

SUPREME COURT OF PENNSYLVANIA

Betz v. Pneumo Abex LLC

615 Pa. 504 (2012) (Pa. 2012) · No. No. 38 WAP 2010 · Decided May 23, 2012

SUMMARY

The Supreme Court of Pennsylvania reviewed the admissibility under Frye of expert testimony asserting that every inhaled asbestos fiber is a substantial contributing factor in causing asbestos-related disease. The appeal arose from an asbestos product-liability action involving an automobile mechanic and a trial court ruling excluding the plaintiffs’ “any-exposure” causation theory. The opinion addresses scientific methodology, general and specific causation, and the trial court’s role in screening novel expert evidence.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Justice Saylor; Chief Justice Castille; Justice Eakin; Justice Baer; Justice Todd; Justice McCaffery
JURISDICTION	Pennsylvania
DECIDED	May 23, 2012
DOCKET	No. 38 WAP 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an en banc Superior Court decision reversing a common pleas court order that sustained a Frye challenge to the admissibility of the any-exposure asbestos causation theory and thereafter entered summary judgment for the defendants.
STANDARD OF REVIEW	A Frye ruling is reviewed for abuse of discretion. The appellate court may not substitute its judgment for that of the trial court absent manifest unreasonableness, partiality, prejudice, bias, ill will, or a lack of supporting evidence amounting to clear error.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Pennsylvania
PARTIES	Allied Signal, Inc., Ford Motor Company v. Diana K. Betz, Executrix of the Estate of Charles Simikian, Deceased

TOPICS

expert testimony

evidence

appellate procedure

standard of review

products liability

PRACTICE AREAS

Evidence

Products liability

Toxic torts

Appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court properly conducted a Frye hearing concerning the methodology underlying the any-exposure or any-fiber theory of asbestos-specific causation.
2. Whether a Frye hearing is warranted when an expert applies accepted scientific methods in a novel or scientifically questionable manner.
3. Whether the trial court properly considered testimony from toxicologists, risk assessors, and epidemiologists in evaluating the broad causation opinion offered by a pathologist.
4. Whether the trial court abused its discretion by excluding the any-exposure opinion as lacking generally accepted scientific methodology.
5. Whether the Superior Court applied the proper abuse-of-discretion standard in reversing the trial court's Frye ruling.

HOLDINGS

1. A Frye hearing was appropriate because the defendants presented an articulable challenge to whether the expert had applied accepted scientific methodology in a conventional manner, and Pennsylvania's concept of scientific novelty is broad enough to encompass a novel use of an established method.
2. A trial court's Frye ruling is reviewed for abuse of discretion, and the appellate court may not merely substitute its judgment for that of the trial court.
3. The trial court properly considered testimony from toxicologists, risk assessors, and epidemiologists because the expert's broad any-exposure opinion concerned risk assessment and disease causation beyond the particular clinical expertise of a pathologist.
4. The trial court did not abuse its discretion in finding that the methodology underlying the any-exposure opinion was not generally accepted and in excluding the opinion.

KEY QUOTATIONS

"We therefore agree with Appellants that a reasonably broad meaning should be ascribed to the term "novel."" (44 A.3d at 53)

"Furthermore, we conclude that a Frye hearing is warranted when a trial judge has articulable grounds to believe that an expert witness has not applied accepted scientific methodology in a conventional fashion in reaching his or her conclusions." (44 A.3d at 53)

"Simply put, one cannot simultaneously maintain that a single fiber among millions is substantially causative, while also conceding that a disease is dose responsive." (44 A.3d at 56)

“Such theories are not at issue in this case, however, and we do not believe that it is a viable solution to indulge in a fiction that each and every exposure to asbestos, no matter how minimal in relation to other exposures, implicates a fact issue concerning substantial-factor causation in every “direct-evidence” case.”
(44 A.3d at 57)

FACTUAL BACKGROUND

Charles Simikian alleged that asbestos exposure during a forty-four-year career as an automotive mechanic caused his mesothelioma. His executrix pursued claims against manufacturers and suppliers of asbestos-containing automotive friction products. The plaintiff's primary causation expert opined that every inhaled asbestos fiber contributes substantially to asbestos-related disease, without assessing the individual exposure histories of the test plaintiffs. Defense experts challenged that methodology as inconsistent with dose-response principles, epidemiological evidence, and the scientific method.

PROCEDURAL HISTORY

The Allegheny County Court of Common Pleas selected this action as a test case and conducted a Frye hearing concerning expert testimony that every asbestos exposure, no matter how small, is a substantial contributing factor in causing asbestos-related disease. The trial court excluded the opinion, and the defendants subsequently obtained summary judgment. The Superior Court, sitting en banc, reversed. The Supreme Court of Pennsylvania reversed the Superior Court and remanded for consideration of any remaining preserved appellate issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court was directed to consider whether any remaining, preserved issues on appeal had been obviated by its prior approach to the common pleas court's Frye ruling.

CASES CITED

- Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)
- Commonwealth v. Topa, 471 Pa. 223, 369 A.2d 1277 (1977)
- Grady v. Frito-Lay, Inc., 576 Pa. 546, 839 A.2d 1038 (2003)
- Gregg v. V-J Auto Parts Co., 596 Pa. 274, 943 A.2d 216 (2007)
- Summers v. Certainteed Corp., 606 Pa. 294, 997 A.2d 1152 (2010)
- Betz v. Pneumo Abex LLC, 998 A.2d 962 (Pa. Super. 2010) (en banc)
- Trach v. Fellin, 817 A.2d 1102 (Pa. Super. 2003) (en banc)
- General Electric Co. v. Joiner, 522 U.S. 136, 118 S. Ct. 512, 139 L. Ed. 2d 508 (1997)
- Ferebee v. Chevron Chemical Co., 736 F.2d 1529 (D.C. Cir. 1984)
- Rafter v. Raymark Industries, 429 Pa. Super. 360, 632 A.2d 897 (1993)
- Whiting v. Boston Edison Co., 891 F. Supp. 12 (D. Mass. 1995)

- Norris v. Baxter Healthcare Corp., 397 F.3d 878 (10th Cir. 2005)
- Tragarz v. Keene Corp., 980 F.2d 411 (7th Cir. 1992)
- Estate of Hicks v. Dana Cos., 984 A.2d 943 (Pa. Super. 2009) (en banc)
- Smalls v. Pittsburgh-Corning Corp., 843 A.2d 410 (Pa. Super. 2004)

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