

Belfiore-Braman v. Rotenberg (2018)

Trial court properly precluded expert testimony on causation where it is too speculative to the jury.

FACTS/PROCEDURE

In 2012, Angela Belfiore-Braman (Plaintiff) consulted with D. Daniel Rotenberg, M.D. (Defendant), who diagnosed her with moderate to severe arthritis of the left hip. Defendant eventually performed a total left hip replacement for Plaintiff. After the procedure, Plaintiff's pain continued and appeared to spread. Plaintiff brought a medical malpractice action against Defendant.

During discovery, Plaintiff consulted with Dr. Aaron Filler (Filler) for a neurological imaging study, which revealed a sciatic nerve entrapment. Filler believed this was a result of an error made by Defendant during Plaintiff's surgery. In conducting his review, Filler did not consult the Plaintiff's medical records or operative report. Furthermore, his practice does not include hip replacements. Plaintiff did not retain Filler as an expert and wanted his testimony introduced at trial.

Defendant filed a motion in limine to preclude Filler's testimony at trial. The trial court granted the Defendant's motion and precluded Filler from testifying as to causation but allowed him to testify as to the results of the neurological tests he performed. The jury returned a verdict for the Defendant.

DISCUSSION

On appeal, the Court of Appeal for the Fourth District affirmed finding that the trial court did not abuse its discretion in limiting Filler's testimony. The court reasoned that to aid a jury in the determination of causation an expert must be able to explain why his research led to a conclusion that it is more probable than not that a negligent act was the cause-in-fact injury.

Here, Filler lacked the proper foundation to testify regarding the cause of the plaintiff's injuries because he does not perform such hip replacement surgeries. Additionally, Filler only had a limited relationship with the plaintiff because he only reviewed the results of the neurological imaging study and could only speculate that "most likely" a misplaced retractor or slippage of the hip joint damaged the nerve. Lastly, the court found that Filler's testimony would also be duplicative because the Plaintiff had already designated an orthopedic surgeon.