IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

DAVID A. DICKERSON,	:	APPEAL NO. C-180372 TRIAL NO. A-1702572
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
SARAH MORRISON, ACTING ADMINISTRATOR, OHIO BUREAU OF WORKERS' COMPENSATION,	:	
Defendant,	:	
and	:	
ROBERT MCCABE LUMBER, INC.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Robert McCabe Lumber, Inc., ("McCabe") appeals from a decision of the Hamilton County Court of Common Pleas allowing plaintiff-appellee David A. Dickerson to participate in the workers' compensation fund for the condition of a right shoulder strain. We find no merit in McCabe's sole assignment of error, and we affirm the trial court's judgment.

In its assignment of error, McCabe argues that the trial court erred in allowing Dickerson to participate in the workers' compensation fund. It argues that he failed to

show causation because his expert testified in terms of possibilities, and the expert's opinion was inconsistent and equivocal. This assignment of error is not well taken.

To establish a right to workers' compensation for harm or disability resulting from an accidental injury, the claimant must show by a preponderance of the evidence a causal connection between the injury and the harm or disability. *White Motor Corp. v. Moore*, 48 Ohio St.2d 156, 357 N.E.2d 1069 (1976), paragraph one of the syllabus; *Fox v. Indus. Comm.*, 162 Ohio St. 569, 125 N.E.2d 1 (1955), paragraph one of the syllabus. The trier of fact may determine the issue of proximate cause on the basis of probabilities. *Krull v. Ryan*, 1st Dist. Hamilton No. C-100019, 2010-Ohio-4422, ¶ 10. Where medical expert testimony is necessary to demonstrate causation, the testifying expert must be able to opine at a minimum, that the injury was more likely than not caused by or substantially aggravated by the accident. *Rubenbauer v. C.W. Zumbiel Co.*, 1st Dist. Hamilton No. C-120486, 2013-Ohio-929, ¶ 6; *Krull* at ¶ 14.

Dickerson's expert testified to a reasonable degree of medical certainty that Dickerson's injury was caused by the workplace accident Dickerson had described to him. The expert's testimony was not inconsistent or equivocal. Equivocation occurs when a doctor repudiates an earlier opinion, renders contradictory or uncertain opinions, or fails to clarify an ambiguous statement. *State ex rel. Eberhardt v. Flxible Corp.*, 70 Ohio St.3d 649, 657, 640 N.E.2d 815 (1994); *Rubenbauer* at ¶ 9. Nothing in the expert's testimony amounted to an equivocation.

McCabe argues that the expert relied on Dickerson's statements and nothing else. The fact that a doctor relies on the patient's account of an injury does not render the doctor's testimony unreliable. *See Riblet v. Dayton Foods Ltd. Partnership*, 2d Dist. Green No. 2006CA0058, 2007-Ohio-672, ¶ 18.

Additionally, McCabe argues that the expert equivocated because he acknowledged that it was possible that Dickerson's injury had a cause other than the injury Dickerson had described to him. But an expert must testify as to probabilities, not absolutes. The trier of fact "may determine the issue of proximate cause on the basis of probabilities and not necessarily on the basis of absolute fact." *Fox*, 162 Ohio St. 569, 125 N.E.2d 1, at paragraph two of the syllabus. We hold, therefore, that Dickerson's expert's testimony was sufficient to show proximate cause.

We review the trial court's decision under a manifest-weight-of-the-evidence standard. *Krull*, 1st Dist. Hamilton No. C-100019, 2010-Ohio-4422, at ¶ 9. This case largely came down to credibility, and the trial court found Dickerson's evidence to be more credible. After reviewing the record, we cannot say that the trier of fact clearly lost its way and created such a manifest miscarriage of justice that we must reverse the trial court's decision and order a new trial. Therefore, the judgment is not against the manifest weight of the evidence. *See Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 17-23; *Studnicka v. Bur. of Workers' Comp.*, 1st Dist. Hamilton No. C-110724, 2012-Ohio-4266, ¶ 5. Consequently, we overrule McCabe's assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry constitutes the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and **WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on October 11, 2019
per order of the court _____.
Presiding Judge