

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

CHARLES SLUSS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 05C-05-31-PLA
	)	
ROBERT DAVIS and	)	
JACLYN RUSSELLO	)	
	)	
Defendants.	)	

Submitted: October 4, 2006  
Decided: October 4, 2006

UPON DEFENDANTS’ MOTIONS FOR SUMMARY JUDGMENT  
**GRANTED.**

This 4<sup>th</sup> day of October, 2006, upon consideration of defendants Robert Davis’ and Jaclyn Russello’s motions for summary judgment, it appears to the Court that:

1. On June 26, 2003, plaintiff Charles Sluss (“Plaintiff”) was a passenger in defendant Robert Davis’ (“Davis”) vehicle. Davis approached the intersection of 4<sup>th</sup> and Broom Streets in Wilmington, Delaware and proceeded to make a left turn through the intersection. When Davis entered the intersection, his vehicle was struck by defendant Jaclyn Russello’s

(“Russello”) vehicle. Plaintiff filed this action against Davis and Russello alleging he sustained personal injuries from the accident.

2. On January 26, 2006, the Court issued a Scheduling Order pursuant to which Plaintiff was to produce all expert reports by April 1, 2006. Plaintiff failed to produce any expert reports as of the deadline and, as a result, defendants motioned the Court to exclude Plaintiff from offering expert medical testimony at trial. The Court granted the motion and ordered that Plaintiff was “excluded from offering any expert medical testimony at trial as to the Plaintiff’s injuries from the accident including any opinions as to diagnosis, causation, or permanency.” Both Davis and Russello have now filed the instant motions for summary judgment.

3. Defendants argue that Plaintiff can not make a *prima facie* case of negligence because, pursuant to this Court’s Order, Plaintiff is not permitted to produce expert medical testimony at trial. According to defendants, expert medical testimony is required to establish causation in an auto accident negligence case under *Rayfield v. Power*.<sup>1</sup> Therefore, because Plaintiff can not make a *prima facie* showing without expert medical testimony, summary judgment should be granted.

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<sup>1</sup> 2003 WL 22873037 (Del. Dec. 2, 2003).

4. Plaintiff responds by arguing that expert medical testimony is not required to prove that personal injury and pain and suffering were the proximate result of a defendant's negligence in every case. Plaintiff maintains that expert medical testimony is only required to establish causation in those cases where the connection between the defendant's actions and the plaintiff's injuries is outside the common knowledge of a lay person – and this case does not present such a situation. This is a case involving an undisputed collision where a vehicle smashed into the vehicle in which Plaintiff was riding. Plaintiff will testify as to the pain he suffered immediately after the accident and his doctor (serving as a fact witness) will testify that Plaintiff complained of pain and other symptoms during treatment. Establishing the connection between the accident and Plaintiff's injuries is within the common knowledge of lay persons. Therefore, Plaintiff contends that no medical expert testimony is required.<sup>2</sup>

5. The Court's function when considering a motion for summary judgment is to examine the record to ascertain whether genuine issues of material fact exist and determine whether a party is entitled to judgment as a matter of law. Summary judgment will not be granted if, after viewing the record in a light most favorable to the non-moving party, there are material

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<sup>2</sup> Interestingly, Plaintiff makes this claim even in the face of his deposition testimony that establishes that Plaintiff had a pre-existing condition from a prior accident, and admittedly lied to his treating doctors for the purpose of obtaining pain medication.

facts in dispute or if judgment as a matter of law is not appropriate. If, however, there are no material facts in dispute, and the moving party is entitled to judgment as a matter of law, summary judgment will be granted.<sup>3</sup>

6. “The standard for determining when expert testimony is required in a tort case was outlined by the Delaware Supreme Court in *Money v. Manville Corp. Asbestos Disease Comp. Trust Fund*, Del. Supr. 596 A.2d 1372 (1991).”<sup>4</sup> “Citing to Prosser and Keeton’s hornbook on tort law, the Court [in *Money*] stated the following: ‘When the issue of proximate cause is presented in a context which is not a matter of common knowledge, expert testimony may provide a sufficient basis for a finding of causation, but in the absence of such testimony it may not be made.’”<sup>5</sup>

7. The Delaware Supreme Court has held that the issue of proximate cause in the personal injury auto accident context is *not* a matter of common knowledge and, therefore, expert medical testimony is required. In *Rayfield v. Power*,<sup>6</sup> the plaintiffs filed a complaint seeking damages for personal injuries allegedly caused by an auto accident. The Superior Court

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<sup>3</sup> See SUPER. CT. CIV. R. 56; *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 879 (Del. Super. Ct. 2005); *Oliver B. Cannon & Sons, Inc. v. Dorr-Oliver, Inc.*, 312 A.2d 322, 325 (Del. Super. Ct. 1973); *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

<sup>4</sup> *Smith v. Chrysler Corp.*, 1996 WL 945018, at \*2 (Del. Super. Ct. Oct. 25, 1996).

<sup>5</sup> *Id.* (quoting *Money*, 596 A.2d at 1376).

<sup>6</sup> 2003 WL 22873037.

granted the defendants' motion for summary judgment because the plaintiffs failed to offer any expert medical testimony in support of their complaint for damages. On appeal, the Supreme Court held:

In order to survive the [defendants'] motion for summary judgment, the [plaintiffs] were required to adequately establish all the elements essential to their case that they would have the burden of proving at trial. In Delaware, in order to prevail in a negligence action, a plaintiff must prove by a preponderance of the evidence that the defendant's action breached a duty of care in a way that proximately caused injury to the plaintiff. *With a claim for bodily injuries, the causal connection between the defendant's alleged negligent conduct and the plaintiff's alleged injury must be proven by the direct testimony of a competent medical expert.* The Superior Court directed the [plaintiffs] to identify their expert witness, but the [plaintiffs] failed to comply with the Superior Court's directives. Summary judgment, therefore, was appropriate.<sup>7</sup>

8. The facts in this case are analogous to those in *Rayfield* in that the Plaintiff here seeks damages for personal injuries he sustained as a result of an auto accident between the two defendants. Pursuant to this Court's Order, Plaintiff is excluded from presenting expert medical testimony at trial. As clearly held in *Rayfield*, in a claim for bodily injuries suffered from an auto accident, the connection between the defendant's negligence and the plaintiff's injury "must be proven by the direct testimony of a competent medical expert." Because Plaintiff will be unable to present expert medical testimony, he can not make that connection and therefore can not make a

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<sup>7</sup> *Id.* (emphasis added).

*prima facie* showing of negligence. Accordingly, Davis' and Russello's motions for summary judgment are **GRANTED**.

**IT IS SO ORDERED.**

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**Peggy L. Ableman, Judge**

Original to Prothonotary