

NO. 2017-C-0078

COURT OF APPEAL, FOURTH CIRCUIT

STATE OF LOUISIANA

CLEVE NEWMAN, ET AL.

VERSUS

GEORGE SAVAGE, ET AL.

IN RE: PROGRESSIVE WASTE SOLUTIONS OF LA, INC. AND
CERONE SAVAGE

APPLYING FOR: EXPEDITED SUPERVISORY WRIT

DIRECTED TO: HONORABLE ETHEL SIMMS JULIEN
CIVIL DISTRICT COURT, ORLEANS PARISH
DIVISION "N-8", 2014-10465

WRIT GRANTED; REVERSED

Relators, Progressive Waste Solutions of LA, Inc. ("Progressive") and Cerone Savage, seek review of the trial court's January 6, 2017 judgment granting the plaintiffs' motions in limine to strike the testimony of Stephen Chewning, an expert in accident reconstruction; and Calum McRae, an expert biomechanical engineer. For the reasons that follow, we grant Relators' writ application and reverse the trial court's judgment.

This action arises from a collision between two garbage trucks at the River Birch Landfill on February 14, 2014. The plaintiffs were riding in a truck owned by Richard's Disposal ("Richard's"). The Richard's truck was dumping garbage at the landfill when another garbage truck owned by Progressive and driven by Mr. Savage backed into the Richard's truck. Although the plaintiffs could not estimate the speed of the Progressive truck, there is some evidence that the vehicles were less than three feet apart prior to the impact, and that the Progressive truck could not reverse at a speed in excess of 5.3 miles per hour. The plaintiffs allege that as a result of the collision, they sustained herniated lumbar discs and lumbar strains and sprains.

On November 17, 2015, the parties entered into a Stipulation and Waiver in which Relators stipulated as to 100 percent liability for the collision, but reserved the right to contest medical causation and damages at trial.

In early December 2016, the plaintiffs filed “Motions Pursuant to La. C.C.P. art. 1425 and/or Motions in Limine and/or Motions for a *Daubert* Hearing” (collectively, “Motions in Limine”) to strike the testimony of Calum McRae, Relators’ expert biomechanical engineer; and Stephen Chewning, Relators’ expert in accident reconstruction.

On January 5, 2017, the trial court rendered a judgment granting the plaintiffs’ Motions in Limine on the grounds that the experts’ testimony was “wholly unnecessary” given that, pursuant to the Stipulation and Waiver, the only issues for trial were medical causation and damages. According to the trial court, only physicians may testify on the issue of medical causation.

Relators argue that the experts’ testimony regarding the approximate speed of the vehicles and the physical forces at work during the collision is relevant in determining the cause of the plaintiffs’ injuries. According to Relators, although plaintiff Cleve Newman testified that he was jerked backward as a result of the collision, Mr. McRae opined that, because the collision occurred to the front of the Richard’s truck, the force exerted on the body from that direction propelled the body forward, rather than backward. Relators argue that this expert testimony will assist the jury in deciding whether the physical forces involved in the impact were significant enough to cause the plaintiffs’ lumbar disc injuries, as well as in assessing Mr. Newman’s credibility.

We agree, and find that force-of-impact is a relevant factor that may be considered by a jury in determining whether a plaintiff was injured in an accident, although it is not determinative. Therefore, an expert’s opinion of speed, rate of acceleration, force of impact, and the correlation to possible injuries as exemplified in reliable published studies, would assist the jury in its determination of medical causation. *See Pratt v. Culpepper*, 49,627, p. 25 (La. App. 2 Cir. 2/27/15), 162 So. 3d 616, 630 (“As the force of impact in a collision lowers, and the seriousness of the injury rises, expert testimony becomes more relevant”); *Fussell v. Roadrunner Towing & Recovery, Inc.*, 99-0194, p. 4 (La. App. 1 Cir. 3/31/00), 765 So. 2d 373, 376; *Delahoussaye v. State Farm Mut. Auto Ins. Co.*, 520 So. 2d 891 (La. App. 3d Cir. 1987). *See also Fisher v. Knight*, 381 So. 2d 968, 969 (La. App. 4th Cir. 1980) (“jury could logically conclude from the testimony that plaintiff suffered no injuries nor damage from this accident, which consisted of minimal impact between the vehicles”); *Fletcher v. Langley*, 631 So. 2d 693, 695 (La. App. 3d

Cir. 1994) (“minimal or minor nature of an automobile accident is a fact which may be considered by the jury”). The trial court abused its discretion in excluding this expert testimony. *Madison v. Inter-Continental Hotels Corp.*, 14-0717, 14-0781, p. 8 (La. App. 4 Cir. 8/26/15), 173 So. 3d 1246, 1251.

Relators also argue that the trial court erred in excluding the biomechanical expert testimony because “the only person who could testify as to medical causation would be a physician.” We agree. “[E]xpert medical testimony is required when the conclusion regarding medical causation is one that is not within common knowledge.” *Boudreaux v. Bollinger Shipyard*, 15-1345, p. 24 (La. App. 4 Cir. 6/22/16), 197 So. 3d 761, 775 (emphasis added). In this instance, in addition to their two biomechanical experts, Relators have a medical expert, Dr. Gabriel Tender, who will testify at trial as to medical causation. We disagree with the trial court, however, that only physicians may testify as to medical causation, to the exclusion of other non-medical experts. “[A] court necessarily abuses its discretion if its ruling is based on an erroneous view of the law.” *Boudreaux*, 15-1345, p. 16, 197 So. 3d at 771.

For these reasons, we grant Relators’ writ application, and reverse the trial court’s January 6, 2017 judgment granting the plaintiffs’ Motions in Limine.

New Orleans, Louisiana this 31st day of January, 2017.

JUDGE SANDRA CABRINA JENKINS

CHIEF JUDGE JAMES F. MCKAY, III

JUDGE DENNIS R. BAGNERIS, SR

JUDGE REGINA BARTHOLOMEW WOODS

JUDGE MARION F. EDWARDS, PRO TEMPORE