IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

CHRISTINA E. QUINN &	)	
JONATHAN P. QUINN,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No. 05C-04-179-PLA
	)	
RICHARD WOERNER	)	
	)	
Defendant.	)	

Submitted: October 5, 2006
Decided: October 23, 2006

UPON CONSIDERATION OF DEFENDANT'S MOTION *IN LIMINE*
GRANTED.

This 23rd day of October, 2006, upon consideration of defendant Richard Woerner's motion in limine, it appears to the Court that:

1. On September 14, 2004, Richard Woerner's ("Woerner") vehicle struck another vehicle causing that vehicle to strike plaintiff Christina Quinn's ("Quinn") vehicle from behind. Quinn was twelve weeks pregnant at the time of the accident. After the accident, Quinn reported to Christiana Hospital with neck and abdominal discomfort. An ultrasound was performed which revealed a positive fetal heartbeat with no evidence of

placental abruption. Quinn was diagnosed with neck strain and subsequently discharged.[1]

2. In December 2004, approximately three months after the accident, Quinn went into labor and delivered the baby prematurely. The baby passed two days later. The autopsy revealed that the cause of death was hyaline membrane disease, or immature lungs.[2]

3. In April 2005, Quinn and her husband, Jonathan Quinn, (collectively "Plaintiffs") brought this action against Woerner alleging, *inter alia*, that he was negligent in the operation of his vehicle and that such negligence was the proximate cause of Quinn's pre-term delivery. To establish the causal connection between the accident and the pre-term delivery, Plaintiffs rely on Dr. Diane McCracken as an expert.[3]

4. Dr. McCracken is board certified in obstetrics and gynecology and has been Quinn's treating obstetrician since 2003. She opines that the accident between Woerner and Quinn caused a placental abruption to Quinn's fetus which led to her pre-term delivery and the eventual death of

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[1] Docket 22, ¶ 1.

[2] *Id.*, ¶ 2.

[3] *See id.*, Ex. 2; Docket 1.

her child. In describing how she arrived at her opinion, Dr. McCracken has stated:

> Well, I mean she [Quinn] had a pre-term delivery and there is lots [sic] of potential causes for pre-term delivery, so when we are looking back and trying to find out why a patient has delivered early, we need to look at what are the possible causes of this pre-term delivery. What things can we exclude … what things can't we exclude … what things continue to be a possibility … and what things may we never know that caused the pre-term delivery?[4]

After "looking back" in an effort to determine what could be included and excluded as a cause for Quinn's pre-term delivery, and after considering Quinn's clinical history, Dr. McCracken concluded that the "No. 1 potential cause for [the premature delivery] was a placental abruption" resulting from trauma sustained by Quinn in the accident with Woerner.[5] Although Dr. McCracken was aware that Quinn had polyhydramnios (excess amniotic fluid), she apparently excluded that condition as a cause for Quinn's pre-term delivery. Dr. McCracken was also unwilling to concede that the cause of Quinn's pre-term delivery is not determinable, even though she admits

[4] Docket 22, Ex. 2, page 7-8.

[5] *Id.*, Ex. 2, page 8.

that the cause in a small percentage of pre-term deliveries can never be determined.[6]

5. Woerner has filed the instant motion *in limine* seeking to exclude Dr. McCracken's testimony and the admission into evidence of any and all references to the Plaintiffs' claims of loss of an unborn child, mental anguish, and emotional distress. Woerner argues that Dr. McCracken's causation opinion is not supported by the facts or by scientific knowledge. Specifically, Woerner contends that Dr. McCracken's opinion that there was a placental abruption is mere speculation because the objective tests and the autopsy report show no such condition, and further because she knew nothing about the force involved in the accident to be able to conclude whether the uterus or placenta was affected by any trauma. Woerner also maintains that Dr. McCracken's opinion is not medically or scientifically sound because she has no scientific or peer reviewed citations for her theory and she did not adequately exclude the possibility that the pre-term delivery was caused by polyhydramnios.[7]

6. Plaintiffs respond by arguing that Dr. McCracken employed a coherent and valid scientific methodology in formulating her opinion and, as

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[6] *See id.*, ¶¶ 5-6; Docket 28, ¶ 3.

[7] *See* Docket 22, ¶¶ 12-13.

such, her testimony should not be excluded. Specifically, Plaintiffs contend that Dr. McCracken's objective methodology is evidenced by her consideration of Quinn's clinical history and her understanding of trauma to pregnant womens' abdomens, how placental abruptions can remain hidden, and how placental abruptions can cause quick, pre-term deliveries. Therefore, Plaintiffs conclude that Dr. McCracken's opinion is both relevant and reliable and, hence, admissible.[8]

7. The admissibility of expert testimony is governed by Delaware Rule of Evidence 702 ("Rule 702") and the standards set forth in *Daubert v. Merrill Dow*.[9] At its core, Rule 702 and *Daubert* require that the trial judge act as a gatekeeper by ensuring that any expert testimony that is offered is both reliable and relevant.

8. Rule 702 provides:

> If 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, training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of

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[8] *See* Docket 28, ¶ 5.

[9] 509 U.S 579 (1993). The *Daubert* decision was explicitly adopted by the Delaware Supreme Court "as the law of this state in recognition that our rules of evidence mirrored the federal counterparts upon which *Daubert* was decided." *State v. McMullen*, 900 A.2d 103, 112 (Del. Super. Ct. 2006).

> reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The *Daubert* interpretation of the phrase "scientific knowledge" is the "genesis of the so-called 'reliability' requirement."[10] "Scientific" coupled with "knowledge" "'implies a grounding in the methods and procedures of science.' And 'knowledge' is more than unsupported beliefs, it must be derived from supportable facts."[11] While scientific opinions are not required to be held to a certainty to be admissible at trial, "they must be grounded in the scientific method to qualify as 'scientific knowledge.'"[12]

9. *Daubert* offers guidance in assessing whether an expert's opinion is based on "scientific knowledge," and is hence reliable, in the form of the following non-exclusive factors: (1) whether the technique or scientific knowledge has been tested or can be tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error and the control standards for the technique's operation; and (4) whether the technique has gained general acceptance.[13] However, "these factors do not function as a 'definitive checklist or test' but

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[10] *Id.* at 113.

[11] *Id.* (quoting *Daubert*, 509 U.S. at 590).

[12] *Id.*

[13] *See Daubert*, 509 U.S. at 593-594.

rather "courts should apply the factors … in a flexible manner that takes into account the particular specialty of the expert under review and the particular facts of the underlying case."[14]

10. To ensure that an expert's opinion is relevant, Rule 702 and *Daubert* also requires that expert testimony "assist the trier of fact to understand the evidence or to determine a fact in issue."[15] If an expert's proffered testimony has no relation to the case, "then it will not aid in clarifying a contested fact and is, therefore, not relevant."[16]

11. The "proponent of the proffered expert testimony bears the burden of establishing the relevance [and] reliability ... by a preponderance of the evidence."[17] Proponents need not demonstrate that the assessments of their experts are correct, only that their opinions are reliable.[18] The proponent's focus, therefore, should be on the expert's methodology rather than her conclusions.[19] In assessing whether the proponent has met its burden, "the trial court does not choose between competing scientific

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[14] *McMullen*, 900 A.2d at 113 (citation omitted).

[15] *Id.*

[16] *Id.*

[17] *Minner v. Am. Mortgage & Guar. Co.*, 791 A.2d 826, 843 (Del. Super. Ct. 2000).

[18] *See McMullen*, 900 A.2d at 114; *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744 (3d Cir. 1994).

[19] *Daubert*, 509 U.S. at 595.

theories, nor is it empowered to determine which theory is stronger."[20] Rather, the trial court determines only "whether the proponent of the evidence has demonstrated that scientific conclusions have been generated using sound and reliable approaches."[21]

12. In this case, the Court finds that the Plaintiffs have failed to meet their burden of establishing that Dr. McCracken's proffered testimony is reliable. Dr. McCracken has not employed "objective diagnostic techniques and a sound methodology"[22] in reaching the opinion that the accident between Woerner and Quinn caused a placental abruption to Quinn's fetus which led to her pre-term delivery and the eventual death of her child. Dr. McCracken's opinion is not "derived from supportable facts" as is evidenced by her lack of reliance upon any objective diagnostic techniques or other "sufficient facts or data" which provides an adequate foundation for her conclusion. To the contrary, the diagnostic techniques which are applicable in this case, namely the ultrasound and the autopsy report, found no evidence of a placental abruption. Further, Dr. McCracken failed to satisfactorily discount by any objective measure the possibility that polyhydramnios is the cause of Quinn's pre-term delivery, or that her pre-

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[20] *McMullen*, 900 A.2d at 114.

[21] *Id.*

[22] *Id.* at 119.

term delivery may fall into the small percentage of pre-mature deliveries in which a cause can never be determined.

13. While it is not the function of the Court to make a determination as to whether Dr. McCracken's conclusions are correct by weighing the objective evidence, the Court is charged with the duty to ensure that her opinions are based on some articulable and objective standard. In reaching her opinion, however, Dr. McCracken failed to articulate her use of "methods and procedures of science" to reach her conclusion. The methodology actually employed by Dr. McCracken consisted of "looking back" in an effort to determine what could be included and excluded as a cause for Quinn's pre-term delivery. This "looking back" method caused her to conclude that, because she subjectively excluded all other causes for Quinn's pre-term delivery, a placental abruption must be the "No. 1" cause. As applied here, however, this "looking back" method does not impart an objective methodology used to reach a medical conclusion and, as such, does not meet the reliability threshold required by *Daubert*. Dr. McCracken's opinion is, therefore, unreliable.

14. For the foregoing reasons, Dr. McCracken's testimony regarding Quinn's pre-term delivery is excluded. Because the Plaintiffs have no other expert to establish the causal connection between the accident

and Quinn's pre-term delivery, any and all references or evidence related to the Plaintiffs' claim of loss of an unborn child, and any and all reference or evidence related to the Plaintiffs' claims of mental anguish and emotional distress allegedly caused by the loss of their child, is also excluded. Accordingly, Woerner's motion *in limine* is **GRANTED**.

IT IS SO ORDERED.

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Peggy L. Ableman, Judge

Original to Prothonotary