

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

VENETA MCDANIEL,	:	APPEAL NO. C-070658
	:	TRIAL NO. A-0604481
Plaintiff-Appellant,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
JEWISH HOSPITAL OF CINCINNATI,	:	
INC.,	:	
	:	
Defendant-Appellee,	:	
	:	
and	:	
	:	
WILLIAM E. MABE,	:	
ADMINISTRATOR, OHIO BUREAU	:	
OF WORKERS' COMPENSATION,	:	
	:	
Defendant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.<sup>1</sup>

Following a bench trial, plaintiff-appellant Veneta McDaniel appeals from the entry of the judgment for defendant-appellee, the Jewish Hospital of Cincinnati, Inc., on McDaniel's 2005 application to add a claim for myofascial pain syndrome to her workers' compensation claim for a lumbrosacral sprain sustained in a 1999 industrial accident.

In two assignments of error, McDaniel argues that the trial court's judgment was based on insufficient evidence and was against the manifest weight of the evidence. In a

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

civil proceeding, however, distinctions between the weight and the sufficiency of the evidence are not recognized.<sup>2</sup> Therefore, in the appeal of a civil case, the test for the sufficiency and the manifest weight of the evidence is essentially the same.<sup>3</sup> Under the civil standard, as long as some competent and credible evidence supports the trial court's judgment, it will not be reversed.<sup>4</sup>

McDaniel argues that since the trial court discounted the testimony of Jewish Hospital's medical expert, the trial court should have been obligated to adopt the testimony of her medical expert and to rule in her favor.

We are guided by the principle that whether the case is "civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts."<sup>5</sup> This rule also applies to the evaluation of expert testimony. The trial court, sitting as the trier of fact in this case, was free to accept all, part, or none of McDaniel's testimony and that of her medical expert.<sup>6</sup> As a claimant seeking to participate in the workers' compensation fund, McDaniel bore the burden of proof at trial.<sup>7</sup>

Here, the trial court reviewed McDaniel's own testimony, the testimony of her medical expert, and the records of McDaniel's medical treatments. Its conclusion that McDaniel had not established a causal connection between her 1999 accident and the 2005 diagnosis that she was suffering from myofascial pain syndrome was supported by competent, credible evidence and will not be disturbed on appeal.

The first and second assignments of error are overruled. Therefore, the trial court's entry of judgment for Jewish Hospital is affirmed.

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<sup>2</sup> See *State v. Hunter* (2001), 144 Ohio App.3d 116, 121, 759 N.E.2d 809.

<sup>3</sup> See *Capeheart v. O'Brien*, 1st Dist. No. C-040223, 2005-Ohio-3033, at ¶11.

<sup>4</sup> See *Myers v. Garson*, 66 Ohio St.3d 610, 1993-Ohio-9, 614 N.E.2d 742; *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, syllabus; see, also, *Stand Energy Corp. v. Cinergy Serv.* (2001), 144 Ohio App.3d 410, 417, 760 N.E.2d 453.

<sup>5</sup> See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

<sup>6</sup> See *McKay Machine Co. v. Rodman* (1967), 11 Ohio St.2d 77, 82, 228 N.E.2d 304.

<sup>7</sup> See *Zuljevic v. Midland-Ross Corp., Unitcase Div.* (1980), 62 Ohio St.2d 116, 118, 403 N.E.2d 986.

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

**SUNDERMANN, P.J., HENDON and CUNNINGHAM, J.J.**

*To the Clerk:*

Enter upon the Journal of the Court on September 10, 2008  
per order of the Court \_\_\_\_\_.  
Presiding Judge