

## Psychologist Not Qualified to Give Expert Opinion on Causation of a Brain Injury

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Today, the Indiana Court of Appeals issued an opinion in *Bennett v. Richmond*, Case No. 20A03-0906-CV-285, which held that a trial court had abused its discretion when it allowed a psychologist to provide an expert opinion on whether a motor vehicle accident caused a brain injury. While stating that testimony of a medical doctor is not strictly necessary, the psychologist had not demonstrated the requisite expertise.

In this case, a man was rear-ended while driving a van. As a result of that collision, Richmond sustained injuries to his neck and back, so he brought suit against the other driver. Pursuant to a referral by his attorney, the plaintiff underwent a neuropsychological evaluation with a psychologist "to determine the presence and possible degree of disability associated with a closed head injury sustained in an automobile accident." The psychologist concluded, *inter alia*, that "the accident produced the brain injury." The defendant moved to strike the psychologist's testimony because he was not competent to testify regarding medical diagnosis. The trial court denied this motion after a hearing and allowed the psychologist to testify on these issues at trial over objection. The defendant appealed.

On appeal, the Court noted that the medical cause of a brain injury "is generally exclusively within the purview of medical doctors." While the Court refused to hold that a psychologist is per se unqualified to give such testimony, it held that this particular psychologist had not demonstrated that he is qualified to opine on causation in this case.

Dr. McCabe testified only that, in his professional continuing education courses, he has "touched on subjects that relate to evaluation of traumatic brain injuries" and that he has received referrals from two Elkhart neurologists. We hold that the trial court abused its discretion when it permitted Dr. McCabe to testify that Richmond sustained a brain injury as a result of the accident with Bennett. ...

While, generally speaking, Dr. McCabe demonstrated that he would have been qualified to opine that Richmond's test results indicate that he has sustained a brain injury from an

unknown cause, absent qualifications in determining the etiology of brain injuries, Dr. McCabe's testimony went too far in identifying the May 2004 accident as the cause of Richmond's alleged brain injury.

The Court then went on hold that the psychologist's testimony had no probative value.

At trial, Dr. McCabe presented a video explaining how even a minor whiplash injury can result in brain damage. But Dr. McCabe did not testify regarding the mechanics of the vehicular accident in this case to demonstrate how the impact might have resulted in Richmond's brain damage. For instance, Dr. McCabe did not describe the speed or force of the impact of the collision between the vehicles.

Instead, Dr. McCabe offered a simple inferential analysis of the cause of Richmond's alleged brain injury based upon Richmond's lack of any history of memory loss, cognitive dysfunction, headaches, or other symptoms prior to the May 2004 accident. Dr. McCabe testified that "[g]iven the absence of any of the symptoms of this condition prior to the accident, either in his report, the medical record, or the observations of his wife, it seems evident that the accident produced the brain injury." His opinion was not based on clinical medical evidence of the alleged injury. Under the circumstances, his opinion is "nothing more than 'subjective belief' and 'unsupported speculation' which is not the proper subject of expert testimony under *Daubert*["

The first part of this decision will be helpful to members of the bar generally, because it clarifies that an expert who is not a doctor will only be competent to testify regarding the causation of most medical conditions if that expert can show qualifications in determining the etiology of the particular medical condition in question. However, it is the Court's holding that the psychologist's testimony had no probative value that is likely to be affect litigation more. Defendants in personal injury cases will use this case to argue that no expert can testify on issues of causation of an injury unless that person has the requisite medical qualifications *and* can provide more than an inferential analysis of the cause of the injury. While the opinion gives room for plaintiffs to dispute this argument, it will have an effect on the value of any particular personal injury claim going forward.

#### Lessons:

1. An expert must have qualifications in determining the etiology of an injury in order to provide an opinion on the causation of that injury.
2. An expert must base an opinion on the causation of a physical injury on more than an inferential analysis.

