

KANSAS COURT OF APPEALS

LeTourneau v. Law Offices of Richard M. Lester, Richard M. Lester,
and Michael K. DeKruif

LeTourneau · No. No. 128,132 · Decided January 2, 2026

SUMMARY

The Kansas Court of Appeals held that a legal malpractice plaintiff must prove the underlying personal-injury claim as a separate “case within a case,” using the same standard of proof and evidentiary requirements applicable to the underlying action. The court concluded that an attorney who was not qualified as a subject-matter expert could not establish engineering, medical, life-care-planning, and economic-damages issues merely by summarizing or introducing reports prepared by unavailable experts. The court reversed the judgment for the plaintiffs and remanded with directions to enter judgment for the defendant attorneys.

CASE DETAILS

COURT	Kansas Court of Appeals
WRITING FOR THE COURT	Arnold-Burger, J.; Arnold-Burger, P.J.; Hurst, J.; Jacob Peterson, District Judge, assigned
JURISDICTION	Kansas Court of Appeals
DECIDED	January 2, 2026
DOCKET	No. 128,132
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendants appealed from a jury judgment in favor of plaintiffs on a legal malpractice claim. The Kansas Court of Appeals considered the admissibility of the plaintiffs' attorney's testimony concerning expert opinions in the underlying personal-injury case and the denial of defendants' motions for judgment as a matter of law.
STANDARD OF REVIEW	Admission of expert testimony is reviewed for abuse of discretion; issues involving interpretation of the expert-witness statute are reviewed de novo. Denial of a motion for judgment as a matter of law is reviewed under the same standard applied by the district court: facts and reasonable inferences are resolved in favor of the nonmoving party, and the motion must be denied if reasonable minds could reach different conclusions.

PRECEDENTIAL VALUE	published
PARTIES	Law Offices of Richard M. Lester, Richard M. Lester, Michael K. DeKruif v. Mark LeTourneau, Deborah LeTourneau

TOPICS

expert testimony negligence evidence motion for directed verdict standard of review

PRACTICE AREAS

legal malpractice negligence expert testimony evidence civil procedure

QUESTIONS PRESENTED

1. Whether a legal-malpractice plaintiff must prove the underlying personal-injury claim as a case within a case using the same evidentiary standards and presentation that would have applied in the underlying action.
2. Whether an attorney without subject-matter expertise may establish engineering, medical, life-care-planning, and economic issues by summarizing or introducing reports prepared by unavailable experts.
3. Whether the evidence was sufficient to establish the underlying negligence claim and support the plaintiffs' legal-malpractice judgment.
4. Whether the district court erred in denying defendants' motions for judgment as a matter of law.

HOLDINGS

1. A plaintiff bringing a legal-malpractice claim based on mishandling litigation must present the underlying case as it would have been presented separately to a judge or jury, and the fact-finder must determine the merits of that underlying case solely from the evidence properly presented regarding it.
2. An attorney who lacks subject-matter expertise may not establish the engineering, medical, life-care-planning, and economic elements of an underlying personal-injury negligence claim merely by reviewing and summarizing reports prepared by other experts.
3. The plaintiffs failed to present sufficient evidence to establish the underlying personal-injury negligence claim because the attorney's improper testimony about the absent experts' opinions was excluded from consideration.
4. The district court erred in denying defendants' motion for judgment as a matter of law because the plaintiffs failed to prove the underlying personal-injury negligence claim.

KEY QUOTATIONS

"In a legal malpractice action, to prove what is commonly referred to as a "case within a case," the plaintiff must present the underlying case as it would have been presented to a judge or jury and the fact-finder must make a determination solely on the evidence presented regarding that underlying case." (7-8)

“We know of no caselaw that would support a holding that the standard of proof in the underlying case within a case is diminished or is its presentation subject to relaxed evidentiary standards.” (8)

“In sum, we know of no court that would allow an attorney to simply review an expert's report on engineering studies, future earnings, and medical injuries and then opine in front of the judge or jury in a personal injury action.” (15)

FACTUAL BACKGROUND

Mark LeTourneau was seriously injured in a 2012 motorcycle accident on a highway under construction, where an asphalt overlay created an uneven pavement drop-off. His attorneys filed a personal-injury action against Venture Corporation and the Kansas Department of Transportation, but the case ultimately proceeded against Venture alone. Shortly before trial, several designated experts were unavailable, and local counsel negotiated a \$495,000 settlement. Plaintiffs later brought a legal malpractice action and attempted to prove the underlying negligence case through testimony from attorney Thomas Dickerson, who summarized reports prepared by unavailable engineering, medical, life-care-planning, and economic experts.

PROCEDURAL HISTORY

Plaintiffs' underlying personal-injury action against Venture Corporation settled for \$495,000 after the availability of several designated expert witnesses became uncertain. Plaintiffs then sued their former attorneys for legal malpractice. The district court allowed plaintiffs' local counsel, Dickerson, to testify about the substance of engineering, medical, life-care-planning, and economic expert reports without calling the subject-matter experts. The jury awarded plaintiffs \$3,563,832.88, and the district court denied defendants' posttrial motion for judgment as a matter of law. The Court of Appeals reversed and remanded with directions to enter judgment as a matter of law for defendants.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must enter judgment as a matter of law in favor of the Law Offices of Richard M. Lester, Richard M. Lester, and Michael K. DeKruif.

CASES CITED

- *Canaan v. Bartee*, 276 Kan. 116, 120, 72 P.3d 911 (2003)
- *Power Control Devices, Inc. v. Lerner*, 56 Kan. App. 2d 690, 437 P.3d 66 (2019)
- *Castleberry v. DeBrot*, 308 Kan. 791, 812, 424 P.3d 495 (2018)
- *Dawson v. Prager*, 276 Kan. 373, 376, 76 P.3d 1036 (2003)
- *State v. Henderson*, 32 Kan. App. 2d 1202, 1211, 96 P.3d 680 (2004)
- *Corbet v. City of Kensington*, 63 Kan. App. 2d 466, 483, 530 P.3d 750 (2023)
- *Shirley v. Glass*, 297 Kan. 888, Syl. ¶ 4, 308 P.3d 1 (2013)

- Yount v. Deibert, 282 Kan. 619, 624, 147 P.3d 1065 (2006)
- Dawson v. BNSF Railway Co., 309 Kan. 446, 454, 437 P.3d 929 (2019)
- Webb v. Pomeroy, 8 Kan. App. 2d 246, 249, 655 P.2d 465 (1982)
- Rice v. Barker & Bunch, P.C., 25 Kan. App. 2d 797, 797-98, 972 P.2d 786 (1998)

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