REL: May 22, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180338

Jerry Mohr

v.

CSX Transportation, Inc.

Appeal from Mobile Circuit Court
(CV-17-902900)

MITCHELL, Justice.

In April 2017, Jerry Mohr, a Mobile County resident and an employee of CSX Transportation, Inc. ("CSX"), was injured in an on-the-job accident while working on a crew that was repairing a section of CSX railroad track near the Chef

Menteur Bridge in Louisiana. Mohr sued CSX in the Mobile Circuit Court, asserting a negligence claim under the Federal Employers' Liability Act ("FELA"), 45 U.S.C. § 51 et seq. The trial court ultimately entered a summary judgment in favor of CSX. Mohr appeals that judgment, arguing that there are genuine issues of material fact that can only be resolved by a jury. We affirm the judgment.

Facts and Procedural History

Mohr has been employed by CSX in various positions since August 2000. Sometime in 2016, he began working as a traveling bridge mechanic. On April 17, 2017, Mohr was assigned to a crew making repairs to a section of railroad track that had washed out near the Chef Menteur Bridge outside New Orleans. The crew's specific job on this date involved using a crane to load bundles of sheet piling -- narrow 25-foot-long interlocking pieces of steel -- onto a flatbed railcar, transporting that loaded railcar to the area where the railroad track had washed out, and then using a crane to unload the bundles. An outside contractor then installed the sheet piling by driving it into the ground alongside the base of the railbed, thus shielding the railbed from further

erosion caused by the adjacent water. Mohr and his crew loaded and unloaded railcars throughout the day on April 17, and again on April 18, without incident.

In accordance with CSX policy, each work day began with a job briefing and safety meeting at which the crew members discussed issues that might arise in connection with the tasks they were performing that day. On April 19, Mohr's crew began their day with such a meeting, which was conducted by telephone with their supervisor Brian May, who was working in Evergreen. The crew then proceeded to load, transport, and unload two more railcars of sheet piling. After loading and transporting a third railcar, they began unloading it in the same manner they had unloaded the previous railcars that day and over the two previous days. One crew member, operating a crane mounted to the end of the railcar, maneuvered the boom of the crane over a bundle of sheet piling while Mohr and another bridge mechanic, William Laufhutte, stood on the railcar at opposite ends of the bundle and attached crane cables to the chains that bundled several pieces of sheet piling together. Laufhutte also attached a "tag line" to his end of the bundle, which was used to control the load once it

was lifted so that it could be guided to its destination without uncontrolled rotation. CSX's safety rules required employees working with suspended loads to use tag lines when moving loads that were to be lifted higher than knee level, but no rule dictated the number of tag lines that must be used.

After Mohr and Laufhutte finished attaching the crane cables and tag line to a bundle, they backed away and a signal was given to the crane operator to lift the bundle approximately two to three feet high. In accordance with CSX safety rules, Mohr and Laufhutte then used their gloved hands as needed to steady the bundle and to keep it parallel to the railcar as the crane began swinging the bundle to the side. Once Mohr and Laufhutte reached the edge of the railcar, they removed their hands from the bundle and a crew member on the ground, who took possession of the tag line after it was attached by Laufhutte, assumed control over the bundle, rotated it 90 degrees, and guided it as the crane placed it on the riprap covering the sloped side of the elevated railbed.[1]

[1]During his deposition, Laufhutte described the riprap as "football sized rocks" that were placed on the side of the railbed for erosion control.

As the crew was unloading the third bundle from the third railcar on April 19, Mohr and Laufhutte attached the crane cables and tag line, and the bundle was lifted approximately knee high. As the crane swung the bundle toward the unloading site, Mohr steadied the bundle with his left hand and walked it to the edge of the railcar. At some point, however, the cuff of the leather work glove on Mohr's left hand became caught in the bundle of sheet piling and, as the bundle swung over the riprap covering the sloped side of the railbed, Mohr was pulled off the railcar with it. While he was suspended approximately 10 feet above the riprap, Mohr's glove tore and he fell headfirst onto the rocks below; he was knocked unconscious and his left arm was fractured. His coworkers thereafter loaded him onto an airboat, which the contractor installing the sheet piling had on-site, and he was taken to shore and transported by ambulance to a hospital.

On November 6, 2017, Mohr sued CSX under the FELA, alleging that his injuries were caused by CSX's negligent failure to provide a safe workplace. Mohr specifically alleged that CSX had acted negligently by (1) not providing proper safety gloves; (2) not mandating the use of an

additional tag line to better control the suspended bundles; (3) not having sufficient employees on-site to safely unload the railcars; (4) not properly training its employees; and (5) not properly supervising its employees. Following the completion of discovery, CSX moved the trial court to enter a summary judgment in its favor, arguing there was no evidence to support Mohr's claims that CSX had breached its duty to provide a safe workplace. Mohr filed a response opposing CSX's summary-judgment motion, to which CSX filed a reply.

On December 14, 2018, the trial court heard oral arguments on CSX's summary-judgment motion, and, four days later, the trial court entered a summary judgment in favor of CSX. In its order, the trial court noted that Mohr had acknowledged during his deposition both that his crew was well trained, experienced, and knew how to properly unload sheet piling from the railcars and that they were not improperly supervised on the day of the incident. The trial court further noted that Mohr had apparently abandoned his claim that CSX had failed to provide a sufficient number of employees to safely unload the railcars because he failed to address that claim in his response to CSX's summary-judgment

motion. Accordingly, the trial court held that CSX was entitled to a summary judgment on Mohr's claims that CSX had acted negligently by failing to provide proper training, proper supervision, or a sufficient number of employees for the crew to safely perform their job duties.

The trial court subjected Mohr's other two claims to further analysis:

> "As for Mohr's remaining claims -- regarding the number of tag lines and type of gloves provided for the job -- Mohr has failed to submit evidence that [CSX] breached its duty. The FELA imposes a duty on employers to provide a reasonably safe workplace. Tootle v. CSX Transp., Inc., 746 F. Supp. 2d 1333, 1337 (S.D. Ga. 2010). This does not mean that an employer must eliminate all workplace dangers. Id. It requires only that they eliminate dangers 'that can reasonably be avoided in light of the normal requirements of the job.' Id. (quoting Stevens v. Baner & Aroostook R.R. Co., 97 F.3d 594, 598 (1st Cir. 1996)). Reasonable foreseeability, i.e., notice of a potential hazard[,] is an essential ingredient in FELA liability. Gallick v. Baltimore & Ohio R.R. Co., 372 U.S. 108, 117 (1963). See also Barger v. CSX Transp., Inc., 110 F. Supp. 2d 648, 653 (S.D. Ohio 2000). Thus, to establish FELA negligence, Mohr was required to establish that [CSX] 'knew or should have known of a potential workplace hazard' and failed to remedy it. Tootle, 746 F. Supp. 2d at 1337.
>
> "Mohr has failed to establish that [CSX's] use of standard leather work gloves and use of one tag line caused a potential hazard of which [CSX] either knew or should have known. Mohr has, moreover, not established a violation of any statute, regulation,

> standard, or practice that required different gloves or an additional tag line. Mohr was required to establish not that some other equipment or method was safer, but that the actual equipment or method used was not reasonably safe. Tootle, 746 F. Supp. 2d at 1338 (quoting McKennon v. CSX Transp., Inc., 897 F. Supp. 1024, 1027 (M.D. Tenn. 1995)). He has failed to submit any such evidence. No jury could reasonably find that [CSX] failed to provide a reasonably safe place to work on these facts.
>
> "Moreover, notice is the cornerstone of FELA liability, and Mohr has submitted no evidence whatsoever that [CSX] had notice of any potential hazard related to the standard work gloves or the use of one tag line for the job. See Gallick, 372 U.S. at 117."

Based on these conclusions of law, the trial court entered a summary judgment in favor of CSX on all claims asserted by Mohr. Mohr thereafter filed a timely appeal to this Court, challenging the trial court's judgment only as it related to his claims involving the type of work gloves provided by CSX and CSX's policy for using tag lines.

Standard of Review

The FELA allows a railroad employee injured in a workplace accident to sue his or her employer in either federal or state court. Burlington Northern R.R. v. Warren, 574 So. 2d 758, 762 (Ala. 1990). In Glass v. Birmingham Southern R.R., 905 So. 2d 789, 792-93 (Ala. 2004), this Court

explained the standard of review it applies in an appeal challenging a summary judgment entered on a FELA claim:

> "Although the FELA authorizes the filing of a federal action for an employer's alleged failure to provide a safe workplace, and although the substantive law governing such cases is federal, St. Louis Southwestern Ry. v. Dickerson, 470 U.S. 409, 411, 105 S.Ct. 1347, 84 L.Ed.2d 303 (1985), '[a]s a general matter, FELA cases adjudicated in a state court are subject to the state's procedural rules.' Alabama Great So. R.R. v. Jackson, 587 So. 2d 959, 962 (Ala. 1991). Thus our standard in Alabama for reviewing a summary judgment applies.
>
> "In performing such a review, we use the same standard the trial court used in determining whether to deny or to grant the summary-judgment motion. We must determine whether the evidence presents a genuine issue of material fact and whether ... the movant[] was entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P. If [the movant] makes a prima facie showing that no genuine issue of material fact exists, the burden then shifts to [the nonmovant] to present substantial evidence creating such a genuine issue of material fact. Bass v. SouthTrust Bank, 538 So. 2d 794, 798 (Ala. 1989). Evidence is 'substantial' if it is of 'such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). This Court must review the record in a light most favorable to the nonmovant and must resolve all reasonable doubts against the movant. Hanners v. Balfour Guthrie, Inc., 564 So. 2d [412,] 413 [(Ala. 1990)]."

Thus, we apply the same de novo standard of review in this case that we would apply in the appeal of a summary judgment deciding typical state-law claims.[2]

Analysis

In Glass, this Court explained that, although the FELA does not define negligence, a plaintiff asserting a FELA claim must prove the same elements that are at issue in any negligence case: (1) a duty owed by the defendant; (2) a breach of that duty; (3) causation; and (4) damage. 905 So.

[2]Mohr does not directly state that the substantial-evidence rule, see § 12-21-12, Ala. Code 1975, does not apply to summary judgments involving FELA claims, but, citing Pulley v. Norfolk Southern Ry., 821 So. 2d 1008, 1013 (Ala. Civ. App. 2001), he argues that he can establish the existence of a genuine issue of material fact and thus avoid summary judgment by submitting only "minimal" or "slight" evidence as opposed to "substantial" evidence. His argument is misguided. In Pulley, the Court of Civil Appeals quoted an excerpt from Hines v. Consolidated Rail Corp., 926 F.2d 262, 267-68 (3d Cir. 1989), to provide a "historical backdrop" for the FELA. Within that excerpt, the United States Court of Appeals for the Third Circuit noted that it had previously held in Pehowic v. Erie Lackawanna R.R., 430 F.2d 697, 699-700 (3d Cir. 1970), "that a FELA plaintiff need only present a minimum amount of evidence in order to defeat a summary judgment motion." 926 F.2d at 268. Mohr fails to recognize, however, that the Pulley court, when setting forth the standard of review it was applying, specifically explained that a party opposing summary judgment still has to meet its burden with substantial evidence. 821 So. 2d at 1012. Because this action was filed in an Alabama state court, we apply Alabama procedural rules, and to the extent there is any conflict between those rules and Hines and Pehowic, those cases have no application.

2d at 793-94. See also Cottles v. Norfolk Southern Ry., 224 So. 3d 572, 581-82 (Ala. 2016) (same).[3]

Mohr and CSX agree that, "[u]nder the FELA, a railroad employer owes its employees a duty to provide a safe place to work." Glass, 905 So. 2d at 794 (citing Blair v. Baltimore & Ohio R.R., 323 U.S. 600, 601 (1945); Bailey v. Central Vermont Ry., 319 U.S. 350, 352 (1943); Yawn v. Southern Ry., 591 F.2d 312, 315 (5th Cir. 1979)). Additionally, although CSX asserts that Mohr's accident was at least partly caused by his own carelessness in where he placed his hand, it is not disputed that there is substantial evidence indicating that the immediate cause of Mohr's accident and injuries was the loose cuff of his glove getting caught in a bundle of sheet pile.

[3]We recognize that at times and even in other FELA cases this Court has described the elements of a negligence claim as being (1) a duty; (2) a breach of that duty; (3) forseeability; and (4) causation. See Norfolk Southern Ry. v. Denson, 774 So. 2d 549, 552 (Ala. 2000) ("'To prevail on an FELA negligence claim, the plaintiff must prove the traditional common law elements of negligence: duty, breach of that duty, foreseeability, and causation.' CSX Transp., Inc. v. Dansby, 659 So. 2d 35, 37 (Ala. 1995)."). Although our present formulation of the negligence elements does not explicitly include foreseeability, that concept is encompassed in a proper analysis of the other elements. CSX Transp., Inc. v. Miller, 46 So. 3d 434, 464 (Ala. 2010). See also Gallick v. Baltimore & Ohio R.R., 372 U.S. 108, 118 (1963) (recognizing that a defendant's duty is measured by what is reasonably foreseeable under the circumstances).

The focus of our review is therefore on the second element of the negligence inquiry -- whether CSX breached its duty to Mohr to provide him a safe workplace by failing to equip him with proper safety gloves and by failing to mandate the use of a second tag line. We first examine Mohr's claim relating to the work gloves provided by CSX.

A. The Leather Work Gloves Provided By CSX

Mohr alleges that the standard leather work gloves provided by CSX were not suitable for the task he was performing when he was injured because, he alleges, the cuffs on the gloves were loose and susceptible to getting snagged on items. He asserts that CSX should have instead provided him with tighter-fitting mechanic-style gloves that have a Velcro strap around the cuff, which, Mohr argues, are less likely to get caught on items like the bundles of sheet piling he was unloading when he was injured. Mohr argues that his and Laufhutte's deposition testimony constitutes substantial evidence indicating (1) that the standard leather work gloves he was issued were not reasonably safe and (2) that CSX had knowledge of the danger posed by the gloves. See McKennon v. CSX Transp., Inc., 897 F. Supp. 1024, 1027 (M.D. Tenn. 1995)

(explaining that a FELA plaintiff must establish that the employer's practice was not "reasonably safe"); see also Tootle v. CSX Transp., Inc., 746 F. Supp. 2d 1333, 1337 (S.D. Ga. 2010) ("A railroad breaches its duty to provide a safe workplace if it 'knew or should have known of a potential hazard in the workplace, and yet failed to exercise reasonable care to inform and protect its employees.'" (quoting Ulfik v. Metro-North Commuter R.R., 77 F.3d 54, 58 (2d Cir. 1996))). Thus, Mohr argues, he submitted substantial evidence to create a genuine issue of material fact regarding his claim that CSX breached its duty to provide him with a safe workplace by not providing him with proper gloves.

CSX argues that Mohr's argument fails on both accounts. First, it disputes that the leather work gloves it provided Mohr were not reasonably safe for the task he was performing when he was injured; and, second, it argues that, even if the leather work gloves did present a safety issue, CSX had no knowledge of that fact before Mohr's accident. For the reasons that follow, we agree that Mohr failed to put forth substantial evidence creating a genuine issue of material fact as to whether CSX knew or should have known that the standard

leather work gloves it provided Mohr were not reasonably safe.[4]

In Carlew v. Burlington Northern R.R., 514 So. 2d 899, 901 (Ala. 1987), this Court recognized that reasonable foreseeability is an essential component of a FELA negligence claim. See also Gallick v. Baltimore & Ohio R.R., 372 U.S. 108, 117 (1963) ("We agree with respondent that reasonable foreseeability of harm is an essential ingredient of [FELA] negligence."); Van Gorder v. Grand Trunk Western R.R., 509 F.3d 265, 269 (6th Cir. 2007) (explaining that a railroad breaches its duty to provide a safe workplace when it knows or should have known that its practices were inadequate to protect its employees). CSX argues that there is no evidence in the record indicating that there had ever been a previous injury caused by the standard-issue leather work gloves and that, regardless of whether Mohr and Laufhutte presently believe that the leather work gloves are a safety hazard, they never raised that concern with their supervisors or other management before Mohr's accident.

[4]Our resolution of this issue makes it unnecessary to consider whether Mohr submitted substantial evidence indicating that the leather work gloves were, in fact, not reasonably safe, and we express no opinion on that issue.

Mohr does not dispute the absence of evidence about any previous accidents caused by the leather work gloves, but he argues that his and Laufhutte's deposition testimony established that they put CSX on notice of their safety concerns well before Mohr's accident. Because Mohr's argument hinges on his and Laufhutte's deposition testimony, we examine those transcripts in detail below. Before doing so, however, we reiterate that this Court has cautioned against the practice of relying on isolated excerpts of deposition testimony to argue in favor of a proposition the testimony as a whole does not support:

> "Even if portions of her expert's testimony could be said to be sufficient to defeat a summary-judgment motion when viewed 'abstractly, independently, and separately from the balance of his testimony,' 'we are not to view testimony so abstractly.' Hines v. Armbrester, 477 So. 2d 302, 304 (Ala. 1985)."

Giles v. Brookwood Health Servs., Inc., 5 So. 3d 533, 550 (Ala. 2008). See also Riverstone Dev. Co. v. Garrett & Assocs. Appraisals, Inc., 195 So. 3d 251, 257-58 (Ala. 2015) (explaining that this Court's standard of review when reviewing a trial court's ruling on a motion for a judgment as a matter of law requires us to consider a witness's testimony as a whole, not just isolated excerpts).

During his deposition, Mohr was asked multiple times by the attorney for CSX to describe any specific complaints he had made about the leather work gloves before his accident:

> "Q. At any point in time before the accident, did you request a different set of gloves?
>
> "A. We had -- we had talked about it before. We had heard other people [were] getting gloves that strap over. And we [were] talking about, wondering, you know, if we could get some, but nothing ever happened about it.
>
> "Q. Did you ever complain to anyone that it was unsafe to do the job you were doing with the gloves you were wearing?
>
> "A. No, sir, never reported it.
>
> "Q. Okay. Did anyone?
>
> "A. No, sir.
>
> "....
>
> "Q. Are you aware of anyone ever having a glove get caught on a sheet pile before your incident?
>
> "A. Not as I know of.
>
> "Q. Are you aware of anyone ever complaining that these gloves, the ones you were wearing, were unsafe to use to unload sheet piling before the incident?
>
> "A. Not as I know of.
>
> "...."

"Q. Did you at any point in time before the accident ask anyone for a different type of gloves for this job?

"A. We've -- we've -- like I said earlier, we mentioned it about getting some because we heard other guys were getting [the mechanic-style gloves] and we [were] wondering why we weren't getting them.

"Q. Okay.

"A. But I never got an answer from that.

"Q. That was a discussion amongst your crew, is what you told --

"A. Right.

"Q. -- me, right? Did you ever -- did you ever complain to anyone that the gloves you were using were unsafe for that job?

"A. Yeah, I told them these glov- -- these gloves were loose.

"Q. Who did you tell that to?

"A. My foreman, Jeremy Davis, at the time.

"Q. Okay. All right. Did you ever tell anyone that using those gloves was unsafe to use?

"A. No, I never told anyone.

"Q. Okay.

"A. Because that's what they furnished us with, so I figured they knew what they were doing.

"Q. Okay. Did anyone, to your knowledge, before your accident complain that using those gloves to do this job was unsafe?

"A. I never heard any- -- never heard anyone.

"....

"Q. What did you say to Jeremy Davis about gloves?

"A. I li- -- I told him that, you know, had mentioned to him that we were -- that other people were getting these [mechanic-style] gloves, you know -- you know, why -- why couldn't we get them.

"....

"Q. Why did you say that to him? What prompted it?

"A. It was a -- like I said, I heard other people were getting them and -- and I think they were more safe and that -- that we should have got them, too.

"Q. And what did he say to you?

"A. He would check into it.

"Q. Was that the first time you ever mentioned it to him?

"A. Uh-huh.

"Q. Okay. Did you tell him you didn't want to perform the job you were performing without those gloves?

"A. No.

"Q. Did you tell him you didn't want to perform the job you were performing with the gloves you had?

"A. No.

"Q. Okay. Did anyone tell Jeremy Davis or anyone else, to your knowledge, these gloves that you were using are unsafe for this job?

"A. Not to my knowledge.

"Q. Okay. Did you say anything else to Jeremy Davis other than mentioning to him that other people are getting these Velcro-strap gloves ... can you get them?

"A. We talked amongst ourselves.

"Q. And by that you mean you and Bill and --

"A. Our -- our gang.

"....

"Q. And what did y'all -- when you talked amongst yourself, what did y'all say?

"A. That -- that was -- we -- it was -- we just stopped after that, after we, you know, mentioned it.

"....

"Q. Just so I'm clear, was it only the one time that you asked Jeremy or mentioned to Jeremy about those gloves?

"A. Yes.

"Q. Just the one time?

"A. Just the one time.

"Q. Okay. Have you ever mentioned it to anybody else before the accident?

"A. No, sir."

Thus, Mohr repeatedly testified both that he had never told any supervisor that the leather work gloves issued by CSX were unsafe and that he was unaware of any other CSX employee making that complaint. Mohr emphasizes the one time in his testimony when he told his supervisor the leather work gloves "were loose," but, when considering Mohr's testimony as a whole, the only conclusion one can reasonably draw is that he never complained to CSX that the leather work gloves he had been provided were not reasonably safe. At best, Mohr might have made an inquiry to his supervisor about receiving some mechanic-style gloves, but the record does not contain any evidence indicating that Mohr told his supervisor that his request was motivated by safety concerns about the leather work gloves CSX had provided.

Our inquiry does not end here, however, because Mohr argues that Laufhutte's deposition testimony also showed that CSX had notice that the leather work gloves it provided were not reasonably safe. When Laufhutte was asked by CSX's

attorney about the leather work gloves, he testified as follows:

> "Q. Did you ever complain to anyone about ... the equipment that you were using or anything about the job that you felt affected safety?
>
> "A. I've been saying it personally for years. The gloves we use aren't -- they're not worth having.
>
> "Q. The what?
>
> "A. They're not worth having. They're terrible.
>
> "Q. The gloves?
>
> "A. The loose cuff gloves are just useless.
>
> "Q. Did you -- did you complain that the leather gloves were unsafe?
>
> "A. I -- well, I mean, they weren't -- I don't think I ever said they were unsafe.
>
> "Q. Okay. What was your complaint about the leather gloves.
>
> "A. The cuff's loose. It has a tendency to get caught on things. There's -- we've seen some in the -- in the system, I guess you'd call it. We've seen some of the bigger production gangs -- system production gangs have a knot on them. It's like a Velcro, like a mechanic's glove.
>
> "Q. Uh-huh.
>
> "A. And we've seen those and I know we've asked for them.

"Q. Let me ask you, with regard to this job did you ever tell anyone that it's unsafe to use these leather gloves on this job?

"A. No.

"Q. Okay. Did anybody to your knowledge?

"A. I don't -- I don't know.

"Q. Did you ever complain to anyone with regard to the job that y'all were doing the day of the accident that anything about that job was unsafe?

"A. Me personally, no.

"Q. Do you know anyone that did?

"A. I don't know.

"Q. And the gloves that you're talking about, the standard leather gloves, who did you complain to about those?

"A. Just about every supervisor I've worked with -- worked for.

"Q. And Bill, what was the nature of your complaint?

"A. That first off, when you get them, when they come to you out of the package, they have a tendency to be dry rotted. The first time you put them on, they split. It doesn't take long for them to wear out. The fingers are real -- the material is thin. They're just not -- not a good -- not a good glove in my opinion.

"Q. Are there any other complaints that you had about the glove other than what you've just said --

"A. I don't think so.

"Q. -- about being dry rotted?

"A. No. Like I said, the cuff is just -- the cuff is loose.

"Q. Okay.

"A. ... I normally wear a size large in gloves. But I take the smallest one because they're tighter. And if you get a smaller glove, they'll actually fit like a -- it doesn't help. The cuff is still big. But the glove itself will fit like a -- like a batting glove.

"Q. Yeah.

"A. But you need, in my opinion, I've been telling them you need that Velcro piece on the side to tighten the glove.

"Q. For -- why?

"A. That cuff. It leaves your wrist exposed and has a tendency to get hung up on stuff.

[The next page of the deposition transcript was not included in the record.]

"A. ... I never actually thought about [the gloves] being an actual -- saying they were a safety hazard, but looking back, that's what it was.

"Q. Okay. But you never said that to anyone. Isn't that right?

"A. No. No. I never said these gloves present a safety hazard.

"Q. Okay.

"A. I never -- I've always said these gloves -- the other gloves would be better to have.

"Q. Okay. Who have you said that to? What supervisor specifically?

"A. I know I told -- Zack Amna. ... He no longer works for CSX. Brian May.

"Q. Zack Amna and Brian May?

"A. Yes.

"Q. Any other supervisors, Bill?

"A. No.[5]

"Q. When did you tell Zack Amna?

"A. Probably maybe a year before. Probably a -- two years ago maybe.

"....

"Q. Okay. And what specifically did you say to Zack Amna?

"A. Oh, I just -- in a safety overlap, I said I'd like to have the Velcro cuffed gloves, the mechanic-style gloves.

"Q. Did you say anything other than that?

"A. No.

"....

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[5]Later in his deposition, Laufhutte testified that he had also told another supervisor, Chad Coker, that he'd "like to have the mechanic's gloves, the mechanic-style gloves."

> "Q. Other than telling them you'd like to have the Velcro strapped glove, did you say anything else about the glove to Zack Amna?
>
> "A. No, just that.
>
> "....
>
> "Q. What did you say to Brian May?
>
> "A. Same thing. I think we need to have the Velcro mechanic-style gloves if we can get them.
>
> "Q. What did Brian May say in response?
>
> "A. He'd send it up the chain. It would be a pass-up item.
>
> "Q. Okay. When did you say that to Brian May?
>
> "A. The exact day, I don't remember. One of our safety overlaps. ... Maybe a couple of months before [Mohr's accident]."

It is evident from Laufhutte's testimony that, even before Mohr's accident, he did not like the leather work gloves for a variety of reasons and that he would have preferred the mechanic-style gloves. But Laufhutte's testimony that he told unspecified individuals that the leather work gloves were "not worth having," "terrible," and "useless" and his testimony that he told his supervisors that mechanic-style gloves were preferable and "would be better to have" is insufficient to have put CSX on notice that the leather work gloves CSX

provided were not reasonably safe. Every time Laufhutte was asked if he had ever specifically complained that the leather work gloves were unsafe he admitted that he had not -- "I don't think I ever said they were unsafe"; "I never said these gloves present a safety hazard."

We acknowledge Laufhutte's testimony about the cuff on the leather work gloves being loose and having a tendency to get caught on things. This testimony might be relevant to the question of whether the gloves were reasonably safe, but because Laufhutte could not identify even a single instance when he complained to a supervisor about the loose cuff posing a safety hazard, that testimony does not support the conclusion that CSX knew or should have known about that safety concern. In sum, a fair-minded person in the exercise of impartial judgment could not conclude on the basis of Laufhutte's deposition testimony that CSX had notice of the alleged safety hazard presented by the leather work gloves.

In reviewing a trial court's summary judgment, the role of this Court is to determine whether the nonmovant met his burden of establishing that a genuine issue of material fact exists. Glass, 905 So. 2d at 793. Even when we consider all

the evidence in the record in the light most favorable to Mohr, as our standard of review requires, we cannot conclude that Mohr has met that burden in this case because he has failed to present substantial evidence indicating that, before Mohr's accident, CSX knew or should have known that the leather work gloves it provided to its employees were not reasonably safe. Accordingly, the trial court did not err by entering a summary judgment in favor of CSX on that claim.

B. CSX's Safety Rules For Using Tag Lines

We reach the same conclusion with regard to Mohr's claim that CSX was negligent by not requiring his crew to use a second tag line to secure the bundle of pilings. The CSX safety rule governing the use of tag lines, Safe Way Rule 2405.1, provides that employees working with cranes and hoisting equipment must "use tag lines when necessary to control loads that are being moved higher than knee level." The rule, however, does not dictate the number of tag lines that must be used. Mohr acknowledged in his deposition that each member of his crew was well trained and experienced and that he had no criticism of them "with regard to [the] accident." Each of those crew members was deposed in the

course of this litigation, and they unanimously testified that they believed one tag line was sufficient to safely perform the task the crew had been assigned. In sum, no member of the undisputedly well trained and experienced crew -- including Mohr -- thought a second tag line was needed, much less complained about the crew's failure to use one. Even still, had one of the crew members decided a second tag line was needed, it is undisputed that additional tag lines were available on-site for the crew to use.

"A railroad breaches its duty to provide a safe workplace if it 'knew or should have known of a potential hazard in the workplace, and yet failed to exercise reasonable care to inform and protect its employees.'" Tootle, 746 F. Supp. 2d at 1337 (quoting Ulfik, 77 F.3d at 58). It is undisputed that CSX had appropriately recognized that a load suspended by a crane presents a potential hazard because it might begin to rotate. CSX therefore had a safety rule in place requiring its employees to use tag lines to control such loads. That safety rule left it to the discretion of the employees to determine how many tag lines are necessary, and all four members of Mohr's crew, as well as their supervisor May,

testified that it was reasonable to use one tag line for the task the crew was performing when Mohr was injured. There is no testimony in the record indicating otherwise, and "'the mere fact that the injury occurred'" is insufficient to show that CSX's safety rules were not adequate. Glass, 905 So. 2d at 793 (quoting Atlantic Coast Line R.R. v. Dixon, 189 F.2d 525, 527 (5th Cir. 1951)). See also Durso v. Grand Trunk Western R.R., 603 F. App'x 458, 460 (6th Cir. 2015) ("To be actionable, the railroad must have known or should have known that the standards of conduct were not adequate to protect its employees."). In the absence of any evidence indicating that CSX should have known that one tag line was insufficient to protect its employees at the time Mohr was injured, CSX was entitled to a judgment as a matter of law on Mohr's claim. The trial court therefore acted properly in entering a summary judgment in favor of CSX on Mohr's claim regarding the tag line.

Conclusion

Mohr was injured when his leather work glove became caught in a bundle of sheet piling that was being unloaded by crane from a railcar, causing him to be dragged off the

railcar with the suspended load before falling onto the rocks below. Mohr sued his employer CSX under the FELA, alleging that his injuries were caused by multiple negligent acts committed by CSX. The trial court ultimately entered a summary judgment in favor of CSX on Mohr's claims, and Mohr appealed, challenging the summary judgment on two of those claims. Having reviewed the record, we agree that the summary judgment was warranted on both claims Mohr presented on appeal. The trial court's summary judgment is therefore affirmed.

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.