

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

APRIL D. EMMERT,	:	APPEAL NOS. C-070315
	:	TRIAL NO. A-0604842
Plaintiff-Appellant,	:	
	:	<i>DECISION.</i>
vs.	:	
	:	
WILLIAM MABE, Administrator of the	:	
Ohio Bureau of Workers' Compensation,	:	
	:	
Defendant,	:	
	:	
and	:	
	:	
UNITED CHURCH HOMES, INC.,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Reversed and Final Judgment Entered

Date of Judgment Entry on Appeal: April 18, 2008

Mark B. Weisser and Weisser & Wolf, for Plaintiff-Appellant,

Edna Scheuer, Michael A. Moskowitz, and Scheuer Mackin & Breslin, LLC, for Defendant-Appellee.

HILDEBRANDT, Judge.

{¶1} Plaintiff-appellant, April D. Emmert, appeals the summary judgment entered by the Hamilton County Court of Common Pleas in favor of defendant-appellee, United Church Homes, Inc. (“United”), on Emmert’s claim for benefits from the Ohio workers’ compensation fund.

{¶2} Emmert worked as a housekeeper at a nursing home operated by United. One afternoon, there was a Christmas party for the staff and residents. After the party, Emmert was cleaning up the dining room. She sat in a chair to pick up a piece of litter, and as she stood up, she felt a “pop” in her knee. She was later diagnosed with a knee strain and a torn meniscus.

{¶3} It was undisputed that it was within the scope of Emmert’s job duties to clean up after the party and that she was “on the clock” at the time of her injury.

{¶4} The Ohio Industrial Commission denied Emmert’s claim, and Emmert appealed that decision to the common pleas court. Emmert and United filed cross-motions for summary judgment, and the trial court granted summary judgment in favor of United.

{¶5} In a single assignment of error, Emmert now argues that the trial court erred in granting United’s motion for summary judgment and in denying her summary-judgment motion.

{¶6} Under Civ.R. 56(C), a motion for summary judgment may be granted only when no genuine issue of material fact remains to be litigated, the moving party is entitled to judgment as a matter of law, and it appears from the evidence that reasonable minds can come to but one conclusion, and with the evidence construed

most strongly in favor of the nonmoving party, that conclusion is adverse to that party.¹ This court reviews the granting of summary judgment de novo.²

{¶7} An injury is compensable under R.C. 4123.01(C) only if it is sustained “in the course of, and arising out of” the claimant’s employment. To determine whether there is a sufficient causal connection between a worker’s injury and her employment to justify participation in the worker’s compensation fund, a court must consider the totality of the circumstances surrounding the injury, including (1) the proximity of the scene of the accident to the place of employment; (2) the degree of control the employer had over the scene of the accident; and (3) the benefit the employer received from the employee’s presence at the scene of the accident.³ The phrase “in the course of, and arising out of” is to be liberally construed in favor of awarding benefits.⁴

{¶8} In this case, the totality of the circumstances established that Emmert’s injury was sustained “in the course of, and arising out of” her employment with United. Emmert’s fall occurred at the scene of her employment in a place over which United had complete control. United received a direct benefit from Emmert’s presence at the scene of the accident, because Emmert was performing her assigned duties when the injury occurred.

{¶9} In granting United’s motion for summary judgment, the trial court relied heavily on the decision of the Eleventh Appellate District in *Dailey v. AutoZone*.⁵ In *Dailey*, a cashier felt a sharp pain in his back as he was turning to

¹ See *State ex rel. Howard v. Ferreri*, 70 Ohio St.3d 587, 589, 1994-Ohio-130, 639 N.E.2d 1189.

² *Jorg v. Cincinnati Black United Front*, 153 Ohio App.3d 258, 2003-Ohio-3668, 792 N.E.2d 781, at ¶6.

³ *Fisher v. Mayfield* (1990), 49 Ohio St.3d 275, 277, 551 N.E.2d 1271, citing *Lord v. Daugherty* (1981), 66 Ohio St.2d 441, 423 N.E.2d 96, syllabus.

⁴ R.C. 4123.95; *Fisher*, supra, at 278, 551 N.E.2d 1271.

⁵ (Sept. 29, 2000), 11th Dist. No. 99-T-0146.

show a receipt to his manager.⁶ The court held that the back sprain was not compensable because it arose from a “normal movement that could easily have occurred at home, or any other place other than work. It was not specifically associated with his work nor could it be considered a hazard of working at AutoZone.”⁷

{¶10} The case at bar is distinguishable from *Dailey*. Whereas the employee’s act of turning to talk to his manager was merely incidental to his job duties, Emmert’s bending down to pick up litter or debris was the very essence of her job as a housekeeper. That she could have sustained the injury at home or elsewhere was immaterial in light of the uncontroverted evidence that the performance of her job duties had directly led to her injuries.

{¶11} An employer is not an insurer of its employees.⁸ But bearing in mind that the workers’ compensation statutes are to be liberally construed, we hold, on the specific facts presented in this case, that Emmert was entitled to participate in the fund.

{¶12} The assignment of error is sustained. We reverse the judgment of the trial court and hereby enter final judgment ordering that Emmert be entitled to participate in the workers’ compensation fund.

SUNDERMANN, P.J., concurs.

DINKELACKER, J., dissents.

DINKELACKER, J., dissenting.

{¶13} Because the majority’s holding essentially makes employers strictly liable for any injury occurring at the workplace—making them insurers of their employees—I respectfully dissent.

⁶ Id.

⁷ Id.

⁸ See, e.g., *Phelps v. Positive Action Tool Co.* (1986), 26 Ohio St.3d 142, 144, 497 N.E.2d 969.

{¶14} The record before this court contains little information regarding the nature of Emmert’s injury other than that she heard a pop while rising from a chair. There was no evidence that she was injured by something that she was required to do for her work—such as lifting a heavy object. In fact, the record indicates that she had stood up after picking up a napkin.

{¶15} An injury that occurs while the employee is doing nothing more than standing up from a seated position indicates that there is some idiopathic cause for the injury. When an injury is idiopathic in origin, that is, one that derives from a sickness or weakness peculiar to the claimant, it is not causally connected to employment.⁹ In workers' compensation cases involving an unexplained injury, the claimant has the burden of eliminating idiopathic causes.¹⁰ Once the claimant has met that burden, an inference arises that the injury was work-related.¹¹

{¶16} I do not believe that Emmert met her burden to eliminate idiopathic causes for the injury. While she submitted an affidavit indicating that she had not injured her knee in the past, and that her knee had not been previously treated, I do not believe that this was sufficient. The affidavit did not state that she had not had problems with her knee in the past, nor did it rule out the possibility that her knee was internally weak for reasons not related to her employment. Even if it did, I

⁹ *Riley v. Conrad*, 2nd Dist. No. 18822, 2001-Ohio-1831, citing *Waller v. Mayfield* (1988), 37 Ohio St.3d 118, 121, 524 N.E.2d 458, fn. 3.

¹⁰ *Id.*, citing *Waller* at paragraph two of the syllabus.

¹¹ *Id.*

believe that a claimant cannot meet her burden to eliminate idiopathic causes that are inherent to the structure of her knee without some expert testimony.¹²

{¶17} At the very least, the record is not sufficiently developed to make a determination on idiopathic causes. In *Waller v. Mayfield*, the Ohio Supreme Court faced a similarly underdeveloped record. In that case, the court determined that “[f]urther development of the evidence by both parties [was] necessary.”¹³

{¶18} Emmert failed to eliminate idiopathic causes for the knee injury, and I would affirm the judgment of the trial court for that reason. Alternatively, if the issue of idiopathic causes has not been sufficiently developed in this case, I would support only a remand for further proceedings on that issue.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

¹² See, e.g., *Thatcher v. Exterior Systems, Inc.*, 5th Dist. No. 07 CA 53, 2008-Ohio-899 (claimant presented expert testimony that he was in “excellent health and had no history of seizures” and the appellate court concluded that the trial court “had sufficient evidence before it eliminating idiopathic causes * * *”); *Stewart v. B.F. Goodrich Co.* (1993), 89 Ohio App.3d 35, 42, 623 N.E.2d 591 (“[A]ppellant’s treating physician specifically testified that he was able to rule out all preexisting physical weakness, diseases, or conditions, i.e., all idiopathic reasons, that could have caused appellant’s syncopal episode. * * * Therefore, Dr. Dennis’s deposition testimony was sufficient, when construing it most strongly in appellant’s favor, to eliminate idiopathic causes for appellant’s injuries and raise the inference that the unexplained syncopal episode arose out of appellant’s employment.”).

¹³ *Waller*, 37 Ohio St.3d at 125, 524 N.E.2d 458.