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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0502**

Leonard A. Wallace,
Appellant,

vs.

BNSF Railway Company, a Delaware Corporation,
Respondent.

**Filed November 18, 2019
Reversed and remanded
Hooten, Judge**

St. Louis County District Court
File No. 69DU-CV-18-357

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Considered and decided by Hooten, Presiding Judge; Cleary, Chief Judge; and
Worke, Judge.

U N P U B L I S H E D O P I N I O N

HOOTEN, Judge

Appellant employee challenges the summary-judgment dismissal of his negligence claim under the Federal Employers' Liability Act (FELA) arising out of personal injuries suffered while working at BNSF Railway Company. Appellant argues that the district

court erred by determining that he did not present sufficient evidence to create a genuine issue of material fact on causation. We reverse and remand.

FACTS

Appellant Leonard Wallace worked for BNSF for 39 years prior to the incident leading to this lawsuit. In 2006, Wallace began working on a full-time welding crew for BNSF, but he had experience in welding throughout his time at the company as a seasonal worker. On April 28, 2015, Wallace and his welding partner learned that their work assignment for the day was welding a rail crossing about 100 miles from their office. Wallace was the head welder.

Wallace began welding first. When his welding partner took over welding, Wallace worked on the maintenance of the truck and tools. To do so, he used Deep Creep, a flammable spray used to lubricate rusty equipment, to spray down the rusted doors of the company's truck and the tools in the truck. After he finished spraying the equipment, Wallace walked back to where his partner was welding. "A red piece of metal" from the welding flew at Wallace, hit his pant leg, and immediately started a fire. To try to extinguish the fire, Wallace took off his gloves to rip off his pants. When that failed, he found some dirt and smothered the fire. Wallace sustained second-degree burns on both of his hands and his right leg.

Following the incident, Wallace filled out a personal injury report form with BNSF. When describing how the injury occurred, Wallace stated, "While spraying tools, doors on truck, spray went into clothing also." He also stated that he could have prevented the injury

“[b]y not accidentally having spray on clothing and hands.” Wallace told BNSF that there was nothing the company could have done to prevent his injuries.

In November 2017, Wallace brought a negligence action under FELA against BNSF, alleging that the company breached its duty to maintain a safe work environment. Following discovery, BNSF moved for summary judgment asserting that Wallace’s own negligence was the cause of his injuries and that his injuries were not foreseeable to BNSF. In reply, Wallace argued that (1) the railroad could not establish that he was the sole cause of his injuries when the evidence is viewed in the light most favorable to him, and (2) a genuine issue of material fact exists because BNSF created the unsafe welding environment. Wallace argued that BNSF was causally negligent as it failed to provide and maintain a safe work truck; failed to provide proper tools and equipment, including protective screens, flame-retardant clothing, and water hoses and tanks; failed to adopt safe work procedures; and failed to safely staff its workplace.

Following a hearing, the district court granted BNSF’s motion for summary judgment and concluded that there was no genuine causation issue because Wallace stated in his injury report that he caused his injury.

This appeal follows.

D E C I S I O N

Wallace argues that the district court erred in granting BNSF summary judgment. A district court must grant a motion for summary judgment “if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. A genuine issue of material fact exists if a rational trier

of fact, when considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court applies a de novo standard of review to the district court’s legal conclusions on summary judgment and views the evidence in the light most favorable to the party against whom summary judgment was granted. *Commerce Bank v. West Bend Mut. Ins. Co.*, 870 N.W.2d 770, 773 (Minn. 2015).

Under FELA, 45 U.S.C. §§ 51–60 (2012), “a railroad has a duty to provide its employees with a reasonably safe workplace.” *Smith v. Soo Line R.R. Co.*, 617 N.W.2d 437, 439 (Minn. App. 2000), *review denied* (Minn. Nov. 21, 2000). Railroads are liable for injuries that result “in whole or in part” from their negligence. *Hauser v. Chicago, Milwaukee, St. Paul. & Pac. R.R. Co.*, 346 N.W.2d 650, 653 (Minn. 1984). While a plaintiff must offer evidence of the common-law elements of negligence, a plaintiff’s burden is significantly lighter under FELA. *Smith*, 617 N.W.2d at 439. The United States Supreme Court has termed this lighter burden the “relaxed” causation standard. *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 690, 131 S. Ct. 2630, 2632 (2011). Only a “scintilla” of evidence is needed to establish a railroad’s negligence under FELA than in an ordinary negligence action. *Hauser*, 346 N.W.2d at 653. “If there is any evidence of negligence, the case should go to the jury.” *Id.*

The district court concluded that there were no genuine issues of material fact regarding the cause of Wallace’s injuries. It reasoned:

To the Court, this case turns on the facts. Specifically, the facts that [Wallace] knew that the lubricant was flammable, knew that he had gotten some on his clothes, and knew that the

byproducts of his partner's welding could cause his clothes to start on fire under those circumstances. By contrast, there was nothing BNSF could have done or said to change the outcome. In the Court's view, based on the facts present here, [Wallace]'s negligence was the sole cause of the injury.

The district court indicated that each of Wallace's allegations of negligence was undermined by Wallace's statements in his personal injury report that he caused his injury.

Wallace argues that the district court failed to properly apply FELA's causation standard. In doing so, he points to the Supreme Court's decision in *Rogers v. Missouri Pac. R.R. Co.*, 352 U.S. 500, 77 S. Ct. 443 (1957). In *Rogers*, the Supreme Court discussed Congress's purposes in creating FELA:

The law was enacted because the Congress was dissatisfied with the common-law duty of the master to his servant. The statute supplants that duty with the far more drastic duty of paying damages for injury or death at work due in whole or in part to the employer's negligence. The employer is stripped of his common-law defenses and for practical purposes the inquiry in these cases today rarely presents more than the single question whether negligence of the employer played any part, however small, in the injury or death which is the subject of the suit. The burden of the employee is met, and the obligation of the employer to pay damages arises, when there is proof, even though entirely circumstantial, from which the jury may with reason make that inference.

Id. at 507–08, 77 S. Ct. at 449. The *Rogers* court concluded that “the Congress vested the power of decision in these actions exclusively in the jury in all but the infrequent cases where fair-minded jurors cannot honestly differ whether fault of the employer played any part in the employee's injury.” *Id.* at 510, 77 S. Ct. at 450–51.

This case is factually similar to *Rogers*. Rogers worked as a railroad laborer and was assigned to burn weeds and vegetation growing along the tracks. *Id.* at 501, 77 S. Ct.

at 446. As he was instructed, Rogers stopped burning the vegetation and ran away from the tracks for safety when he heard the sound of an oncoming train. *Id.* But unbeknownst to him, a passing train fanned the flames of the burning vegetation, carrying the flames to his position and engulfing him. *Id.* The Missouri Supreme Court determined that, as a matter of law, Rogers caused his injuries, partially because Rogers allegedly admitted that he knew it was his primary duty to watch the fire and that he therefore brought on his own emergency situation. *Id.* at 503–04, 77 S. Ct. at 447. But the United States Supreme Court ruled that the jury could have found that the employer was negligent in part, and therefore reversed the state court’s decision. *Id.* at 510–11, 77 S. Ct. at 451.

Here, the district court ruled that Wallace was the sole cause of his injuries because he sprayed the Deep Creep that caused the fire to start. The district court relied heavily on Wallace’s alleged admission in his personal injury report that he caused his injuries and therefore was the sole legal cause of his injuries. But the district court did not discuss whether BNSF’s conduct also contributed to Wallace’s injuries.

Under FELA, “the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.” 45 U.S.C. § 53. The district court failed to consider whether BNSF was a contributing cause of Wallace’s injuries. The district court simply stated that Wallace’s “own report to the company, however, belies any claim that [BNSF] was in any way responsible for this accident” and “there was nothing BNSF could have done or said to change the outcome.”

Wallace does not argue that BNSF was the sole cause of his injuries. Instead, he takes responsibility for his part in the accident and argues that the district court erred by dismissing his claim because there is a factual question as to whether BNSF also contributed to the cause of his injuries. Wallace has maintained that BNSF was causally negligent by failing to provide a reasonably safe work environment. *See Bailey v. Cent. Vt. Ry.*, 319 U.S. 350, 352, 63 S. Ct. 1062, 1063 (1943) (providing that railroads must use reasonable care in furnishing employees with a safe place to work). Again, we must view the evidence in the light most favorable to Wallace. The record reveals that, under the relaxed causation standard, there is a genuine issue of material fact as to whether BNSF was, at least in part, causally negligent.

Wallace argues first that BNSF was negligent by providing rusty tools and equipment for the welders to use and that, because Wallace was required to maintain the equipment, BNSF should have known of the dangers involved in doing so. The record shows that the welding tools and the truck BNSF provided Wallace were rusted and needed constant maintenance. Wallace's welding partner testified that his work crew always has a lubricant with them to lubricate the doors of the truck and the tools because "they get hard to open" and the lubricant "loosens them up." Wallace's supervisor had received multiple complaints about the truck Wallace used and testified that it needed regular maintenance. While welders are required to maintain their tools, BNSF does not give them any designated time in their schedule to maintain their tools. As lead welder, Wallace was responsible for "maintaining the equipment in good operating condition," "servicing the equipment on a timely basis," "keeping the equipment in good repair," and "keep[ing] the

truck in good repair.” Wallace’s supervisor indicated that welders could come in early or stay late to maintain their tools but would have to be approved for overtime.

Wallace also argues that BNSF was negligent by providing welders with the highly flammable lubricant, Deep Creep, to de-rust the equipment. BNSF provides Deep Creep to its employees for cleaning and maintaining tools. Wallace’s supervisor testified that Wallace did not violate any BNSF rules on the day of the incident. There is no BNSF rule regarding the use of Deep Creep, or other lubricants, on the job site. BNSF has a safety sheet on the use of Deep Creep, but Wallace’s supervisor had no recollection of ever reviewing the safety sheet and did not print it to hand it out to any of his supervisees. The safety data sheet that Wallace never reviewed indicates that the lubricant is flammable and users should “[w]ear suitable protective equipment during handling.” According to Wallace’s supervisor, the only non-flammable cleaning supply BNSF provides its welders is soap. But as the supervisor testified, “soap doesn’t take away the rust very easily.”

Wallace further contends that BNSF was negligent by failing to provide him with flame-retardant welding pants and protective screens. BNSF does not provide welders with welding pants, but Wallace’s supervisor indicated that if Wallace had asked for welding pants, he would have received them. But nothing in the record indicates that BNSF had welding pants available on site for welders to use. According to BNSF’s safety rules, other types of welding require welders to use a protective screen to prevent sparks from flying. But BNSF does not explain why the safety rules do not require a protective screen for the type of welding Wallace was assigned.

Finally, Wallace argues that BNSF was negligent by failing to staff the welding crews with a safe number of employees. Wallace testified that when he first started welding for BNSF, the welding crews were made of three people: a lead welder, a second welder, and a welder helper. Wallace alleged that when BNSF reduced its operating expenses, welding teams no longer were assigned a welder helper and were only made up of two people. Wallace stated that if there had been a welder helper on his team that day, he would have been able to perform his job requirements of maintaining the equipment and listening to the radio for incoming trains, while the welder helper could have been assisting and watching his welding partner as he welded.

When viewing the above evidence in the light most favorable to Wallace, we hold that a genuine issue of material fact exists as to whether BNSF failed to provide a reasonably safe workplace that contributed to the cause of Wallace's injuries. This is especially true in light of FELA's relaxed causation standard. While it appears that Wallace's conduct was a contributing cause to his injuries, the district court failed to address whether BNSF also contributed to the cause of his injuries. On this record, where there is at least a scintilla of evidence that BNSF's negligence may have contributed to Wallace's injuries, we conclude that this issue must be submitted to a jury. For the foregoing reasons, we reverse the district court's summary judgment decision and remand for further proceedings.

Reversed and remanded.