

Court of Appeals, State of Michigan

ORDER

Lynn Barrett v Alfredo C Domingo MD

Docket No. 312565

LC No. 11-033842-NH

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Kurtis T. Wilder
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, pursuant to MCR 7.205(D)(2), the Court further orders that the September 24, 2012, order of the Sanilac County Circuit Court is REVERSED. In this case, defendant Alfredo Domingo, M.D., noted in his operative report from the exploratory surgery that the ulnar bundle of plaintiff's median nerve penetrated through the transverse carpal ligament, and that this nerve was severed when he cut the ligament during the prior carpal tunnel release surgery. Although plaintiff's experts contend that this aberration/anomaly is a medical impossibility and/or it could not occur without plaintiff experiencing symptoms prior to the surgery, these experts' opinions create a question of fact for the jury to resolve – which is whether Dr. Domingo is telling the truth about his post-surgical observation. While the articles upon which defendants' experts rely may not document a case where the ulnar branch of the median nerve passed through the ligament, the articles document that nerve anomalies occur. The fact that the nerve anomaly is “novel” does not render the articles and the experts' testimony unreliable under MRE 702. Dr. Domingo documented his observation of this anomaly, and therefore, the testimony is sufficiently based on fact, albeit a disputed one. *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781-782; 685 NW2d 391 (2004). Any doubts pertaining to Dr. Domingo's credibility and plaintiff's disagreement with the experts' opinion or interpretation of facts, “present issues regarding the weight to be given the testimony, and not it's admissibility.” *Surman v Surman*, 277 Mich App 287, 309-310; 745 NW2d 802 (2007). Accordingly, the trial court abused its discretion in precluding defendant and the experts from testifying that the nerve severed by Dr. Domingo can be aberrant and in granting plaintiffs' motion in limine.

In light of the peremptory relief, the motion for stay is DENIED.


Pursuant to MCR 7.215(F)(2), this order shall take immediate effect and the Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

OCT 01 2012

Date


Chief Clerk