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IN THE
COURT OF APPEALS OF INDIANA

Walter E. Patrick, III,
Appellant-Plaintiff,

v.

April J. Henthorn,
Appellee-Defendant.

March 3, 2022

Court of Appeals Case No. 21A-CT-1436

Appeal from the Johnson Superior Court

The Honorable Marla K. Clark, Judge

Trial Court Cause No. 41D04-1908-CT-120

Najam, Judge.

Statement of the Case

[1] Walter E. Patrick, III appeals the trial court's grant of summary judgment in favor of April J. Henthorn on his complaint for negligence following an automobile accident. Patrick raises one issue for our review, namely whether the trial court erred when it entered summary judgment in favor of Henthorn.

[2] We affirm.

Facts and Procedural History

[3] In 1975, when Henthorn was twelve years old, she was diagnosed with ornithine transcarbamylase ("OTC") deficiency, which is an "allergy to protein." Appellant's App. Vol. 2 at 74. Henthorn takes medication for her OTC deficiency, and she watches her diet by limiting her protein intake. If Henthorn eats too much protein, she gets "an extremely bad headache that won't go away." *Id*. at 76. Henthorn has also gotten "dizzy" or "close to passing out" because of her OTC deficiency. *Id*. at 77. However, her OTC deficiency "doesn't really affect" her on a daily basis, and she "very rarely" has symptoms. *Id*. at 75. Doctor Bryan Hainline has treated Henthorn for her OTC deficiency since 1989.

[4] On August 18, 2017, Henthorn left her home and travelled north to Indianapolis. As she approached the intersection of Stop 11 Road and Meridian Street, she lost control of her vehicle. She then struck one vehicle, continued on, and struck Patrick's vehicle. As a result of the accident, Patrick sustained several injuries, which resulted in medical bills totaling more than $50,000.

[5] Thereafter, Patrick filed a complaint against Henthorn in which he asserted that Henthorn had been negligent. Henthorn filed her answer and, as an affirmative defense, alleged that she had lost consciousness due to a "sudden emergency not of [her] own making." *Id*. at 13. Henthorn also filed a motion for summary

judgment. In her supporting memorandum of law, Henthorn asserted that she was entitled to summary judgment because her "sudden loss of consciousness was not foreseeable." *Id*. at 23. Specifically, she asserted that her OTC deficiency "was well controlled" prior to the accident, she was "under no driving restrictions," and she "had not experienced any physical impairments or ill health" that day. *Id*. Accordingly, she contended that the "designated evidence establishes that [she] did not breach any duty" to Patrick. *Id*.

[6] Henthorn then designated her affidavit as evidence. In it, Henthorn stated that, prior to the accident, she "was feeling perfectly fine and in good health." *Id*. at 31. She further stated that, "seconds before the crash, [she] suddenly and unexpectedly felt light-headed, flushed and dizzy" and that she "lost consciousness and when [she] came to, [her] vehicle was stopped adjacent to the intersection and beside a telephone pole." *Id*. at 31-32. And she stated that she did not "recall the crash." *Id*. at 32.

[7] In addition, Henthorn designated Dr. Hainline's affidavit as evidence. In his affidavit, Dr. Hainline stated that he had reviewed Henthorn's medical records following the crash and that it was his opinion that Henthorn "suffered from a sudden change in mental status with loss of consciousness prior to the collision that had resulted from an unforeseen elevation in her blood ammonia levels due to her OTC deficiency." *Id*. at 35. He further stated that her condition caused Henthorn to "become incapacitated just before losing control of her car and crashing." *Id*.

[8] Thereafter, Patrick deposed Henthorn. During the deposition, Patrick asked Henthorn about how her OTC deficiency has affected her "in the past." *Id*. at 77. Specifically, Patrick asked Henthorn about the frequency with which she has "episodes" where she gets "light-headed or close to losing consciousness." *Id*. at 78. Henthorn responded that it "hasn't happened in . . . over 10 years." *Id*. Henthorn further testified that she has not been admitted for in-patient treatment for her OTC deficiency in the last ten years.

[9] After having questioned Henthorn about her medical history, Patrick redirected his inquiry when he stated, "Okay. Let's talk a little bit about the day of the accident[.]" *Id*. at 83. Henthorn then testified that, on that day, she felt "okay" and had gone to work. *Id*. at 84. She then testified that she went through the stoplight at Stop 11 road and "got kind of dizzy, and [her] head had a really sharp pain on the left side." *Id*. at 85. And she testified that the last thing she remembered was putting her hand up to her head and then waking up next to a telephone pole. She specifically testified that she "remembered going through the intersection," but that she did not remember striking any vehicles or speaking with police officers. *Id*. at 86.

[10] Patrick filed his response in opposition to Henthorn's motion for summary judgment and a corresponding memorandum of law. And he designated as evidence Henthorn's affidavit, Dr. Hainline's affidavit, Henthorn's deposition, and the accident report. Patrick asserted that Henthorn's statements in her deposition were inconsistent with those in her designated evidence. Specifically, Patrick asserted that Henthorn's and Dr. Hainline's affidavits

claimed that Henthorn had lost consciousness because of her OTC deficiency. However, Patrick claimed that Henthorn testified in her deposition that she had not had any episode of lightheadedness or loss of consciousness in the past ten years. Patrick maintained that those "inconsistent statements," along with her "different versions of how she felt just prior to the accident" demonstrate that a genuine issue of material fact exists regarding whether Henthorn actually suffered from a medical emergency on the date of the accident. *Id*. at 42.

[11] In addition, Patrick alleged that Henthorn also "offered several different versions of the accident itself." *Id*. at 43. To support that assertion, Patrick relied on the portion of Henthorn's affidavit in which she stated that she had lost consciousness and did not remember the accident. He also relied on the portion of Henthorn's deposition in which she testified that she remembered going through the intersection. And he stated that the accident report demonstrates that she hit another vehicle prior to entering the intersection. Patrick maintained that those inconsistencies precluded the entry of summary judgment.

[12] Following a hearing at which the parties presented oral argument, the court entered summary judgment in favor of Henthorn. In its order, the court found that, although Henthorn had testified in her deposition that she had not lost consciousness in over ten years, "[i]n the context of a deposition about an accident in which [Henthorn] states that she lost consciousness, it is the reasonable interpretation that her answer was addressing any *other* episodes of loss of consciousness besides the one in question." *Id*. at 7 (emphasis in

original). The court also found that the other alleged inconsistent statements were either not inconsistent or were not material to the issue. Accordingly, the court concluded that Henthorn's "sudden physical incapacity was not reasonably foreseeable under the circumstances" and that she had "no reason to foresee that driving that day would put others in peril because of her medical condition." *Id*.

[13] Patrick then filed a motion to correct error. He again asserted that, while Henthorn claimed she had suffered a medical emergency on the date of the accident, she twice "stated that she had not suffered an episode in the last ten (10) years." *Id*. at 114. He maintained that her answers "were clear and unequivocal" and that they created a genuine issue of material fact as to whether she suffered a medical emergency on the date of the accident. *Id*. The court denied Patrick's motion. This appeal ensued.

Discussion and Decision

[14] Patrick contends that the trial court erred when it entered summary judgment in favor of Henthorn. The Indiana Supreme Court has explained that

> [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*).

[15] Here, the trial court entered findings of fact and conclusions thereon in its summary judgment order. While such findings and conclusions are not required in a summary judgment and do not alter our standard of review, they are helpful on appeal for us to understand the reasoning of the trial court. *See Knighten v. E. Chicago Hous. Auth*., 45 N.E.3d 788, 791 (Ind. 2015).

[16] Summary judgment is rarely appropriate in negligence cases because they are particularly fact-sensitive and are governed by a standard of the objective reasonable person, which is best applied by a jury after hearing all the evidence. *Kramer v. Catholic Charities of Diocese of Fort Wayne-S. Bend, Inc.*, 32 N.E.3d 227,

231 (Ind. 2015). Nonetheless, summary judgment is appropriate where the undisputed material evidence negates one element of a negligence claim. *Rhodes v. Wright*, 805 N.E.2d 382, 385 (Ind. 2004).

[17] To prevail on his negligence claim, Patrick was required to demonstrate that Henthorn owed him a duty, that Henthorn breached that duty by allowing her conduct to fall below the applicable standard of care, and that Patrick was injured by Henthorn's breach of duty. *See Goodwin v. Yeakle's Sports Bar & Grill*, 62 N.E.3d 384, 386 (Ind. 2016). Here, the parties do not dispute that Henthorn owed a duty to Patrick or that Patrick sustained injuries as a result of the accident. Rather, the parties dispute whether Henthorn breached that duty.

[18] In her motion for summary judgment, Henthorn asserted that she had suffered a medical emergency and, thus, had negated the breach element of Patrick's claim. Henthorn relied on this Court's opinion in *Denson v. Estate of Dillard*, 116 N.E.3d 535 (Ind. Ct. App. 2018), to support her claim. In that case, a passenger in a vehicle was severely injured when the driver suffered a heart attack and crashed. *Id*. at 537. The passenger sued the driver's estate, and the estate filed an affirmative defense and motion for summary judgment in which it alleged that the driver had suffered a sudden medical emergency. The trial court found that the estate had negated the breach element of the negligence claim and entered summary judgment for the estate. On appeal, this Court determined "as a matter of law that the driver could not be found to have acted unreasonably after he suffered the heart attack and was rendered unconscious." *Id*. at 541. Thus, the question became whether the driver's "sudden physical

incapacity was reasonably foreseeable such that a reasonably prudent person in his position would not have risked driving." *Id*.

[19] Here, Henthorn asserted that, as a matter of law, she could not be found to have acted unreasonably when she suddenly lost consciousness. And she continued that she did not act unreasonably when she decided to drive on the day of the accident because her designated evidence demonstrated that her condition was well controlled, that she felt healthy that day, and that she had never had any driving restrictions placed on her. The trial court agreed and entered summary judgment in her favor.

[20] On appeal, Patrick does not dispute this Court's holding in *Denson*. And he appears to concede that, if Henthorn suffered a medical emergency prior to the accident, the holding in *Denson* would apply. But Patrick asserts that "whether Henthorn acted unreasonably in deciding to drive" on the date of the accident "is not and never has been the issue in this matter." Reply Br. at 5. Rather, he asserts that "the real issue is whether [she] actually suffered a sudden medical emergency on the date of the accident." *Id*. And Patrick contends that Henthorn's inconsistent statements created a genuine issue of material fact regarding whether she suffered a medical emergency prior to the accident.

[21] To support his assertion, Patrick directs us to Henthorn's deposition, in which she testified that she had not had any episodes of lightheadedness or been admitted for in-patient treatment for her OTC in the past ten years. Patrick avers that it is reasonable to infer from those answers that she has not suffered

any episodes from her OTC in the past ten years, including on the date of the offense, which is inconsistent with the statements in her and Dr. Hainline's affidavits. We cannot agree.

[22] When considering the meaning of witness testimony, the proper inquiry requires that we consider both the question and the answer in context. The statements at issue in Henthorn's deposition were in response to questions about her medical history. Specifically, the answers Patrick contends created an issue of fact were Henthorn's answers to a line of questions that began when Patrick asked her how her OTC deficiency had affected her "in the past." Appellant's App. Vol. 2 at 77. After Patrick asked her that question, Henthorn testified that, most of the time, her OTC deficiency does not affect her but that it has "in the past." *Id*. Patrick and Henthorn then engaged in a colloquy about the symptoms that Henthorn had previously experienced. *See id*. at 77-78. It was during that line of questioning that Henthorn stated that she had not had any episodes of lightheadedness or received in-patient treatment in the past 10 years.

[23] In other words, Patrick's questions were not questions about whether Henthorn had suffered a medical emergency on the date of the accident. Rather, they were clearly questions about her medical history. This is further demonstrated by the fact that, later in the deposition, Patrick changed subjects when he said, "Okay. Let's talk a little bit about the day of the accident." *Id*. at 83. It was then that Henthorn testified that she had felt "okay" that morning but that,

prior to the accident, she got "kind of dizzy" and her "head had a really sharp pain" while she was driving. *Id*. at 84-85.

[24] "Although we are mindful that all reasonable inferences must be construed in favor of the nonmoving party, those inferences must still be *reasonable*." *Speaks v. Rao*, 117 N.E.3d 661, 668 (Ind. Ct. App. 2018) (internal citation omitted; emphasis in original); *see also Estate of Short ex rel. Short v. Brookville Crossing 4060 LLC*, 972 N.E.2d 897, 904 n.4 (Ind. Ct. App. 2012) ("on summary judgment, only 'reasonable' inferences are to be construed in favor of the nonmovant"). And, again, taking Henthorn's answers during the deposition in context and not in isolation, the only reasonable inference is that, when Henthorn testified that she had not had an episode in ten years, she was responding to questions about her medical history and was referring to the time period before the accident, not to the date of the accident.

[25] The questions about Henthorn's "past" during the deposition do not present a genuine issue of material fact as to whether she suffered a medical emergency on the date of the accident. Rather, the designated evidence, including her affidavit, her doctor's affidavit, and her testimony during the deposition, all consistently demonstrate that Henthorn suffered a medical emergency just prior to the accident.

[26] Still, Patrick asserts that Henthorn offered "several different versions of how she felt" just prior to the accident and "several different versions of the accident itself." Appellant's Br. at 12. As to how Henthorn felt on the day of the

accident, Patrick claims that the accident report demonstrates that she was "hot" prior to the accident, but that she stated in her affidavit that she was "light-headed, flush and dizzy," and that she testified in her deposition that she "felt dizzy and had a sharp pain in her head." *Id*.

[27] As to Henthorn's memory of the accident, Patrick directs us to Henthorn's affidavit, in which she stated that she had lost consciousness and woke up next to a telephone pole and that she did not remember the accident. And Patrick directs us to the portion of Henthorn's deposition in which she testified that she remembered going through the intersection but does not remember striking any vehicles, which he claims is inconsistent with the accident report as that report states that Henthorn hit the first vehicle prior to reaching the intersection.

[28] Patrick baldly asserts that those inconsistent statements "preclude the entry of summary judgment." *Id*. at 13. But Patrick has not made any argument to demonstrate that either Henthorn's description of her symptoms or her memory of the accident created a genuine issue of material fact. A "fact is 'material' if its resolution would affect the outcome of the case." *Hughley*, 15 N.E.3d at 1003. Here, neither Henthorn's symptoms nor her memory of the accident would affect the outcome of the case. In other words, whether she was hot, dizzy, light-headed, or some combination thereof, or whether she remembered some or none of the accident, does not create a genuine issue of material fact on the dispositive issue—whether she suffered a medical emergency.

[29] As the summary judgment movant, it was Henthorn's burden to demonstrate the absence of any genuine issue of material fact. *Hughley*, 15 N.E.3d at 1003. Henthorn met this burden when she designated her affidavit and that of her doctor, which showed that Henthorn suffered from a medical emergency related to her OTC deficiency. At that point, the burden shifted to Patrick to come forward with evidence to demonstrate that Henthorn did not suffer a medical emergency prior to the accident. But Patrick did not designate any such evidence. Rather, as discussed above, the designated evidence consistently demonstrates that she suffered a medical emergency prior to the accident.

[30] Further, the designated evidence shows, and Patrick does not dispute, that Henthorn's condition had been well controlled, that she did not have any driving restrictions, and that she felt healthy on the morning of the accident, which demonstrates that her sudden physical incapacity was not reasonably foreseeable. *See Denson*, 116 N.E.3d at 541. Because the designated evidence demonstrates that Henthorn suffered a medical emergency which was not reasonably foreseeable, Henthorn has affirmatively negated one element of Patrick's negligence claim. We therefore hold that the trial court did not err when it entered summary judgment in favor of Henthorn. We affirm the trial court's order.

[31] Affirmed.

Vaidik, J., and Weissmann, J., concur.