## MEMORANDUM DECISION




ATTORNEY FOR APPELLANT

W. Russell Sipes
Sipes Law Firm PC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Sarah N. Dimmich
Shawna M. VanHook
Stuart & Branigin, LLP
Lafayette, Indiana

Carl J. Summers
Evan M. Tager
Mayer Brown
Washington, D.C.

# IN THE COURT OF APPEALS OF INDIANA

Edward Eggers,
*Appellant-Plaintiff,*

v.

CSX Transportation, Inc.,
*Appellee-Defendant*.

September 27, 2022

Court of Appeals Case No. 22A-CT-33

Appeal from the Marion Superior Court

The Honorable John Chavis, II, Judge

Trial Court Cause No. 49D05-1911-CT-48390

**Mathias, Judge.**

[1] Edward Eggers appeals the Marion Superior Court's entry of summary judgment for CSX Transportation, Inc. ("CSX") on Eggers's complaint alleging negligence under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. §§ 51-60 (2022). Eggers raises a single issue for our review, namely, whether the trial court erred when it entered summary judgment for CSX. We affirm.

## Facts and Procedural History

[2] Eggers began working for CSX in 2008. In December 2016, Eggers reported for work at CSX's Hawthorne Yard in Indianapolis. He was asked to place ice melt on track switches, which required driving the ice melt in a pickup truck to the switches, moving a five-gallon bucket that held the ice melt from the back of the truck to near the switch, and then spraying the switch.

[3] About two or three hours into this work, Eggers and a coworker arrived at one of the switches to spray ice melt on it. Eggers inspected the area around the bucket and noticed nothing unusual. He then began to lift the bucket of ice melt, but "the bucket came free" unexpectedly. Appellant's App. Vol. 2, p. 44. Eggers felt like he "pulled [a] muscle" in his left arm. *Id.* at 45. He mentioned to his coworker that his "arm didn't feel right," but he continued and completed his work for the day and did not inform a manager that he had been injured because he "didn't really think [he] was injured." *Id.* at 53.

[4] A few days later, Eggers noticed the pain in his left arm "getting worse" with "shooting pain" and numbness in his hand. *Id.* Eggers saw Dr. Ripley Worman at IU Health West Hospital. Dr. Worman diagnosed Eggers with carpal tunnel

syndrome in his left wrist and cubital tunnel syndrome in his left elbow. Eggers subsequently had surgery on his left arm, which resolved his pain and caused him to miss a few months of work.

[5] Thereafter, Eggers sued CSX under FELA for damages related to the alleged workplace injury to his left arm. CSX moved for summary judgment and designated the deposition of Dr. Worman as evidence. In that deposition, Dr. Worman testified as follows:

> A It just sounds to me like the bucket fell and his arm pulled.
>
> * * *
>
> Q [by CSX's counsel:] And is it unlikely that this event caused either condition that Mr. Eggers had?
>
> * * *
>
> A Either condition being carpal or cubital tunnel syndrome?
>
> Q Yes.
>
> A It is more likely than not that the symptoms were caused by something else than . . . a pulling injury like that.
>
> Q And, Doctor, why do you say that?
>
> A Because most times when we're talking about an injury causing cubital or carpal tunnel, it's a direct blow to the area around the cubital or carpal tunnel. It's stretching of the nerve

because of swelling or pressure. When the arm is pulled on, as described in . . . the patient's testimony, the nerve doesn't stretch that much in that sense to cause any kind of injury. And it's less likely to be that as opposed to something causing swelling around the nerve causing the compression.

* * *

. . . He was bringing a bucket down and he's not sure what happened but it pulled his arm. It's just not a typical mechanism for carpal or cubital tunnel syndrome to evolve from.

Q [by Eggers's counsel:] It's not typical but is it possible?

A Anything's possible, yes.

* * *

Q [by CSX's counsel:] . . . [O]ne last question. I know earlier you said that anything is possible as far as causes of Mr. Eggers'[s] condition, but would you say that it's unlikely caused by his work injury?

* * *

A The specific mechanism that we were discussing is unlikely to cause carpal and cubital tunnel syndrome requiring surgical intervention.

Appellant's App. Vol. 4, pp. 177-78, 180, 184-85. No other expert testimony relating to medical causation was designated by the parties. After a hearing, the trial court granted CSX's motion for summary judgment. This appeal ensued.

## Standard of Review

[6] Eggers appeals the trial court's entry of summary judgment for CSX. Although FELA establishes a federal cause of action, those actions may be adjudicated in state courts. *Gouge v. N. Ind. Commuter Transp. Dist.*, 670 N.E.2d 363, 365 (Ind. Ct. App. 1996). When they are, federal substantive law governs the merits of the FELA claim, but state procedural rules govern the proceedings. *Id.* Indiana's procedural rules include our Trial Rules and our Rules of Evidence. *Cf. Church v. State*, 189 N.E.3d 580, 588-89 (Ind. 2022) ("th[e] power to make substantive law is exclusive to the General Assembly—our judicially created rules cannot abrogate or modify substantive law," and "a substantive right . . . can be conferred only by the Legislature, but the method and time of asserting such right are matters of procedure . . . .") (quotation marks and emphases removed).

[7] Indiana's appellate standard of review in summary judgment appeals is well established. As our Supreme Court has made clear,

> [w]e review summary judgment de novo, applying the same standard as the trial court: "Drawing all reasonable inferences in favor of . . . the non-moving parties, summary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp*, 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if its resolution would affect the outcome of the case, and an issue is 'genuine' if a trier of fact is required to resolve the parties' differing accounts of the truth, or if the

> undisputed material facts support conflicting reasonable inferences." *Id.* (internal citations omitted).
>
> The initial burden is on the summary-judgment movant to "demonstrate [ ] the absence of any genuine issue of fact as to a determinative issue," at which point the burden shifts to the non-movant to "come forward with contrary evidence" showing an issue for the trier of fact. *Id.* at 761-62 (internal quotation marks and substitution omitted). And "[a]lthough the non-moving party has the burden on appeal of persuading us that the grant of summary judgment was erroneous, we carefully assess the trial court's decision to ensure that he was not improperly denied his day in court." *McSwane v. Bloomington Hosp. & Healthcare Sys.*, 916 N.E.2d 906, 909-10 (Ind. 2009) (internal quotation marks omitted).

*Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014) (omission and some alterations original to *Hughley*).

## CSX's Designated Evidence Negated FELA's Element of Causation

[8] In its motion for summary judgment, CSX asserted that its designated evidence negated several elements of Eggers's FELA claim. We need only consider the following dispositive question on appeal: whether CSX's designated evidence,

namely, Dr. Worman's deposition, negated Eggers's claim of causation under FELA.[1] We agree with the trial court that it did.[2]

[9] Under FELA, a railroad "shall be liable in damages to any person suffering injury while he is employed . . . for such injury . . . *resulting in whole or in part* from the negligence" of the employer. 45 U.S.C. § 51 (emphasis added). As the Supreme Court of the United States has explained:

> FELA's language on causation . . . "is as broad as could be framed." *Urie v. Thompson*, 337 U.S. 163, 181, 69 S. Ct. 1018, 93 L. Ed. 1282 (1949). Given the breadth of the phrase "resulting in whole or in part from the [railroad's] negligence," and Congress' "humanitarian" and "remedial goal[s]," we have recognized that, in comparison to tort litigation at common law, "a relaxed standard of causation applies under FELA." *[Consol. Rail Corp. v.] Gottshall*, 512 U.S. [532,] 542–543, 114 S. Ct. 2396 [(1994)]. In our 1957 decision in *Rogers [v. Missouri Pac. R.R. Co.*, 352 U.S. 500], we described that relaxed standard as follows:
>
> > "Under [FELA] the test of a jury case is simply whether the proofs justify with reason the conclusion that employer

---

[1] In his brief, Eggers asserts that "[t]here was nothing in [CSX's] Motion for Summary Judgment to suggest that [CSX] was disputing that either the incident did not occur or that Eggers was injured as a result of the incident." Appellant's Br. at 29. First, Eggers did not include CSX's motion for summary judgment in the Appellant's Appendix; thus, he is unable to support his assertion with citations to the record, as required under Indiana Appellate Rule 46(A)(8)(a). Second, insofar as Eggers's assertion is that CSX did not challenge causation in its motion for summary judgment, we have reviewed CSX's motion and supporting brief through Odyssey, and Eggers is plainly not correct. *See* Ind. Appellate Rule 2(L) ("The Record on Appeal shall consist of . . . all proceedings before the trial court . . . whether or not . . . transmitted to the Court on Appeal.").

[2] Eggers repeatedly notes in his brief on appeal that the trial court did not fully explain its reasoning in entering summary judgment for CSX. *See, e.g.*, Appellant's Br. at 30. Of course, the trial court had no such obligation, and our review of the court's judgment is de novo regardless of whether the trial court explained itself. *See, e.g.*, *In re Estate of Kent*, 99 N.E.3d 634, 637 (Ind. 2018).

> negligence played any part, even the slightest, in producing the injury or death for which damages are sought." 352 U.S., at 506, 77 S. Ct. 443.

. . . In [petitioner's] view, . . . *Rogers* was a narrowly focused decision that did not touch, concern, much less displace common-law formulations of "proximate cause."

Understanding this argument requires some background. The term "proximate cause" is shorthand for a concept: Injuries have countless causes, and not all should give rise to legal liability. *See* W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts § 42, p. 273 (5th ed. 1984) (hereinafter Prosser and Keeton). "What we . . . mean by the word 'proximate,'" one noted jurist has explained, is simply this: "[B]ecause of convenience, of public policy, of a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point." *Palsgraf v. Long Island R. Co.*, 248 N.Y. 339, 352, 162 N.E. 99, 103 (1928) (Andrews, J., dissenting). Common-law "proximate cause" formulations varied, and were often both constricted and difficult to comprehend. *See* T. Cooley, Law of Torts 73–77, 812–813 (2d ed. 1888) (describing, for example, prescriptions precluding recovery in the event of any "intervening" cause or any contributory negligence). Some courts cut off liability if a "proximate cause" was not the sole proximate cause. Prosser and Keeton § 65, p. 452 (noting "tendency . . . to look for some single, principal, dominant, 'proximate' cause of every injury"). . . .

* * *

. . . The employee in [*Rogers*] was injured while burning off weeds and vegetation that lined the defendant's railroad tracks. A passing train had fanned the flames, which spread from the vegetation to the top of a culvert where the employee was

standing. Attempting to escape, the employee slipped and fell on the sloping gravel covering the culvert, sustaining serious injuries. 352 U.S., at 501–503, 77 S. Ct. 443. A Missouri state-court jury returned a verdict for the employee, but the Missouri Supreme Court reversed. Even if the railroad had been negligent in failing to maintain a flat surface, the court reasoned, the employee was at fault because of his lack of attention to the spreading fire. *Rogers v. Thompson*, 284 S.W.2d 467, 472 (1955). As the fire "was something extraordinary, unrelated to, and disconnected from the incline of the gravel," the court felt "obliged to say [that] plaintiff's injury was not the natural and probable consequence of any negligence of defendant." *Ibid.*

We held that the jury's verdict should not have been upset. Describing two potential readings of the Missouri Supreme Court's opinion, we condemned both. First, the court erred in concluding that the employee's negligence was the "sole" cause of the injury, for the jury reasonably found that railroad negligence played a part. *Rogers*, 352 U.S., at 504–505, 77 S. Ct. 443. Second, the court erred insofar as it held that the railroad's negligence was not a sufficient cause unless it was the more "probable" cause of the injury. *Id.*, at 505, 77 S. Ct. 443. FELA, we affirmed, did not incorporate any traditional common-law formulation of "proximate causation[,] which [requires] the jury [to] find that the defendant's negligence was the sole, efficient, producing cause of injury." *Id.*, at 506, 77 S. Ct. 443. Whether the railroad's negligent act was the "immediate reason" for the fall, we added, was "an irrelevant consideration." *Id.*, at 503, 77 S. Ct. 443. We then announced the "any part" test, *id.*, at 506, 77 S. Ct. 443, and reiterated it several times. *See, e.g.*, *id.*, at 507, 77 S. Ct. 443 ("narro[w]" and "single inquiry" is whether "negligence of the employer played any part at all" in bringing about the injury); *id.*, at 508, 77 S. Ct. 443 (FELA case "rarely presents more than the single question whether negligence of the employer played any part, however small, in the injury").

* * *

> A few years later, in *Gallick v. Baltimore & Ohio R. Co.*, 372 U.S. 108, 83 S. Ct. 659, 9 L.Ed.2d 618 (1963), we held jury findings for the plaintiff proper in a case presenting the following facts: For years, the railroad had allowed a fetid pool, containing "dead and decayed rats and pigeons," to accumulate near its right-of-way; while standing near the pool, the plaintiff-employee suffered an insect bite that became infected and required amputation of his legs. *Id.*, at 109, 83 S. Ct. 659. The appellate court had concluded there was insufficient evidence of causation to warrant submission of the case to the jury. *Id.*, at 112, 83 S. Ct. 659. We reversed, reciting the causation standard *Rogers* announced. 372 U.S., at 116–117, 120–121, 83 S. Ct. 659. *See also Crane v. Cedar Rapids & Iowa City R. Co.*, 395 U.S. 164, 166–167, 89 S. Ct. 1706, 23 L.Ed.2d 176 (1969) (contrasting suit by railroad employee, who "is not required to prove common-law proximate causation but only that his injury resulted 'in whole or in part' from the railroad's violation," with suit by nonemployee, where "definition of causation . . . [is] left to state law"); *Gottshall*, 512 U.S., at 543, 114 S. Ct. 2396 ("relaxed standard of causation applies under FELA").

*CSX Transp., Inc. v. McBride*, 564 U.S. 685, 691-94, 697 (2011) (some alterations original to *McBride*) (footnotes omitted).

[10] However, while proof of causation under FELA is more "relaxed" vis-à-vis common-law proximate causation, FELA is not a strict liability statute:

> As we explained in *Lisek v. Norfolk & Western Ry. Co.*, 30 F.3d 823, 832 (7th Cir. 1994), *cert. denied*, 513 U.S. 1112, 115 S. Ct. 904, 130 L.Ed.2d 787 (1995), a FELA action must be submitted to a jury, rather than resolved on summary judgment, even where the evidence of employer negligence is only slight. But that

> relaxed evidentiary standard does not mean that a trial is required where the plaintiff comes forward with next to no evidence at all, for FELA is not a strict liability statute. *See Lisek*, 30 F.3d at 832 ("[A] FELA plaintiff is not impervious to summary judgment. If the plaintiff presents no evidence whatsoever to support the inference of negligence, the railroad's summary judgment motion is properly granted."); *see also Robert v. Consolidated Rail Corp.*, 832 F.2d 3, 6 (1st Cir. 1987).

*Doty v. Illinois Cent. R. Co.*, 162 F.3d 460, 463 (7th Cir. 1998) (alteration original to *Doty*; some citations omitted).

[11] Our Court's precedents are clear that "[t]he development and cause of an ailment . . . is a complicated medical question requiring expert testimony" in all but the most obvious scenarios. *Turner v. Davis*, 699 N.E.2d 1217, 1220 (Ind. Ct. App. 1998), *trans. denied*. And we have previously held that carpal tunnel syndrome and similar ailments are within the complicated medical questions requiring expert testimony to establish causation:

> when the cause of the injury is not one which is apparent to a lay person and multiple factors may have contributed to causation, expert evidence on the subject is required.
>
> Here, our review of the record reveals that although [the plaintiff] testified that his employment as a bus driver caused his carpal tunnel syndrome, none of [his] medical records contained an opinion as to the cause of [his] condition. [The plaintiff] was the only witness, and no other evidence of causation was introduced. Because there are many causes of carpal tunnel syndrome, and [the plaintiff] has a prior history of hand numbness . . . , expert testimony on the cause of [his] carpal tunnel syndrome was

> required. [His] failure to introduce such testimony is fatal to his claim.

*Muncie Ind. Transit Auth. v. Smith*, 743 N.E.2d 1214, 1217-18 (Ind. Ct. App. 2001); *accord Hoeft v. Harrop*, 366 Fed. Appx. 681, 682-83 (7th Cir. 2010).

[12] Here, Eggers's complaint alleged that he developed carpal and cubital tunnel syndromes as a result of lifting the ice melt out of the pickup truck while working for CSX. In support of its motion for summary judgment, CSX designated the deposition testimony of Dr. Worman, Eggers's treating physician. Dr. Worman unequivocally testified that the alleged incident—lifting the ice melt out of the truck—was "unlikely" to have been the cause of Eggers's carpal and cubital tunnel syndromes. Appellant's App. Vol. 4, pp. 177-78, 180, 184-85. While Dr. Worman added that "[a]nything's possible," a reasonable fact-finder would not be able to do any more than speculate from that statement that causation here existed. *See id.* at 180. Thus, CSX's designated evidence established a prima facie showing that the alleged negligence here played no part, even a slight one, in Eggers's injuries.

[13] Eggers did not designate any expert testimony to rebut Dr. Worman's opinion. Instead, Eggers asserts that his own testimony that he was injured at work, and the testimony of other nonexperts who saw Eggers with an apparent arm injury at or near that time, is sufficient to establish a genuine issue of material fact on the issue of causation. But, as we have held, "[b]ecause there are many causes of carpal tunnel syndrome" and cubital tunnel syndrome, "expert testimony on the cause" of those syndromes is "required." *Smith*, 743 N.E.2d at 1217-18.

Absent such evidence, Eggers is unable to rebut CSX's prima facie showing that there is no causation under FELA here.

[14] Indeed, much of Eggers's argument in his brief on appeal is to emphasize the "relaxed" burden of proof he faces in showing causation under FELA. But Eggers's argument is neither here nor there under Indiana's procedural rules for summary judgment. Again, under our well-established procedure, the burden here was on CSX to affirmatively negate the element of causation. *See Hughley*, 15 N.E.3d at 1003-04. As explained above, CSX has met that burden. We therefore affirm the trial court's entry of summary judgment for CSX.

[15] Affirmed.

Robb, J., and Weissmann, J., concur.