STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 5, 2015)

PAULINE R. HALL,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC 08-2420**
	:	
RITA SHIFF, PA-C,	:	
BROWN UNIVERSITY in Providence in the	:	
State of Rhode Island and	:	
Providence Plantations, and	:	
QUEST DIAGNOSTICS, LLC	:	
Defendants.	:	

DECISION

GIBNEY, P.J. Before this Court is Third-Party Plaintiff Brown University's (Brown) Motion to Strike Third-Party Defendant Quest Diagnostics, LLC's (Quest) designation of Mark D. Aronson, M.D. as an expert. For the reasons set forth below, Brown's Motion is denied.

I

Facts & Travel

The basic facts of this matter have been previously recounted in this Court's prior decisions.[1] Accordingly, the Court will supplement the facts as necessary to decide the instant Motion.

In March 2008, Pauline Hall (Ms. Hall) commenced the instant action against Rita Shiff (Ms. Shiff), Brown, and Quest. Ms. Hall alleged negligent treatment and diagnosis by Ms. Shiff and Brown, as well as negligent laboratory testing by Quest. See Hall, 2013 WL 2363143, at *1. At that time, Quest provided laboratory testing services at Brown University Health Services

[1] See Hall v. Shiff, 2013 WL 2363143, *1 (R.I. Super. May 23, 2013); Hall v. Shiff, PA-C, 2015 WL 730662, *1 (R.I. Super. Feb. 17, 2015); Hall v. Shiff, PA-C, 2015 WL 730661, *1 (R.I. Super. Feb. 17, 2015).

pursuant to a Professional Services Agreement. On December 10, 2010, Brown filed a cross-claim against Quest alleging negligence, breach of contract, indemnity, and contribution.[2] Brown alleges that Quest was negligent in the provision of laboratory services to Ms. Hall and, furthermore, that Quest's negligence was a proximate cause of Ms. Hall's injuries.

When Ms. Hall was originally treated at Brown University Health Services, she was treated by Ms. Shiff, a physician's assistant employed by Brown. The parties disagree as to whether Ms. Shiff was negligent in her treatment of Ms. Hall. Accordingly, both parties have retained expert witnesses in the field of internal medicine to opine as to whether Ms. Hall acted within the standard of care. Quest has disclosed Mark D. Aronson, M.D. (Dr. Aronson) and Brown has disclosed Daniel J. Sullivan, M.D. (Dr. Sullivan). Dr. Sullivan and Dr. Aronson are colleagues and members of the same practice. Sullivan Dep. 125:14, Dec. 18, 2014. Currently, Dr. Aronson holds certain positions at Beth Israel Deaconess Medical Center superior to those held there by Dr. Sullivan. Id. at 129:6-129:10.

II

Standard of Review

The law regarding the admissibility of an expert witness's testimony is well-settled. "When a party seeks to introduce, through expert testimony, novel scientific or complex technical evidence, it is proper for the trial justice to exercise a gatekeeping function." Owens v. Silvia, 838 A.2d 881, 891 (R.I. 2003) (citing DiPetrillo v. Dow Chem. Co., 729 A.2d 677, 687 (R.I. 1999)). "A trial justice's ruling on the admissibility of an expert witness's proffered testimony 'will be sustained provided the discretion has been soundly and judicially exercised, that is, if it has been exercised in the light of reason applied to all the facts and with a view to the

[2] Brown settled with Ms. Hall in 2011.

rights of all the parties to the action, . . . and not arbitrarily or willfully, but with just regard to what is right and equitable under the circumstances and the law.'" Owens, 838 A.2d at 890 (quoting DeBartolo v. DiBattista, 117 R.I. 349, 353, 367 A.2d 701, 703 (1976)). "The purpose of expert testimony is to aid in the search for the truth. It need not be conclusive and has no special status in the evidentiary framework of a trial." Morra v. Harrop, 791 A.2d 472, 477 (R.I. 2002). "[A] jury is free to accept or to reject expert testimony in whole or in part or to accord it what probative value the jury deems appropriate." Id.

Rule 702 of the Rhode Island Rules of Evidence (Rule 702) addresses the testimony of experts and states that "[i]f 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 fact or opinion." See Owens, 838 A.2d at 890. In addition, G.L. 1956 § 9-19-41, entitled "Expert witnesses in malpractice cases[,]" provides:

> "In any legal action based upon a cause of action . . . for personal injury or wrongful death filed against a licensed physician, hospital, clinic, health maintenance organization, professional service corporation providing health care services . . . based on professional negligence, only those persons who by knowledge, skill, experience, training, or education qualify as experts in the field of the alleged malpractice shall be permitted to give expert testimony as to the alleged malpractice." Sec. 9-19-41.

III

Analysis

Brown now asks this Court to preclude Quest from calling Dr. Aronson as an expert witness. Brown does not object based upon Dr. Aronson's credentials or his basis of knowledge, but rather his professional relationship with Dr. Sullivan. Accordingly, Brown alleges that Quest's retention of Dr. Aronson is a form of strategic "maneuvering" or gamesmanship. See

Brown's Mem. in Supp. of Mot. to Strike Expert, 2. In other words, Brown alleges that Quest chose Dr. Aronson as an expert to intimidate Dr. Sullivan and otherwise put him in the uncomfortable position of disagreeing with his colleague and superior. Id. at 3-4. Specifically, Brown alleges that "[a]t Dr. Sullivan's deposition, Quest made clear what Brown suspected when Dr. Aronson was disclosed—that Quest is trying to capitalize on the employment relationship between Dr. Sullivan and Dr. Aronson." Id. at 2. Furthermore, Brown contends that "Quest seeks to unfairly restrict [Dr. Sullivan] by, essentially, retaining his department chief, and then asking him to comment on his chief's credibility." Id. at 3.

In support, Brown directs this Court's attention to Gormley v. Vartian, 121 R.I. 770, 775, 403 A.2d 256, 259 (1979). In relevant part, Gormley provides that "[t]he purpose of Rule 33(c) and the other discovery rules is to enable litigants to prepare for trial free from the elements of surprise and concealment so that judgments can rest upon the merits of the case rather than the skill and maneuvering of counsel." Gormley, 121 R.I. at 775, 403 A.2d at 259. Brown asks this Court to extend the Gormley rationale to the instant case and use its inherent powers of equity to prevent Quest from calling Dr. Aronson as an expert. The Court, however, finds Brown's argument unpersuasive.

Generally, courts are "reluctant to disqualify expert witnesses[.]" Lacroix v. BIC Corp., 339 F. Supp. 2d 196, 199 (D. Mass. 2004); see also Gallucci v. Humbyrd, 709 A.2d 1059, 1064 (R.I. 1998) (quoting Advisory Note to R.I. R. Evid. 702) ("Rhode Island law and practice on the use of expert testimony is consistent with FRE 702, [which] makes helpfulness to the trier of fact the crucial issue."). Courts have, however, found disqualification to be appropriate when an expert switches sides in the same litigation. See Koch Ref. Co. v. Boudreaux, 85 F.3d 1178, 1180 (5th Cir. 1996) (stating that there is a "clear case for disqualification" when an expert

switches sides in the same litigation after receiving confidential information from the adverse party pursuant to its earlier retention); Lacroix, 339 F. Supp. 2d at 199 (finding that "[d]isqualification of an expert is appropriate when a party retains an expert who previously worked for an adversary and received confidential information from the first client"). Here, Brown does not allege that Dr. Aronson switched sides or otherwise received confidential information. Consequently, the Court must determine if Dr. Aronson's specialized knowledge "will assist the trier of fact to understand the evidence or to determine a fact in issue[.]" Rule 702.

This Court finds—and Brown does not dispute—that Dr. Aronson is qualified to testify based upon his education, training, and experience. See ADP Marshall, Inc. v. Brown Univ., 784 A.2d 309, 314 (R.I. 2001) (quoting DiPetrillo, 729 A.2d at 689-90) (finding that "'[o]nce an expert has shown that the methodology or principle underlying his or her testimony is scientifically valid and that it 'fits' an issue in the case, the expert's testimony should be put to the trier of fact to determine how much weight to accord the evidence'"). Dr. Sullivan is expected to testify that the care provided by Ms. Shiff was appropriate and in keeping with the applicable standard of care. Conversely, Dr. Aronson is expected to present the opposite conclusion: that Ms. Shiff deviated from the applicable standard of care. Accordingly, this Court finds that Dr. Aronson is qualified to testify and his expert opinion will be helpful to the jury. See Gallucci, 709 A.2d at 1064 (finding that the trial justice should act as a gatekeeper, but assessing the credibility of an expert witness is within the province of the trier of fact); Franco v. Latina, 916 A.2d 1251, 1260 (R.I. 2007) (affirming the trial justice's decision to strike an expert's testimony, but only because the trial justice "was unable to see any relationship between

[the expert's] opinion and the standard of care to which he . . . testified to during the course of the trial").

Furthermore, whether the experts know one another professionally or their opinions and conclusions differ is of no moment. See Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 595 (1993) (emphasis added) (holding that with respect to the admissibility of expert testimony, "[t]he focus, of course, must be solely on principles and methodology, *not on the conclusions that they generate*"); see also Megan A. Yarnall, Dueling Scientific Experts: Is Australia's Hot Tub Method A Viable Solution for the American Judiciary?, 88 Or. L. Rev. 311, 316 (2009) (explaining that "[t]wo experts, neither of whom relies on junk science, might disagree because they adhere to two different schools of thought, both of which are supportable"); Douglas R. Richmond, Expert Witness Conflicts and Compensation, 67 Tenn. L. Rev. 909, 924 (2000) (noting "[i]t is common for opposing experts to know one another, to be familiar with each other's work, and perhaps to have worked together"). This Court is not persuaded that a difference in expert opinions would in any way affect the relationship between Dr. Sullivan and Dr. Aronson. Moreover, Dr. Aronson's involvement in the case should not have any bearing upon Dr. Sullivan's testimony. Accordingly, this Court shall not preclude Dr. Aronson from testifying simply because he has a professional relationship with the opposing expert.

IV

Conclusion

For the reasons set forth above, Brown's Motion is denied. Counsel shall submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Pauline R. Hall v. Rita Schiff, PA-C, et al.**
CASE NO:	**PC 08-2420**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 5, 2015**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**

ATTORNEYS:

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