

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division

2020/CLE/gen/00928

LORRAINE SANDRA FRANCIS

Plaintiff

AND

ISLAND HOTEL COMPANY LIMITED

Defendant

Before: The Honourable Madam Justice Camille Darville-Gomez

Appearances: Mr. Bryan Woodside for the Plaintiff

Ms. Camille Cleare along with Mrs. Viola Major for the Defendant

Hearing Date: 13th January, 2023

RULING

Darville Gomez, J.

Introduction/ Factual Background

1. The Plaintiff commenced this action by way of Writ of Summons filed on the 18th September, 2020 followed by an Amended Writ of Summons filed on the 18th November, 2020 against the Defendant for a personal injury claim, specifically a slip and fall at her place of employment on 19th October, 2017.
2. During the course of the trial, Counsel for the Defendant challenged the Plaintiff's expert witness, Dr. Sean Leonard Knowles who had prepared a medical report dated 14th June, 2021. Counsel argued that the basis of the objection was that Dr. Knowles is not an expert as it relates to the Plaintiff's alleged personal injuries.

Further, that an orthopedic surgeon would be the appropriate physician to examine and provide an opinion as it relates to the injuries.

3. Counsel for the Plaintiff disagreed on the basis that Dr. Sean Leonard Knowles is an expert in the medical field therefore he should be deemed an expert witness. He also referred to the qualifications, medical history and background of Dr. Knowles.
4. Dr. Sean Leonard Knowles' witness statement filed on the 20th April, 2022 and showed that he is a General Practitioner with 9 years of practice.

The Law

5. ***Order 38, Rule 1 of the Rules of the Supreme Court, 1978*** reads,

“Subject to the provisions of these rules and to the Civil Evidence Act 1968 of England, (in so far as the latter is applicable) and any other enactment relating to evidence, any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of witnesses orally and in open court.”

6. According to ***section 22 of the Evidence Act***,

“Where the court has to form an opinion on the identity or genuineness of handwriting, or upon a point of foreign law, or of science, art, trade, manufacture or any other subject requiring special skill or knowledge, evidence may be given of the opinion of persons who in the opinion of the court are experts in such subjects and of any facts which support or are inconsistent with such opinions.”

Issue

6. The Court has to determine whether Dr. Knowles can be deemed a medical expert witness for the purposes of these proceedings.

Analysis & Disposition

7. In *Taylor and Solomon's Supercentre (Nassau) Ltd. and AML Food (NASSAU) Ltd. (Formerly ABACO Markets Ltd.) BS 2016 SC 12*, Fraser J. said:

“18 It is important in the interest of justice that the court hears evidence from both parties, particularly as it relates to the medical evidence which will assist the Court in determining the extent of the injury which was sustained and whether such injury occurred as a result of the fall.”
8. The issue at hand is relevant to these proceedings as it encompasses the slip and fall at the Plaintiff's place of employment on the 19th October, 2017 for a claim of personal injury. In short, the Plaintiff's medical assessment is necessary to assist the Court in determining the likelihood of any negligence on the part of the Defendant as a result of the injuries the Plaintiff alleged to have sustained.
9. In court proceedings, medical evidence is best given by specialists within a particular field, and related to the issue at hand.
10. The witness maintained that for the period of 2013-2016, he was gainfully employed with the Sandilands Rehabilitation Centre as Registrar of the Substance Abuse Ward.
11. For foundational purposes, Dr. Sean Leonard Knowles operates a medical practice named E-Man-U-Well Medical Center in New Providence, The Bahamas. His academic qualifications entails: (i) Bachelor of Arts - Biology, All- College Honors with Distinction in Biology (St. John's University, Minnesota, USA) ; (ii) Bachelor of Medicine, Bachelor of Surgery (MBBS) (University of the West Indies, Mona, Jamaica/ Nassau, Bahamas); (iii) Master of Science – Mathematics & Statistics (Youngstown State University, Ohio, USA); (iv) Master of Science – Immunology of Infectious Diseases (London School of Hygiene & Tropical Medicine, London, England); and (v) Certified Gambling Addiction Specialist (University of Minnesota – Duluth & North American Training Institute). This information was retrieved from page 9 of the Physical & Mental Health Assessment Report.

12. The admissibility of expert opinion evidence was discussed in *Kennedy v Cordia (Services) LLP* [2016] UKSC 6 where the UK Supreme Court alluded to the Australian case of *R v Bonython* (1984) 38 SASR 45. In that case, King CJ at pp 46-47 stated:

“Before admitting the opinion of a witness into evidence as expert testimony, the judge must consider and decide two questions. The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This first question may be divided into two parts: (a) whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area, and (b) whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organized or recognized to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court.”

13. In the present case, Dr. Knowles assessment report included a physical and mental status examination of the Plaintiff. The Plaintiff expressed having pain in her lower back and left knee. Assessing the academic qualifications of Dr. Knowles, he listed a Bachelor of Medicine and Bachelor of Surgery however, his specialty is Certified Gambling Addiction. Considering that the Plaintiff complained of left knee pain, in my opinion, it would be most appropriate that she be assessed by a specialists, particularly an orthopedic surgeon for such injury.

14. In applying the test above, I am of the view that Dr. Knowles cannot provide this court sufficiently, or matter of fact with an expert opinion in relation opinions associated with orthopedics. My opinion is based on the outlined academic qualifications which indicates the lack of study in such area and his lack of experience to render a valuable opinion on the Plaintiff’s knee injury.

15. In *R v Earl St John Michael Clarke and another [2013] EWCA Crim 162*, the court found that a witness did not have the experience or expertise to consider the cause of death in the matter because he specialized in another medical field. The court had this to say at paragraph 77:

“Secondly, we think that the judge was entitled to rule that Professor Freemont did not have the expertise to give an opinion on the cause of death looking at the matter overall. The professor is distinguished in the field of osteoarticular pathology. He specialises in the process of fracture and the generalised disorders of bone known as metabolic bone disease. But he has never conducted a post-mortem when there is a suspicion that the cause of death is murder. Such post-mortems are reserved to Home Office pathologists precisely because they have higher qualifications such as the Diploma of Medical Jurisprudence and the experience of assisting with the post-mortems in suspected murder cases. In this very case the first post-mortem by Dr Cvijan had been abandoned because he suspected foul play and the post-mortem had been carried out by Dr Kolar, a Home Office pathologist. Professor Freemont did not have the experience or expertise to consider all the possible causes of death apart from the fractures to the ribs in the way that Dr Kolar could in order to come to his overall conclusion that the cause of death was best regarded as "multiple injuries", where the likely mechanism for the multiple injuries was heavy punches or kicks.”

16. Counsel for the Plaintiff also highlighted Dr. Knowles’ experience at Sandilands Rehabilitation Centre and contended that he can speak to the Plaintiff’s mental status. For the reasons already noted above, I am also of the opinion that Dr. Knowles qualifications and experience is insufficient for the allowance of evidence as an expert witness in relation to the Plaintiff’s mental status. Perhaps if Dr. Knowles’ obtained a psychology degree or experience in that field of study, the circumstances may have produced a different result.

17. Fundamentally, the admissibility of expert opinion is determined on expertise and experience. A court should not deem a witness an expert or allow evidence in proceedings if their opinions fall outside of scope of their expertise and not related to the subject matter.

6. Dr. Knowles noted in his assessment report that the Plaintiff was seen by Dr. Dane Bowe, a certified orthopaedic and arthroplasty surgeon sometime in August 2018 where she underwent a procedure: arthroscopic debridement of the left medial & lateral meniscus.
7. Having reviewed the Operative report conducted by Dr. Dane Bowe on the 23rd August, 2018, I am of the view that he or another physician with similar qualifications would have been the appropriate surgeon to provide an expert opinion on the Plaintiff's injury.
8. For all the reasons given above, the plaintiff's attending physician cannot be deemed a medical expert witness for the purposes of these proceedings.

Dated this 3rd day of February, A. D., 2023



Camille Darville Gomez
Justice