

STATE OF MICHIGAN
COURT OF APPEALS

MOHAMAD DORRA,

Plaintiff-Appellant,

v

K-MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED

June 12, 1998

No. 199499

Wayne Circuit Court

LC No. 95-512506 NP

Before: Wahls, P.J., and Jansen and Gage, JJ.

MEMORANDUM.

Plaintiff appeals as of right the trial court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought this negligence and breach of warranty action alleging that defendant failed to properly repair his brakes, causing an accident. Plaintiff presented two expert witnesses in support of his claim. Anthony Martin was the service writer at a repair shop that inspected plaintiff's car two weeks after the accident. The inspection was performed by a mechanic who was not produced as a witness. Martin had no formal training as a mechanic, and had never been employed as a mechanic, although he performed brake inspections and repairs. Martin took a photograph of the brakes in the course of his inspection.

Plaintiff's second expert, Ahmad Moukalled, had been licensed as a mechanic, but his license had expired. He volunteered his services as an expert. Moukalled did not view plaintiff's automobile, which had been discarded. Moukalled gave his opinion based on review of the photograph taken by Martin. Moukalled identified the brake system as a Ford product. However, plaintiff's car was a Pontiac, manufactured by General Motors.

Defendant moved to strike the testimony of the two witnesses, and it moved for summary disposition. The trial court found that Martin was not qualified as an expert, and that Moukalled was inherently incredible, and granted defendant's motion to strike. Where plaintiff had no other expert testimony to support his case, the court granted summary disposition to defendant.

On appeal, plaintiff argues that the trial court erred in excluding the testimony of his expert witnesses. We disagree. A trial court's decision to admit or exclude expert testimony is reviewed for abuse of discretion. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995). An abuse of discretion exists where an unprejudiced person, considering the facts on which the trial court made its decision, would find no justification for the ruling made. *Id.*

A person may be qualified to testify as an expert by virtue of his knowledge, skill, experience, training, or education. *Id.* MRE 702 requires a trial court to determine the evidentiary reliability or trustworthiness of the facts underlying an expert's testimony before the testimony may be admitted. *Nelson v American Sterilizer Co (On Remand)*, 223 Mich App 485, 491; 566 NW2d 671 (1997). Where expert testimony is purely speculative, it should be excluded or stricken pursuant to MRE 403. *Phillips, supra*, p 402.

The trial court did not abuse its discretion in striking the testimony of plaintiff's experts. Witness Martin did not have formal training as a mechanic, and his testimony was largely based on the conclusions made by a mechanic whose testimony was not presented. The trial court could reasonably conclude that Martin lacked the necessary knowledge, skill, experience, training, or education to be considered an expert in brake repair. Although witness Moukalled was considered an expert, there was no indication of reliability or trustworthiness of the facts underlying his testimony. He never inspected plaintiff's car, and he either misidentified the brake system in the photograph, or he was shown a photograph of another car. His testimony was properly stricken as based on unreliable information. *Nelson, supra*. Where there was no expert testimony remaining to support plaintiff's case, the trial court properly granted summary disposition to defendant. *Id.*

Affirmed.

/s/ Myron H. Wahls

/s/ Kathleen Jansen

/s/ Hilda R. Gage