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Richard E. Mosca & Co. v. Mosca, 362 So. 2d 1340 (Fla. 1978)

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CASE COMMENTS

Workers' Compensation—EXPANDING THE *Victor Wine* RULE TO INCLUDE ALL INTERNAL FAILURES OF THE CARDIOVASCULAR SYSTEM—*Richard E. Mosca & Co. v. Mosca,* 362 So. 2d 1340 (Fla. 1978).

In 1975 Richard E. Mosca, president of the Richard E. Mosca & Co., Inc. construction company, was under emotional stress as a result of the financial difficulties of his business. Because of the decline in business Mosca had been forced to replace the company secretary with his wife, move the business office into his home, and take other measures to reduce overhead. On October 2, 1975, Mosca accompanied one of the company salesmen to a business meeting to assist in securing a lucrative sales contract on which the financial stability of the company rested. The meeting began with the potential customer severely criticizing Mosca for the way a previous sales order had been handled. The contract negotiations continued for four hours in a strained and tense atmosphere, when, while holding a sample book and explaining various details to the buyer, Mosca suddenly collapsed as a result of a middle cerebral artery aneurysm rupture.[1]

The Judge of Industrial Claims awarded compensation to Mosca for his disability; this order was affirmed by the Industrial Relations Commission. The Florida Supreme Court granted certiorari and reversed the lower decisions in *Richard E. Mosca & Co. v. Mosca,*[2] holding that the rule from *Victor Wine & Liquor, Inc. v. Beasley,*[3] which previously had been applied only to heart attack cases, should be expanded to include cases involving internal failures of other parts of the cardiovascular system. The *Victor Wine* standard required that, for a heart attack to be compensable, the employee must have been involved in an employment-related activity requiring unusual physical strain not customary to the employee's work.[4] The supreme court in *Mosca* noted that it was receding from its holding in *Tracy v. Americana Hotel,* in which the court found a ruptured aneurysm to be compensable when the "[c]laimant sustained her injury as an unexpected result flowing from the performance of her employment activity."[5]

1. Richard E. Mosca & Co. v. Mosca, 362 So. 2d 1340, 1341 (Fla. 1978).
2. *Id.* at 1340.
3. 141 So. 2d 581 (Fla. 1962).
4. *Id.* at 588-89.
5. 234 So. 2d 641, 642 (Fla. 1970).

Prior to the *Mosca* decision, Florida law had determined compensability for the rupture of an aneurysm by using the same standard applicable to other internal physiological failures,[6] namely, that an injury is compensable when it occurs by accident as a result of employment.[7] Since *Gray v. Employers Mutual Liability Insurance Co.*,[8] Florida has recognized unexpected results as being within the definition of accident and thus compensable under Florida's workers' compensation law. In *Gray*, a waffle cook injured her arm when she lifted a five-gallon can of waffle batter. Although she was totally disabled for three weeks, the claimant was originally denied compensation because the Deputy Commissioner found no accident.[9] The Florida Supreme Court reversed, holding that it was not necessary that the injury be from an unexpected cause, but only that there be an unexpected result.[10] The Florida Legislature subsequently amended the law in 1953 to incorporate the court's holding in *Gray*.[11]

Since the ruling in *Gray* that internal physiological injuries were compensable, Florida claimants who had suffered such internal injuries as a herniated disc,[12] a knee injury,[13] cataracts,[14] and a hernia,[15] have been awarded compensation benefits. However, compensability for heart attacks was limited under a special rule established in 1962 by the Florida Supreme Court's decision in *Victor Wine*.

Victor Wine involved a claimant who suffered a heart attack while

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6. *See, e.g.*, Tracy v. Americana Hotel, 234 So. 2d 641 (Fla. 1970); Direct Oil Corp. v. Coleman, 216 So. 2d 193 (Fla. 1968).

7. Workers' compensation benefits are awarded for disability or death which occurs as a result of an injury arising out of and in the course of employment. FLA. STAT. § 440.09(1) (1977). An "injury" is personal injury or death by accident. *Id.* § 440.02(6). An "accident" is an unexpected or unusual event or result, happening suddenly. *Id.* § 440.02(18).

8. 64 So. 2d 650 (Fla. 1953).

9. *Id.* at 651.

10. The court stated:

> It is enough, then, if there is an unexpected *result*, even though there was no unexpected *cause*, such as a slip, fall or misstep, in order to constitute an "accident" within the meaning of the Workmen's Compensation Law . . . . [A]n unexpected injury received in the ordinary performance of a duty in the usual manner is an injury "by accident" within the purview of the Workmen's Compensation Law . . . .

Id. (emphasis supplied by court).

11. Ch. 28238, § 1, 1953 Fla. Laws 844 (current version at FLA. STAT. § 440.02(18)(1977)). The Florida Legislature undertook a comprehensive revision of the Florida workmen's compensation law during the 1979 legislative session. This revision included changing the name of the act from the Workmen's Compensation Act to the Workers' Compensation Act.

12. Wilhelm v. Westminster Presbyterian Church, 235 So. 2d 726 (Fla. 1970).

13. Simmons v. City of Coral Gables, 186 So. 2d 493 (Fla. 1966).

14. Worden v. Pratt & Whitney Aircraft, 256 So. 2d 209 (Fla. 1972).

15. Salazar v. Jules Gillette, Inc., 243 So. 2d 138 (Fla. 1971).

engaged in the strenuous work of loading over one hundred cases of whiskey from a conveyor line to a truck. The Florida Supreme Court held that a heart attack was not a compensable injury if it occurred as a result of the usual work of the employee, even when that work customarily entailed physical exertion. The court adopted a rule requiring unusual strain or exertion for compensability of heart attacks.[16] Therefore, the claimant was denied compensation, because there was no strain or exertion that was unusual to the work he customarily performed.[17]

However, the rule of *Victor Wine* had been limited in application only to heart attack cases. Thus, when a claimant suffered a ruptured aneurysm of the aortic artery as a result of lifting cases to a higher shelf, he was awarded benefits even though the strain was not unusual to his employment.[18] Following the supreme court's decision in *Tracy v. Americana Hotel,*[19] the Industrial Relations Commission perceived the *Victor Wine* case as pertaining only to heart attacks, and quoted that decision to support its finding of compensability for the ruptured aneurysm.[20]

In *Tracy,* the Florida Supreme Court quashed the Industrial Relations Commission order denying benefits to a claimant who had suffered a ruptured aneurysm and subsequent brain damage.[21] The ruptured aneurysm was the result of a significant rise in the claimant's blood pressure during her employment. The Florida Supreme

16. The Florida Supreme Court stated:

> When disabling heart attacks are involved and where such heart conditions are precipitated by work-connected exertion affecting a pre-existing non-disabling heart disease, said injuries are compensable only if the employee was at the time subject to unusual strain or over-exertion not routine to the type of work he was accustomed to performing.

141 So. 2d at 588-89.

17. *Id.* at 583-84. See Simmons v. Stanley, 197 So. 2d 514 (Fla. 1967), for a typical decision based on the *Victor Wine* rationale (claimant suffered a heart attack after unloading and stacking one hundred and seventy-five fifty-pound cases of canned goods over a two-day period, but was denied benefits; evidence showed that he customarily stacked one hundred to one hundred and twenty-five cases in a single day, so there was no unusual strain).

18. Zayre Corp. v. Urrechaga, 7 F.C.R. 185 (IRC 1972), *cert. denied,* 271 So. 2d 461 (Fla. 1972).

19. 234 So. 2d 641 (Fla. 1970).

20. It is therefore settled beyond question in this state that an internal failure, such as a strained muscle, ruptured disc, "snapped" kneecap, and the like, brought about by exertion in the performance of the regular or usual duties of the employment, may be found to be an injury "by accident," without the necessity of showing that such injury was preceded by some incident such as a slip, fall or blow.

7 F.C.R. at 186 (quoting 141 So. 2d at 588).

21. The claimant, a hotel chamber maid, was irritated because she had to make an additional trip to the supply room for more linen near quitting time. As she continued her work in an emotionally agitated state, she "snapped" a sheet across the bed that she was making, and immediately afterwards she sustained a ruptured aneurysm. 234 So. 2d at 642.

Court awarded compensation benefits, relying on *Williams v. Terrazzo Associates,* which held that "it is incumbent on a claimant, in order to receive compensation, to show only that he sustained injury as an unexpected result flowing from the performance of his employment activities."[22]

In determining the compensability of Mosca's ruptured aneurysm, the Florida Supreme Court could have ruled in favor of compensation on the basis of its prior holdings in *Tracy* and *Direct Oil Corp. v. Coleman.*[23] The court awarded full compensation in both cases for the rupture of a preexisting aneurysm. In *Direct Oil Corp.,* the court stated that "the fact that no rupture would have occurred without the aneurysm, a pre-existing nondisabling congenital weakness, is wholly irrelevant to the determination of compensability . . . ."[24] This position is consistent with Florida's law that the employer takes the employee as he finds him,[25] and with the compensability of other types of internal injuries, such as a herniated disc.[26]

The factual situation of *Mosca* was very similar to that of *Tracy*: both of the claimants had a medical history of hypertension; they both were performing their usual employment in an agitated emotional state; neither claimant performed any physical activity requiring unusual physical strain or overexertion; both suffered a rupture of a preexisting aneurysm during the course of their employment. However, while Tracy's injury was fully compensable, Mosca's injury was held to be not compensable. The Florida Supreme Court reversed its position, applying the standard of the *Victor Wine* case, for the first time, to injuries other than heart attacks.[27]

No reason or statement was given in support of the court's sudden reversal from its established position, except that the court concluded "that the same rationale for requiring a stricter rule in heart cases is also applicable to other internal failures of the cardiovascular system."[28] Since the court supplied no such rationale, this statement presumably referred to the rationale from *Victor Wine* sup-

22. 224 So. 2d 257, 258 (Fla. 1968).

23. 216 So. 2d 193 (Fla. 1968).

24. *Id.* at 194.

25. *See* Davis v. Artley Constr. Co., 18 So. 2d 255, 258 (Fla. 1944), in which the court held that "[r]ecovery of compensation by a claimant for an injury is not conditioned on good or perfect health . . . . The employer accepts the employee in such physical condition as he finds him and assumes the risk of a diseased condition aggravated by injury."

26. *See, e.g.,* Wilhelm v. Westminster Presbyterian Church, 235 So. 2d 726 (Fla. 1970).

27. [B]efore a ruptured aneurysm can qualify as an accident arising out of employment, the rupture must be shown to have been caused by an unusual strain or overexertion by the claimant resulting from a specifically identifiable effort by him not routine to the type of work he is accustomed to performing.

362 So. 2d at 1342.

28. *Id.*

porting a more restrictive standard. Yet the court in *Victor Wine* also failed to provide a rationale for its decision to require unusual strain or overexertion in order for an injury to be compensable; the court merely modified the holding from a prior case[29] that had been overruled in part nine years earlier.[30] The court in *Victor Wine* limited its decision to "heart attacks" when it expressed the adopted standard for "heart cases." Rather than including other defects of the cardivascular system, the *Victor Wine* court expressly limited its decision to "heart disease" injuries when it later explained the application of the rule.[31]

In determining ruptured aneurysms to be within the same category of injuries as heart attacks, the court in *Mosca* seemed to ignore the medical fact that the two injuries are quite different and often can be attributed to dissimilar causes. While the court may have been correct in stating that emotional strain cannot be isolated as the sole cause of a heart attack,[32] there is a sufficient causal relationship between emotional stress and high blood pressure in a hypertensive person for it to be generally recognized that emotional stress often results in an increase in blood pressure.[33] It is also generally recognized that an elevation in blood pressure can be the precipitating cause of a ruptured aneurysm.[34] Since the court did not give a reason for combining heart attacks and aneurysms under the *Victor Wine* rule, it is possible to speculate that the decision was based solely on the court's desire to limit the number of future determinations of compensability based on such nonquantifiable factors as emotional strain. Such a limitation is precisely the result of the court's decision, despite the fact that there may be evidence sufficient to support a finding that emotional strain was the precipitating cause of the disability.

The court could have modified the law from *Tracy* to allow compensation only when the cardiovascular failure was caused, in whole or part, by customary physical exertion in conjunction with emotional stress. The court in *Mosca* hinted at this requirement when it stated "in no case have we held emotional strain alone to be sufficient."[35] However, this statement is ambiguous because only

29. Cleary Bros. Constr. Co. v. Nobles, 23 So. 2d 525 (Fla. 1945).

30. Gray v. Employers Mut. Liab. Ins. Co., 64 So. 2d 650 (Fla. 1953), overruled that portion of *Cleary Bros.* which required a literal accident, such as a slip or fall, for an injury to be compensable.

31. 141 So. 2d at 588-89.

32. 362 So. 2d at 1342.

33. Isaacs, *Occupation, Trauma and Cardiovascular Disease*, 5 LAWYER'S MEDICAL CYCLOPEDIA 162-63 (1960); McLaughlin, *Summary of the Legal Problem, id.* at 195.

34. 3B R.N. GRAY, ATTORNEYS' TEXTBOOK OF MEDICINE 91.52 (3d ed. 1978).

35. 362 So. 2d at 1342.

heart attack cases have been decided using the *Victor Wine* standard.[36] The court's prior aneurysm decisions[37] were not based on unusual physical strain or overexertion, as required by the *Victor Wine* rule for compensability. The *Tracy* decision was based on a finding of an injury caused by an emotional state, anger, coupled with a customary physical act, "snapping" a sheet. The court in *Mosca* indicated that it was receding from the *Tracy* decision,[38] but it did not clarify to what extent *Tracy* was no longer valid. The court neglected to say whether Mosca's ruptured aneurysm would have been compensable if he had been experiencing unusual employment-related emotional stress while engaged in some usual physical exertion customary to his employment.

After ruling that the standard from *Victor Wine* would be applied, the court in *Mosca* stated that emotional strain was not measurable enough to be used as a determining factor in establishing a causal relationship between the injury and the employment.[39] However, the rationale offered by the court to buttress its statement concerning emotional strain was a discussion of prior cases involving claimants who had suffered heart attacks,[40] since only heart attacks had been subject to the *Victor Wine* rule. The court had ignored the distinction between causation of heart attacks and ruptured aneurysms.

If *Mosca* is intended as a categorical denial of relief for injuries resulting from emotional strain which is not accompanied by unusual physical strain or overexertion not customary to the employment, then the court has failed to provide for compensation benefits for injuries which may be primarily caused by emotional strain. The law in Florida requires not only that the burden of proof for noncompensability be on the employer/insurer,[41] but also that the Workers' Compensation Act be liberally construed and doubts always re-

36. The supreme court in *Mosca* ignored its opinion in Harbor Island Spa v. Barlow, 139 So. 2d 879 (Fla. 1962), in which it granted an award, requiring apportionment for preexisting disease, to a claimant who had suffered a heart attack as the result of employment-related emotional stress.

37. *E.g.*, Direct Oil Corp. v. Coleman, 216 So. 2d 193 (Fla. 1968); Tracy v. Americana Hotel, 234 So. 2d 641 (Fla. 1970).

38. 362 So. 2d at 1342 n.2.

39. "Emotional strain is too elusive a factor to be utilized, independent of any physical activity, in determining whether there is a causal connection between a heart attack or other internal failure of the cardiovascular system and the claimant's employment." *Id.* at 1342.

40. *Id.* at 1342-44.

41. This court is committed to the doctrine that when a serious injury is conclusively shown and a logical cause for it is proven, he who seeks to defeat recovery for the injury has the burden of overcoming the established proof and showing that another cause of the injury is more logical and consonant with reason.

Sanford v. A.P. Clark Motors, 45 So. 2d 185, 187 (Fla. 1950) (citation omitted).

solved in favor of the worker.[42] Thus, such a categorical denial of relief seems to contradict established principles of the Florida workers' compensation law.

A more rational alternative may have been for the court to require that the preexisting disability be apportioned out of the resulting disability, with a corresponding reduction in the compensation award, as provided for in the Workers' Compensation Act.[43] The holding in *Tracy,* that the preexisting aneurysm should not be apportioned,[44] would be overruled. As the law existed under *Tracy* and *Mosca,* there would still be no apportionment for the preexisting condition, and full compensation could be awarded if there was an accompanying unusual physical exertion. This would be true even if the physical exertion was less a cause of the injury than the emotional stress was and if no disability would have resulted but for the preexisting physical defect.

A suggested explanation for the decision in *Mosca* may be the desire by the court to limit the inflationary spiral effect of higher compensation insurance premiums by eliminating an area of compensation that is usually the result of preexisting defects that are often congenital or not related to employment. The Florida Supreme Court has noted in the past that the compensation laws are not intended to be a form of general public health or accident insurance.[45] The court recently denied benefits to a claimant who suffered a disabling injury as a result of a congenital abnormality in her lower back.[46] Although the injury occurred during the claimant's employment, the court did not look to the legal issue of whether the claimant suffered an injury, but instead cited a decision by an Arizona intermediate appellate court[47] in ruling that there was no causal connection between the injury and the employment. Although a causal connection has not been a consistent requirement for compensability in previous cases, the court stated that "[w]e cannot permit the Commission to convert the workmen's compensa-

42. *See, e.g.,* Naranja Rock Co. v. Dawal Farms, Inc., 74 So. 2d 282, 286 (Fla. 1954).

43. FLA. STAT. § 440.02(18) (1977) provides that "[w]here a preexisting disease or anomaly is accelerated or aggravated by accident arising out of and in the course of employment, only acceleration of death or the acceleration or aggravation of disability reasonably attributable to the accident shall be compensable with respect to permanent disability or death." The 1979 Workers' Compensation Act amended this section to provide that "[w]here a preexisting disease or anomaly is accelerated or aggravated by accident arising out of and in the course of employment and resulting in death, only acceleration of death reasonably attributable to the accident shall be compensable." Ch. 79-40, § 2, 1979 Fla. Laws 215. The implications of this amendment are beyond the scope of this comment.

44. 234 So. 2d at 643.

45. *E.g.,* Victor Wine & Liquor, Inc. v. Beasley, 141 So. 2d 581, 583 (Fla. 1962).

46. Southern Bell Tel. & Tel. Co. v. McCook, 355 So. 2d 1166 (Fla. 1978).

47. Sacks v. Industrial Comm'n, 474 P.2d 442 (Ariz. Ct. App. 1970).

tion statute into a mandatory general health insurance policy which does not limit the burden on industry to those ailments produced even remotely by the hazards of industry."[48] This statement may be the key to the court's refusal to award compensation benefits in *Mosca;* it is possible that the same rationale, though not identified in the opinion, underlies the court's decision.

The Florida Supreme Court in *Mosca* has significantly altered the standards concerning compensability for injuries resulting from internal failures of the cardiovascular system. A more stringent test will determine the award made to an employee whose disability was primarily caused by an emotional strain or a preexisting physical defect. The court has emphasized that it now requires a direct causal relationship between the employment and the employee's disability. However, by not providing a rationale that would clarify the court's reasoning and delineate the limits of the decision, the court has invited future litigation to define the extent to which *Tracy v. Americana Hotel* is no longer valid. The decision indicates a trend toward a compensation law that will be construed less liberally for the claimant.

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48. Southern Bell Tel. & Tel. Co. v. McCook, 355 So. 2d 1166, 1169 (Fla. 1978).