IN THE SUPREME COURT OF THE STATE OF DELAWARE

REGINALD JACKSON and CASSANDRA JACKSON, Plaintiffs Below- Appellants, v. HOPKINS TRUCKING COMPANY, INC. and BAY WEST TRUCKING, LIMITED Defendants Below- Appellees.	§ § § § § § § § § § § § §	No. 42, 2010 Court Below: Superior Court of the State of Delaware in and for New Castle County C.A. No. 07C-12-129

Submitted: June 1, 2010
Decided: August 30, 2010

Before **BERGER**, **JACOBS**, and **RIDGELY**, Justices.

O R D E R

This 30th day of August 2010, it appears to the Court that:

(1) This is a personal injury action arising from injuries sustained at the Port of Wilmington. Plaintiffs-below Reginald and Cassandra Jackson appeal from the Superior Court's decision granting summary judgment to Defendants-below Hopkins Trucking Co., Inc. and Bay West Trucking, Limited. The Jacksons contend that the trial court abused its discretion in excluding their liability expert's report submitted after the discovery deadline. They also contend that there are genuine issues of material fact that render summary judgment inappropriate and

that they presented a *prima facie* case of negligence sufficient to defeat summary judgment in this case. We find no merit to their appeal and affirm.

(2) On December 19, 2005, Reginald Jackson injured his leg when he stepped off a twenty-ton slab of steel and onto the bed of a flat-bed trailer he was helping to load. He was part of a crew of longshoremen that was unloading the steel slabs from the hold of a ship and lowering them with a crane onto trucks. The trucks transported the steel to a holding area at the Port of Wilmington and returned to the ship to pick up more loads. Jackson and another longshoreman stood on a flat-bed trailer, and the trucks pulled up beside them to receive the slabs. After the crane lowered the slabs onto two railroad ties on the receiving trailers, Jackson and the other longshoreman disconnected the hoisting chains from the slabs. Jackson crossed onto the receiving trailer because a chain was caught in one of the railroad ties. When he stepped off the slab and onto the receiving trailer, a two-by-six board on the bed gave way. One end of the board went down, the other end went up, and Jackson's leg went through the bed, causing injury.

(3) Bay West's trucks participated in the hauling, and Bay West had hired two additional trucks from Hopkins. Hopkins owned and operated the trailer on which Jackson was injured. On the date of the incident, the driver of the trailer did a pre-trip inspection and did not notice any problems with its bed. The driver did not re-inspect the trailer during the unloading operation. Bay West's owner also

inspected Hopkins' trailers before the unloading operation, but his inspection was limited to ensuring that they had the structural soundness necessary to haul the slabs.

(4) After the Jacksons filed this action, the Superior Court issued a scheduling order that provided, in relevant part:

> (b) ***Discovery:***
> [ ] Discovery Cut-Off: Discovery to be initiated such that it will be completed by—6/1/09.
> [ ] Plaintiff's Expert Report (or Rule 26(b)(4) Disclosure) Deadline—N/A.
> [ ] Defendant's Expert Report (or Rule 26(b)(4) Disclosure) Deadline—N/A.
> (c) ***Filing of Dispositive Motions***—7/31/09.

The scheduling order also stated:

> Counsel are advised that all of the deadlines established by this Trial Scheduling Order are firm deadlines. Failure to meet these deadlines, absent good cause show[n], likely will result in the Court refusing to allow extensions regardless of the consequences. Amendments to this Trial Scheduling Order must be by Order of the Court on appropriate motion or stipulation of the parties.

(5) During the course of discovery, Hopkins asked the Jacksons to identify by interrogatory answer each person they expected to call as an expert witness and to provide contact and other information about them. On March 6, 2009, the Jacksons answered as follows:

> I expect to call one or more of my doctors, liability experts, vocational, economic and life care plann [sic] experts. This answer

> will be supplemented pursuant to the applicable rules of civil procedure and trial scheduling order.

(6) The parties agreed to extend the discovery deadline until July 15, 2009. On July 31, 2009, the deadline for dispositive motions, the Defendants filed their motions for summary judgment. They argued that the Jacksons' lack of expert liability testimony was fatal to their case. The Jacksons later identified a liability expert in August and received that expert's report (the "Report") in September. The Jacksons filed their opposition to the motions on October 20, 2009 and attached their Report as an appendix.

(7) Hopkins requested that the trial court strike the Jacksons' entire response to the motions for summary judgment or, in the alternative, strike any portions of the response that relied on the late Report. Hopkins also claimed that the Jacksons' late submission of the Report prejudiced the Defendants because they were "without liability experts to respond to the Plaintiff[s'] expert." The Superior Court agreed and declined to consider the Report. The Superior Court stated:

> By order of the Court following a scheduling conference held on January 8, 2009, all discovery was to be completed by June 1, 2009. The parties subsequently agreed to extend that deadline until July 15, 2009. The Plaintiffs did not identify a liability expert or disclose the substance of any expert opinions relative to any of the liability issues involved herein before the passage of either date. Nor did they ask the Court to grant a further extension of time to do so. It was not until October 20, 2009, that the Plaintiffs submitted a report from an expert

> witness as to the liability claims. Following that disclosure, the Defendants moved to preclude use of that report or testimony by its author by the Plaintiffs at trial. The Court granted that motion based upon the late production and the absence of any testimony reflected therein establishing the existence of a duty of care owed by the Defendants to the Plaintiffs. No other expert testimony as to the Plaintiffs' liability claims was produced and there is an absence of evidence in favor of the Plaintiffs in that regard.
>
> * * *
>
> .... If expert testimony is necessary given the subject matter, the Plaintiffs are not able to define the applicable standard of care and the case must be dismissed.
>
> * * *
>
> Even if the expert report in dispute was considered the result would be the same. No matter how it is viewed, the report does not set or define the standard of care to be applied in this situation. At best, it summarizes the Plaintiffs' views of the record.[1]

(8) The Jacksons argue that the Superior Court abused its discretion when it refused to consider the Report based upon a violation of the scheduling order. They contend that the scheduling order did not provide a deadline for expert reports because the trial judge wrote "N/A" in the applicable lines. In addition, the Jacksons contend that if they violated the scheduling order, the Defendants also violated it by submitting medical and vocational experts' reports after July 31, 2009. Finally, the Jacksons argue that the trial court did not fully balance its duty to admit all relevant and material evidence with its duty to enforce the procedural

[1] During oral argument, the court found that considering the Report would prejudice the Defendants because they could not respond to it and the trial would be delayed.

rules of the court under *Coleman v. Pricewaterhouse Coopers, LLC*.[2] We review the Superior Court's evidentiary rulings restricting or allowing expert testimony for an abuse of discretion.[3]

(9) The scheduling order reveals that the court wrote "N/A" in the spaces that correspond to the Plaintiffs' and Defendants' respective deadlines for submitting expert reports. The space provided the opportunity for the parties to agree and for the trial court to establish by order – if it chose to do so – a separate date for production of the reports. The writing of "N/A" did not amend the discovery cutoff of June 1, 2009 or the express language of the order requiring that "[d]iscovery to be initiated such that it will be completed by – 6/1/09."

(10) The record also shows that the Superior Court complied with our decision in *Coleman v. Pricewaterhouse Coopers, LLC.* *Coleman* concerned the submission of a supplemental expert report after the applicable deadline. We stated in *Coleman* that "Delaware courts have consistently engaged in a balancing of factors including considering the original scheduling order, whether there is good cause to allow the supplement, the prejudice to the opposing party, and possible trial delay."[4] Here, the Superior Court found that the Report was late

[2] 902 A.2d 1102 (Del. 2006).
[3] *Sammons v. Doctors for Emergency Servs., P.A.*, 913 A.2d 519, 528 (Del. 2006) (citing *Bush v. HMO of Del.*, 702 A.2d 921, 923 (Del. 1997)).
[4] *Id.* at 1106 n.6.

pursuant to the original scheduling order and late even under the parties' agreed-upon extension. The trial judge did not find anything within the Report to establish the existence of a duty of care owned by the Defendants to the Plaintiffs. He found that considering the Report would prejudice the Defendants because they were not able to respond to it. And finally, he noted that accepting the Report would result in a trial delay. "'Parties must be mindful that scheduling orders are not merely guidelines but have full force and effect as any other order of the [Superior] Court.'"[5] The Superior Court did not abuse its discretion in excluding the Report.

(11) The Jacksons next contend that material disputes of fact exist and that they presented a *prima facie* case of negligence sufficient to overcome a motion for summary judgment. They argue that no expert testimony is needed in this case to establish the standard of care applicable to hauling steel slabs at a port. We disagree. "If the matter in issue is one within the knowledge of experts only and not within the common knowledge of laymen, it is necessary for the plaintiff to introduce expert testimony in order to establish a *prima facie* case".[6]

[5] *Barrow v. Abramowicz*, 931 A.2d 424, 430 (Del. 2007) (quoting *Sammons*, 913 A.2d at 528); *see also* SUPER. CT. R. CIV. P. 16(e) ("(e) Pretrial orders.—After any conference held pursuant to this Rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.").

[6] *Money v. Manville Corp. Asbestos Disease Comp. Trust Fund*, 596 A.2d 1372, 1375 (Del. 1991) (quoting M.S. MADDEN, PRODUCTS LIABILITY 533 (2d ed. 1988)).

(12) Here, contrary to Jackson's argument, expert testimony is required to establish the standard of care applicable to a pre-trip inspection of a trailer because laypersons are not familiar with the frequency, method, and requirements for conducting pre-trip inspections of commercial trucks and trailers to be used in off loading cargo at a port. In addition, to the extent that the parties contest the standards of care applicable to hauling steel slabs at a port and working as a longshoreman, expert testimony was required. Given the absence of admissible expert testimony in this case, we find no genuine issue of material fact and the absence of a *prima facie* case. The Superior Court did not err in granting summary judgment.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice