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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

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Murphy Oil, USA, Inc.

v.

Shirley English

**Appeal from Monroe Circuit Court
(CV-16-900068)**

MITCHELL, Justice.

Shirley English sued Murphy Oil USA, Inc., after she slipped and fell in the restroom of a Murphy Oil gas station. Murphy Oil moved for

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summary judgment, but the trial court denied the motion. After a nonjury trial, the trial court entered a judgment in favor of English. We now affirm the judgment.

Facts and Procedural History

According to English, on an evening in June 2015, she, her brother, and her sister were traveling to Birmingham when they stopped to fill up at a Murphy Oil gas station in Monroeville. The gas station had a cover above the pumping stations, but the entrance to the restroom was on the exterior of the building and outside the cover. It had been raining off and on that day. After English and her two siblings pulled up to the gas pump, English exited their vehicle and walked to the restroom. She then opened the restroom door, took one step inside with her right foot, and "went down." As a result of her fall, English said, she injured her arm, neck, back, and knee.

English sued Murphy Oil in the Monroe Circuit Court, claiming negligence. Murphy Oil moved for summary judgment, relying heavily on English's deposition testimony in which she could not identify what had caused her to slip. At the summary-judgment hearing, the trial court

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admitted, over Murphy Oil's objection, an affidavit from English's sister indicating that English had slipped on water on the restroom floor. The trial court then denied Murphy Oil's summary-judgment motion because, according to the court, there were "enough issues" that it "need[ed] to hear the facts of the case."

The trial court held a nonjury trial. At trial, the parties presented oral testimony from various witnesses and introduced documentary evidence, including the deposition of Dr. Charles H. Wilson of The Orthopaedic Group in Mobile, who treated English for her injured arm. The trial court made no findings of fact during the trial and instead took the matter under consideration after inviting the parties to submit briefs. One day after the briefing deadline had passed, the trial court entered a judgment in favor of English and awarded her compensatory damages in the amount of \$125,000. The trial court did not make any written factual findings as a part of its judgment. It appears from the record that Murphy Oil did not move for a new trial or for judgment as a matter of law, and it did not otherwise challenge the sufficiency of the evidence before it appealed to this Court.

Standard of Review

"Since this case was heard nonjury by the trial judge and decided by [her] as factfinder, the ore tenus rule applies." Clardy v. Capital City Asphalt Co., 477 So. 2d 350, 352 (Ala. 1985). "There is thus a presumption of correctness in the trial judge's findings and [her] judgment based on those findings should not be disturbed unless palpably wrong, without supporting evidence, or manifestly unjust." Id. Nevertheless, we review the trial court's "conclusions of law or its application of law to the facts" de novo. Mitchell v. Brooks, 281 So. 3d 1236, 1243 (Ala. 2019).

Analysis

Murphy Oil argues on appeal that (1) the trial court erred by denying its summary-judgment motion, (2) English offered no evidence at trial to sustain a judgment holding it liable for negligence, and (3) the trial court erred by admitting evidence of medical expenses that was unsupported by expert testimony. We address each argument in turn.

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A. We Generally Will Not Review the Denial of a Summary-Judgment Motion After a Trial on the Merits

As a general matter, "we do not review a trial court's denial of a summary-judgment motion following a trial on the merits." Mitchell v. Folmar & Assocs., LLP, 854 So. 2d 1115, 1116 (Ala. 2003). Instead, "the sufficiency of the evidence at trial would be the significant question on appeal." Superskate, Inc. v. Nolen, 641 So. 2d 231, 233 (Ala. 1994). This is not, however, an "ironclad rule that an erroneous denial of a motion for summary judgment is always rendered moot by a subsequent verdict in favor of the nonmovant, lest we encourage a party to change 'testimony or other evidence based on experience gained during the proceedings on the motion for summary judgment.'" Wal-Mart Stores, Inc. v. Thompson, 726 So. 2d 651, 654 (Ala. 1998) (citation omitted). When we are not "confronted with a situation involving a change of testimony, we will not consider whether the defendant was in fact entitled to a summary judgment" but, rather, will consider only whether a trial court properly denied the defendant's motion for judgment as a matter of law. Id.

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Murphy Oil has not argued that English changed her testimony or other evidence based on experience gained during the summary-judgment proceedings, nor does that appear to be the case based on our review of the record. Further, it does not appear that Murphy Oil moved for judgment as a matter of law or that it sought an interlocutory appeal of the denial of its summary-judgment motion. See Thompson Props. v. Birmingham Hide & Tallow Co., 839 So. 2d 629, 634 (Ala. 2002) ("The denial of a motion for summary judgment is not an appealable order, except by permission obtained pursuant to Rule 5, Ala. R. App. P. The [appellants] neither sought nor obtained permission to appeal under Rule 5 with respect to the denial of that summary-judgment motion. Therefore, we do not address the merits of the [appellants'] claim that the trial court erred in denying their motion for a summary judgment." (internal citations omitted)). For those reasons, we will not consider whether the trial court erred by denying Murphy Oil's summary-judgment motion.

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B. The Issue of the Sufficiency of the Evidence is Not Properly Before Us

In a "nonjury case in which the trial court makes no specific findings of fact, a party must move for a new trial or otherwise properly raise before the trial court the question relating to the sufficiency or weight of the evidence in order to preserve that question for appellate review." New Props., L.L.C. v. Stewart, 905 So. 2d 797, 801-02 (Ala. 2004). This case was tried without a jury. The trial court made no oral factual findings at the trial, nor did it make any specific written factual findings in its judgment in favor of English. And the record does not indicate that Murphy Oil moved for a new trial or otherwise raised the alleged insufficiency of the evidence to the trial court after the judgment was entered. Thus, the issue of whether English provided sufficient evidence to support the judgment is not properly before us.

C. Murphy Oil Has Not Demonstrated that the Trial Court Erroneously Admitted Evidence of Medical Expenses

Murphy Oil cites Ex parte Hicks, 537 So. 2d 486, 489-90 (Ala. 1998), for the general rule that "a plaintiff may recover those medical expenses that are reasonable and necessary." Murphy Oil contends that the trial

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court erred by admitting evidence of English's medical expenses because that evidence was not supported by expert testimony about the reasonableness and necessity of the treatments English received.

This argument fails for two reasons. First, the trial court admitted the deposition testimony of Dr. Wilson, English's treating orthopedic surgeon, without objection from Murphy Oil. And during Dr. Wilson's deposition, Murphy Oil affirmatively stated that it had no objection to tendering him as an expert in orthopedic surgery. Dr. Wilson then testified at length about his treatment of English's arm and of her recovery. Thus, "[h]aving carefully reviewed the testimony" Dr. Wilson provided, "we are of the opinion that there exists sufficient evidence" to support the trial court's admission of English's medical bills to the extent they related to her injured arm. Id. at 490. Second, it is not clear from the record which medical bills, if any, the trial court relied upon in formulating its damages award. Without that information, we are unable to determine whether the trial court erred by admitting evidence of medical expenses related to English's other alleged injuries.

Conclusion

None of Murphy Oil's arguments provide a ground for reversing the judgment. Murphy Oil has not established that we should disregard the general rule against reviewing a trial court's denial of a summary-judgment motion after a trial on the merits. And its argument about the sufficiency of the evidence at trial is not properly before us. Finally, based on the record before us, we cannot say that the trial court erred by admitting evidence of English's medical expenses. We therefore affirm the trial court's judgment.

AFFIRMED.

Parker, C.J., concurs.

Shaw, Bryan, Mendheim, JJ., concur in the result.