IN THE COURT OF APPEALS OF IOWA

No. 0-012 / 09-0695
Filed February 24, 2010

CECELIA LEE TAYLOR,
Plaintiff-Appellant,

vs.

FARM BUREAU MUTUAL INS. CO.,
Defendant-Appellee.

Appeal from the Iowa District Court for Woodbury County, Michael S. Walsh, Judge.

The plaintiff appeals from a district court ruling denying her personal injury action against the defendant. **AFFIRMED.**

Cecelia Taylor, Sioux City, pro se.

Harold K. Widdison, Sioux City, for appellant.

Michael W. Ellwanger of Rawlings, Nieland, Killinger, Ellwanger, Jacobs, Mohrhauser & Nelson, L.L.P., Sioux City, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

DOYLE, J.

Cecelia Taylor appeals from a district court ruling denying her personal injury action against her insurer, Farm Bureau Mutual Insurance Company. The determinative question in this case is whether Taylor proved she was injured as a result of her alleged exposure to mold. Because we conclude she did not meet that burden, we affirm the judgment of the district court.

I. Background Facts and Proceedings.

This is the second appeal arising from the flooding of Taylor's home on February 16, 2003. *See Taylor v. Farm Bureau Mut. Ins. Co.*, No. 07-1580 (Iowa Ct. App. Oct. 1, 2008).[1] Taylor was in Florida recuperating from knee surgery when she received a telephone call from her son, Paul, informing her the large, old home she owned in Sioux City, Iowa, had flooded. As we explained in our previous opinion:

> It appears the heating system for the home malfunctioned while Taylor was in Florida. The lack of heat in the home caused the water pipes in the master bathroom on the second floor of the house to burst. The water from the broken pipes flowed down from the second floor through the first floor and into the basement.
>
> Taylor had lived in the house, which was built in the 1920s, for approximately forty years. It was filled with a number of antiques and collectibles that she had accumulated over the years. The house was insured by Farm Bureau.

Id.

Paul reported the loss to Farm Bureau, and Steve Holverson, a senior claims adjuster, began investigating the claim on February 18. He immediately

[1] Taylor's first lawsuit involved claims regarding the damage to her dwelling and personal property. *See Taylor v. Farm Bureau Mut. Ins. Co.*, No. 07-1580 (Iowa Ct. App. Oct. 1, 2008). Taylor appealed the jury verdict and judgment entry in that case, which we affirmed. *Id.*

contacted Ken Seely with ServPro of Siouxland, a professional water remediation company located in Sioux City, and arranged for him to examine the house the following day. On February 19, Paul met Holverson and Seely at the house. After walking through the house, Holverson told Paul that the house "needs to be dried out as soon as possible." Because it was such a large job, Seely called ServPro of Estherville for assistance. Those companies were ready to begin removing the water and cleaning the house that weekend. However, when Taylor arrived in town a couple of days later, she informed Holverson she did not want ServPro of Estherville involved in the clean-up process "because they were not local."

According to Holverson's notes from February 21, Taylor wanted to

> price everything first since the house is a total [loss] and why spend more money. She is convinced the house is a total [loss] with the mold/mildew that will always be in the place after we are done. . . . She insists that we get the "prices" down to see if it is worth spending money to clean this water damage up. . . . I indicated we need the heat low so as not to promote mold growth. She is in a motel at the present. . . . .
>
> She does not understand why we would want to pay to clean the house up when it is a total loss. She has not been cooperative in this matter.

Holverson referred Taylor's claim to Brian Larsen, an adjuster for Farm Bureau specializing in large property claims. He met Taylor at her house on February 25. Larsen observed the house was still very wet, although Taylor did have people removing the carpet in the house. He "urged [her] to get a professional to do water remediation. She insisted that she was using her own people. I believe they were employees of her business, which are heavy

equipment sales." He was certain that he told her she needed to "to get her house dried out, period."

On March 2, Taylor sent Larsen a letter regarding their conversation on February 25. She advised him that "[b]ecause of the excessive water damage to my home, I fear a health hazard from mold. . . . I believe the home should be razed." She later reiterated, "The other sticking point is the probability of mold, due to the excessive amount of water damage. The mold liability will not be mine, as I believe this house should be razed." Taylor again stated in a letter to Larsen dated March 19, "As I expressed to you, my utmost fear is the containment of mold between the walls with such an excessive amount of water damage. . . . I still believe the structure should be razed." Taylor then called Larsen on March 26 "concerned about mold in the house." Larsen accordingly arranged for mold testing to be performed on the house.

The testing, which was performed in mid-June 2003, revealed visible mold, as well as air-borne mold spores, throughout the house. Larsen advised Taylor of the test results in July. Up to that point, Taylor had apparently been going into the house several times each week to clean, though she had not returned to live in the house since it flooded. After receiving the test results, Taylor started wearing a mask whenever she entered the house.

In August 2003, Taylor developed a cough and began suffering from headaches. She visited Dr. J.D. Oggel, an allergist, in early September. She reported "having troubles with allergies all her life," but her recent concern "is that she has had a major problem with water damage in her home." She told Dr. Oggel that "[w]henever she goes in to [her home] to try to clean or sweep up

a little bit she ends up feeling very stuffed up and starts coughing." Dr. Oggel performed skin tests on Taylor, which according to his notes, "showed distinct sensitivity to pollens and dust mites. Completely negative to all molds."

Taylor next saw her family physician, Dr. Terry Mitchell, in January 2004. She reported that her cough had subsided after she took allergy medications prescribed by Dr. Oggel, but she continued to experience a "persistent sensation of a scratchy irritated sensation in the back of her throat." Dr. Mitchell referred her to Dr. Robert Stewart, a pulmonologist. He examined her and observed her "lungs are clear. I don't hear any wheezing even with forced exhalation." He could not find an explanation for her cough.

Taylor returned to Dr. Mitchell in August 2005, again complaining of a headache and sore throat. He referred her to Dr. David Wagner, an ear, nose, and throat specialist, who observed her "entire upper airway looks normal and healthy." He recommended she visit a gastroenterologist for a "possible upper GI evaluation and/or upper GI endoscopy." Taylor accordingly saw Dr. Michael Persaud, a gastroenterologist, who determined she had "some mild reflux" and several "superficial antral ulcers." Taylor was also examined by a speech pathologist, Michael Mueller, who performed a "swallow function test," which was normal.

In March 2006, Taylor went back to Dr. Mitchell complaining of "a very nonspecific headache." He noted she was not taking her blood pressure medicine and that her blood pressure was elevated. Later that year, Taylor was examined by Dr. Clayton Cowl, a pulmonologist at the Mayo Clinic. Her primary complaint at that time was "almost daily headaches" and "generalized

congestion," although she reported that her "cough has resolved over the past couple of years." Based upon his physical examination of her, Dr. Cowl informed Taylor that he did "not believe the current problems that you are experiencing with headache and disequilibrium are at all associated with your prior mold exposures." Instead, he opined that her "description of headaches seems to be consistent with those noted with tension headache[s]." He also informed her that her lung examination was normal.

Taylor ultimately filed a personal injury action against Farm Bureau, alleging Farm Bureau breached its duty to warn and protect her from the health problems she suffered as a result of her exposure to the mold in her home. Farm Bureau denied the allegations, and the case proceeded to a bench trial.

Following the trial, the district court entered a written ruling finding Taylor

> failed to establish by any credible evidence that . . . Farm Bureau . . . had any contractual or common law duty towards her to warn her of or protect her from any alleged hazards or exposure to mold. Taylor has failed to establish that even if there was such a duty owed to Taylor, that Farm Bureau breached that duty.

The court additionally found,

> There is no credible evidence to establish that Taylor sustained any injury (including headaches or cognitive impairment) as a result of any exposure she had to mold in her house. All of the credible medical providers have concluded that Taylor does not have any injury caused by mold.

Taylor appeals. She claims the district court erred by failing to find (1) she suffered personal injury as a result of exposure to mold; (2) Farm Bureau breached its duty to perform services in a non-negligent manner; and (3) Farm Bureau breached its duty to warn or inform Taylor of the dangers and risks of

exposure to mold. She additionally claims the court erred in not excluding or limiting the testimony of Farm Bureau's expert witnesses.

II. Scope and Standards of Review.

> Our review of a trial court's finding in a jury-waived case is for correction of errors at law, and the trial court's findings of fact have the effect of a special verdict. This means that a district court's decision will not be set aside unless it was induced by an error of law.

Evans v. Benson, 731 N.W.2d 395, 397 (Iowa 2007) (internal citations omitted).

The trial court has broad discretion in making rulings on expert testimony, which we will not disturb absent a manifest abuse of that discretion. *Smith v. Haugland*, 762 N.W.2d 890, 899 (Iowa Ct. App. 2009).

III. Discussion.

We begin, as Taylor did in her appellate brief, with the question of causation, which we believe is dispositive of her appeal. Our supreme court has held that "causation has two components: cause in fact and legal cause." *Thompson v. Kaczinski*, 774 N.W.2d 829, 836 (Iowa 2009). It is the plaintiff's burden to prove both. *Id.* The component of causation at issue here is cause in fact.

> We apply a "but for" test to determine whether the defendant's conduct was a cause in fact of the plaintiff's harm. Under that test, "the defendant's conduct is a cause in fact of the plaintiff's harm, if, but-for the defendant's conduct, that harm would not have occurred. The but-for test also implies a negative. If the plaintiff would have suffered the same harm had the defendant not acted negligently, the defendant's conduct is not a cause in fact of the harm."

Yates v. Iowa W. Racing Ass'n, 721 N.W.2d 762, 774 (Iowa 2006) (citation omitted). Having failed to meet that burden in the district court, Taylor can

prevail on appeal only if she shows causation was established as a matter of law. *See Evans*, 731 N.W.2d at 397. Taylor has not made such a showing in this case.

The only evidence Taylor presented at trial linking the physical symptoms she experienced to her exposure to mold came from her expert witness, Dr. James Schaller. Dr. Schaller testified by deposition that he is a "full-time research and clinical physician, not just working in psychiatry, but other areas in medicine," although he generally holds himself out as a child psychiatrist. Dr. Schaller has authored several children's books and become "self-taught" in a number of different areas of medicine, including "Indoor Mold Illness Treatment."[2]

Dr. Schaller examined Taylor in January 2007 and opined "within a reasonable degree of medical certainty that Cecelia Taylor is experiencing medical, neurological and psychiatric problems including ongoing severe headache pain, due to her exposure to documented and extensive indoor mold." Dr. Schaller's diagnosis was primarily based on a "neuropsychiatric mini mental status type of exam" during which he asked her, "How would you decorate this room?" According to Dr. Schaller, she was "completely overwhelmed" by that question, leading him to conclude her "cognitive, neurological abilities" were "quite impaired." He believed she "had a significant, cognitive, neurological problem . . . in the brain that involved, most likely, inflammation" even though Taylor reported no such difficulties with memory or cognition on the medical

[2] Dr. Schaller's website lists numerous "areas of special interest," ranging from "Exceptional Executive Lab Evaluations" to "Treatment Resistant Weight Gain" and "Out-of-Control Youth." A disclaimer on the website notes, however, that Dr. Schaller "does not claim to be an expert in anything. He does not claim to be superior, smarter, or more skilled or to have expert qualifications that are superior to other physicians."

questionnaire she filled out for Dr. Schaller. In addition, a neuropsychological exam conducted by a physician Dr. Schaller referred Taylor to, Dr. John Meyers, revealed no significant cognitive impairment.

The district court found Dr. Schaller's testimony was not credible, stating:

> Taylor's witness, Dr. Schaller, actually stepped outside of Taylor's complaints to opine that she had an "injury," not even complained of by Taylor, which he described as cognitive impairment and the mold was "the most likely cause". . . . His opinion is contrary to all other evidence. He obviously created this "injury" in his determination to associate some injury with the alleged mold exposure. Schaller ignored or disregarded the findings and conclusions of Taylor's other doctors (including the doctor Schaller referred Taylor to—Dr. Meyers). Schaller did not know or did not give consideration to the extent of Taylor's alleged exposure to mold. There is no credible evidence and foundation for giving Schaller's opinions any merit by this Court.

Taylor challenges this credibility finding. However, "[o]ur task is not to weigh the evidence or the credibility of the witnesses. Rather, our task is to determine whether substantial evidence supports the district court's findings *according to those witnesses whom the court believed*." *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996) (emphasis added); *see also Estate of Hagedorn ex rel. Hagedorn v. Peterson*, 690 N.W.2d 84, 88 (Iowa 2004) ("Although the plaintiffs contend the defendant's experts were not credible, the credibility of witnesses is peculiarly the responsibility of the fact finder to assess.").

This brings us to Taylor's next claim challenging the deposition testimony of Farm Bureau's expert witnesses, Dr. Suzanne Von Essen and Dr. Beverly Baker. Both of those physicians reviewed Taylor's medical records and concluded she did not suffer any permanent injury, neuropsychiatric or otherwise,

from her exposure to mold. They testified there is insufficient scientific evidence in general to determine there is an association between neuropsychiatric symptoms, such as Dr. Schaller reported observing with Taylor, and the presence of mold in indoor spaces. In addition, both physicians observed that the symptoms Taylor has complained of since August 2003 (headaches, cough, difficulty swallowing, and phlegm in the throat) are not symptoms usually associated with mold, and could in fact be due to other health problems she was diagnosed with, such as gastroesophageal reflux disease or elevated blood pressure. According to Drs. Von Essen and Baker, Dr. Schaller's opinion was contrary to generally-accepted science.

Taylor argues the district court erred in admitting the testimony of Drs. Von Essen and Baker because (1) their opinions were based on incomplete medical records; (2) both lacked experience in the field of neurology and psychiatry; and (3) their opinions were not expressed to a reasonable degree of medical certainty. This argument fails in all respects.

We first observe that before medical expert testimony will be considered competent, "there must be sufficient data upon which the expert judgment can be made." *Yates*, 721 N.W.2d at 774. The only medical record Taylor claims Drs. Von Essen and Baker did not review is the results of the scratch test performed by Dr. Oggel in September 2003. Those results revealed Taylor had a slight sensitivity to one type of mold, though Dr. Oggel's notes following the test stated she was "[c]ompletely negative to all molds." Although the actual scratch test results were not in the medical records provided to Drs. Von Essen and Baker, the results were noted in other medical records that they reviewed. We

also find it interesting that Taylor's expert medical witness, Dr. Schaller, did not review *any* of her medical records before rendering his opinion in this case.

Second, our courts have repeatedly stated that we

> are committed to a liberal rule on the admission of opinion testimony. Moreover, the source of expert knowledge is not significant, and knowledge from experience is every bit as good as that acquired academically. *A physician need not be a specialist in a particular field of medicine to give an expert opinion.*

Smith, 762 N.W.2d at 899 (emphasis added); *see* Iowa R. Evid. 5.702 ("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."); *see also Leaf v. Goodyear Tire & Rubber Co.,* 590 N.W.2d 525, 532 (1999) (citing court's history of maintaining liberal view on admissibility).

> All expert witnesses must be qualified in the area of their testimony based on one of the five areas of qualification. Yet, a particular degree or type of education is not needed. *Leaf*, 590 N.W.2d at 535. Moreover, an expert does not need to be a specialist in the area of the testimony as long as the testimony is within the general area of expertise of the witness. *Mensink v. Am. Grain*, 564 N.W.2d 376, 379 (Iowa 1997). However, the qualifications of an expert can only be properly assessed in the context of the issues to be determined by the fact finder.

Ranes v. Adams Labs., Inc., ___ N.W.2d ___, ___ (Iowa February 5, 2010)[3].

Dr. Von Essen, a physician specializing in internal medicine with an emphasis in pulmonology, was involved in writing a book entitled *Damp Indoor Spaces and Health*, a peer-reviewed text commissioned by the Institute of

[3] *Ranes* contains a comprehensive discussion of the admissibility of expert testimony on proof of causation in a toxic-tort case.

Medicine to provide "an objective scientific assessment of the published literature" regarding "the relationship between damp indoor spaces, mold, and certain health hazards." She reviewed hundreds of articles and studies examining the relationship between mold exposure and health effects in drafting that authoritative text. She also has experience in treating patients who have been exposed to mold. Like Dr. Von Essen, Dr. Baker specializes in internal medicine, although her subspecialities include occupational and environmental medicine, and medical toxicology, which she explained involves the study of "exposures to toxins, . . . whether it's chemical, biological, radiological." She routinely treats patients who have been exposed to mold and teaches medical students and residents about mold illnesses. It is clear from the foregoing that both of these physicians possessed significant knowledge, skill, experience, training, and education to testify about mold illnesses, even though neither was board-certified in neurology or psychiatry. *See Hutchison v. Am. Family Mut. Ins. Co.*, 514 N.W.2d 882, 886 (Iowa 1994) ("Although licensing carries a presumption of qualification to testify in the given field, 'learning and experience may provide the essential elements of qualification.'" (citation omitted)).

As to Taylor's final challenge to the testimony of Drs. Von Essen and Baker, our supreme court has held that "[b]uzzwords like 'reasonable degree of medical certainty' are . . . not necessary to generate a jury question on causation." *Hansen v. Cent. Iowa Hosp. Corp.*, 686 N.W.2d 476, 485 (Iowa 2004). While an expert's conclusion must be based on "more than mere conjecture or speculation," *Yates*, 721 N.W.2d at 774, it does not have to be

expressed with absolute certainty. *Williams v. Hedican*, 561 N.W.2d 817, 823 (Iowa 1997).

Neither Dr. Von Essen nor Dr. Baker rendered speculative opinions as to the lack of any causal connection between Taylor's physical symptoms and her exposure to mold. Dr. Von Essen testified quite certainly, "My opinion is that she has not suffered neuropsychiatric problems as a consequence of working in her mold contaminated home." Dr. Baker similarly testified: "Within a reasonable degree of medical certainty, she has not suffered any permanent illness from her mold exposure." Although Dr. Von Essen's testimony did not contain what Taylor asserts are the magic words, "reasonable degree of medical certainty," the cases cited above demonstrate that such words are not needed so long as the expert's opinion is, as Dr. Von Essen's was, based on more than mere conjecture or speculation. *See Yates*, 721 N.W.2d at 774.

Furthermore, the opinions of Drs. Von Essen and Baker are corroborated by other evidence in the record. As the district court observed, none of Taylor's treating physicians connected her health problems to her exposure to mold. In fact, several of those physicians definitively ruled out such a connection. Dr. Cowl, who examined Taylor in November 2006, informed her that he did "not believe that the current problems that you are experiencing with headache and disequilibrium are at all associated with your prior mold exposure." Dr. Dennis Nitz, a neurologist who examined Taylor in October 2008, similarly opined that Taylor's "headaches do not appear related to her mold exposure." Both of those physicians noted that Taylor's cough had "resolved over the past couple of years."

In light of the foregoing, we conclude Taylor has not shown that she established cause in fact as a matter of law, as required to prevail here. *See Evans*, 731 N.W.2d at 397. We therefore need not and do not address her other assignments of error on appeal. *See Gerst v. Marshall*, 549 N.W.2d 810, 817 (Iowa 1996) ("Any attempt to find liability absent actual causation is an attempt to connect the defendant with an injury or event that the defendant had nothing to do with.").

IV. Conclusion.

The district court did not err in finding Taylor failed to establish she was injured as a result of her exposure to mold following the flooding of her home. The judgment of the court denying her personal injury claim against Farm Bureau is accordingly affirmed.

V. Postscript.

The parties' 837 page appendix contains almost 300 pages of trial transcript. For 242 of those pages, the name of each witness was not inserted at the top of each page where the witness's testimony appears in the appendix. This violation of Iowa Rule of Appellate Procedure 6.905(7)(*c*) (2009) may seem inconsequential, but having the witness's name at the top of each page makes our job of navigating the appendix much easier.[4] Other rules violations include (1) no listing of relevant docket entries in violation of rules 6.905(2)(*b*)(2) and 6.905(5); (2) failure to precede transcript testimony with the court reporter's cover

[4] Although not required by the rules, an indication at the top of each page of testimony as to whether the testimony is direct, cross, redirect, or recross examination, would be helpful to us.

sheet in violation of rule 6.905(7)(*a*); and (3) no indication of the omission of transcript pages by a set of three asterisks in violation of rule 6.905(7)(*e*).

This court's mandate is to dispose justly of a high volume of cases. Iowa Ct. Rule 21.30(1). Parties' noncompliance with the rules of appellate procedure fosters frustration and impedes our efforts to meet our mandate. Additionally, compliance with the rules is essential in promoting judicial efficiency, particularly during this time of reduced resources.

The reorganized rules of appellate procedure have been in effect since January 1, 2009. The reorganized rules have been the subject of many papers and numerous legal seminars. Plaintiff's notice of appeal was filed May 6, 2009. The parties' appendix was filed November 4, 2009. There is no excuse for the rules violations.

AFFIRMED.