Court of Appeals, State of Michigan

ORDER

William Robertson v Jack W DeLong MD

Docket No. 310246

LC No. 09-045153-NH

Joel P. Hoekstra
Presiding Judge

William B. Murphy, C. J.

Douglas B. Shapiro
Judges

In lieu of granting leave to appeal, we PEREMPTORILY REVERSE the trial court's decision to exclude from evidence: (a) the defendant's deposition testimony that during the surgery he found that plaintiff's facial artery was "crunchy" and/or that he observed plaque in the artery, (b) the defendant's deposition testimony that the artery's atherosclerotic condition was a possible cause of the post-operative arterial bleed, (c) and the testimony of Dr. Robert Vogelzang. Even if the defense now takes the position that the artery was not "crunchy" or atherosclerotic, the deposition testimony is relevant to the nature and accuracy of defendant's intra-operative observations, and defendant's credibility. MRE 401. *Howard v Kowalski*, 296 Mich App 664, 681; 823 NW2d 302 (2012). We decline to rule at this time whether the testimony of Dr. Wayne Kinning is admissible under the requirements of *Daubert v Merrell Dow Pharm, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993) and *Gilbert v DaimlerChrysler Corp*, 470 Mich 749; 685 NW2d 391 (2004) as the trial court did not rule on that issue.

The motion to strike defendant-appellee's answer is DENIED.

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

OCT 0 2 2013
Date

Jerome W. Zimmer Jr.
Chief Clerk