

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LINDA F. PEARSON, as Administratrix	:	
of the Estate of LAURIE SHAW, and as	:	
Guardian Ad Litem for Niki M. Daley and	:	C.A. No. 01C-03-018 WLW
Sean G. Colecchio,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
LARRY ROGERS and BELL ATLANTIC	:	
COMMUNICATIONS, INC., a corporation	:	
of the State of Delaware,	:	
	:	
Defendants.	:	

Submitted: May 10, 2004  
Decided: May 12, 2004

**ORDER**

Upon Defendants' Motion in Limine. Denied.

Robert B. Young, Esquire of Young & Young, Dover, Delaware, attorneys for the Plaintiffs.

Louis J. Rizzo, Jr., Esquire of Reger & Rizzo, LLP, Wilmington, Delaware, attorneys for the Defendants.

WITHAM, J.

*Linda F. Pearson, et al. v. Larry Rogers, et al.*

C.A. No. 01C-03-018 WLW

May 12, 2004

### **Introduction**

Before this Court is Defendants Larry Rogers and Bell Atlantic Communications, Inc.'s motion in limine to preclude the trial testimony of Charles R. Link, Ph.D., Plaintiffs' economic expert. Plaintiffs, Linda Pearson as Administratrix of the Estate of Laurie Shaw and as Guardian Ad Litem for Niki Daley and Sean Colecchio, oppose the motion.

### **Background**

This is a wrongful death case arising from an automobile accident. The trial has been rescheduled several times and is currently scheduled to begin on June 14, 2004. At a pre-trial conference held on November 10, 2003, Plaintiffs indicated their intention to present an economic expert, but did not identify the expert. On March 4, 2004, Plaintiffs advised Defendants that Dr. Link would be the expert providing economic analysis. On April 14, 2004, Plaintiffs provided Defendant with Dr. Link's report which set forth the present value of Ms. Shaw's future earned income. At the time the report was prepared Dr. Link did not have the documents which had previously been requested from the IRS detailing Ms. Shaw's income, therefore he based his report on an estimated income of \$30,000 per year. Since the time the report was provided to Defendants, documents have been obtained from the IRS indicating that Ms. Shaw's salary was actually \$25,000 per year. According to Plaintiffs' counsel at the argument on the motion, Dr. Link is preparing a new report simply filling in \$25,000 per year rather than \$30,000. The new report will be provided to Defendants as soon as it is prepared.

*Linda F. Pearson, et al. v. Larry Rogers, et al.*

C.A. No. 01C-03-018 WLW

May 12, 2004

Defendants contend that Dr. Link's report was not timely produced and constitutes prejudice to the Defendants. Thus, the Defendants request that Dr. Link be precluded from testifying. In the event Dr. Link is permitted to testify, the Defendants contend that because his report was based on speculation, because the decedent's annual income was estimated, his testimony should be precluded. Further, Defendants assert that Dr. Link failed to back out the decedent's living expenses when calculating the value of the lost earnings.

Plaintiffs argue that at the November 10, 2003 pre-trial conference the Defendants objected to Plaintiffs' use of an economic expert because one had not been identified. However, Plaintiffs claim that at that conference Defendants noted that the use of the expert must be conditioned upon identifying the expert in a reasonable time prior to the trial date. Plaintiffs are therefore contending that providing the report 60 days prior to trial is within a reasonable time. Further Plaintiffs assert that while the report provided in April was based merely on an estimate of Ms. Shaw's income, the report allowed the Defendants to see the process utilized to determine the economic loss. Because the correct figures have now been provided, Dr. Link will provide a revised report using the correct figure.

### **Discussion**

In the pre-trial stipulation the Plaintiffs identified their intention to present the testimony of an economic expert, but the expert was not identified at that time. However, this put the Defendants on notice that the Plaintiffs would be calling an economic expert. In March 2004, Plaintiffs identified the expert and provided the

*Linda F. Pearson, et al. v. Larry Rogers, et al.*

C.A. No. 01C-03-018 WLW

May 12, 2004

Defendants with the expert's report on April 14, 2004. This allowed the Defendants 60 days before trial to review the report and obtain their own economic expert. Defendants have not demonstrated that they were prejudiced by the disclosure of the expert in March. It appears to the Court that Defendants have sufficient time to identify an expert prior to trial. Therefore, Defendants' motion to preclude the testimony of Dr. Link on the basis that he was not identified in a timely manner is denied.

Further, Defendants' contention that Dr. Link's report should be precluded because it was based on estimates of Ms. Shaw's income is unfounded. While the original report prepared by Dr. Link relied on estimates of her income, Plaintiffs' attorney has indicated that Ms. Shaw's tax returns have been obtained from the IRS, and thus Dr. Link will be revising his report. According to Plaintiffs, the testimony presented at trial will be based on Ms. Shaw's actual income rather than the estimates, therefore the testimony would be admissible.

Finally, the Court finds that the failure of Dr. Link to take into consideration Ms. Shaw's expenses when calculating the wage loss is an issue which may be raised by the Defendants on cross-examination. This is not a proper basis for excluding the testimony of Dr. Link.

It is especially noted that neither side chose to extend the cutoff dates set in the Scheduling Order and thus the Plaintiffs and the Defendants are now in this predicament. In the future, attorneys should be aware that enforcement of the scheduling order is an option the Court may enforce.

*Linda F. Pearson, et al. v. Larry Rogers, et al.*

C.A. No. 01C-03-018 WLW

May 12, 2004

### **Conclusion**

Defendants' motion to preclude the testimony of Dr. Link is therefore *denied* provided Dr. Link's report is updated to include the correct annual salary.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.

J.

WLW/dmh

oc: Prothonotary

xc: Order Distribution

File