

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 6, 2025 Session

JONATHAN CRAWLEY v. ZANIES REAL ESTATE, LLC ET AL.

**Appeal from the Circuit Court for Davidson County
No. 23C852 Clifton David Briley, Judge**

No. M2024-01014-COA-R3-CV

After getting sick following a visit to a comedy club, a customer sued the venue for negligence and breach of contract. The court found after a bench trial that the cause of the customer's sickness had not been proved, so it dismissed the customer's claims with prejudice. The court also denied the customer's post-judgment request to amend the judgment based on evidence that one of the witnesses at trial may have given false testimony. We affirm.

Tenn. R. App. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and JEFFREY USMAN, J., joined.

Gina Crawley, Nashville, Tennessee, for the appellant, Jonathan Crawley.

Adam Dread, Nashville, Tennessee, for the appellees, Zanies Real Estate, LLC and Zanies Comedy Club.

MEMORANDUM OPINION¹

I.

On July 31, 2022, Jonathan Crawley attended a show at Zanies Comedy Club with a friend, Shatika White. As part of the ticket purchase agreement, Zanies required all patrons to buy at least two menu items, either food or drink, during the show. Mr. Crawley

¹ Under the rules of this Court, this memorandum opinion may not be published, "cited[,]" or relied on for any reason in any unrelated case." TENN. CT. APP. R. 10.

purchased and consumed several items on the Zanies menu. Later that night, Mr. Crawley experienced symptoms of gastrointestinal distress. But other than a phone call to his sister who is a registered nurse, he did not seek medical attention. He purchased some basic supplies to stay hydrated, as his sister recommended, and he returned to work a few days later.

Mr. Crawley sued Zanies Real Estate, LLC and Zanies Comedy Club (collectively “Zanies”) in general sessions court, alleging breach of contract and negligence. The general sessions court entered a judgment for Zanies. Mr. Crawley appealed the adverse decision to circuit court.

At trial, Mr. Crawley told the court that he became ill a few hours after eating at Zanies. He could not recall his exact meal, but he thought he had eaten queso and wings. He did not remember eating any other food that day.

Mr. Crawley recounted at least six prior occasions when he experienced similar gastrointestinal symptoms about two to five hours after eating a “bad meal.” He never sought medical attention other than consulting his sister. One time, as he recalled, a physician he worked with diagnosed him with food poisoning based solely on his reported symptoms.

As a registered nurse, Mr. Crawley’s sister often treated patients with symptoms of gastrointestinal distress, including some patients with food poisoning. She testified that the symptoms Mr. Crawley described were consistent with a diagnosis of food poisoning. Yet she readily admitted that his symptoms could also have been caused by several common viruses. She did not diagnose her brother’s medical condition.

Mr. Crawley submitted multiple health inspection reports from previous years, with scores ranging between 83 and 100, to show that Zanies had a poor food safety record. But none of the inspections occurred in close proximity to Mr. Crawley’s visit. The general manager insisted that the venue never had a serious issue on an inspection, such as contaminated food. And their most recent inspection yielded a perfect score.

The witnesses from Zanies presented evidence that the club’s supplier delivered their chicken wings fully cooked and flash frozen. The club’s sales records showed that dozens of customers purchased chicken wings at Zanies that night. No one reported an illness. Even Mr. Crawley’s companion that evening, Ms. White, denied having any symptoms of food poisoning after the show.

The trial court ruled that Mr. Crawley failed to prove by a preponderance of the evidence that the food he consumed at Zanies caused his illness. The proof at trial showed that food poisoning was merely one of several possible causes of his symptoms. He

presented no expert medical testimony on causation. Nor was there any evidence that anyone else became ill after eating at Zanies that night. Because he failed to meet his burden of proof, the court dismissed Mr. Crawley’s “claim” with prejudice.

Unsure of the finality of the dismissal order, Mr. Crawley sought post-judgment relief under either Tennessee Rule of Civil Procedure 54.02 or 59.04. First, Mr. Crawley asked the court to resolve his finality concern and dispose of his contract claim so that he could appeal the judgment. Second, he asked the court to reconsider its decision in light of new evidence suggesting that Ms. White may have given false testimony. He submitted text messages he had received from Ms. White the day after the show. To him, the messages proved that Ms. White also fell ill after eating at Zanies that night. He argued that this new evidence undermined one of the bases for the court’s ruling.

The trial court granted the motion in part. It issued an amended judgment clarifying that the lack of proof on causation compelled dismissal of both of Mr. Crawley’s legal theories. As for Mr. Crawley’s second argument, the court acknowledged that counsel had fulfilled her ethical duty to bring allegedly false witness testimony to the court’s attention. *See* TENN. S. CT. R. 8, RPC 3.3(h). Yet the text messages, which were obviously available at trial, were never offered as evidence. Nor did Mr. Crawley provide the court with a legal basis for considering the evidence as part of a motion to alter or amend. Even if the court could consider the text messages, it determined that they would not have altered the outcome.

II.

Mr. Crawley raises two issues on appeal. First, he contends that the evidence preponderates in favor of a finding that Zanies caused his illness. Second, he complains that the court failed to consider the text messages he submitted with his post-trial motion.²

Because this was a bench trial, we review the trial court’s factual findings de novo on the record, with a presumption of correctness, unless the evidence preponderates otherwise. TENN. R. APP. P. 13(d); *see, e.g., Armbrister v. Armbrister*, 414 S.W.3d 685, 692 (Tenn. 2013). Evidence preponderates against a finding of fact when it “support[s] another finding of fact with greater convincing effect.” *Watson v. Watson*, 196 S.W.3d

² Zanies contends that this Court should dismiss Mr. Crawley’s appeal because he failed to present any “substantive legal issues” warranting appellate relief. Admittedly, Mr. Crawley’s statement of the issues is poorly drafted. But when we consider the stated issues in light of his written arguments, we conclude that he has sufficiently presented grounds for appellate relief. *See Trezevant v. Trezevant*, 696 S.W.3d 527, 531 (Tenn. 2024) (instructing appellate courts to “not decline to address a clearly presented argument that falls within the scope of the stated issues simply because the stated issues were not crafted as precisely as they could have been”).

695, 701 (Tenn. Ct. App. 2005). We review the trial court's conclusions of law de novo, with no presumption of correctness. *Armbrister*, 414 S.W.3d at 692.

A.

Mr. Crawley insists that he met his burden of proof on causation. Relying on *McCarley v. West Quality Food Serv.*, 960 S.W.2d 585 (Tenn. 1998), he contends that he was not required to eliminate all other potential causes of his illness to establish causation in a negligent food poisoning case. Mr. Crawley misapprehends the cited opinion.

The *McCarley* decision was an appeal from an adverse ruling on summary judgment. *Id.* at 587. Mr. McCarley became ill after eating the defendant's fried chicken. *Id.* Blood tests showed that Mr. McCarley's symptoms were caused by ingesting improperly cooked poultry or other meat contaminated by the bacterium *Campylobacter*. *Id.* Based on Mr. McCarley's food history, his illness could have been caused by the bacon he ate at breakfast or the defendant's chicken. *Id.* at 587-88. Mrs. McCarley claimed that the defendant's chicken "smelled kind of funny" and "didn't taste right." *Id.* at 587. The McCarleys' medical expert opined that chicken was a top suspect. *Id.* But without testing the two suspect food items, the expert could not eliminate bacon as a possible source of contamination. *Id.* at 588.

The defendant persuaded the lower court that it was entitled to a judgment as a matter of law because the plaintiffs could not prove causation. *Id.* at 587. Although the supreme court reversed, the court did not lower the standard for proving causation as Mr. Crawley suggests. To prove causation by a preponderance of the evidence, the plaintiff must show that the defendant "more likely than not" caused the plaintiff's injury. *Kilpatrick v. Bryant*, 868 S.W.2d 594, 598-99 (Tenn. 1993). Causation must be shown as "a matter of probability, not possibility." *Id.* at 602. In *McCarley*, the supreme court held that a plaintiff in a negligent food poisoning case may establish causation through either expert testimony alone or a combination of expert and lay testimony. *McCarley*, 960 S.W.2d at 589. So the inability of Mr. McCarley's medical expert to pinpoint the source of contamination was not fatal. *Id.* at 588. The expert's testimony, in combination with the other evidence, was sufficient to support a reasonable inference that the defendant's chicken was the probable cause of Mr. McCarley's illness. *Id.* at 589. In other words, Mr. McCarley came forward with sufficient proof for a reasonable juror to find in his favor.

Here, the evidence does not preponderate against the trial court's causation finding. Mr. Crawley offered no expert testimony on causation. Mr. Crawley's sister gave expert testimony on the treatment of his symptoms, not the cause. Expert testimony on causation is still a required component. See *McCarley*, 960 S.W.2d at 589; *Miller v. Choo Choo Partners, L.P.*, 73 S.W.3d 897, 901 (Tenn. Ct. App. 2001) (recognizing the "general rule" that "causation of a medical condition must be established by testimony from a medical

expert”). Even if Mr. Crawley had food poisoning, he failed to show that his Zanies meal was the source. The witnesses from Zanies gave uncontroverted testimony that the food was prepared safely and dozens of other customers ate the same thing that night without any other reports of illness. Mr. Crawley offered no countervailing evidence other than some outdated health inspection reports.

B.

Mr. Crawley also challenges the trial court’s partial denial of his post-trial motion to alter or amend the judgment. We discern no abuse of discretion in the court’s decision. *See Discover Bank v. Morgan*, 363 S.W.3d 479, 487 (Tenn. 2012) (explaining that appellate courts review trial court decisions on both Rule 54.02 and Rule 59.04 motions for an abuse of discretion).

Mr. Crawley posits that his attorney’s report of improper conduct required the court to alter its previous ruling. The Rules of Professional Conduct “are designed to provide guidance to lawyers.” TENN. S. CT. R. 8, PREAMBLE & SCOPE. One such rule requires attorneys to alert the court if they believe that a witness has perpetrated a fraud on the court or “otherwise committed an offense against the administration of justice in connection with the proceeding.” TENN. S. CT. R. 8, RPC 3.3(h). Mr. Crawley’s counsel fulfilled this obligation by bringing the text messages to the court’s attention. But the rule does not impose a substantive requirement on the tribunal.

The Tennessee Rules of Civil Procedure govern motions to alter or amend previous trial court decisions. *See Discover Bank*, 363 S.W.3d at 488-89. For post-trial relief based on new evidence, a party must show that the “evidence was not known to the moving party prior to or during trial and that it could not have been known to him through exercise of reasonable diligence.” *Burris v. Burris*, 512 S.W.3d 239, 248 (Tenn. Ct. App. 2016) (quoting *Kirk v. Kirk*, 447 S.W.3d 861, 869 (Tenn. Ct. App. 2013)). As the trial court recognized, the text messages were nothing new. Mr. Crawley admitted that they were available at the time of trial, but he forgot to alert his counsel. *See Seay v. City of Knoxville*, 654 S.W.2d 397, 399 (Tenn. Ct. App. 1983) (recognizing that clients have a “duty to act with due diligence in securing evidence for trial”).

C.

Zanies requests attorney’s fees under Tennessee Code Annotated § 27-1-122 (2017), claiming this appeal was frivolous or taken solely for delay. A frivolous appeal is “utterly devoid of merit,” *Combustion Eng’g, Inc. v. Kennedy*, 562 S.W.2d 202, 205 (Tenn. 1978), or has “no reasonable chance of success,” *Davis v. Gulf Ins. Grp.*, 546 S.W.2d 583, 586 (Tenn. 1977). While the merits of this appeal are suspect, we decline to award attorney’s fees.

III.

We conclude that the evidence does not preponderate against the trial court's findings on causation. And the trial court did not err in its decision on Mr. Crawley's post-trial motion. So we affirm the judgment.

s/ W. Neal McBrayer

W. NEAL MCBRAYER, JUDGE