UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2523

September Term, 2014

AUTOMATED GRAPHICS SYSTEMS, INC., et al.

v.

CALVERT THOMAS

Krauser, C.J,
Meredith,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: May 18, 2016

Automated Graphics Systems, Inc., appellant, appeals a judgment that was entered on a jury verdict returned in favor of Calvert Thomas, appellee, a workers' compensation claimant. The Maryland Workers' Compensation Commission (the "Commission") ruled that appellee did not sustain a compensable occupational disease arising out of and in the course of employment. Appellee filed a petition for judicial review in the Circuit Court for Charles County, and the case was tried before a jury. The first trial ended with a hung jury, but, at the second trial, the jury returned a verdict in favor of appellee. Appellant noted this appeal.

QUESTIONS PRESENTED

Appellant presents two issues for our review:

> I. Whether a Claimant has sustained an occupational disease under the Maryland Workers' Compensation Act where his condition was aggravated by his employment, as opposed to caused by his employment.
>
> II. Whether a Claimant has sustained an occupational disease under the Maryland Workers' Compensation Act where no evidence was presented that the hazard of developing Claimant's disease exists within the Claimant's occupation.

For the reasons that follow, we shall affirm.

FACTS AND PROCEDURAL BACKGROUND

Since graduating from high school more than thirty-eight years ago, appellee has been employed in the commercial printing and book binding industry. At the time of trial, appellee was 56-years-old, and had been employed by appellant for the previous twenty-three years.

Appellee's work at Automated Graphics Systems, Inc., involved loading stacks of paper into a machine referred to in the record as a "folder." After appellee loaded the stacks of paper into the folder, appellee would walk roughly twenty feet to the opposite end of the machine where he would remove the now-folded paper. Appellee would then "jog" the stack of paper into alignment so that the stack could be bound with wire. The act of jogging the paper involved the use of appellee's hands to smooth and align the printed materials, banging the paper until the edges of the stack are flush. Appellee would then place a properly aligned stack of paper onto a skid for transporting.

In 2013, appellee filed a claim for compensation with the Commission, alleging that he sustained an occupational disease in both wrists, arising out of and in the course of his employment with appellant. After a hearing, the Commission disallowed appellee's claim on July 10, 2013. On July 23, 2013, appellee filed a petition for judicial review in the Circuit Court for Charles County. A jury trial was held on June 2, 2014, but, after the jury failed to reach a unanimous verdict, a second trial was scheduled for December 15, 2014. On August 18, 2014, the appellant filed a motion for summary judgment. One business day prior to the second trial, the trial judge, by summary order, denied appellant's motion for summary judgment.

At trial, appellee moved into evidence a videotaped deposition of his expert witness, Dr. Frank Broner. Dr. Broner opined that, although appellee's wrist exhibited evidence of a pre-existing condition – either congenital or due to earlier trauma – the repetitive hand and

wrist movements required by appellee's occupation aggravated and accelerated the pre-existing condition, causing appellee to suffer from bilateral scapholunate advanced collapse.

At the conclusion of appellee's case, appellant "renewed" its pre-trial motion for summary judgment. This motion was opposed by appellee, and the court ruled: "Viewing the evidence in the light most favorable to the Plaintiff, motion denied." The appellant then called its expert witness, and the appellee was recalled for brief rebuttal testimony. At the close of all evidence, appellee moved for judgment pursuant to Maryland Rule 2-519, but appellant did not do so.

Following jury instructions and closing arguments, the jury deliberated and returned a verdict that answered "yes" to the following question:

> "[D]id Calvert Thomas sustain an occupational disease of Bilateral Scapholunate Articular Collapse arising out of and in the course of his employment?"

Judgment in favor of appellee was entered on the docket on December 18, 2014. On January 5, 2014, appellant filed an untimely motion for judgment notwithstanding the verdict. (Maryland Rule 2-532(b) requires that a motion for judgment notwithstanding the verdict "shall be filed within ten days after entry of judgment on the verdict.") By order dated March 16, 2015, the circuit court denied appellant's motion for JNOV because the motion was filed more than ten days after judgment was entered on the verdict. A motion for reconsideration of that ruling was denied by order dated April 9, 2015. But, in the meantime, appellant filed a timely notice of appeal on January 13, 2015.

On appeal, appellant contends that: (1) Thomas failed to present evidence that his alleged occupational disease was "incurred as a result of the employment"; and (2) failed to present evidence that the risk or hazard of developing bilateral scapholunate advanced collapse is a hazard of the printing and book bindery occupation. We conclude that appellant's challenges to the sufficiency of the evidence are not preserved for our review.

DISCUSSION

Appellant contends that, "as a matter of law, Claimant did not sustain an occupational disease as the Claimant did not present sufficient evidence" that the alleged occupational disease was caused by his employment, and did not provide evidence that the risk of developing bilateral scapholunate advanced collapse is an inherent hazard of employment in the commercial printing industry.

We will not reach the merits of these contentions, however, because no challenge to the sufficiency of the evidence was preserved for appellate review. Appellant failed to move for judgment at the close of the evidentiary phase of the case. Accordingly, appellant's challenge to the sufficiency of the evidence supporting the jury's verdict was not preserved.

A motion for judgment is governed by Maryland Rule 2-519, which provides in relevant part:

> (a) **Generally. A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence.** The moving party shall state with particularity all reasons why the motion should be granted. No

> objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.

(Emphasis added.)

The Maryland Rules further provide, in Rule 2-532(a), that a motion for judgment notwithstanding the verdict may not be made unless a motion for judgment was made "at the close of all the evidence." Our cases have similarly held that a challenge to the sufficiency of evidence may not be made on appeal unless the party appealing moved for judgment at the close of all the evidence. For example, in *Mathis v. Hargrove*, 166 Md. App. 286, 311 (2005), we stated:

> [T]he record reflects . . . that, although [appellant's counsel] made a motion for judgment at the conclusion of his case, he did not do so at the conclusion of the entire case. **The law is well settled that we will not review a challenge to the sufficiency of the evidence where there is a failure to move for judgment at the conclusion of all the evidence.**

(Emphasis added.) *Accord Wash. Metro. Area Transit Auth. v. Washington*, 210 Md. App. 439, 456 n.10 (2013) ("WMATA made no motion for judgment under Md. Rule 2–519 on the basis of sufficiency of the evidence. Thus, to the extent the employer raises a sufficiency question rather than an evidentiary one, this issue has been waived."); *Gitlin v. Haught-Bingham*, 123 Md. App. 44, 48 (1998) ("In order to preserve for appellate review the evidentiary sufficiency issues he now raises, appellant was required specifically to make a motion for judgment pursuant to Md. Rule 2-519 at the close of all evidence."); *Waters v.*

Whiting, 113 Md. App. 464, 475 (1997) ("[S]he cannot challenge the jury verdicts on appeal given that she did not move for judgment under Rule 2-519 at the close of all the evidence and prior to submission of the case to the jury."). *See also* JOHN A. LYNCH, JR. & RICHARD W. BOURNE, MODERN MARYLAND CIVIL PROCEDURE § 9.6(b) (2d ed. 2004) ("As long as a party moves for judgment **at the close of all the evidence**, the question of the sufficiency of the opponent's evidence for the jury is preserved for appeal.") (Emphasis added.)

Accordingly, the arguments now raised by appellant are not properly before us.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.