

SUPERIOR COURT
of the
State of Delaware

William L. Witham, Jr.
Resident Judge

Kent County Courthouse
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February 8, 2007

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Re: ***Lori A. Sigismondi v. Duncan Hall***
C.A. No. 05C-05-011 WLW

Defendant Duncan Hall filed a Motion in Limine to exclude the testimony of Plaintiff's medical expert, Dr. James G. Moran, for lack of adequate foundation.¹ Dr. Moran is licensed to practice medicine in the State of Delaware and hold sa Doctorate Degree in Osteopathic Medicine from the University of Medicine and Dentistry in New Jersey. (See Ex. "B", Moran p. 3-4) On direct examination Dr. Moran offered the opinions that Plaintiff Lori A. Sigismondi suffered left L5 radiculopathy (low back injury) secondary to the motor vehicle accident and also probable complex regional pain syndrome type two or causalgia of the left tibial and sural nerve (ankle

¹Dr. Moran was a treating physician of the Plaintiff. Also, the Doctor's testimony will be presented to the jury by way of reading in the Doctor's deposition.

injury) secondary to the motor vehicle accident. Dr. Moran offered his opinion within a reasonable degree of medical probability.

On cross examination, Dr. Moran was presented with some medical records for the first time. The records appeared to be inconsistent with the Plaintiff's medical history as described to the Doctor by Ms. Sigismondi. Dr. Moran stated that the inconsistent records, tending to show that certain injuries began three (3) months after the accident, did not affect his opinion concerning the L5 radiculopathy. Dr. Moran stated he could not cite specific documentary material that he relied on in determining that the onset of L5 radiculopathy symptoms could have been delayed for three months. Further on cross examination, Dr. Moran testified that after examining and based on the new records, he could not within a reasonable degree of medical probability say that the ankle injury was related to the accident.²

On redirect examination, Dr. Moran stated that he believed that the medical history that Ms. Sigismondi provided to him was correct. The Doctor testified that the opinions he stated on direct examination were based on the history and records available to him, and based on that information, the opinions he offered on direct remain unchanged. Therefore, on redirect examination, Dr. Moran ratified the testimony he provided during direct examination concerning his medical opinions.

Defendant Hall argues that the method used by Dr. Moran in forming his opinions as to the low back injury did not meet the reliability requirement, because

²There were no complaints about injuries to that region in reports generated close in time to the accident, and the Doctor felt that the Plaintiff's ankle injury symptoms would likely have shown up with some immediacy.

his causation opinion was not supported by the facts or by scientific knowledge. Further, the Defendant argues that the method used by Dr. Moran in initially relating the ankle injury to the auto accident did not meet the reliability requirement, because that opinion was not supported by the facts. On the other hand, Ms. Sigismondi argues that Dr. Moran's opinion meets the *Daubert* test, because the proffered testimony is both relevant and reliable.

Discussion

The admissibility of expert testimony is governed by Delaware Rules of Evidence 702 and the standards set forth in *Daubert v. Merrill Dow*.³ At its core, Rule 702 and *Daubert* require that the trial judge act as a gatekeeper by ensuring that any expert testimony that is offered is both reliable and relevant.⁴

Dr. Moran's testimony concerning the Plaintiff's low back injury is admissible, because the opinion is relevant and reliable. Ms. Sigismondi's primary physician ordered an EMG nerve test of her left lower extremity, as a result of tingling sensations and pain she was feeling, which objectively revealed the radiculopathy. The radiculopathy was consistent with Dr. Moran's physical examination of Ms. Sigismondi, and the Doctor attributed the Plaintiff's lower back injury to the accident based on the Plaintiff's description of the mechanics of the injury and the lack of any lower back pain prior to the accident. On cross examination, Dr. Moran did not waiver on his lower back injury opinion, and he stated that a delay of three months

³*Daubert v. Merrill Dow*, 509 U.S. 579 (1993).

⁴*Quinn v. Woerner*, 2006 WL 3026199, *2 (Del. Super).

concerning an onset of symptoms would not affect his opinion of the Plaintiff's lower back injury.⁵ An objective test revealed Ms. Sigismondi had radiculopathy, and the Doctor's opinion concerning the lower back injury is relevant and reliable.

Dr. Moran's testimony concerning Ms. Sigismondi's ankle injury is admissible, because the opinion is relevant and reliable. Mr. Hall argues that the Doctor's opinion concerning the ankle injury is unreliable, because the opinion is not supported by facts. Based on earlier reports, which Dr. Moran did not have at his disposal, the Doctor stated on cross examination that he could not offer an opinion that the ankle injury was related to the accident within a reasonable degree of medical certainty. However, on redirect examination, the Doctor ratified his initial opinion that the ankle injury was probably related to the accident within a reasonable degree of medical certainty. The Doctor based his initial opinion on the medical history and mechanics of the accident provided to him by the Plaintiff.

Even though the initial emergency room report did not state that the Plaintiff suffered bruising on her legs, which would suggest that she did not have an ankle injury at the time of the accident, a medical report generated one week after the accident explained that Ms. Sigismondi had bruises on her lower extremities. Dr. Moran testified on redirect that bruises do not always appear right away. The subsequent report furthers the credibility of Ms. Sigismondi's explanation that her ankle injury occurred at the time of the accident. Although there is a factual dispute

⁵The Doctor could not cite any documentary material related to his non-concern of the three month delay of the onset of symptoms, but Dr. Moran was not apprised of the new documents showing Ms. Sigismondi's non-complaints, until he was being deposed.

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here, Dr. Moran's opinion about the Plaintiff's ankle injury is, on balance, supported by facts. Consequently, the Doctor's testimony is admissible, and the jury will be the ultimate fact finders concerning the factual disputes presented.

Based on the foregoing, the Defendant's Motion in Limine is *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.

WLW/dmh

oc: Prothonotary

xc: Order Distribution