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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-840

Filed 20 February 2024

Wake County, No. 19CVS7484

NICHOLAS NELSON, a minor, and RAINE NELSON, a minor, by and through their Parent and Guardian Ad Litem, CANDACE GREENE, Plaintiffs,

v.

CHARLOTTE CATESSA OAKLEY, Defendant.

Appeal by defendant from judgment entered 13 April 2023 by Judge Paul C. Ridgeway in Wake County Superior Court. Heard in the Court of Appeals 23 January 2024.

Martin & Jones, P.L.L.C., by Huntington M. Willis, for plaintiffs-appellees.

Robert E. Ruegger, for defendant-appellant.

FLOOD, Judge.

Charlotte Catessa Oakley (“Defendant”) appeals from a judgment finding that Plaintiffs Nicholas Nelson (“Nicholas”) and Raine Nelson (“Raine”) are entitled to recover for personal injuries inflicted by Defendant in the cumulative amount of \$192,899.46. Defendant argues on appeal, (A) the trial court erred in admitting expert testimony regarding the causation of Raine’s injury, and (B) the trial court

erred in excluding evidence of alleged domestic violence suffered by Nicholas. After careful review, we hold it was well within the discretion of the trial court to admit the expert testimony regarding causation and to dismiss Defendant's desired evidence regarding alleged domestic violence, and affirm the trial court's judgment.

I. Facts and Procedural Background

On 10 September 2017, siblings Raine, a ten-year-old girl, and Nicholas, a seven-year-old boy, were picked up by their aunt, Christal Nelson ("Christal"), just before noon at their mother's, Candace Houston's ("Candace"), house. Nicholas was in the back seat on the driver's side of Christal's two-door sedan, while Raine was in the back seat on the passenger's side. Christal, who was taking Raine and Nicholas to church, took exit 401 off the west ramp of Interstate 540 in Raleigh, North Carolina, and they proceeded through a green light at the intersection. At this point, Defendant drove her SUV through the red light of the same intersection, and made impact with the rear portion of the driver's side door of Christal's vehicle. Both vehicles spun out of control and came to a stop, and emergency personnel promptly arrived at the scene.

At the scene of the crash, both Raine and Nicholas were visibly injured. Nicholas was bleeding from his ears, was unresponsive and "dazed[.]" and would not answer any questions. Raine was more alert than Nicholas but still in a "stupor[.]" and complained to emergency personnel that she was "hurting" and specifically that her arm hurt. The children were then transported to WakeMed Hospital. Hospital

personnel conducted a radiograph¹ of Raine, which revealed she had a buckle fracture, and a “CAT scan” on Nicholas, which revealed internal hemorrhaging. A hospital doctor relayed to Candace that Nicholas may have a concussion.

Four days after the crash and following discharge from WakeMed Hospital, Raine came under the care of Doctor Sami Mardam-Bey (“Dr. Mardam-Bey”) for treatment for her arm fracture. Dr. Mardam-Bey is a board certified pediatric orthopedic surgeon with Wake Orthopedics. Dr. Mardam-Bey concluded that Raine suffered from a distal radius fracture, he directed she be taken out of sporting activities, and he had her attend follow-up visits with his office to ensure the fracture healed properly. Raine healed from her injury and made a full recovery.

Nicholas, after his discharge from WakeMed Hospital, began to experience several debilitating symptoms, including headaches, nosebleeds, abnormal sleepiness, and decline in school performance. Nicholas saw many medical professionals to address these symptoms, and he eventually developed, and was diagnosed with, a condition called nocturnal anuresis, where he could not control his urine movements at nighttime in his sleep. Primarily to address Nicholas’s complaints of daytime sleepiness, Nicholas eventually came under the care of Doctor Sujay Kansagra (“Dr. Kansagra”), a board-certified pediatric neurologist with Duke University’s pediatric neurology department.

¹ Commonly referred to as an “X-Ray.”

On 7 June 2019, Plaintiffs filed a complaint against Defendant, alleging Defendant's negligent actions and omissions were all proximate causes of Plaintiffs' injuries. Prior to trial, on 24 June 2021, Plaintiffs deposed Dr. Mardam-Bey, and on 1 February 2022, they deposed Dr. Kansagra.

The current matter came on before the trial court on 27 March 2023. Prior to evidence being admitted, the trial court orally denied Defendant's supplemental motion *in limine* to present collateral district domestic court files regarding, *inter alia*, alleged domestic violence between Candace, Plaintiffs' father, and Nicholas. During the admission of evidence, Plaintiffs presented testimonies from Dr. Mardam-Bey, Dr. Kansagra, Candace, Christal, and Raine. Despite a note within hospital records indicating Raine suffered a fall and hurt her arm a few days prior to the crash, Raine and Candace each testified that Raine did not suffer a fall a few days prior to the crash. On 29 March 2023, the jury returned verdicts granting damages for Plaintiffs against Defendant, and on 13 April 2023, the trial court entered its written judgment. Defendant filed timely notice of appeal.

II. Jurisdiction

Defendant's appeal is properly before this Court pursuant to N.C. Gen. Stat. § 7A-27(b), as an appeal of right from the final judgment of the trial court. *See* N.C. Gen. Stat. § 7A-27(b) (2023).

III. Analysis

Defendant argues on appeal, (A) the trial court erred in allowing Dr. Mardam-Bey's testimony regarding the causation of Raine's injury, and (B) the trial court erred in prohibiting Defendant from offering evidence of Nicholas's alleged exposure to domestic violence. As we explain below, we disagree with both of Defendant's arguments.

A. Dr. Sami Mardam-Bey's Testimony

Defendant contends the trial court "erred in submitting testimony from Dr. [] Mardam-Bey on the causation of Raine[']s arm injury," as Dr. Mardam-Bey did not set forth in his testimony that he believed with a "reasonable degree of medical certainty" the motor vehicle accident was a proximate cause of Raine's injury. Defendant's contention has no merit.

We review a trial court's decision to allow or exclude expert testimony for abuse of discretion. *See State v. McGrady*, 368 N.C. 880, 893, 787 S.E.2d 1, 11 (2016). Under an abuse of discretion standard, the trial court's judgment will be disturbed only upon a showing that "its ruling was manifestly unsupported by reason and could not have been the result of a reasoned decision." *Id.* at 893, 787 S.E.2d at 11 (citation and internal quotation marks omitted).

Under North Carolina law, to show injury causation, "a plaintiff must prove by a preponderance of the evidence that the accident was a causal factor resulting in" injury. *Cannon v. Goodyear Tire & Rubber Co.*, 171 N.C. App. 254, 262, 614 S.E.2d 440, 445 (2005) (citation and internal quotation marks omitted). "Expert testimony

as to the possible cause of a medical condition is admissible if helpful to the jury, but it may be insufficient to prove causation, particularly when there is additional evidence or testimony showing the expert's opinion to be a guess or mere speculation.” *Mahone v. Home Fix Custom Remodeling*, 281 N.C. App. 676, 685, 870 S.E.2d 259, 266 (2022) (citation and internal quotation marks omitted) (cleaned up). “[E]xpert testimony establishing that a[n] . . . injury likely caused further injury is competent evidence to support a finding of causation.” *Id.* at 685, 870 S.E.2d at 266 (citation and internal quotation marks omitted).

Defendant contends here that the “trial court erred in submitting testimony from Dr. [] Mardam-Bey on the causation of Raine’s arm injury[,]” and we construe Defendant’s argument to be that the trial court erred in allowing Dr. Mardam-Bey’s testimony regarding causation to be presented to the jury. Despite Defendant’s contention, the proper standard for expert testimony to support a finding of medical causation is whether it is “likely” the harm caused further injury and not whether it was a “medical certainty.” *Id.* at 685, 870 S.E.2d at 266. We need not address whether Dr. Mardam-Bey’s testimony supported a finding of likely causation, however, as Defendant alleges only that it was error for Dr. Mardam-Bey’s testimony to be *submitted* to the jury.

As set forth above, expert testimony regarding the *possible* cause of a medical condition or injury is admissible if helpful to the jury. *Id.* at 685, 870 S.E.2d at 266.

Here, in Dr. Mardam-Bey's deposition, the following, relevant colloquy occurred between Plaintiff's counsel and Dr. Mardam-Bey:

Q: Is it more likely than not that the acute trauma that [Raine] suffered in the motor vehicle crash was the cause of the distal radius buckle fracture?

. . . .

A: Yeah. So it's certainly plausible. She did describe it -- in my note and in the ER [] -- a fall on the wrist a few days prior, so obviously I can't make that determination, but it is *possible* to have an injury like this after . . . a car accident.

(emphasis added). This testimony was properly admitted to the jury—Dr. Mardam-Bey is a board certified pediatric orthopedic surgeon and the sole specialist who worked extensively with Raine following her injury, and as such his testimony was categorically helpful in helping the jury understand the possible cause of Raine's fracture. *See id.* at 685, 870 S.E.2d at 266. We therefore discern no merit in Defendant's allegation of error, and find the trial court did not abuse its discretion in allowing Dr. Mardam-Bey's testimony to be presented to the jury. *See McGrady*, 368 N.C. at 893, 787 S.E.2d at 11.

B. Exclusion of Evidence

In her second allegation of error, Defendant argues the trial court erred in prohibiting Defendant's counsel from offering evidence of Nicholas's exposure to domestic violence where the evidence showed he was being treated for anuresis,

excessive sleepiness, and concentration difficulty. Defendant’s argument has no merit.

As with our review of a trial court’s decision to allow or exclude expert testimony, “[w]e review a trial court’s Rule 403 determination for an abuse of discretion.” *State v. Baldwin*, 240 N.C. App. 413, 418, 770 S.E.2d 167, 171 (2015) (citation omitted). Evidence must be relevant to be admissible, but under Rule 403 of the North Carolina Rules of Evidence, evidence derived from cross-examination of a witness, even if relevant, may be excluded if a trial court determines “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” N.C.R. Evid. 403.

Here, in her second argument on appeal, Defendant appears to swap horses. In her first presented issue on appeal, Defendant contends the testimony of Dr. Mardam-Bey—a board-certified surgeon—should have been excluded for not being of “reasonable medical certainty,” while in her second issue, Defendant seemingly contends that in introducing evidence of Nicholas’s exposure to domestic violence, Defendant—without the introduction of any expert testimony—could have established a causal link between this alleged violence and Nicholas’s symptoms of anuresis, excessive sleepiness, and difficulty concentrating. Defendant argues that it “does not take an expert to understand that discord between parents can affect a child and lead to mental and emotional distress[,]” but she cites no binding authority

in support of this argument. The Record shows that Nicholas suffered brain injury and debilitating symptoms therein, and this Court has held that the issue of medical causation for brain injuries is a matter of expert opinion, about which a layman or someone otherwise unqualified may not testify. *See Martin v. Benson*, 125 N.C. App. 330, 337, 481 S.E.2d 292, 296 (1997). As such, under Rule 403, it was proper for the trial court to exclude Defendant's desired evidence, and we find the trial court did not abuse its discretion in doing so. *See N.C.R. Evid. 403; see Baldwin*, 240 N.C. App. at 418, 770 S.E.2d at 171.

IV. Conclusion

Defendant has failed to demonstrate the trial court erred in allowing Dr. Mardam-Bey's testimony regarding causation between the accident and Raine's injury, and failed to show the trial court improperly excluded Defendant's evidence regarding Nicholas's alleged exposure to domestic violence. Accordingly, we affirm the trial court's judgment.

AFFIRMED.

Judges ARROWOOD and GORE concur.

Report per Rule 30(e).