

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

SHEILA DAVIS,	:	APPEAL NO. C-140664
	:	TRIAL NO. A-1207984
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF CINCINNATI,	:	
	:	
and	:	
STEPHEN BUEHRER,	:	
ADMINISTRATOR, OHIO BUREAU	:	
OF WORKERS' COMPENSATION,	:	
	:	
Defendants-Appellees.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On June 5, 2007, plaintiff-appellant Sheila M. Davis injured her left leg while working for defendant-appellee city of Cincinnati. She was initially treated at the emergency room and later saw a doctor with the city's employee health services. That doctor noted some abrasions and scrapes, but did not initially believe her knee was involved in the incident. A few weeks later, Davis returned and reported that she had started experiencing knee pain. She was then referred to Dr. Sambhu Choudhury, an orthopedic specialist. He ordered an MRI, which revealed a ganglion cyst and some degenerative changes in the patellofemoral compartment. He also prescribed a few months of physical therapy. She was released from his care on September 14. She followed up shortly after with the employee-health-services doctor who said that she was "asymptomatic today and has a normal knee exam." He determined that she could resume regular duty without further care.

A year-and-a-half later, Davis returned to Dr. Choudhury for “occasional pain going up and down the stairs and discomfort with longer periods of mobility.” He noted that she had full range of motion, normal gait and good stability. He recommended that she return to physical therapy and follow-up in two months. She did not perform the physical therapy and did not seek further treatment for over two years.

On August 5, 2011, Davis returned to see an employee-health-services doctor complaining of knee pain. She told him that her pain dated back to the 2007 injury. She also complained of pain in her right foot. That doctor said that neither condition was related to her work and placed her on restricted duty. Davis then consulted with another orthopedic specialist, who diagnosed her with early degenerative arthritis and administered a steroid injection. He did not believe that her condition was related to her work injury, because it “occurred over four years ago, and she has had only intermittent symptoms.”

Davis then returned to see Dr. Choudhury. He said that she “had presumably a tibial stress fracture and insult to the articular surface of the knee.” She told him that she has “consistently had pain since that time.” Dr. Choudhury concluded that “this appears to be a direct continuity with her work compensation injury and should be considered part of that claim.”

Davis’s workers’ compensation claim was initially allowed for contusion to the lower leg, abrasion of the lower leg, traumatic hematoma, and medial collateral ligament strain of the left knee. Davis later sought to amend her claim to seek coverage for substantial aggravation of the preexisting osteoarthritis of the left knee. That claim was denied, and Davis filed an appeal in the trial court. The trial court conducted a bench trial in which it heard the testimony of Davis, and reviewed the deposition testimony of Dr. Choudhury and Dr. Seth Vogelstein, an anesthesiologist

and independent medical examiner hired by the city. The trial court found that Davis was not entitled to participate in the fund for the additional claimed condition.

In her first assignment of error, Davis claims that the trial court improperly applied R.C. 4123.01(C). This statute specifies that a workplace injury is compensable if it is an “injury \* \* \* received in the course of, and arising out of, the injured employee's employment.” The subdivisions of R.C. 4123.01(C) qualify the definition of a compensable injury. R.C. 4123.01(C)(4) provides that an injury does not include a condition that preexisted an injury unless that preexisting condition is “substantially aggravated” by the injury, as documented by certain objective evidence. *Pflanz v. Lof*, 1st Dist. Hamilton No. C-100574, 2011-Ohio-2670, ¶ 11-12. To be compensable, the aggravation of a preexisting condition must be “substantial both in the sense of being considerable and in the sense of being firmly established through the presentation of objective evidence.” *Id.* at ¶ 18.

In this case, the trial court noted that “there is no question that based on the three MRIs, the question of the condition of osteoarthritis of the left knee has been substantially proven by the plaintiff to have increased from 2007 to 2013.” The trial court then quoted testimony from both Dr. Choudhury and Dr. Vogelstein describing Davis’s condition as “gradually worsening” over that period. The trial court concluded its discussion by noting Dr. Vogelstein’s observation that “a mild progression is not a substantial progression or a substantial aggravation.” After this analysis, the trial court announced its decision to affirm the denial of the claim.

On this record, we cannot say that the trial court incorrectly applied R.C. 4123.01(C) and our opinion in *Pflanz*, and we overrule Davis’s first assignment of error.

In her second assignment of error, Davis claims that the decision was against the manifest weight of the evidence. This court will not reverse a trial court's decision on manifest-weight-of-the-evidence grounds unless, after reviewing all

evidence and reasonable inferences and considering the credibility of the witnesses, we determine that the trier of fact lost its way and created such a manifest miscarriage of justice that we must reverse its decision. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 14-23, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

In this case, the record supports the finding that the accident did not substantially aggravate Davis's arthritis. While it is true that the trial court found that Dr. Choudhury was more credible than Dr. Vogelstein, the trial court also concluded that both had suggested that Davis's complaints were the result of "the gradual worsening of the arthritic condition over a seven-year period." And when Dr. Choudhury was specifically asked if the condition had been "substantially aggravated" by the workplace injury, he could only say that "it was exacerbated by the injury—or I'm sorry—aggravated by the injury."

On this record, we cannot say that the trial court's decision was against the manifest weight of the evidence. We overrule Davis's second assignment of error, and affirm the judgment of the trial court.

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

**HENDON, P.J., MOCK and STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on December 23, 2015  
per order of the court \_\_\_\_\_.  
Presiding Judge