

2008

Jonathan Hall v. Jason Steimle : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JONATHAN HALL,	:	Appellate Case No. 20080486-CA
Plaintiff/Appellant,	:	
vs.	:	ORAL ARGUMENTS REQUESTED
JASON STEIMLE,	:	
Defendant/Appellee.	:	

REPLY BRIEF OF APPELLANT

**APPEAL FROM JUDGMENT OF THE FOURTH DISTRICT COURT
HONORABLE JAMES R. TAYLOR PRESIDING**

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**FILED
UTAH APPELLATE COURTS**

MAR 03 2009

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Standing Order No. 8 of the Utah Supreme Court

STATEMENT OF THE ISSUE

Issue for review: SHOULD THIS COURT EXERCISE ITS DISCRETION IN REACHING THE MERITS OF THE APPEAL WHERE THE APPELLANT'S BRIEF FAILED TO CITE TO THE RECORD BUT OTHERWISE CONFORMED WITH THE REQUIREMENTS OF RULE 24?

Standard of review: The standard of review for the sufficiency of a brief is the Court's discretion. Chistensen v. Munns, 812 P.2d 69 (Utah App. 1991).

Issue for review: WAS THE BRIEF OF JASON STEIMLE SO DEFICIENT IN COMPLYING WITH UTAH SUPREME COURT STANDING ORDER NO. 8 THAT APPELLEE'S BRIEF SHOULD BE STRICKEN?

The standard of review for the sufficiency of complying with the standing orders of the Utah Supreme Court is to compare the party's efforts with what the standing order requires. Francisconi v. Hall, Not Reported in P.3d, 2008 WL 1971336 (Utah App. 2008)

STATEMENT OF FACTS

On December 12, 2008, Appellant filed his Brief of Appellant with the Court of Appeals.

Service of Appellant's brief was accepted by the Utah Court of Appeals on December 30, 2009.

On February 2, 2009, Appellee filed his Appellee brief.

On February 25, 2009, Appellee was given notice of his failure to submit an electronic courtesy brief as required under Utah Supreme Court Standing Order No. 8.

As of the date of the filing of this Reply Brief, Appellant has not received from Appellee a copy of Appellee's electronic courtesy brief.

SUMMARY OF THE ARGUMENT

This Court should exercise its discretion in reaching the merits of this appeal despite Appellant's lack of citation to the record in his initial brief and Appellee's failure to abide by Standing Order 8 of the Utah Supreme Court.

ARGUMENT

Appellant's Failure to Cite to the Record Pursuant to Rule 24

The case cited by Appellee as determinative, Christensen v. Munns, 812 P.2d 69 (Utah App. 1991) as to the issue of an Appellant's failure to abide by Rule 24 of the Rules. Christensen v. Munn is distinguishable from the present case. In Christensen v. Munns, the appellant attempted to raise three issues in her appeal. This Court declined to rule on two of the three issues finding with respect to the second issue that,

Appellants' brief contains less than a single page of assertions on this point and no citations to the record, no legal authorities and no analysis whatsoever. Their brief is not in compliance with our rules which require the brief of the appellant to contain an argument.

Id. at 72.

As to the third contested issue this Court found,

Appellants' brief contains three sentences regarding this issue with no citations to the record, no legal authorities and no analysis whatsoever. Further, appellants challenge is that the trial court's finding is unsupported by the evidence in the record. But, appellants have failed to marshal the evidence as required by our standard of review. When appellant attacks the evidence, we begin our analysis with the trial court's finding of fact, not with

an appellant's view of the way the trial court should have found.
Id. at 72.

In the present case, Appellant's failure related to citations to the Record. Regarding the specific issues raised by Appellant in his Brief, the two issues raised were fully briefed and argued, including citations to legal authority and analysis as to the applicability of the cited case law to the facts of the case. Furthermore, while Appellant failed to cite to the Record, Appellant's brief did conform to Rule 24 (a)(11)(C) which relates to addendums and states:

those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

Those portions of the records which are of central importance to Appellant's appeal were attached to Appellant's Brief as addendums. This was particularly necessary because many of the facts are drawn from Appellant's deposition, the full text of which is not included in the trial court's record.

While Appellant's brief was not in strict conformity to Rule 24, in no way was Appellee prejudiced by Appellant's oversight. Likewise, because Appellant attached the documents relied upon to the brief in the form of addendums, the inconvenience to the court was minimal. This Amended Brief is identical to the original but includes proper citation to the record as required under Rule 24. Appellee's argument that the brief of Appellant was so deficient in complying with the Utah Rules of Appellate Procedure that

the appeal should be denied or dismissed is simply hyperbole and fails to take into consideration recent case law which would support this Court exercising discretion and addressing the merits of Appellant's arguments.

In Francisconi v. Hall, Not Reported in P.3d, 2008 WL 1971336 (Utah App. 2008)

this court was presented with an appellant brief which the Court described as follows:

For example, Hall's arguments contain only sporadic citations to legal authorities or the record; Hall fails to develop or explain the legal authorities she does cite; the limited citations that are provided often do not support the facts or law as stated; Hall's contentions are not presented in a manner that is clear and concise; Hall fails to set forth the correct standard of review for each issue on appeal; and the arrangement of Hall's initial brief and its four argument headings are largely unrelated to the seven topics Hall identifies as issues.

This Court continued by stating:

Despite these deficiencies, we exercise our discretion and address the merits of Hall's arguments on appeal so that the parties may have the benefit of a decision on the merits.

Francisconi v. Hall

Appellant's brief in this case is sufficient for this Court to exercise discretion and address the Merits of Appellant's arguments so that these parties may have the benefit of a decision on the merits.

Finally, Appellant has attached an "Amended Brief of Appellant" to this Reply Brief as Addendum One. This "Amended Brief" is identical to Appellant's initial brief except that it also includes citations to the record pursuant to Rule 24 of the Utah Rules of Appellate Procedure.

Appellee's Failure to Follow Standing Order No. 8

Standing Order No. 8 of the Utah Supreme Court makes clear that an Appellee:

filing a brief on the merits in the Utah Supreme Court or the Utah Court of Appeals, including an intervenor and any person who has been granted permission to appear amicus curiae, shall submit a so-called Courtesy Brief on CD in searchable Portable Document Format (PDF) to the appellate court and to the parties in addition to complying with the filing and service requirements set forth in the Utah Rules of Appellate Procedure. The filing party shall include in the Courtesy Brief, the appendices, including relevant portions of the record, in PDF. The filing party shall submit the Courtesy Brief to the appellate court and the parties within fourteen (14) days after the filing of the printed form of the brief.

Utah Court's have long recognized the need to enforce standing orders, Wescoatt v. Eccles, 3 Utah 258, 2 P. 525 (Utah.Terr. 1883). The requirements of Standing Order No. 8 are clear but Appellee failed to meet them. Appellee failed even though Standing Order No. 8 offers a party who is unable to meet the requirements of the Standing Order the opportunity to file a motion to excuse their failure,

Any party or party's attorney who lacks the technological capability to comply with the standing order, must file a motion to be excused from compliance at the same time that the party files its brief on the merits.

Appellee also failed to satisfy this exculpatory provision which would have excused his failure.

CONCLUSION

The errors found in Appellant's brief render it no more deficient than Appellee's brief in light of Appellee's failure to abide by Standing Order No. 8 of the Utah Supreme Court. Appellant's brief as filed is sufficient to allow this Court to rule on the Merits of

this Appeal. Furthermore, Appellant has taken steps to cure the deficiencies found in his initial brief by attaching an “Amended Brief” to his Reply Brief as Addendum One.

DATED AND SIGNED this 9th day of March, 2009.

A handwritten signature in black ink, appearing to read "Rex I. Eagar", written over a horizontal line.

REX I. EAGAR

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ADDENDUM 1

IN THE UTAH COURT OF APPEALS

JONATHAN HALL,	:	Appellate Case No. 20080486-CA
Plaintiff/Appellant,	:	
vs.	:	ORAL ARGUMENTS REQUESTED
JASON STEIMLE,	:	
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AMENDED BRIEF OF APPELLANT

**APPEAL FROM JUDGMENT OF THE FOURTH DISTRICT COURT
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LIST OF ALL PARTIES

The caption of this case on appeal contains the names of all parties.

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Godesky v. Provo City Corp., 690 P.2d 541, 544 (Utah, 1984)

Jackson v. Colston, 116 Utah 295, 209 P.2d 566, 568 (1949)

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Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998)

Prince v. Bear River Mut. Ins. Co., 2002 UT 68, 56 P.3d 524

Robertson v. Sixpence Inns of Am., Inc., 163 Ariz. 539, 546, 789, P.2d 1040, 1047 (1990) (en banc)

Steffensen v. Smith's Mgmt. Corp., 820 P.2d 482, 487 (Utah Ct.App.1991)

Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969)

JURISDICTIONAL STATEMENT

This matter involves the final decision and order of the Fourth District Court in the case of Hall v. Steimle. As a result, this Court has jurisdiction pursuant to: Utah Code Ann. §78A-3-102(3). The trial court's order granting summary judgment , R. at 178, is attached as Addendum One.

STATEMENT OF THE ISSUE

The issues raised in this appeal arose out of a grant of summary judgment for defendant in a personal injury lawsuit. In granting summary judgment the trial court held that because the plaintiff had not designated a medical expert, the plaintiff could not establish causation. The trial court found that neck and back injuries suffered by a plaintiff with pre-existing neck and back injuries is an injury which "involves obscure medical factors which are beyond an ordinary lay person's knowledge". In so finding, the trial court stripped the jury of its role as fact finder. The trial court's order granting summary judgment , R. at 178, is attached as Addendum One. Petitioner's notice of appeal, R. at 180, is attached as Addendum Two.

Issue for review: Whether a Plaintiff, with pre-existing neck and back injuries, who is claiming neck and back injuries as a result of an automobile accident is required to hire an expert witness to testify solely as to causation when his treating doctors have already been identified as potential witnesses and the Utah Court of Appeals has previously ruled that neck and back injuries resulting from automobile accidents, "involve medical damages within the common experience of a layperson" *Beard v. K-Mart*

Corporation, 12 P.3d 1015, 1018 (Utah App. 2000).

Standard of review: DeNovo; "Because summary judgment is granted as a matter of law, [appellate courts] give the trial court's legal conclusions no particular deference." Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998) (citation omitted).

Issue for review: With respect to causation, does the fact that a plaintiff begins experiencing pain on the day of the accident establish a *prima facie* case of causation to be submitted to a jury where the defense has misrepresented to the trial court that the plaintiff did not begin experiencing pain until a couple days after the accident?

Standard of review: DeNovo; "Because summary judgment is granted as a matter of law, [appellate courts] give the trial court's legal conclusions no particular deference." Mast v. Overson, 971 P.2d 928, 931 (Utah Ct. App. 1998) (citation omitted).

STATEMENT OF THE CASE

This is a personal injury case seeking compensation for injuries and damages suffered by Jonathan Hall and alleged to have been caused by the negligence of Jason Steimle.

The complaint was filed in Fourth District Court on December 9, 2004. Service was accepted by Defendant's attorney on February 15, 2006. Defendant's Answer was filed on or about February 17, 2006.

A stipulated discovery plan was filed on or about March 9, 2006. The discovery

plan called for all discovery to be completed by January 22, 2007. Plaintiff's expert reports were due November 22, 2006.

An amended stipulated scheduling order was filed on or about March, 26, 2007. The amended discovery plan called for all discovery to be completed by August 15, 2007. Plaintiff's expert reports were due June 1, 2007.

Defendant moved for summary judgment on December 5, 2007. Plaintiff filed his opposition to Defendant's motion for summary judgment on December 20, 2007. Defendant filed a reply memorandum in support of his motion for summary judgment on January 4, 2008.

Oral arguments were had before Judge Taylor on March 25, 2008. At the conclusion of oral arguments, Judge Taylor granted Defendant's motion for summary judgment. The final order was prepared by defendant and signed by Judge Taylor on April 25, 2008.

Plaintiff filed his notice of appeal with the district court on May 27, 2008. This appeal was accepted by the Utah Supreme Court and transferred to the Utah Court of Appeals on June 4, 2008. Plaintiff filed a docketing statement with the Utah Court of Appeals on June 26, 2008. On October 30, 2008, the Utah Court of Appeals gave plaintiff notice that plaintiff's appellant brief was due on or before December 12, 2008.

STATEMENT OF FACTS

On December 11, 2000, Jonathan Hall was riding as a passenger in Defendant's vehicle as they traveled from Rexburg, Idaho to Salt Lake City, Utah. (Complaint, R. at 5,

¶ 3, attached as Addendum Three; Hall Deposition, R. at 93, p. 23, lines 13-23, attached as Addendum Four).

As the vehicle approached the 33rd South freeway exit on I-15, Defendant saw that a car was off the road. In response, Defendant slowed his vehicle from freeway speeds to about 40 to 45 miles per hour. Prior to slowing, Mr. Hall estimated that Defendant had been traveling between 65 and 70 miles per hour. (Complaint, ¶ 3; Hall Deposition, p 20, lines 14-18; p. 69, lines 5-12).

In the early morning hours, while attempting to slow down, Defendant's vehicle began to slide on black ice. After sliding 20 to 30 yards, the vehicle collided with the retaining wall of the off-ramp. (Hall Deposition, p 20-21, lines 21-22, 1-2, 17-18).

At the point of impact, Mr. Hall's head moved to the side. Mr. Hall's head did not hit a window or any objects inside of the vehicle. (Hall Deposition, pp. 28-29, lines 14-25, 1).

Following the accident, Mr. Hall returned home and fell asleep. Upon awakening later that morning, Mr. Hall experienced pain in his neck and back:

- Q. So the first day you experienced pain, you went and saw Dr. Anderson?
- A. Yes. I called him and said, "I need to come in right away." Because I woke up in a lot of pain. Couldn't move my head at all.
- Q. Describe the pain that you experienced on that very first day you felt it.
- A. Well, I woke up in the morning and I couldn't move my head. I remember when I – I simply called him and told him that I needed to come in and have that adjusted because it was in a lot of pain.

(Hall Deposition, p. 32, lines 7-17).

Mr. Hall scheduled and attended an appointment with his chiropractor, Dr. Anderson, later on the day of the accident. (Hall Deposition, pp. 30-31, lines 7-8, 25, 1).

On December 11, 2000, the day of the accident, Mr. Hall presented to the Anderson Chiropractic Center with complaints of neck pain. (Anderson Chiropractic Notes, R. at 52, attached as Addendum Five).

Mr. Hall had previously consulted with Dr. Anderson regarding his neck pain prior to the motor vehicle accident at issue in this case. Two months earlier, on October 4, 2000, Mr. Hall received his initial chiropractic assessment from Anderson Chiropractic Center, at which time he complained of neck and back pain, rating his neck pain at a 4 on a scale from 1 to 10. (Id.)

Mr. Hall also testified that his October 2000 visit to Anderson Chiropractic was not to treat a specific injury but was to receive preventative chiropractic care. (Hall Deposition, pp. 61-62, lines 15-25; 1-5).

Mr. Hall had suffered neck and back injuries prior to the accident at issue in this case. In discovery responses he stated: "Plaintiff had a whiplash injury in the summer of 1998/1999 when he dove into a shallow lake. He was treated by Dr. Frank Smith [in Wichita, Kansas]. He sustained a back injury and whiplash injury from hitting his chin on the lake bed.") Plaintiff's Answers to Defendant's First Set of Interrogatories, R. at 62, p. 6; attached as Addendum Six).

Mr. Hall described the pain he experienced on the day of the accident as being different pain than what he had experienced following the diving accident. (Hall Deposition, p. 60, lines 2-10).

Mr. Hall described the pain he experienced following the December 11, 200 accident as being a lot more painful than his previous injuries. (Hall Deposition, p. 61, lines 3-9).

Mr. Hall testified at his deposition that there was a noticeable difference in the way his neck felt prior to the December 2000 accident and the way it felt after the December 2000 accident. (Hall Deposition, p. 62, lines 6-11).

On December 9, 2004, Mr. Hall initiated this lawsuit, asserting negligence claims against Defendant in connection with the December 2000 motor vehicle accident. (Complaint, ¶ 5).

In his Complaint, Mr. Hall alleges that he “suffered permanent injuries to his neck and back,” caused by Defendant’s alleged negligence. (Complaint, ¶ 5).

Mr. Hall designated his treating physician, Dr. Anderson, as a witness in his initial disclosures on April 4, 2006, specifically stating that “It is anticipated that Dr. Anderson will testify consistent with his medical records.” (Plaintiff’s Rule 26(a) Initial Disclosures, R. at 52, attached as Addendum Seven).

Mr. Hall did not designate a medical expert prior to the cutoff for doing so.

SUMMARY OF THE ARGUMENT

Under Utah case law, cases involving injuries to the neck, back and shoulder

resulting from car accidents involve medical damages within the common experience of a layperson and therefore expert medical testimony is not required to establish causation. The plaintiff in this case can establish a *prima facie* case of causation through the testimony of the plaintiff who will testify as to the circumstances of the accident and the fact that he began experiencing severe pain in his neck and back on the day of the accident. He will testify that the pain he experienced was of a different kind than what he experienced prior to the accident. He will testify that he sought chiropractic care prior to this injury for preventative reasons. Mr. Hall's treating chiropractor will testify as to his condition prior to this accident and as to the basis of the treatments he received. Mr. Hall's treating chiropractor will testify as to his condition following this accident as observed on the day of the accident and note that the injuries he sought treatment for were different than the conditions for which he had been receiving treatment..

Furthermore, there are disputed material facts concerning when Mr. Hall began experiencing pain and the nature of his chiropractic treatment before and after the accident. Finally, because Mr. Hall has established a *prima facie* case of causation, the trial court improperly stripped the jury of its role as fact finder.

ARGUMENT

Plaintiff does not need a expert medical testimony to establish a *prima facie* case of causation

In Utah, Plaintiffs carry the "burden [of] establish[ing] a *prima facie* case of negligence," Clark v. Farmers Ins. Exch., 893 P.2d 598, 601 (Utah Ct.App.1995),

including “proximate and actual causation of the injury,” *id.* at 600; see also Jackson v. Colston, 116 Utah 295, 209 P.2d 566, 568 (1949) (“It is fundamental that the burden rests upon the plaintiff to establish the causal connection between the injury and the alleged negligence of the defendant.”). “[T]he causal connection between the alleged negligent act and the injury is never presumed and ... this is a matter the plaintiff is always required to prove affirmatively.” Jackson, 209 P.2d at 568. Although “the question of proximate causation is generally reserved for the jury,” Clark, 893 P.2d at 601 (internal quotation marks omitted), “the trial court may rule as a matter of law on this issue ... if ... ‘there is no evidence to establish a causal connection, thus leaving causation to jury speculation,’ ” *id.* (quoting Steffensen v. Smith's Mgmt. Corp., 820 P.2d 482, 487 (Utah Ct.App.1991)).

This court has had recent opportunity to rule on when expert medical testimony is required to establish a *prima facie* case of negligence. The cases are Beard v. K-Mart Corp., 2000 UT App 285, 12 P.3d 1015, and Fox v. Brigham Young University, 2007 UT App 406, 176 P.3d 446. The Beard decision cites two cases from other jurisdictions, Jordan v. Smoot, 191 Ga.App. 74, 380 S.E.2d 714, 715 (1989); and Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969), in which causation was established without the benefit of expert testimony..

In Beard this Court stated, “[t]he need for positive expert testimony to establish a causal link between the defendants' negligent act and the plaintiff's injury depends on the nature of the injury.” *Id.* at ¶ 16 (internal quotation marks omitted). Thus, “[w]here the injury involves obscure medical factors which are beyond an ordinary lay person's

knowledge, necessitating speculation in making a finding, there must be expert testimony that the negligent act probably caused the injury.” Id. (citations and internal quotation marks omitted). In such cases, the “testimony of lay witnesses regarding the need for specific medical treatment is inadequate to submit the issue to the jury.” Id.

In examining Beard it should be noted that the evidentiary problem for the Plaintiff in Beard was that as a result of being struck in the head by a K-Mart employee’s elbow, the Plaintiff required multiple neurological surgeries. The opinion in Beard specifically applies to “this medical causation issue”, i.e. neurological surgeries resulting from an elbow strike to the head. Mr. Hall is not seeking damages for neurological surgeries. The injuries claimed by Mr. Hall are commonly referred to as soft tissue injuries.

In reaching the Beard decision this court reviewed two cases proffered by Beard, Jordan v. Smoot, 191 Ga.App. 74, 380 S.E.2d 714, 715 (1989); and Walton v. Gallbraith, 15 Mich.App. 490, 166 N.W.2d 605, 606 (1969), in which causation was established without the benefit of expert testimony. Smoot involved injuries sustained as the result of an automobile accident. The treatment consisted of chiropractic care. Quoting the Georgia Court of Appeals:

Appellant's case consisted of her testimony and that of the responding police officer, pictures of her damaged car, and her medical bill. Through her testimony, appellant established that she was involved in a collision with appellee; that later that same day she experienced pain and visited a chiropractor; that she continued to have pain from the back of her head through her neck and shoulders; that the chiropractic treatments gave her relief; that she stopped seeing the chiropractor four months after the collision; and that she had suffered from some backaches prior to the collision but had not been under medical care. Pursuant to OCGA § 24-7-9,

appellant identified the medical bills for her chiropractic treatment from March 12 through July 20, 1987, totaling \$2,245. Appellant then rested...

Id. at 714.

In finding that the plaintiff had met the burden of proof with respect to causation the court held:

However, where, as here, there is no significant lapse of time between the injury sustained and the onset of the physical condition for which the injured party seeks compensation, and the *injury sustained is a matter which jurors must be credited with knowing by reason of common knowledge*, expert medical testimony is not required in order for a plaintiff to establish a personal injury case sufficient to withstand a defendant's motion for directed verdict.

Id. at 714-715, (emphasis added by the Utah Court of Appeals in Beard).

The facts in Walton, 15 Mich.App. 490, 166 N.W.2d 605, are similar, the plaintiff sued the defendant for neck, back, and shoulder injuries caused by a car accident. At trial, no physician testified for the plaintiff, and the defendant “objected to the admission into evidence of bills for medicine and treatment on the ground that there was no showing that they were causally connected with the ... accident.” The defendant also requested an instruction to exclude the jury's consideration of the bills. The trial court denied both motions, and the jury awarded the plaintiff \$3500 in damages. On appeal, the defendant argued it was error to introduce plaintiff's medical bills. The plaintiff, on the other hand, argued “that a causal connection between the accident and the injury may be shown

without expert testimony.” Id. at 605-06. The Walton court stated:

A brief review of the function of the jury leads us to the conclusion that plaintiff's position is the correct one. Her testimony emphasizes the facts that there were no previous neck or back pains and that they began the day after the accident.

In a situation such as this, it should be clear to men of common experience that the cause of the injuries was the accident and no expert was needed to demonstrate this fact.

Therefore, the court sustained the jury's verdict in favor of the plaintiff. Id. at 606.

In comparing Smoot and Walton to Beard this Court stated: “we conclude these cases are factually distinguishable as they involve medical damages within the common experience of a layperson.” Beard at 1018. Thus according to this Court’s decision in Beard, cases involving injuries to the neck, back and shoulder resulting from car accidents involve medical damages within the common experience of a layperson.

Fox v. BYU was decided by this Court after Beard. The plaintiff in Fox suffered knee injuries during a slip and fall. Prior to the slip and fall, the plaintiff had been diagnosed with osteoarthritis.

At the scene of Mrs. Fox's fall, she first attributed the cause of her fall to the fact that her knee “gave out.” She admitted to the EMTs that she had been diagnosed with a pre-existing condition, osteoarthritis, in that same knee. Thus, by her own initial explanation of the cause of her fall and her admission of an osteoarthritic condition, Mrs. Fox tied the cause of her fall to medical factors sufficiently complicated to be beyond the ordinary senses and common experience of a layperson. Mrs. Fox's lay testimony would not have been sufficient to determine whether the need for her medical treatment, the surgery and attachment of the fixator, was caused by BYU's allegedly defective stairs or the failure of her own arthritic knee.

The only evidence the plaintiff intended to call at trial to establish causation was her own testimony. This Court determined that, “[t]he trial court did not err in dismissing the Foxes' negligence claim for failure to present expert testimony on the element of causation because the factors associated with Mrs. Fox's fall and injury were sufficiently medically complex to require such testimony.”

The facts in this case compare favorably to the facts in Smoot and Walton. In this case, Mr. Hall suffered neck and back injuries following an automobile accident. Like the Plaintiff in Smoot, Mr. Hall experienced neck and back pain prior to the December 11, 2000 automobile accident. However, the pain he experienced following the accident was of a different kind and was more severe. In Walton, the only evidence necessary to establish causation was that of the Plaintiff. In this case, Plaintiff has designated his treating chiropractor, Dr. Anderson, as a fact witness. Dr. Anderson treated Mr. Hall on October 4, 2000. Dr. Anderson's testimony will establish a baseline of what Mr. Hall's condition was prior to the accident at issue. Dr. Anderson treated Mr. Hall following the accident on the same day as the accident. Dr. Anderson's testimony concerning the observable changes to Mr. Hall's condition versus his condition prior to the accident on December 11, 2000 is sufficient to establish a prima facie case of negligence.

Genuine issues of material fact

There is a dispute in this case as to when Mr. Hall began experiencing pain following the December 11, 2000 accident. There is also a dispute as to the location, type and severity of the pain experienced by Mr. Hall following the accident. As noted in

Brigham Young University v. Tremco Consultants, Inc., 110 P.3d 678 (Utah, 2005),

summary judgment is appropriate when there are no genuine issues of material fact and

“the moving party is entitled to a judgment as a matter of law.” Utah R. Civ. P 56:

In addition, “[the court] view[s] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.”

BYU v. Tremco, quoting Prince v. Bear River Mut. Ins. Co., 2002 UT 68, ¶ 14, 56

P.3d 524.

As to the specific issue of causation:

The question of proximate causation “is generally reserved for the jury.” Steffensen, 820 P.2d at 486 (citing Godesky v. Provo City Corp., 690 P.2d 541, 544 (Utah 1984)). Consequently, the trial court may rule as a matter of law on this issue only if: “(1) there is no evidence to establish a causal connection, thus leaving causation to jury speculation, or (2) where reasonable persons could not differ on the inferences to be derived from the evidence on proximate causation.” Steffensen, 820 P.2d at 487 (citing Robertson v. Sixpence Inns of Am., Inc., 163 Ariz. 539, 546, 789 P.2d 1040, 1047 (1990) (en banc)).

Clark v. Farmers Ins. Exchange, 893 P.2d 598, 601, (Utah App. 1995).

In Clark, quoted above, the plaintiff had no memory of how he was injured. The experts who testified could not testify as to which driver among many had hit the plaintiff’s vehicle and thus there truly was no evidence of causation.

In this case the Defendant argued at the trial level that Mr. Hall did not begin experiencing pain until a couple days after the accident. (See Defendant’s Motion for Summary Judgment, R. at 130, Fact 6, attached hereto as addendum Nine). Defendant argument that Mr. Hall could not establish causation was based upon the fact that there

was a gap of a couple days between the accident and when Mr. Hall began seeking treatment.

However, the facts in this case as established through discovery show that Mr. Hall sought treatment for his injuries on the day of the accident. (See Accident Report, R. at 37, attached hereto as Addendum Eight. See also Dec 11, 2000 notes of Dr. Anderson, R. at 52, attached hereto as Addendum Five).

The facts of this case taken in the light most favorable to Mr. Hall show that within hours of this accident Mr. Hall began experiencing severe pain of a different kind in a different location of his neck. The facts also show that he was treated by his chiropractor for severe pain of a different kind in a different location of his neck. These facts are sufficient to establish a *prima facie* case of causation.

As such, Defendant has not satisfied either of the conditions set forth in Clark which would justify taking from the jury the role of fact finder. This is so because (1) there is evidence to establish a causal connection, thus a potential jury needn't be left to speculation, and (2) reasonable persons could differ on the inferences to be derived from the evidence on proximate causation.

For the above reasons, it was improper for the trial court to rule as a matter of law that Plaintiff could not establish causation. Having established a *prima facie* case of causation, the issue of causation should have been presented to the jury.

CONCLUSION


In reality, this case is hardly distinguishable from the Smoot and Walton cases discussed above. In this case Mr. Hall was injured when the vehicle being driven by the defendant struck a freeway retaining wall while traveling 40 plus miles per hour. Mr. Hall felt the severe effects of this accident later that same day. He sought treatment from a chiropractor, with whom he had previously treated, that same day. Because he had previously treated with the chiropractor, the chiropractor can testify as to Mr. Hall's condition before and after the accident. The injuries suffered by Mr. Hall were neck and back injuries, the very kind of injuries that this Court has previously stated are within the common experience of a layperson.

In contrast, the Beard and Fox decisions upon which the trial court issued its ruling involved complex neurological surgeries and osteoarthritis. To equate the soft tissue injuries suffered by Mr. Hall with the conditions presented respectfully in Beard and Fox is a serious blow to all chiropractic patients and is disservice to the intelligence of jurors in Utah.

The plaintiff in this case can establish a *prima facie* case of causation through the testimony of the plaintiff who will testify as to the circumstances of the accident and the fact that he began experiencing severe pain of a different kind in a different location in his neck and back on the day of the accident and through the testimony of his treating chiropractor who will testify as to his condition prior to this accident and as to his condition following this accident.

Because the plaintiff, Mr. Hall, can establish a *prima facie* case of causation, Petitioner asks that this Court reverse the trial court's grant of summary judgment and remand this case to Fourth District Court so that Mr. Hall can try his case before a jury.

DATED AND SIGNED this 9 day of March, 2009.



REX I EAGAR
IVIE & YOUNG
Attorneys for Plaintiff/Appellant

Plaintiff/Appellant's Address:
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Provo, UT 84606

ADDENDUM 2

Utah Supreme Court Standing Order No. 8

(As to establishment of a pilot program to require submission of electronic court briefs to the Utah Supreme Court and the Utah Court of Appeals)

Effective May 15, 2008

The Utah Supreme Court hereby establishes a pilot program to determine the feasibility and desirability of requiring parties to provide the Utah appellate courts with a courtesy copy on compact disk (CD) of all briefs on the merits.

As of the effective date of this order, any party filing a brief on the merits in the Utah Supreme Court or the Utah Court of Appeals, including an intervenor and any person who has been granted permission to appear amicus curiae, shall submit a so-called Courtesy Brief on CD in searchable Portable Document Format (PDF) to the appellate court and to the parties in addition to complying with the filing and service requirements set forth in the Utah Rules of Appellate Procedure. The filing party shall include in the Courtesy Brief, the appendices, including relevant portions of the record, in PDF. The filing party shall submit the Courtesy Brief to the appellate court and the parties within fourteen (14) days after the filing of the printed form of the brief.

A person confined in a state institution and not represented by counsel who is filing a brief on the merits is exempt from this standing order. Any party or party's attorney who lacks the technological capability to comply with the standing order, must file a motion to be excused from compliance at the same time that the party files its brief on the merits.

As part of the pilot program, the Utah Supreme Court urges a filing party who has the technological capability to do so to submit a so-called Enhanced Courtesy Brief that includes hyperlinks to the cases, statutes, treatises, and portions of the record cited in the brief. A party electing to submit an Enhanced Courtesy Brief, shall submit the Enhanced Courtesy Brief to the appellate court and the parties within fourteen (14) days after the filing of the printed form of the brief. To view sample pages from an Enhanced Courtesy Brief (with hyperlinks) please click [here](#).

ADDENDUM 3

UTAH APPELLATE COURT
FEB 25 2009

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

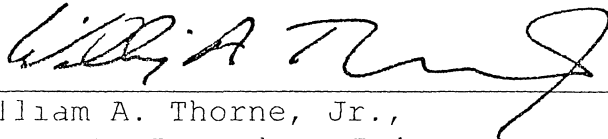
Jonathon Hall,)	
)	
Plaintiff and Appellant,)	ORDER
)	
v.)	Appellate Case No. 20080486-CA
)	
Jason Steimle,)	
)	
Defendant and Appellee.)	
)	

Before Judges Greenwood, Thorne, and Orme.

Appellee failed to submit the electronic courtesy brief required under Utah Supreme Court Standing Order No. 8 within fourteen days after the filing of the printed brief. Please be advised that within seven (7) days from the date of this order, you must submit to the court, a copy of appellee's brief on compact disc in searchable PDF format or a motion stating good cause to be excused from complying with Utah Supreme Court Standing Order No. 8. The courtesy brief must be accompanied by a certificate of service.

Dated this 25 day of February, 2009.

FOR THE COURT:



William A. Thorne, Jr.,
Associate Presiding Judge


CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2009, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

NAN T. BASSETT
GARY T WIGHT
KIPP & CHRISTIAN PC
10 EXCHANGE PL 4TH FLR
SALT LAKE CITY UT 84111-2714

JARED R. CASPER
REX I EAGAR
IVIE & YOUNG
226 W 2230 N #210
PO BOX 657
PROVO UT 84604

Dated this February 25, 2009.

By 
Celia Urcino
Judicial Assistant

Case No.: 20080486-CA

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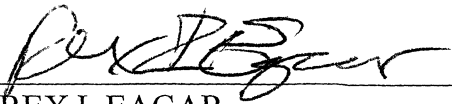
IN THE UTAH COURT OF APPEALS
STATE OF UTAH

JONATHAN HALL,	:	CERTIFICATE OF SERVICE
Plaintiff/Appellant,	:	
vs.	:	
JASON STEIMLE,	:	ORAL ARGUMENTS REQUESTED
Defendant/Appellee.	:	

COMES NOW Rex I. Eagar, attorney for plaintiff/appellant, Jonathan Hall,
and hereby certifies that on the 9th day of March, 2009, a true and correct copy of
plaintiff/appellant's Reply Brief of Appellant was served by first-class mail, with postage
prepaid thereon, to:

Gary T. Wright, #10994
KIPP & CHRISTIAN
10 Exchange Place, 4th Floor
Salt Lake City, UT 84111

DATED AND SIGNED this 9th day of March, 2009.

A handwritten signature in black ink, appearing to read "Rex I. Eagar", is written over a horizontal line.

REX I. EAGAR

IVIE & YOUNG

Attorneys for Plaintiff/Appellant