude and find as fact that Plaintiff's work-related myocardial infarction in 1991 was the proximate cause of his death for purposes of §375(2) of the act.

C. FIRST APPEAL TO THE WCAC

Defendants appealed to the WCAC, arguing that the medical experts had not agreed on the cause of death, which was contrary to the magistrate's conclusion that the medical experts had agreed on the cause. The WCAC disagreed:

> We are satisfied, however, that the magistrate relied on competent medical expert opinion testimony, as reflected in the above quoted testimony from Dr. Goldberg and Dr. Zobl, in reaching his conclusions and do not disturb them here. Where, as here, the factual determinations of the magistrate are challenged in such a way as to offer a reinterpretation of evidence offered at trial asking us to reweigh key portions of the record differently then [sic] did the magistrate, we will decline to do so as such action does not comport with our standard of review.
>
> In fact, defendant's own expert, Dr. Levinson, made the case of plaintiff more convincing in the previously noted exchange with plaintiff's counsel:

The WCAC rejected defendants' argument that *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), overruled *Hagerman, supra*, the latter of which the magistrate had relied. Further, the WCAC conceded that the doctors' opinions were not unanimous, but declined to overrule the magistrate's conclusions:

> The fact remains, however, that the magistrate's reliance on Dr. Zobl's testimony pertaining to causation – which we accept as accurate and logical – satisfies the statutory requirement that his findings are based on competent, material and substantial evidence. We therefore affirm the magistrate's finding that residual left ventricle damage from plaintiff's first work-related heart attack is a proximate cause of his death from the last cardiac event.

The WCAC affirmed the magistrate's decision, with the single modification that the payment of the death benefit was to be made on a weekly basis.

D. APPEAL

Defendants filed an application for leave to appeal with this Court, arguing in part that the WCAC misinterpreted "proximate cause" under MCL 418.375(2). This Court denied leave.[3] Defendants then appealed to the Michigan Supreme Court, which overruled *Hagerman, supra*, and remanded to the WCAC for reconsideration of the proximate cause issue under the standard articulated in *Robinson, supra.* See *Paige v City of Sterling Heights*, 476 Mich 495, 513; 720 NW2d 219 (2006). In turn, the WCAC remanded the matter to the magistrate.

E. MAGISTRATE'S DECISION ON REMAND

On remand, Magistrate Sloss ruled, in pertinent part:

> In this case, I find as fact, Plaintiff's fatal myocardial infarction was caused by a combination of coronary artery disease and the weakened condition of his heart from the initial work-related myocardial infarction in 1991. Drs. Goldberg and Kelly testified persuasively that Plaintiff's stress on the job, inhalation of smoke over 20 years as a firefighter and damage to his arteries and heart wall from the 1991 myocardial infarction made his cardiovascular system more susceptible to plaque build-up, leading to the blockage that caused the fatal event.
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> Dr. Levinson testified that Plaintiff's fatal coronary artery disease was caused completely by nonvocational factors. However, I did not find his opinion to be persuasive, since its framework is at odds with Magistrate's Miller's initial findings in this case. Accordingly, I have given his opinion no weight.

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[3] *Paige v City of Sterling Heights*, unpublished order of the Court of Appeals, entered January 10, 2005 (Docket No. 256451).

There is a presumption with firefighters that heart diseases arise out of and in the course of employment in the absence of evidence to the contrary. MCL 418.405(2) . . . . Plaintiff applied for "like benefits" as is required as a condition precedent for application of the above presumption. See MCL 418.405(3) . . . . Plaintiff had some outside risk factors, such as smoking cigarettes, but since I have accepted that the work factors caused Plaintiff's cardiovascular system to be more susceptible to plaque build-up, I necessarily reject that these nonvocational factors played any significant role. Accordingly, the presumption applies, and I find as fact that the one most immediate, efficient, and direct cause preceding Plaintiff's death was his employment with Defendant.

I note parenthetically, as did Magistrate Miller, that even were I to apply the usual "significant manner" test of Section 301(2) of the Act, I would find that Plaintiff's fatal event was work-related. As noted above, Plaintiff's work activities played an overwhelmingly large role in the development of his fatal coronary artery disease, and the nonwork factors were insignificant.

F. SECOND APPEAL TO WCAC

The WCAC affirmed in part as to proximate cause, but reversed as to the firefighter's presumption.[4] With regard to the proximate cause issue, the WCAC found:

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[4] With regard to the firefighters' presumption, the WCAC ruled:

> Defendant argues that the magistrate erred in applying the "firefighters presumption" found in § 405(2) and conditioned by § 405(3):
>
> > (2) Such respiratory and heart diseases or illnesses resulting therefrom are deemed to arise out of and in the course of employment in the absence of evidence to the contrary.
> >
> > (3) As a condition precedent to filing an application for benefits, the claimant, if he or she is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he or she, or his or her decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request 2 copies of the determination denying pension benefits, 1 copy of which may be filed with the bureau.
>
> We agree that the magistrate erred. The condition precedent in § 405(3) was not met. Mr. Paige had applied for and was receiving a disability pension prior to his demise. However, the magistrate found, in the alternative, that the

(continued…)

> Defendant argues that the "one most immediate, efficient and direct cause" preceding the death of Mr. Paige in 2001 was not his myocardial infarction of 1991. We would agree. Based on the medical testimony, as relied upon and given weight by the magistrate, the "one most immediate, efficient and direct cause" preceding the death of Mr. Paige in 2001 was his coronary artery disease. Doctors Zobl and Kelly explained in great detail how any preexisting coronary artery diseases that he may have experienced prior to 1991 was significantly aggravated by the myocardial infarction he suffered in 1991. *That MI was found to be work related. Since the 1991 MI was work related and a significant contributing factor to the coronary artery disease, a § 301(2) work related aggravation of the coronary artery disease has been established. The coronary artery disease, in turn, being work related and the "one most immediate, efficient and direct cause" preceding the death, establishes a compensable death claim.* [Emphasis added.]

Defendants now appeal by leave granted.

II. STANDARD OF REVIEW

Our review under the WDCA is limited. *Rakestraw v Gen Dynamics Land Sys*, 469 Mich 220, 224; 666 NW2d 199 (2003). We do not independently review whether the magistrate's findings of fact are supported by substantial evidence. See *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 698-699; 614 NW2d 607 (2000). Rather, our review is complete once we are satisfied that the WCAC has understood and properly applied its own standard of review. *Id*. at 700-702. In the absence of fraud, and as long as the WCAC did not "misapprehend or grossly misapply" the substantial evidence standard and the record reflects some competent evidence supporting the WCAC's decision, then this Court must treat the WCAC's factual decisions as conclusive. *Id*. at 702-703 (citation omitted). In contrast, the WCAC reviews the magistrate's findings under the substantial evidence test and may only substitute its own finding of fact for that of the magistrate in instances where substantial evidence does not support the magistrate's findings. *Id*. at 698-699.

III. PROXIMATE CAUSE

Defendants argue that the one most immediate, efficient, and direct cause preceding plaintiff's 2001 death was his coronary artery disease, not his myocardial infarction of 1991. We agree. Defendants, however, contend that the WCAC erred in finding that plaintiff's coronary

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> decedent's work activities played an overwhelmingly large role in the development of his fatal coronary artery disease, and that the nonwork factors were insignificant. That finding is supported by the competent, material and substantial evidence set forth above. It is that finding which is the basis of our conclusion to affirm.

artery disease was work-related and thus a compensable cause of death under the WDCA. On this point, we disagree.

Our Supreme Court has held that the phrase "the proximate cause" in MCL 418.375(2) refers to "the sole proximate cause." *Paige*, 476 Mich at 510. The Court ruled that, for an employer to be liable for death benefits, the "work-related injury must have been 'the one most immediate, efficient, and direct cause preceding [the death].'" *Id.* at 513 (citation omitted). Typically, the issue of proximate cause involves a factual question for decision by the trier of fact.[5] See *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002). In the workers' compensation arena, magistrates are the triers of fact, see *Civil Serv Comm'n v Dep't of Labor*, 424 Mich 571, 621-622; 384 NW2d 728 (1986), amended 425 Mich 1201 (1986), and this Court defers to the findings of the magistrate and the WCAC, see *Mudel*, 462 Mich at 698-703.

Here, the WCAC properly found that the most immediate, efficient and direct cause of plaintiff's death was his coronary artery disease, a worked-related injury. The record evidence cited by the WCAC supports its conclusion. The WCAC cited Dr. Goldberg, who testified that plaintiff suffered from coronary artery disease, which had been present since plaintiff's first myocardial infarction in 1991, a work-related injury. According to Dr. Goldberg, the 1991 infarction was an aggravation of the coronary artery disease. He further testified that plaintiff's left ventricle did not contract normally as a result of his previous myocardial infarctions, which likely could have progressively and cumulatively caused the left ventricle to malfunction, ultimately causing his death in 2001.[6] The WCAC also relied on testimony from Dr. Zobl, who opined that each of plaintiff's myocardial infarctions resulted in cumulative damage to his left ventricle and were part of the same disease process: coronary artery disease that eventually lead to plaintiff's demise. In addition, the WCAC relied on the testimony of Dr. Kelly, who observed that plaintiff had suffered from coronary artery disease as a result of his employment and which had been aggravated by the 1991 infarction.[7] Dr. Kelly testified that the same vessels were involved in plaintiff's subsequent cardiac events and an autopsy after plaintiff's death revealed that those same vessels were completely occluded. The WCAC thus decided that the plaintiff's coronary artery disease, which was aggravated by the 1991 work-related myocardial infarction, was a work-related injury and the proximate cause of plaintiff's death. We see no error with this conclusion, since at least some evidence was presented to support the conclusion that plaintiff's

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[5] Admittedly, courts may decide the issue of proximate cause as a matter of law if reasonable minds could not differ on the point. *Nichols v Dobler*, 253 Mich App 530, 532; 655 NW2d 787 (2002). Given the differing opinions of the medical experts here, however, we cannot conclude that reasonable minds could not differ on the point.

[6] We note that testimony belies defendants' contention that Dr. Goldberg never said that cumulative damage caused plaintiff's fatal heart attack.

[7] We reject defendants' attempt to discredit the testimony of Dr. Kelly given his alleged lack of expertise. This Court defers to the magistrate's decision regarding the credibility of testimony. Further, the fact that Dr. Kelly's testimony was similar to that of Dr. Zobl, on which the WCAC relied, bolsters its credibility.

coronary artery disease was work-related and was the most direct and immediate cause of his death.

Defendants, however, argue that the magistrate actually found two causes of death and that a finding of more than one cause is contrary to the Supreme Court's ruling in *Paige*. Specifically, defendants point to the magistrate's finding that a combination of coronary artery disease and the weakened condition of plaintiff's heart from his initial myocardial infarction in 1991 caused plaintiff's demise. Defendants also contend that the magistrate wrongly discounted the testimony of Dr. Levinson. We cannot agree with either of these points. This Court "may not substitute [its] own judgment for that of the WCAC by independently reviewing each magistrate's decision to determine whether there is competent, material, and substantial evidence on the whole record supporting the magistrate's findings of fact." *Mudel*, 462 Mich at 706. Rather, this Court considers the WCAC's findings of fact conclusive if any competent evidence in the record exists in support. MCL 418.861a(14). As we have already concluded, competent evidence supports the WCAC's findings. Further, defendants' argument as it relates to Dr. Levinson is unavailing. We do not review the magistrate's findings, but the WCAC's findings. In any event, the magistrate, as fact finder, may accept the medical evidence he finds most persuasive. *Miklik v Michigan Special Machine Co*, 415 Mich 364, 367; 329 NW2d 713 (1982).

Were we to adopt defendants' position in this appeal, we would be required to ignore the magistrate's and the WCAC's findings and reach alternate factual findings. Because this Court does not make independent factual findings in worker's compensation cases, we decline the invitation to do so.

Affirmed.

/s/ William B. Murphy
/s/ Kirsten Frank Kelly
/s/ Cynthia Diane Stephens