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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1931**

John Eide,
Appellant,

vs.

Center for Diagnostic Imaging, Inc.,
Respondent.

**Filed May 23, 2011
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CV-08-14241

Douglas E. Schmidt, Schmidt Law Firm, Minnetonka, Minnesota (for appellant)

Katherine A. McBride, Barbara A. Zurek, Meagher & Geer, P.L.L.P., Minneapolis,
Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and
Randall, Judge.*

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this appeal after remand in a negligence action, appellant John Eide argues that
the district court erred by excluding appellant's expert affidavits on the cause of his

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

injury and granting summary judgment in favor of respondent Center for Diagnostic Imaging Inc. We affirm.

DECISION

Appellant John Eide sued respondent Center for Diagnostic Imaging Inc., alleging that he sustained cervical injuries when his elbow struck a guardrail as he was being removed from a magnetic-resonance-imaging (MRI) machine. The district court excluded the affidavits of appellant's two experts on causation, refused to consider an untimely supplemental expert affidavit, and granted respondent's motion for summary judgment. This court reversed and remanded, directing the district court to consider appellant's supplemental expert affidavit when determining the "reliability—and thus admissibility" of appellant's expert testimony. *Eide v. Ctr. for Diagnostic Imaging, Inc.*, No. A09-1437, 2010 WL 1541430, at *4 (Minn. App. Apr. 20, 2010). The underlying facts and the content of appellant's and respondent's expert affidavits and other expected expert testimony are discussed in full in this court's earlier opinion. *Id.* at *1-3.

On remand, the district court concluded that appellant's supplemental expert affidavit did not render the testimony admissible and entered summary judgment in favor of respondent a second time. This appeal follows and the only question before us is whether the district court abused its discretion in concluding that appellant's supplemental expert affidavit failed to provide sufficient foundational reliability to allow admission of the testimony from both of his experts.

Minnesota's rules of evidence provide:

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, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The opinion must have foundational reliability.

Minn. R. Evid. 702. Here, the parties dispute only the foundational reliability of the opinions of appellant's experts—not the need for expert testimony on causation or the experts' qualifications. We review a district court's determination of foundational reliability for abuse of discretion and we will not reverse absent clear error. *Jacobson v. \$55,900 in U.S. Currency*, 728 N.W.2d 510, 528-29 (Minn. 2007); *State v. Moore*, 458 N.W.2d 90, 96, 98 (Minn. 1990).

Appellant's experts engaged in differential diagnosis to arrive at their opinions on the cause of appellant's injuries. A differential diagnosis "eliminates the possibility of competing causes or confounding factors." *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000). "In performing a differential diagnosis, a physician begins by ruling in all scientifically plausible causes of the [patient's] injury. The physician then rules out the least plausible causes of injury until the most likely cause remains." *McDonough v. Allina Health Sys.*, 685 N.W.2d 688, 695 n.3 (Minn. App. 2004) (alteration in original) (quotations omitted). Appellant's experts based their opinions on appellant's medical history, their examinations of appellant, appellant's statements as to his symptoms and the incident, the post-incident MRI results showing herniation of appellant's cervical discs, and their knowledge of and experience with cervical-disc herniations. An expert opinion arrived at through differential diagnosis based on this type of information can

have sufficient foundational reliability to be admissible. *Id.* at 695; *Ingram v. Syverson*, 674 N.W.2d 233, 236-37 (Minn. App. 2004), *review denied* (Minn. Apr. 20, 2004).

But *McDonough* holds that if a defendant points to a “plausible alternative cause and the doctor offers no explanation for why he or she has concluded that was not the sole cause, that doctor’s methodology is unreliable.” 685 N.W.2d at 695 (quotation omitted). Here, respondent pointed to other possible causes of appellant’s injuries. It identified three experts, each of whom was expected to testify (1) that appellant’s medical records indicate that he suffered from symptoms of cervical-disc herniation before the MRI incident, demonstrating that his injuries were not caused by the impact with the guardrail; (2) that the MRI films taken approximately one week after the incident do not evidence an acute injury; and (3) that the failure of appellant’s spinal surgery to alleviate his symptoms shows that his symptoms were not actually caused by cervical-disc herniation. Additionally, the affidavit of respondent’s biomechanical medical expert stated that disc degeneration occurs with age and is often unrelated to neck pain and that appellant’s symptoms are consistent with the natural progression of chronic disc degeneration, not trauma-induced injury. Further, respondent’s biomechanical medical expert stated that the impact with the guardrail could not have caused the injury to appellant’s cervical discs based on the position of his arm and torso, human physiology, and the low speed of the MRI cradle.

Appellant’s experts, therefore, were required to show why they believed that pre-existing disc degeneration or something completely unrelated to cervical-disc herniation was not the cause of appellant’s symptoms and to explain how the impact could have

caused appellant's injury despite evidence to the contrary from respondent's biomechanical medical expert. *See Goeb*, 615 N.W.2d at 815-16 (concluding that district court did not abuse its discretion by excluding expert testimony as unreliable when expert failed to explain examination results and blood tests contradicting the expert's theory of causation).

Appellant's supplemental expert affidavit cited articles showing that disc herniation can be caused by vomiting, coughing, sneezing, and minor trauma. But the affidavit did not address how the impact of appellant's elbow with the guardrail was sufficient to cause his specific injury or why the experts determined that appellant's symptoms were not caused by the natural progression of degenerative disc disease or by something unrelated to cervical-disc herniation altogether.

Also, appellant's experts' theory of causation was premised on appellant's account of the impact he sustained in the MRI machine. A causation opinion based on a patient's statement can have sufficient foundational reliability. *See Ingram*, 674 N.W.2d at 236-37 (stating that opinion testimony based in part on patient's account can have sufficient factual foundation). But respondent's biomechanical medical expert raised questions about appellant's account, relying on principles of physics, physiology, and the speed of the MRI cradle, and thus challenged appellant's experts' theory of causation.

Appellant's supplemental expert affidavit failed to show why his experts' opinions based on appellant's account of the MRI incident were reliable despite respondent's evidence to the contrary. Instead, appellant's expert affidavits establish only that the impact *might have* caused appellant's injuries. This is not sufficient. *See Saaf v. Duluth*

Police Pension Relief Ass'n, 240 Minn. 60, 65, 59 N.W.2d 883, 886 (1953) (stating that “medical testimony which does nothing more than show a mere possibility, suspicion, or conjecture that such causal relation exists, without any foundation for the exclusion of other admittedly possible causes, provides no proper foundation for a finding of a causal connection”).

The district court properly followed our guidance on remand. And we conclude that it was within the district court’s discretion to determine that appellant’s supplemental expert affidavit did not adequately respond to the challenges raised by respondent’s experts and that appellant’s expert testimony was therefore inadmissible for lack of foundational reliability.

On appeal from summary judgment, we review de novo whether any genuine issues of material fact exist and whether the district court erred in applying the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002). If the nonmoving party completely fails to prove an essential element of the claim, the moving party is entitled to summary judgment as a matter of law. *Rouse v. Dunkley & Bennett, P.A.*, 520 N.W.2d 406, 410 (Minn. 1994). Causation is an essential element of negligence and medical-malpractice claims. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995); *Fabio v. Bellomo*, 504 N.W.2d 758, 762 (Minn. 1993). The parties agree that expert testimony is necessary to show that appellant’s injuries were caused by the impact sustained in the MRI machine. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 386 (Minn. 2008) (stating that expert testimony is generally necessary to establish causation of an injury not within the realm of common knowledge). Without

admissible expert testimony as to the cause of appellant's injuries, appellant cannot prove his claim, whether he pursues a theory of negligence or medical malpractice. Consequently, the district court did not err in granting summary judgment in favor of respondent.

Affirmed.