STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MARIE LAVECK, deceased.

FREDERICK H. TAGGART, Personal Representative of the Estate of Marie Laveck,

Appellee,

v

CALVIN C. ROCK,

Appellant.

UNPUBLISHED
December 20, 1996

No. 179630
Macomb Probate Court
LC No. 94-136990-SE

Before: Fitzgerald, P.J., and O'Connell and T.L. Ludington,* JJ.

PER CURIAM.

Appellant appeals as of right the trial court's order admitting the September 7, 1981, last will and testament of Marie Laveck. We affirm.

Marie Laveck died on September 27, 1992, and an unsigned copy of her last will, dated November 7, 1973, was admitted to probate. Subsequently, appellee filed a petition for commencement of proceedings to revoke the admission of the 1973 will and to admit the September 7, 1981, will. Appellant objected to the admission of the 1981 will, contending that Laveck's signature was a forgery. Following a bench trial that was conducted to determine the validity of Laveck's signature on the 1981 will, the trial court admitted the will.

During the course of the trial, appellant called Leonard A. Speckin, who was qualified as an expert in the field of document forensic analysis. [1] Mr. Speckin described his training at the Michigan State Police Crime Laboratory, a forensic laboratory in Munich, Germany, and the fact that he had previously testified as an expert witness in various courts and state bar hearings "somewhere in excess of 500 times." Mr. Speckin tesified that it was his opinion that Ms. Laveck did not sign the 1981 will.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Appellee offered the expert testimony of Robert Haskins. Appellant argues on appeal that the trial court abused its discretion in admitting the testimony of Robert Haskins.

Robert Haskins testified that he was a graphologist, a handwriting analyst, "a document evaluator," and a stress reduction and personality assessment consultant. Haskins described his educational background, which included a masters degree from the University of Tubigen in Germany. He also testified that he had been permitted to testify in other courts and had lectured to employees of Comerica Bank and Empire of America Bank on the subject of forgeries and forged identification cards. The court overruled appellant's objection regarding Haskins' "qualifications" as an expert.

Subsequently, Mr. Haskins testified that while he was aware of the indicia of a forged signature, he did not apply those indicia in evaluating the purported signature. Mr. Haskins relied instead on his background in graphology. He explained that he examined known signatures against the purported signature, and concluded that the purported signature and the known signatures were both made by a person with problems around the stomach. As well, much of his opinion relied on "indications from the shape of the letters" and his observation that discrepancies in different letters could be ascribed to the fact that " . . . this lady was an upbeat person, . . . trying to do her best against odds." He offered his opinion that a signature is an expression of one's conscious mind and "all the letters of the alphabet constitute different personality traits." No specific objection was registered as to the technique or methodology Mr. Haskins actually employed to reach his opinion.

MRE 702 provides:

> If the court determines that *recognized* scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. [Emphasis added.]

The proponent of expert opinion testimony must not only establish as a matter of fact that an expert "will" assist the trier of fact to understand the evidence or to determine a fact in issue, he or she must also establish that the scientific, technical, or other specialized knowledge actually utilized to reach an opinion is indeed "recognized" by other disinterested and impartial experts whose livelihoods are not connected with the technique. *People v Davis*, 343 Mich 348; 72 NW2d 269 (1955); *People v Tobey* 401 Mich 141; 257 NW2d (1977); *People v Young (After Remand)*, 425 Mich 470; 391 NW2d 270 (1986).

Our Supreme Court has approved the use of a handwriting expert to determine if a signature is authentic or a forgery. *In re Skoog Estate*, 373 Mich 27; 127 NW2d 888 (1964). However, the *Skoog* court did not identify the technique or methodology the expert witness relied on to form his opinion. Neither the Supreme Court not this Court has ever addressed the issue of whether the field of graphology is an area of recognized scientific, technical, or specialized knowledge.

The techniques used by Haskins to formulate his opinions are not clearly identified. All that is known from the record is that Haskins did not use the techniques encompassed in document forensic analysis, although he believed he was familiar with those techniques. In the present case, if the issue had been preserved by a motion in limine or by timely and specific objection, the trial court could have conducted a *Davis-Frye* hearing pursuant to MRE 104(a) to determine if the techniques and principles Haskins used had indeed obtained acceptance or recognition within the scientific or technical community.

The procedures contemplated by MRE 702, 703, 704 and 705, to assure the technical reliability of expert testimony for use to resolve legal questions, can be tedious and time consuming. Generally they require trial counsel and the court to address factual issues in fields of study and experience in which they have no education, training, or experience. Nevertheless, the threshold task of framing the issues is assigned to counsel. In the immediate case, the issue addressed on appeal was not preserved.

Appellant also argues that the trial court's verdict was against the great weight of the evidence. However, appellant has waived any claim that the trial court's findings of fact were against the great weight of the evidence because he failed to move for a new trial. *DeGroot v Barber*, 198 Mich App 48, 54; 497 NW2d 530 (1993).

Affirmed.

/s/ Peter D. O'Connell
/s/ Thomas L. Ludington

I concur in result only.

/s/ E. Thomas Fitzgerald

[1] In *United States v Starzepyzel*, 880 F Supp 1027 (SD NY, 1995), a hearing was conducted pursuant to Federal Rules of Evidence 104(a) and 702 after a motion was filed to exclude the testimony of a forensic document examiner. The court concluded after an extensive hearing that forensic document examination cannot be regarded as scientific knowledge because " . . . it does not rest on carefully articulated postulates, does not employ rigorous methodology, and has not convincingly documented the accuracy of its determinations." The court did find some testimony admissible as constituting nonscientific technical or specialized knowledge but prohibited the forensic document examiners from testifying as to their precise levels of confidence in their opinions.