

SUPERIOR COURT OF THE STATE OF DELAWARE

Scottoline v. Women First, LLC

C.A. No. N19C-08-135 AML (Del. Super. Ct. Mar. 1, 2023) · No. N19C-08-135 AML · Decided March 1, 2023

SUMMARY

The Delaware Superior Court granted Defendants’ motion to exclude the plaintiffs’ expert causation opinion in a medical negligence action. The court held that the expert’s opinion linking hypoxic-ischemic encephalopathy to the child’s autism-spectrum behavioral syndrome lacked a reliable scientific basis and was not the product of a reliable methodology ruling out alternative causes.

CASE DETAILS

COURT	Superior Court of the State of Delaware
WRITING FOR THE COURT	LeGrow, J.
JURISDICTION	Delaware Superior Court
DECIDED	March 1, 2023
DOCKET	N19C-08-135 AML
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved in limine to exclude plaintiffs’ medical expert’s causation opinion that the child’s hypoxic ischemic encephalopathy caused his autism spectrum disorder or behavioral syndrome within the autism spectrum.
STANDARD OF REVIEW	The court independently assessed the relevance and reliability of the challenged expert testimony under Delaware Rule of Evidence 702 and the Daubert standard; the proponent bears the burden of establishing admissibility by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published memorandum opinion; no separate precedential designation stated in the source.

TOPICS

- expert testimony
- daubert standard
- evidence
- medical malpractice

PRACTICE AREAS

- evidence
- medical malpractice
- health law

QUESTIONS PRESENTED

1. Whether Dr. Adler’s opinion that J.S.S.’s HIE caused his autism spectrum disorder or ASD-related behavioral syndrome had a reliable scientific basis under Delaware Rule of Evidence 702.
2. Whether Dr. Adler employed a reliable methodology to rule in and rule out alternative causes of J.S.S.’s ASD before offering a specific-causation opinion.

HOLDINGS

1. The opinion was inadmissible because it lacked a reliable scientific basis. The cited articles identified, at most, an association between HIE or related perinatal conditions and ASD, and none established that HIE causes ASD.
2. The opinion was inadmissible because Dr. Adler did not use a reliable methodology to distinguish HIE as the cause of J.S.S.’s ASD from other potential causes.

KEY QUOTATIONS

“When a disease or disorder has several possible independent causes, an expert must “employ a definitive scientific process to rule in and rule out” the many potential causes of the disorder before reaching a conclusion.” (at 13)

“That ipse dixit opinion is not based on a reliable methodology and therefore is not admissible under Rule 702.” (at 15)

“For the foregoing reasons, Plaintiffs are precluded from introducing at trial Dr. Adler’s opinion or testimony that Hypoxic Ischemic Encephalopathy caused J.S.S.’s behavioral syndrome that falls within the autism spectrum.” (at 15)

FACTUAL BACKGROUND

J.S.S. was born after an allegedly oxygen-depriving labor and delivery and was diagnosed with hypoxic ischemic encephalopathy, with severe encephalopathy, seizures, and developmental injuries. He later developed developmental delays and behaviors consistent with autism spectrum disorder and was diagnosed with ASD by his school district. Plaintiffs’ pediatric neurologist, Dr. Daniel Adler, opined that the HIE injury caused J.S.S.’s ASD-related behavioral condition. The articles and materials Adler identified showed at most associations between perinatal conditions, HIE, and ASD, and he did not reliably exclude other potential causes, including genetic causes.

PROCEDURAL HISTORY

Plaintiffs filed a medical negligence action in 2019 and amended the complaint in 2021. Defendants moved to exclude Dr. Daniel Adler’s causation opinion under Delaware Rule of Evidence 702. The Superior Court granted the motion and precluded plaintiffs from introducing the challenged opinion or testimony at trial.

DISPOSITION

other

CASES CITED

- Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993)
- M.G. Bancorporation v. Le Beau, 737 A.2d 513, 521 (Del. 1999)
- Bowen v. E.I. DuPont de Nemours & Co., Inc., 906 A.2d 787, 794-95 (Del. 2006)
- Tumlinson v. Advanced Micro Devices, Inc., 81 A.3d 1264, 1269 (Del. 2013)
- Norman v. All About Women, P.A., 193 A.3d 726, 730 (Del. 2018)
- Wilant v. BNSF Railway Co., 2020 WL 2467076, at *4-5 (Del. Super. May 13, 2020)
- Melnick v. Consolidated Edison, Inc., 959 N.Y.S.2d 609, 623 (N.Y. Supreme Feb. 15, 2013)
- Frye v. United States, 293 F. 1013 (D.C. Cir. 1923)
- Minner v. American Mortgage & Guaranty Co., 791 A.2d 826, 854 (Del. Super. 2000)
- Scaife v. AstraZeneca LP, 2009 WL 1610575, at *16 (Del. Super. June 9, 2009)
- Daubert v. Merrell Dow Pharmaceuticals, Inc., 43 F.3d 1311, 1319 (9th Cir. 1995)

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