IN THE COURT OF APPEALS OF IOWA

No. 8-558 / 97-2000

RACHEL WININGER,

Plaintiff-Appellant,

vs.

DES MOINES AREA COMMUNITY COLLEGE,

Defendant-Appellee.

FILED
DEC 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Polk County, Larry J. Eisenhauer, Judge.

Plaintiff appeals from a district court ruling granting summary judgment in favor of defendant on plaintiff's claim for damages allegedly sustained from exposure to chemicals while taking defendant's photography course. **AFFIRMED.**

Thomas J. Reilly and Jon E. Dreibelbis of Thomas J. Reilly Law Firm, P.C., Des Moines, for appellant.

Frank A. Comito and Kent A. Gummert of Austin, Gaudineer & Comito, L.L.P., Des Moines, for appellee.

Heard by Sackett, C.J., Huitink, J., and Peterson, S.J.*

* Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

SACKETT, C.J.

Plaintiff-appellant Rachel Wininger appeals from the district court's order granting defendant-appellee Des Moines Area Community College summary judgment in plaintiff's personal injury action. Plaintiff contends she suffered injury when she was exposed to chemicals while taking a black and white photography course at defendant institution. In ruling on the motion for summary judgment, the district court found the evidence from plaintiff's expert that the exposure was a cause of plaintiff's damage inadmissible. Plaintiff contends the district court erred and the expert's opinion should have been deemed admissible. We affirm.

Plaintiff claims she sustained injuries because of her exposure to toxins from the chemicals used in the course she took at defendant institution. Dr. Robert Hoyt diagnosed plaintiff as having a heart condition called "inappropriate sinus tachycardia" and premature ventricular contractions. Dr. Hoyt could not give an opinion within a reasonable degree of medical certainty as to the cause of plaintiff's condition.

Dr. Mark Thoman, a pediatrician and toxicologist, concluded plaintiff's problems were related to exposure to chemicals in the course.

Defendant made a motion for summary judgment asking plaintiff's suit be dismissed. It also requested a hearing to determine whether Dr. Thoman's testimony should be admitted. A hearing was held and the district court found Dr. Thoman's evidence not admissible. The district court found Dr. Thoman's theory that exposure to the chemicals caused plaintiff's problems was such evidence as was categorized as

controversial and novel scientific evidence. The district court employed the analysis set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993), to reach its decision. *See Williams v. Hedican*, 561 N.W.2d 817, 826-27 (Iowa 1997).[1]

The district court recognized Dr. Thoman arrived at his conclusions using a methodology reasonably relied upon in the toxicology field, but the district court went on to find Dr. Thoman's reasoning under this methodology was flawed. The court found the underlying premise of Dr. Thoman's reasoning -- exposure to the chemicals present in the photo lab can cause a change in the electrical activity of the heart -- was not a given. The district court found it had neither been tested nor subjected to peer review, was not generally accepted in the scientific community, and did not have a known or potential rate for error. The district court further found Dr. Hoyt believed plaintiff's tachycardia was probably a side effect of other medication he had prescribed and Dr. Thoman recognized other explanations for tachycardia, such as

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[1] The district court specifically said:

[T]his case falls into the restricted category of controversial and novel scientific evidence, [and] this Court will apply the following *Daubert* analytic framework:

> Faced with a proffer of expert scientific testimony, then, the trial judge must determine at the outset, pursuant to Rule 104(a), whether the expert is proposing to testify to (1) scientific knowledge that (2) will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. at 592, 113 S. Ct. at 2796, 125 L. Ed. 2d at 482.

plaintiff's obesity, panic disorder, and smoking. After excluding the testimony, the district court found there was no evidence to support a finding that exposure to chemicals was a proximate cause of plaintiff's alleged injury. Plaintiff having failed on this issue, the district court entered summary judgment in defendant's favor and dismissed the cause.

Plaintiff contends the district court erred by excluding Dr. Thoman's testimony. She contends his testimony is admissible under the test in *State v. Hall*, 297 N.W.2d 80 (Iowa 1980). Plaintiff further contends the testimony is admissible under the test created in *Daubert* and accepted in *Williams*, 561 N.W.2d at 823.

Plaintiff contends our review is for correction of errors at law. The district court made a determination of the qualifications of the expert under Iowa R. Evid. 104(a) (1997). Consequently, we review for an abuse of discretion. *See State v. Halstead*, 362 N.W.2d 504, 506 (Iowa 1985); *see also General Electric Co. v. Joiner*, 522 U.S. 136, ___, 118 S. Ct. 512, 517, 139 L. Ed. 2d 508, 516 (1997) (where the court said, "[W]hile the Federal Rules of Evidence allow district courts to admit a somewhat broader range of scientific testimony than would have been admissible under *Frye*, they leave in place the 'gatekeeper' role of the trial judge in screening such evidence. A court of appeals applying 'abuse of discretion' review to such rulings may not categorically distinguish between rulings allowing expert testimony and rulings which disallow it.")

The district court ruled Dr. Thoman's testimony was inadmissible using the *Daubert* analysis. The parties, while expressing uncertainty as to whether this was

the proper method of determining admissibility, do not contend the district court erred by applying *Daubert*. We are, therefore, only confronted with whether the *Daubert* analysis was correctly employed by the district court. In doing so, our review is for an abuse of discretion.

Dr. Thoman is a pediatrician and a toxicologist. He cannot, however, identify which chemical or chemicals were the cause of plaintiff's problems, though he feels plaintiff's symptoms are related to her exposure to chemicals at defendant institution. He arrives at this conclusion based on plaintiff's window of toxic exposure during June of 1994. He knew of no studies on these chemicals causing cardiac conditions in humans and had no scientific data showing the chemicals individually could cause plaintiff's cardiac condition. Dr. Thoman could not state within a reasonable degree of medical probability any chemical caused plaintiff's tachycardia or bradycardia. He did not cite any literature linking the chemicals to slow or rapid heart beats. He looked for such information, but found none.

The district court did not abuse its discretion.

AFFIRMED.