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ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2007

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SAAD'S Healthcare Services, Inc.

v.

Cynthia Meinhardt

Appeal from Mobile Circuit Court
(CV-04-615.51)

PER CURIAM.

SAAD'S Healthcare Services, Inc. ("SAAD'S"), appeals from a judgment of the Mobile Circuit Court finding Cynthia Meinhardt to be permanently and totally disabled as a result of injuries she sustained in the line and scope of her

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employment as a home-health-care nurse. This is the second time that this case has been before this court. See Meinhardt v. SAAD'S Healthcare Servs., Inc., 952 So. 2d 368 (Ala. Civ. App. 2006) ("Meinhardt I"). The following excerpts from our opinion in Meinhardt I are relevant to this appeal:

"Cynthia Meinhardt sued her employer, [SAAD'S], seeking workers' compensation benefits under the Workers' Compensation Act, § 25-5-1 et seq., Ala. Code 1975 ('the Act'), based on 'severe physical and psychological' injuries she sustained after being stabbed repeatedly while working in the line and scope of her employment at SAAD'S. SAAD'S answered and admitted that Meinhardt had sustained injuries arising out of and in the course of her employment.

"Following an ore tenus proceeding, the trial court entered a judgment on August 23, 2004, finding that Meinhardt had suffered a permanent and total disability. However, the trial court declined to award Meinhardt permanent and total disability benefits based on its finding that Meinhardt had unreasonably refused to accept medical services, including both psychological and psychiatric care. In light of that finding, the trial court found that Meinhardt had sustained a 90% physical impairment to her body as a whole and that, as a result of her physical and psychological injuries, Meinhardt had a 90% vocational disability. The trial court determined that Meinhardt had reached maximum medical improvement ('MMI') with regard to her psychological injuries on May 1, 2004. ..."

"We find the resolution of the following issue to be dispositive of Meinhardt's appeal. Meinhardt asserts that § 25-5-57(a)(4)[, Ala. Code 1975,]

provides for the compensation of employees who suffer from 'permanent total disability' and that, because one cannot be deemed permanently and totally disabled without first reaching MMI, the trial court's determination that she had reached MMI on May 1, 2004, precludes the application of § 25-5-57(a)(4)d., Ala. Code 1975. We agree.

"Section 25-5-57(a)(4)d. defines 'permanent total disability' and provides that '[a]ny employee whose disability results from an injury or impairment and who shall have refused to undergo physical or vocational rehabilitation or to accept reasonable accommodation shall not be deemed permanently and totally disabled.' In Clear Creek Transportation, Inc. v. Peebles, 911 So. 2d 1059 (Ala. Civ. App. 2004), this court held that the penalty provision found in § 25-5-57(a)(4)d. applies to 'employees who, after having reached MMI, ... are incapable of engaging in gainful employment before undergoing any physical or vocational rehabilitation but who would have some degree of capacity to engage in gainful employment if they were to undergo physical or vocational rehabilitation.' 911 So. 2d at 1064 (emphasis added). In so holding, this court explained:

"'The last sentence of paragraph d. of § 25-5-57(a)(4) clearly applies only to those employees who are totally disabled. First, as noted, it is in that section of the statute entitled by the Legislature "Permanent Total Disability." More significantly, the language used by the Legislature makes it clear that this sentence applies to totally disabled employees. Finally, the sanction imposed by this provision for an employee's refusal to undergo rehabilitation is the disqualification of the employee from receiving total-disability benefits. If the employee were not totally disabled in the

first instance (that is, in the absence of rehabilitation) the only sanction levied by the statute would be no sanction at all.'

"Peebles, 911 So. 2d at 1064-65.

"In its judgment, the trial court concluded, as a matter of law, that Meinhardt was permanently and totally disabled. However, relying on § 25-5-57(a)(4)d., it declined to award permanent and total disability benefits because Meinhardt had failed to 'mitigate her damages.' The trial court found that Meinhardt had refused psychological treatment as of November 2002 and that Meinhardt had refused to attend any further psychiatric appointments with Dr. Hammond after March 2003. The trial court further found that Meinhardt had resumed psychiatric treatment with Dr. [William] Wilkerson in February 2004. However, the trial court found that Meinhardt had remained noncompliant with prescribed psychological treatment and that, according to Dr. Wilkerson, Meinhardt had not begun psychological therapy as of the date of trial.

"SAAD'S contends that Meinhardt's alleged noncompliance with prescribed psychological treatment at the time of trial reveals that Meinhardt continued to refuse treatment, not only before she reached MMI, but also after she reached MMI. Although we recognize that a trial court's findings on disputed evidence in a workers' compensation case are conclusive, and although we are not allowed to reweigh the evidence before the trial court, this court is authorized to determine whether the trial court's decision is supported by sufficient evidence. Ex parte Golden Poultry Co., 772 So. 2d [1175, 1176-77 (Ala. 2000)]. The findings of the trial court will be reversed if they are not supported by substantial evidence. See § 25-5-81(e)(2), Ala. Code 1975 ('In reviewing pure findings of fact, the finding of the circuit court

shall not be reversed if that finding is supported by substantial evidence.').

"After reviewing the record, including Dr. Wilkerson's deposition testimony, we conclude that the record does not contain substantial evidence supporting the trial court's finding that Meinhardt continued to refuse treatment after she reached MMI. In his deposition testimony, Dr. Wilkerson testified that he 'thought [Meinhardt] needed to return to therapy.' However, Dr. Wilkerson testified that he did not refer Meinhardt to a psychotherapist. Furthermore, during a June 10, 2004, appointment with Meinhardt, Dr. Wilkerson noted that, at that time, Meinhardt was seeing a psychologist. It is undisputed that Meinhardt attended all of her scheduled monthly appointments with Dr. Wilkerson after February 2004. Given the evidence presented at trial, we cannot agree with SAAD'S contention that Meinhardt failed to comply with prescribed psychological treatment after she reached MMI.

"The trial court determined from the evidence that Meinhardt had reached MMI for her mental condition on May 1, 2004, and it found that Meinhardt had refused treatment during a period of time before she had reached MMI, i.e., before she was entitled to any permanent benefits. This court recognized in Peebles that the penalty provision found in § 25-5-57(a)(4)d. applies to employees who have reached MMI and are thereafter deemed totally disabled. Therefore, we must reverse the judgment of the trial court insofar as it declined to award Meinhardt permanent and total disability benefits and remand this cause for the trial court to reconsider its judgment in a manner consistent with this opinion."

Meinhardt I, 952 So. 2d at 370-71, 375-76 (footnotes omitted).

In Meinhardt I, this court did not address whether the penalty

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provision found in § 25-5-57(a)(4)d. applied to an employee's refusal to undergo psychological or psychiatric treatment.

After this court released its opinion in Meinhardt I, the trial court set the case for review. Before the trial court reviewed the case on remand, SAAD'S filed a motion on October 10, 2006, to set an evidentiary hearing or, in the alternative, for a ruling that Meinhardt was non-compliant with physical or vocational rehabilitation due to her alleged refusal of psychological and psychiatric treatment since March 24, 2005. On October 23, 2006, the trial court conducted a hearing to review the case on remand, and on October 31, 2006, it entered an amended order stating, in pertinent part, as follows:

"[T]he Court hereby VACATES and AMENDS its 'Findings of Fact, Conclusions of Law, and Final Judgment' entered on August [23], 2004, as follows:

"a. The Court finds that although Cynthia Meinhardt was non-compliant with her prescribed psychological and/or psychiatric treatment between March 2003 and May 1, 2004, Cynthia Meinhardt was compliant with her prescribed treatment thereafter.

"b. The Court finds that, as a proximate result of the March 7, 2002, assault, Cynthia Meinhardt is Permanently and Totally Disabled from gainful employment within the meaning of § 25-5-57(a)(4) of [the Workers' Compensation Act]. After giving due consideration to her age, education, work skills,

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physical disabilities and psychological disabilities, Cynthia Meinhardt cannot be successfully re-trained for any substantial gainful employment.

"c. The Court finds that [Meinhardt's] average weekly wage at the time of the injury was \$417.76. The weekly benefit rate for disability benefits is \$278.51."

(Emphasis in original.) The trial court did not address SAAD'S allegations that Meinhardt had been noncompliant with treatment since March 2005 in its October 31, 2006, amended order.

On November 15, 2006, SAAD'S filed a motion to alter, amend, or vacate the trial court's October 31, 2006, amended order and/or a petition to alter, amend, or revise the amended order.¹ In its motion, SAAD'S argued that Meinhardt had stopped taking her antidepressant medication after March 24,

¹Section 25-5-57(a)(4)b., Ala. Code 1975, provides:

"At any time, the employer may petition the court that awarded or approved compensation for permanent total disability to alter, amend, or revise the award or approval of the compensation on the ground that as a result of physical or vocational rehabilitation, or otherwise, the disability from which the employee suffers is no longer a permanent total disability and, if the court is so satisfied after a hearing, it shall alter, amend, or revise the award accordingly."

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2005, and that Meinhardt was noncompliant with her treatment after having reached MMI. Based on what it alleged was Meinhardt's failure to comply with treatment after March 24, 2005, SAAD'S maintained that the penalty provision found in § 25-5-57(a)(4)d. applied to prevent Meinhardt from being found permanently and totally disabled.

On November 17, 2006, the trial court conducted an evidentiary hearing on SAAD'S November 15, 2006, motion. At that hearing, SAAD'S introduced the November 8, 2006, deposition testimony of Dr. Wilkerson, Meinhardt's psychiatrist; a July 29, 2004, deposition of Dr. Wilkerson; and copies of Meinhardt's medical records maintained by Dr. Wilkerson. The trial court did not receive ore tenus evidence at the November 17, 2006, hearing.

On December 7, 2006, the trial court entered an order denying the November 15, 2006, motion to alter, amend, or vacate and petition to alter, amend, or revise the amended order. In its order denying the motion, the trial court determined, as a matter of law, that the penalty provision found in § 25-5-57(a)(4)d. did not apply to Meinhardt because the psychiatric treatment Meinhardt allegedly refused did not

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constitute "physical or vocational rehabilitation" under that statute. The trial court also concluded that SAAD'S did not demonstrate that Meinhardt's alleged failure to comply with her psychiatric treatment was unreasonable and, therefore, that it warranted the suspension of her compensation benefits under § 25-5-77(b), Ala. Code 1975. The trial court also declined to alter, amend, or revise its award of permanent and total disability benefits pursuant to § 25-5-57(a)(4)b., based on evidence indicating that Meinhardt was unable to work because of her mental condition. SAAD'S timely appealed.

SAAD'S raises three issues on appeal. SAAD'S first contends that the trial court erred by finding in favor of Meinhardt because, it argues, the undisputed evidence proved that Meinhardt had unreasonably refused medical treatment, physical rehabilitation, and vocational rehabilitation for a period of 18 months after she had reached MMI. SAAD'S also contends that the trial court erred by finding in favor of Meinhardt because the noncompliance provisions found in § 25-5-57(a)(4)d., Ala. Code 1975, and § 25-5-77(b), Ala. Code 1975, precluded an award of permanent and total disability benefits. Finally, SAAD'S contends that the doctrine of

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estoppel prevents Meinhardt from asserting that her refusal of treatment does not now preclude an award of permanent and total disability benefits.

Before addressing the issues raised by SAAD'S on appeal, we note that our standard of review in this case is dictated by the manner in which the evidence was presented to the trial court at the November 17, 2006, hearing. At that hearing, the trial court considered the arguments of counsel and documentary evidence. "[W]hen the trial court hears no oral testimony, and the evidence presented to the trial court consists of stipulations, depositions, and exhibits, the ore tenus rule does not apply." Holy Family Catholic School v. Boley, 847 So. 2d 371, 374 (Ala. Civ. App. 2002) (citing McGhee v. International Paper Co., 729 So. 2d 880 (Ala. Civ. App. 1999)). Therefore, no presumption of correctness attaches to the trial court's judgment, and our review of the trial court's judgment is de novo. Id.; American Res. Ins. Co. v. H & H Stephens Constr., Inc., 939 So. 2d 868, 872-73 (Ala. 2006).

The November 8, 2006, deposition testimony of Dr. Wilkerson and the medical records submitted as exhibits to the

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deposition revealed the following pertinent facts. In February 2004, Dr. Wilkerson diagnosed Meinhardt with post-traumatic stress disorder ("PTSD") and major depression. At that time, Dr. Wilkerson recommended that Meinhardt continue psychiatric treatment and take antipsychotic medication. Dr. Wilkerson treated Meinhardt until March 2005. At the March 2005 appointment, Dr. Wilkerson noted that Meinhardt's symptoms were "about the same." According to Dr. Wilkerson, he had instructed Meinhardt to return to the clinic following her March 2005 appointment but Meinhardt failed to return for treatment. Dr. Wilkerson testified that he did not see Meinhardt again for treatment until October 2006.

Dr. Wilkerson testified that when Meinhardt returned in October 2006 he asked her why she had not been to see him in 18 months and that Meinhardt stated that "she did not like to take medication." Dr. Wilkerson documented in handwritten notes taken during the October 2006 appointment that Meinhardt expressed a desire to apply for disability benefits. Dr. Wilkerson stated that he believed that Meinhardt had become discouraged with her treatment. Dr. Wilkerson testified that Meinhardt's seclusion in her home and the anxiety caused by

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having to leave her home could have also been factors in her failure to participate in treatment for 18 months. According to Dr. Wilkerson, it is extremely common for patients to stop seeing a doctor only to return weeks or months later when they need to come back for treatment. Dr. Wilkerson explained that patients with PTSD sometimes avoid therapy and treatment sessions because they do not want to discuss the traumatic event that led to their PTSD. Dr. Wilkerson further explained that it was common for patients to discontinue use of their antipsychotic medication when they felt like their condition had improved. According to Dr. Wilkerson, patients with depression often feel hopeless and have the view that, no matter what they do, their condition is never going to improve and, therefore, discontinue their treatment on that basis.

Dr. Wilkerson testified that breaks in the treatment of PTSD and depression may make the treatment for those illnesses more difficult. He explained that the treatment of PTSD and depression is "not directed at [Meinhardt's] physical problems." Instead, Dr. Wilkerson stated, the treatment is directed "at her emotional response to what happened to her [and] her response to her injuries and to her pain."

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Dr. Wilkerson testified that, to his knowledge, Meinhardt had never expressly refused treatment. Dr. Wilkerson explained that his treatment plan for Meinhardt consists of resuming her medication and therapy. Dr. Wilkerson testified that Meinhardt was unable to work and that he did not believe that Meinhardt was malingering.

On appeal, SAAD'S contends that the penalty provision found in § 25-5-57(a)(4)d., Ala. Code 1975, of the Workers' Compensation Act ("the Act"), § 25-5-1 et seq., Ala. Code 1975, precludes the trial court's determination that Meinhardt is permanently and totally disabled because, it argues, Meinhardt failed to comply with her psychiatric treatment after she had reached MMI. SAAD'S specifically contends that Meinhardt's 18-month abstention from psychiatric treatment after she had reached MMI demonstrated a refusal on her part of physical and vocational rehabilitation. Before we address whether Meinhardt's 18-month abstention from psychiatric treatment constituted a refusal of rehabilitation, we must first decide whether the penalty provision found in § 25-5-57(a)(4)d. governs an employee's refusal to continue psychiatric or psychological treatment.

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Section 25-5-57(a)(4)d. defines "permanent and total disability" and provides that "[a]ny employee whose disability results from an injury or impairment and who shall have refused to undergo physical or vocational rehabilitation or to accept reasonable accommodation shall not be deemed permanently and totally disabled." (Emphasis added.) SAAD'S argues that the undisputed evidence presented at the November 17, 2006, hearing established that the treatment of Meinhardt's mental condition affected her physical condition and her ability to work, thus triggering the application of § 25-5-57(a)(4)d. We disagree.

In Trott v. Brinks, Inc. [Ms. 1050895, May 4, 2007] ___ So. 2d ___ (Ala. 2007), our supreme court discussed the general principals of statutory construction in the context of interpreting certain provisions of the Act, stating as follows:

"The fundamental principle of statutory construction is that words in a statute must be given their plain meaning.' Mobile Infirmary Med. Ctr. v. Hodgen, 884 So. 2d 801, 814 (Ala. 2003). 'When a court construes a statute, "[w]ords used in [the] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says.'" Ex parte Berryhill, 801 So. 2d 7, 10 (Ala.

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2001) (quoting IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 344, 346 (Ala. 1992)). Additionally, "[c]ourts must liberally construe the workers' compensation law 'to effectuate its beneficent purposes,' although such a construction must be one that the language of the statute 'fairly and reasonably' supports.'" Ex parte Weaver, 871 So. 2d 820, 824 (Ala. 2003) (quoting Ex parte Beaver Valley Corp., 477 So. 2d 408, 411 (Ala. 1985))."

___ So. 2d at ___. "If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." IMED Corp. v. Systems Eng'g Assocs. Corp., 602 So. 2d 334, 346 (Ala. 1992). Our supreme court has explained that the role of the appellate courts "is not to displace the legislature by amending statutes to make them express what we think the legislature should have done. Nor is it [the appellate court's] role to assume the legislative prerogative to correct defective legislation or amend statutes." Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1051 (Ala. 1991). "When determining legislative intent from the language used in a statute, a court may explain the language but it may not detract from or add to the statute. ... Courts may not improve a statute, but may only expound it." Siegelman, 575 So. 2d at 1045.

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In accordance with those principles, we look to the plain language of § 25-5-57(a)(4)d. in order to determine if an employee's refusal to undergo psychiatric treatment precludes a finding of permanent and total disability under § 25-5-57(a)(4)d. The Act does not provide a statutory definition of the terms "physical rehabilitation" or "vocational rehabilitation." Merriam-Webster's Collegiate Dictionary (11th ed. 2003), defines "physical" as "of or relating to the body," id. at 935, and defines "vocational" as "1: of, relating to, or concerned with a vocation 2: of, relating to, or undergoing training in a skill or trade to be pursued as a career," id. at 1400. Thus, the ordinary meanings of "physical" and "vocational" do not include any reference to the treatment of a mental illness.

We find that the language used in § 25-5-57(a)(4)d. is plain and unambiguous. If the legislature had intended to include an employee's refusal to undergo psychological or psychiatric treatment as a basis for preventing an employee from being found to be permanently and totally disabled, the legislature could have included that language in the statute. Although we recognize that an employee's rehabilitation may

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include treatment for mental illness, the legislature chose to limit the penalty provision found in § 25-5-57(a)(4)d. to those employees who refuse physical and vocational rehabilitation. This court cannot go beyond the plain meaning of the statute and expand it to encompass a condition not specified by our legislature. Seigelman, supra. Because we conclude that § 25-5-57(a)(4)d. does not prevent a finding of permanent and total disability based on an employee's refusal to continue psychiatric or psychological treatment, we cannot say that the trial court was precluded under § 25-5-57(a)(4)d. from finding Meinhardt permanently and totally disabled.

SAAD'S further contends on appeal that the trial court erred by failing to find that Meinhardt's alleged refusal to accept psychiatric treatment for 18 months warranted a loss of all compensation benefits received during that time pursuant to § 25-5-77(b), Ala. Code 1975. SAAD'S argues that Meinhardt's failure to attend medical appointments and her failure to take medication constitute a refusal of treatment and that her refusal to attend the appointments was unreasonable.

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Section 25-5-77(b), Ala. Code 1975, provides, in pertinent part, as follows:

"If the injured employee refuses to comply with reasonable request for examination, or refuses to accept the medical service or physical rehabilitation, which the employer elects to furnish under this chapter, the employee's right to compensation shall be suspended and no compensation shall be payable for the period of the refusal."

It is well-settled that an injured employee receiving compensation benefits may refuse medical treatment without the suspension of benefits, if the refusal is deemed "reasonable." Baptist Mem'l Hosp. v. Gaylor, 646 So. 2d 93 (Ala. Civ. App. 1994); Healthcare Auth. of the City of Huntsville v. Henry, 600 So. 2d 324 (Ala. Civ. App. 1992); Wiley Sanders Truck Lines, Inc. v. McLain, 591 So. 2d 527 (Ala. Civ. App. 1991); and Genpak Corp. v. Gibson, 534 So. 2d 312 (Ala. Civ. App. 1988).

"The question whether refusal of treatment should be a bar to compensation turns on a determination whether the refusal is reasonable. Reasonableness in turn resolves itself into a weighing of the probability of the treatment's successfully reducing the disability by a significant amount, against the risk of treatment to the claimant."

1 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 10.10[2] at 10-30 (1998).

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Before we address whether Meinhardt's 18-month abstention from treatment was reasonable, we must first determine whether, based on the evidence presented at the November 17, 2006, hearing, Meinhardt's failure to participate in psychiatric treatment for 18 months constituted a refusal of medical treatment. As noted earlier, the ore tenus rule does not apply in this case and our review of the trial court's judgment is de novo. See Holy Family Catholic School v. Boley, supra.

In his deposition testimony, Dr. Wilkerson testified that, at his March 2005 appointment with Meinhardt, he recommended that she return for treatment in approximately one month. Meinhardt did not indicate to Dr. Wilkerson at the March 2005 appointment that she refused to return for treatment. It is undisputed that Meinhardt failed to comply with Dr. Wilkerson's recommendation to return for treatment and that she did not return for treatment for a period of 18 months. Dr. Wilkerson offered several explanations for Meinhardt's failure to return for treatment. Of those explanations, the only explanation Meinhardt provided directly to Dr. Wilkerson was that she did not like to take medication.

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Dr. Wilkerson explained that symptoms of Meinhardt's PTSD and depression could have also been a factor in Meinhardt's decision to discontinue treatment.

Although Dr. Wilkerson testified that Meinhardt never told him or a member of his staff that she refused to come back for treatment, we do not interpret § 25-5-77(b) to require an employee to specifically state that he or she refuses treatment. An employee can demonstrate a refusal to undergo treatment by his or her inaction. Meinhardt failed to attend appointments with Dr. Wilkerson and failed to take anti-psychotic medication for 18 months. Given the particular facts of this case, we conclude that Meinhardt's failure to return to Dr. Wilkerson for psychiatric treatment over the course of 18 months constituted a refusal of treatment.

We must now determine whether Meinhardt's refusal of treatment was reasonable. This court has previously recognized that if there are credible reasons given for the refusal of medical treatment, then the refusal is considered reasonable. Wiley Sanders Truck Lines, Inc. v. McLain, supra. In the majority of cases in which this court has been called upon to decide whether a refusal of treatment was reasonable, surgery

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was the recommended course of treatment. See, e.g., Baptist Mem'l Hosp. v. Gaylor, 646 So. 2d 93 (Ala. Civ. App. 1994) (holding employee's refusal to undergo surgery on herniated disk was unreasonable); Simpson v. Dallas Selma Cmty. Action Agency, 637 So. 2d 1360 (Ala. Civ. App. 1994) (affirming trial court's judgment declining to award permanent and total disability benefits on the basis of employee's unreasonable refusal to undergo surgery on left hand); and Flame Refractories, Inc. v. Cole, 539 So. 2d 1062 (Ala. Civ. App. 1988) (holding employee's refusal to undergo knee surgery was reasonable). In this case, we are asked for the first time to decide whether a refusal of psychiatric treatment was reasonable.

Dr. Wilkerson's deposition testimony revealed that the only reason given by Meinhardt for her failure to participate in psychiatric treatment when she returned from an 18-month absence was the fact that she did not like to take medication. Dr. Wilkerson presented additional reasons that could have contributed to Meinhardt's failure to participate in treatment, but none of the reasons given by Dr. Wilkerson were based on any physical risk to Meinhardt that could result from

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psychiatric treatment. The psychiatric treatment offered by SAAD'S was reasonably calculated to improve Meinhardt's condition. Although we recognize the unique circumstances of treating a patient who suffers from a mental illness and are sympathetic to the challenges a patient with a mental illness faces while undergoing treatment, the length of time Meinhardt failed to comply with recommended treatment, coupled with the lack of risk associated with the treatment, supports a conclusion that Meinhardt unreasonably refused medical treatment. Therefore, pursuant to § 25-5-77(b), Meinhardt's compensation benefits were due to be suspended during the 18-month period that she refused treatment. The trial court's judgment is reversed insofar as it failed to find that Meinhardt unreasonably refused medical treatment and that her refusal necessitated a loss of all compensation benefits during the period of refusal pursuant to § 25-5-77(b).

SAAD'S also contends that Meinhardt should be judicially estopped from arguing that her post-MMI refusal of treatment does not now preclude a finding of permanent and total disability. In support of its contention, SAAD'S quotes a portion of an argument purportedly made by Meinhardt in her

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brief in opposition to a petition for a writ of certiorari to our supreme court in which SAAD'S requested the review of this court's decision in Meinhardt I. We note that neither the petition for certiorari to the supreme court nor the brief in opposition to the petition were included in the record before us on appeal, and SAAD'S does not seek to supplement the record pursuant to Rule 10(f), Ala. R. App. P. It is beyond this court's authority to take judicial notice of another court's records. See Warren v. Wester, 827 So. 2d 116, 119 n.3 (Ala. Civ. App. 2002) (recognizing that this court is not generally permitted to take judicial notice of the records of another judicial body); Worthington v. Amerson, 741 So. 2d 437, 438 n.2 (Ala. Civ. App. 1999) (stating that "[g]enerally, a court may not take judicial notice of the records of another court"). Furthermore, SAAD'S cites to no authority in support of this argument on appeal. See McLemore v. Fleming, 604 So. 2d 353 (Ala. 1992) (recognizing that it is not the function of an appellate court to conduct an appellant's legal research). SAAD'S has not demonstrated error; therefore, we affirm as to this issue.

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In its reply brief, SAAD'S argues for the first time that the trial court's determination in its December 7, 2006, judgment that Meinhardt did not refuse physical or vocational rehabilitation is barred by the doctrine of the law of the case. SAAD'S maintains that the trial court's earlier, August 23, 2004, judgment recognizing that Meinhardt's psychiatric treatment constituted physical rehabilitation under the Act became the law of the case. It is a well-settled principle of appellate review that we will not consider an issue not raised in an appellant's initial brief, but raised for the first time in its reply brief. Kyser v. Harrison, 908 So. 2d 914 (Ala. 2005); Birmingham Bd. of Educ. v. Boyd, 877 So. 2d 592 (Ala. 2003); Sanders v. Smitherman, 776 So. 2d 68, 73 (Ala. 2000); and C & S Family Credit of Alabama, Inc. v. McNairy, 613 So. 2d 1232, 1232 (Ala. 1992). Because SAAD'S raised the issue of the application of the doctrine of the law of the case for the first time in its reply brief, Meinhardt has not had the opportunity to respond. Therefore, we do not reach the question whether the trial court's determination that Meinhardt did not refuse physical or vocational rehabilitation is barred by the doctrine of the law of the case.

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AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.

Thompson, P.J., and Pittman, J., concur.

Thomas, J., concurs specially, with writing.

Moore, J., concurs in part and dissents in part, with writing.

Bryan, J., concurs in the result in part and dissents in part, with writing.

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THOMAS, Judge, concurring specially.

I concur with the conclusion in the main opinion that our legislature's use of the term "physical or vocational rehabilitation" in Ala. Code 1975, § 25-5-57(a)(4)d., does not encompass psychological or psychiatric treatment and therefore that the trial court was not precluded from finding Meinhardt to be permanently and totally disabled.

I also concur as to the application of Ala. Code 1975, § 25-5-77(b), under the facts of the present case. Had Meinhardt herself testified regarding the reasons she discontinued her psychological treatment or if Dr. Wilkerson had testified that Meinhardt had more fully explained her absence from treatment to him or that certain actions she had taken definitively proved that Meinhardt's decision to discontinue treatment was motivated by the reasons Dr. Wilkerson discussed in his deposition, I believe the outcome of this case might have been different. However, Dr. Wilkerson's testimony about the myriad reasons Meinhardt might have discontinued treatment is not based on any statements made or specific actions taken by Meinhardt. Dr. Wilkerson expressly stated in his deposition that he did not ask

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Meinhardt why she had discontinued treatment for the 18-month period; the only statement Meinhardt made to him regarding her absence from treatment was that she did not like taking medication. I conclude that SAAD's proved that Meinhardt's discontinuance of treatment was unreasonable when it demonstrated that she had given no reason to adequately explain her decision to discontinue treatment; therefore, I concur to reverse the trial court's judgment insofar as it is based on finding that Meinhardt's discontinuing her treatment was reasonable because that finding is not supported by substantial evidence.

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MOORE, Judge, concurring in part and in dissenting in part.

I respectfully dissent from that portion of the main opinion that upholds the trial court's award of permanent-total-disability benefits. I believe the clause "physical or vocational rehabilitation" includes treatment for mental illness that is designed to improve an employee's pain and to assist an employee to return to work. I further believe that the employee in the present case unreasonably refused "physical or vocational rehabilitation" by failing to attend her counseling sessions and by failing to take her medication. Therefore, under § 25-5-57(a)(4)d., Ala. Code 1975, the employee should not have been deemed permanently and totally disabled.

As pointed out by the main opinion, the term "physical or vocational rehabilitation" is not defined in the Workers' Compensation Act ("the Act"), § 25-5-1 et seq., Ala. Code 1975. In determining the meaning of undefined terms in a statute, the overriding goal of this court is to ascertain and give effect to the legislature's intent and purpose. See Ex parte Dunlop Tire Corp., 706 So. 2d 729 (Ala. 1997). The legislature specifically stated in § 1 of the 1992 act

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amending the workers' compensation laws its intent that "The Alabama Workers' Compensation Act is remedial in nature and should be liberally construed to effectuate the intended beneficial purposes." Ala. Acts 1992, Act No. 92-537, § 1. Hence, in deciding the meaning of the term "physical or vocational rehabilitation," this court should determine the purpose for which that term is employed and liberally construe the term to assure that the legislative purpose is served.

The legislature added the last sentence of § 25-5-57(a)(4)d. to the Act in 1992 as part of an overhaul of the workers' compensation laws. See Ala. Acts 1992, Act No. 92-537, § 17. The legislature specifically and clearly explained its intent in rewriting the workers' compensation laws in 1992:

"It is also the intent of the Legislature in adopting this workers' compensation scheme to address difficulties in the current scheme that are producing a debilitating and adverse effect on the state's ability to retain existing industry and attract new industry. The Legislature finds that the current Workmen's Compensation Law of Alabama and other means of compensation or remedy for injury in the workplace has unduly increased cost to employers in the state, driven away jobs, and produced no concomitant benefit. There is a total absence of any reliable evidence that the current act has resulted in fewer injuries on the job, and a considerable body of evidence that any added

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benefit to the worker is significantly offset by the resulting reduction in job opportunities."

Ala. Acts 1992, Act No. 92-537, § 1. The legislature evidently concluded that awards of permanent-total-disability benefits to employees who refused to undergo physical or vocational rehabilitation unduly increased the costs of workers' compensation. The legislature apparently reasoned that physical or vocational rehabilitation could either reduce or eliminate an employee's loss of earning capacity, thereby reducing the compensation payable for an injury. Hence, an employee should undergo such rehabilitation. The prior workers' compensation scheme did not suitably encourage an employee to fully participate in such rehabilitation, so the legislature enacted an inducement by declaring that an employee would not be eligible for permanent-total-disability benefits if the employee refuses to undergo physical or vocational rehabilitation.

In determining the purpose of certain language in a statute, a court should not simply view the words in isolation, but should consider the context in which the language is employed. See State Farm Mut. Auto. Ins. Co. v. Motley, 909 So. 2d 806, 813-14 (Ala. 2005). Viewed in the

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proper context, the last sentence of § 25-5-57(a)(4)d. plainly is intended to encourage employees to undergo "physical or vocational rehabilitation" that could lessen or eliminate their disability. See Clear Creek Transp., Inc. v. Peebles, 911 So. 2d 1059, 1064 (Ala. Civ. App. 2004). Hence, the phrase "physical or vocational rehabilitation," as used in § 25-5-57(a)(4)d., should be construed as any treatment, plan, or program that would decrease the physical disability resulting from an injury or reduce the loss of earning capacity caused by the injury.

Such a construction would also be consistent with the meaning of the terms "physical rehabilitation" and "vocational rehabilitation" as they appear elsewhere in the Act. Section 25-5-77(a) requires employers to pay for reasonably necessary "physical rehabilitation." By construing that term to include any reasonably necessary treatment, plan, or program designed to decrease the physical disability caused by an injury, the court would assure that employees would receive the broadest relief available under the medical-benefits provision in the Act. Section 25-5-77(c), Ala. Code 1975, entitles an employee to "vocational rehabilitation" when certain statutory

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conditions have been met. By construing the term "vocational rehabilitation" to mean any treatment, plan, or program intended to lessen the loss of earning capacity caused by an injury, the court would assure that employees would receive the broadest relief available under the vocational-rehabilitation-benefits provision in the Act. This broad construction would meet the remedial purposes of the Act as the legislature intended. See Ala. Acts 1992, Act No. 92-537, § 1.

In this case, Dr. Epker stated that many of the employee's physical symptoms "are likely due to anxiety ... [and] that her symptoms will improve through a combination of medication and therapy." Dr. Wilkerson testified that depression increases the sensation and perception of pain and that depression actually alters the body's immune response and healing ability. Although Dr. Wilkerson testified that his treatment was not "directed at [the employee's] physical problems," the treatment obviously was intended to indirectly address the employee's physical disability by decreasing the employee's subjective pain. Thus, the treatment could be

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properly classified as "physical rehabilitation," as the trial court determined in its first judgment.

The mental-health treatment provided to the employee could also be properly considered "vocational rehabilitation." The evidence is undisputed that the only barrier to the employee's returning to work and earning the same amount of money as she did before the injury is her mental illness. Dr. Wilkerson basically testified that improvement in the employee's mental condition would improve the employee's ability to work. Consequently, treatment for her mental illness would lessen the employee's loss of earning capacity, the goal of any vocational-rehabilitation plan.

In Fruehauf Corp. v. Prater, 360 So. 2d 999, 1001 (Ala. Civ. App. 1978), this court held

"that if it is established by legal evidence that an employee has suffered a physical injury or trauma in the line and scope of his employment and he develops a neurosis as a proximate result of such injury or trauma which neurosis causes or contributes to an occupational or physical disability, such disability is compensable."

(Emphasis added.) Pursuant to this test, disability caused by a mental illness is covered by the workers' compensation laws only to the extent that the mental illness causes or

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contributes to a vocational or physical disability. It naturally follows that any treatment for a covered mental injury would necessarily address the vocational or physical disability caused by the mental injury, even if the primary purpose of the treatment is to treat the underlying mental condition.

Because the language in § 25-5-57(a)(4)d. is unique to Alabama law, a review of the law of other jurisdictions would not be particularly helpful in deciding the issue before us. However, it appears that no other state appellate court has expressly considered whether a refusal to undergo psychiatric or psychological treatment amounts to a refusal of physical or vocational rehabilitation. In analogous cases, this court has recognized that a refusal to stop smoking and a refusal to lose weight that impedes an employee's recovery from a physical injury may be considered a refusal of "medical service or physical rehabilitation" under § 25-5-77(b). See Mike Makemson Logging Co. v. Colburn, 600 So. 2d 1049 (Ala. Civ. App. 1991), and Fort James Operating Co. v. Kirklewski, 893 So. 2d 434 (Ala. Civ. App. 2004). Those cases support the expansive view that a refusal of mental-health treatment that

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could lessen an employee's physical disability and decrease the employee's loss of earning capacity should be considered a refusal of "physical or vocational rehabilitation" under § 25-5-57(a)(4)d.

I concur with the conclusion in the main opinion that the employee unreasonably refused to undergo treatment for her mental illness. Although Dr. Wilkerson testified that some patients may forgo treatment for a variety of reasons, many of which may be reasonable, the only reason the employee gave for not following her doctor's advice was her dislike for medication, which was not reasonable. Because the employee unreasonably refused to attend her counseling sessions and take her medication, the employee should not have been deemed permanently and totally disabled. I therefore dissent from that portion of the main opinion that upholds the trial court's award of permanent-total-disability benefits.

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BRYAN, Judge, concurring in the result in part and dissenting in part.

I dissent from the main opinion insofar as it concludes that Meinhardt unreasonably refused to accept medical treatment, thus resulting in the suspension of her compensation benefits pursuant to § 25-5-77(b), Ala. Code 1975. In its judgment, the trial court found:

"Dr. Wilkerson[, Meinhardt's psychiatrist,] has diagnosed ... Meinhardt as suffering [from] Post Traumatic Stress Disorder [('PTSD')] and Major Depression. ...

".

"Cynthia Meinhardt attended her appointments with Dr. Wilkerson, on a regular basis, between February 2004 and March 2005. Cynthia Meinhardt, however, did not return for psychiatric treatment with Dr. Wilkerson again until October 24, 2006. According to Dr. Wilkerson, Cynthia Meinhardt purportedly ceased attending psychiatric treatment between March 2005 and October 2006 because she did not like taking medication and because she had become 'discouraged.' ...

"According to Dr. Wilkerson, one of the symptoms of Post Traumatic Stress Disorder is avoidance of the stimuli that brought on the disorder in the first place. The disorder itself can cause patients to avoid therapy and treatment sessions because, inevitably, they will start talking about the traumatic event. In his experience, avoidance will cause patients to stay away from therapy because they want to avoid reliving the stressful event, in Cynthia Meinhardt's case a brutal knife attack in

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which she was stabbed forty-seven (47) times. In his record of the October 24, 2006 session, Dr. Wilkerson notes that Cynthia Meinhardt [secludes herself in her house]. PTSD being a specific type of an anxiety disorder, seclusion is a natural response to the unpleasantness of anxiety. The patient tries to cut down on the stimulus causing anxiety by staying home. In Dr. Wilkerson's opinion the avoidance of stimuli, being one of the symptoms of PTSD, is part of the reason why Cynthia Meinhardt did not attend psychiatric treatment between March 2005 and October 2006.

"Dr. Wilkerson testified that major depression often creates feelings of hopelessness about the future and a general lack of energy. These feelings of hopelessness can frequently lead to feelings that the patient will not ever get better no matter what they do, and can lead to missing appointments or discontinuance of treatment on that basis. The disorder itself can drive the patient to not attend treatment."

(Citations to Dr. Wilkerson's testimony in the record omitted.)

Based on those findings, the trial court found that SAAD's failed to establish that Meinhardt had unreasonably refused to accept psychiatric treatment between March 2005 and October 2006. As the employer, SAAD's bore the burden of establishing that Meinhardt had unreasonably refused treatment, thus resulting in the suspension of SAAD's obligation to pay compensation benefits to Meinhardt, pursuant to § 25-5-77(b). 2 Terry A. Moore, Alabama Workers'

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Compensation § 25:4 (West 1998). Whether the employee unreasonably refused to accept medical treatment is a question of fact to be resolved by the trial court. Health Care Auth. of Huntsville v. Henry, 600 So. 2d 324, 327 (Ala. Civ. App. 1992). This court will not reverse a trial court's judgment based on factual findings if those findings are supported by substantial evidence. § 25-5-81(e)(2), Ala. Code 1975. Substantial evidence is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989).

Considering the totality of Dr. Wilkerson's testimony, the trial court's finding that SAAD's failed to demonstrate that Meinhardt had unreasonably refused to accept psychiatric treatment is supported by substantial evidence. Given the facts of this case, a fair-minded person in the exercise of impartial judgment could reasonably infer that SAAD's failed to establish that Meinhardt had unreasonably refused to accept psychiatric treatment between March 2005 and October 2006.

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Accordingly, § 25-5-77(b) does not preclude Meinhardt from receiving compensation benefits for that period.

In all other respects, I concur in the result reached by the main opinion.