

DOCKET NO.: DBD-CV-21-6040305-S

JOSEPH CANN, SR., EXECUTOR
FOR ESTATE OF JOSEPH CANN, JR.

V.

JOHN STRONKOWSKI

SUPERIOR COURT
OFFICE OF THE CLERK
SUPERIOR COURT BA 3
2024 MAY 29 P 3:39
J.D. OF DANBURY
JUDICIAL DISTRICT AT DANBURY
DANBURY
STATE OF CONNECTICUT
MAY 29, 2024

MEMORANDUM OF DECISION
RE: DEFENDANT’S MOTION TO PRECLUDE #160

The plaintiff’s estate has brought an action alleging sexual abuse of the plaintiff’s decedent, Joseph Cann, Jr., by the defendant John Stronkowski who was a Catholic priest. The decedent had been sent to the defendant for counseling and was a minor at the time the abuse is alleged to have occurred. The decedent died at age 28 and the plaintiff’s estate alleges that his death was brought on by the abuse inflicted upon the decedent by the defendant. In support of its claim the plaintiff has disclosed an expert, Dr. Leslie M. Lothstein, who has opined that the decedent committed suicide due to the abuse. Docket entry #156. Specifically, the disclosure recites that “Dr. Lothstein is expected to testify as to his observations and assessments regarding the sexual abuse and drug overdose of Joseph Cann, Jr. His testimony will be based on his review and analysis of Joseph Cann, Jr.’s medical records, autopsy, school records, police reports and records provided by the Archdiocese. Dr. Lothstein is also expected to testify as to his analysis and preparation of his report. He will also testify that his conclusion is that the sexual abuse that Joseph Cann, Jr. endured was a cause of Joseph Cann Jr.’s drug abuse and eventual death. Dr. Lothstein’s opinion that Cann’s overdose was a suicide that was proximately caused by the sexual and mental abuse that was perpetrated by the Defendant, John Stronkowski.”

The disclosure also states that the substance of the facts and opinions of the expert’s opinion are that “Dr. Lothstein will testify concerning the following: his analysis of the abuse perpetrated

160,03

by John Stronkowski; his review of Joseph Cann, Jr.'s medical records, Church, Archdiocese and investigatory records regarding the sexual abuse incident(s); review of school records and treatment records of Joseph Cann, Jr.; and his conclusions that the sexual abuse was a cause of Joseph Cann, Jr.'s drug abuse and that Cann's overdose death was a suicide that was proximately caused by the sexual and mental abuse committed by the Defendant."

The defendant has filed a motion to preclude the plaintiff's expert testimony. The plaintiff has filed an objection thereto and the defendant has filed a reply. Docket entries #160, #164 and #166 respectively. The defendant's motion is predicated on the argument that after the deposition of Dr. Lothstein, it became clear that his opinion was based on conjecture and such factual uncertainty as to lack any substantial probative value in violation of the Conn. Code of Evid. § 7-4(a). The court heard oral argument on the motion on April 8, 2024.

"The standards for admitting expert testimony are well established. Expert testimony should be admitted when: (1) the witness has a special skill or knowledge directly applicable to a matter in issue, (2) that skill or knowledge is not common to the average person, and (3) the testimony would be helpful to the court or jury in considering the issues. . . . [T]o render an expert opinion the witness must be qualified to do so and there must be a factual basis for the opinion. . . . [See] Conn. Code Evid. § 7-2 ([a] witness qualified as an expert by knowledge, skill, experience, training, education or otherwise may testify in the form of an opinion or otherwise concerning scientific, technical or other specialized knowledge, if the testimony will assist the trier of fact in understanding the evidence or determining a fact in issue). . . . [T]he true test of the admissibility of [expert] testimony is not whether the subject matter is common or uncommon, or whether many persons or few have some knowledge of the matter; but it is whether the witnesses offered as experts have any peculiar knowledge or experience, not common to the world, which renders their opinions founded on such knowledge or experience any aid to the court or the jury in determining

the questions at issue. . . . Implicit in this standard is the requirement . . . that the expert's knowledge or experience . . . be directly applicable to the matter specifically in issue." (Citation omitted; internal quotation marks omitted.) *State v. Fisher*, 342 Conn. 239, 269-70, 269 A.3d 104 (2022).

In his motion to preclude the defendant has referenced § 7-4 which provides in relevant part: "**(a) Opinion testimony by experts.** An expert may testify in the form of an opinion and give reasons therefor, *provided sufficient facts are shown as the foundation for the expert's opinion.* **(b) Bases of opinion testimony by experts.** The facts in the particular case upon which an expert bases an opinion may be those perceived by or made known to the expert at or before the proceeding. The facts need not be admissible in evidence if of a type customarily relied on by experts in the particular field in forming opinions on the subject. The facts relied on pursuant to this subsection are not substantive evidence, unless otherwise admissible as such evidence. . . ." (Emphasis added.) Conn. Code Evid. § 7-4 (a) and (b). The commentary to that section explains that "because subsection (a) requires disclosure of a sufficient factual basis for the expert's opinion, and because the cross-examiner often will want to explore the expert's factual basis further, subsection (b) does not preclude the trial court, in its discretion, from admitting the underlying facts relied on by the expert for the limited purpose of explaining the factual basis for the expert's opinion." Conn. Code Evid. § 7-4 (b), commentary, citing *DeNunzio v. DeNunzio*, 151 Conn. App. 403, 413, 95 A.3d 557 (2014), *aff'd*, 320 Conn. 178, 128 A.3d 901 (2016).

"An expert may testify in the form of an opinion and give reasons therefor, *provided sufficient facts are shown as the foundation of the expert's opinion.* . . . Conn. Code Evid. § 7-4 (a). . . . Thus, [t]o render an expert opinion the witness must be qualified to do so *and there must be a factual basis for the opinion.* . . . Accordingly, [the Appellate Court] has stated, [t]he essential facts on which an expert opinion is based are an important consideration in determining the

admissibility of the expert’s opinion.” (Citation omitted; emphasis in original; internal quotation marks omitted.) *Gianetti v. Neigher*, 214 Conn. App. 394, 440, 280 A.3d 555, cert. denied, 345 Conn. 963, 285 A.3d 390 (2022). “In a case in which the factual basis of an [expert witness] opinion is challenged the question before the court is whether the uncertainties in the essential facts on which the opinion is predicated are such as to make an opinion based on them without substantial value. . . . For example, this court has determined that the opinions of a purported expert witness, whose testimony was based on speculation and who lack[ed] [sufficient] personal knowledge . . . of the facts on which he based his opinions . . . were without substantial value.” (Internal quotation marks omitted.) *Kohl’s Dept. Stores, Inc. v. Rocky Hill*, 219 Conn. App. 464, 477, 295 A.3d 470 (2023).


“The decision to preclude a party from introducing expert testimony is within the discretion of the trial court.” (Internal quotation marks omitted.) *DiNapoli v. Regenstein*, 175 Conn. App. 383, 388, 167 A.3d 1041 (2017). Although most decisions involving preclusion of expert testimony based on Conn. Code of Evid. § 7-4 appear to arise at the trial stage, courts have decided motions to preclude at the pretrial stage. See, e.g., *Fortin v. Hartford Underwriters Ins. Co.*, 139 Conn. App. 826, 59 A.3d. 247 (2013), (affirming trial court’s decision granting motion to preclude in context of hearing on motion for summary judgment); *Malaguit v. Ski Sundown, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-08-5003453-S (September 24, 2010, *Danaher, J.*) (denying motion in limine to preclude expert testimony without prejudice to renewal at trial).

In this instance, the defendant has referenced the deposition transcript of the expert which was appended to his motion. In it the expert identified various documents and other materials upon which he had relied in formulating his opinion that the decedent had committed suicide as a result of the abuse inflicted upon him by the defendant. The defendant contends that the expert could not conclude that the decedent committed suicide as a result of the abuse because at his

deposition, the expert acknowledged that one or more of the facts upon which he had based his opinion were either incorrectly recalled or were based on inaccurate assumptions that he had made. The defendant argues that as a result, there are insufficient facts to form the foundation of his opinion. Or, to put it another way, there are enough uncertainties in the essential facts on which the opinion is based so as to leave the opinion without substantial value and therefore it should not be considered by the trier of fact.

A review of the expert's deposition transcript reveals that there are several instances of inconsistent or inaccurate testimony as to the factual bases and assumptions for the conclusion stated in his disclosure of expert. While making certain assumptions or errors that are not based on accurate facts, the expert did rely on other facts from various supporting documentation such as medical, church and school records, as well as investigatory records regarding the allegations of sexual abuse. These records were personally reviewed by him. Coupled with his experience in the field of sexual abuse of individuals by clergymen, which was not challenged by the defendant at the deposition, the expert was able to formulate an opinion as to the decedent's cause of death. While the defendant may believe that the expert's opinion is not supported by the evidence, information and facts relied upon, his contention that the expert's opinion is of no substantial value to the trier of fact is best left to a direct attack in the crucible of trial. The defendant will be free to challenge all of the perceived shortcomings in the formulation of the expert's opinion in cross-examination of the expert.

The defendant's motion to preclude the plaintiff's expert from testifying is denied.


Shaban, J.

Decision entered in accordance
with the foregoing on 5/29/24.
Attys of record notified.
HUM 5/29/24.