

Wilkey v. Mayer (2013 WL 5610841)

Appellate Division holds that expert is not permitted to provide opinion with regard to proximate cause.

The Appellate Division has held that an expert witness cannot provide an opinion with regard to proximate cause. In rendering its decision, the Court noted that “proximate cause is a factual issue, to be resolved by the jury after appropriate instruction by the trial court.”

At issue in Wilkey v. Mayer was a motor vehicle accident involving the defendant striking the plaintiff as she was crossing a street with her car. In order to prove her case, plaintiff retained the services of an accident reconstruction expert. At the time of trial, plaintiff sought to offer this expert to explain to the jury how the accident happened. In his report, and in his testimony, the expert opined that the defendant had an unobstructed view of the plaintiff for 300 feet before impact. He further opined that if the defendant had seen the plaintiff at a distance of 300 feet, she would have had sufficient time to apply her brakes and avoid striking the plaintiff.

Prior to offering this testimony to the jury, a Rule 104 hearing was held. The defendant objected to the expert’s conclusions on the basis of them being net opinions. Specifically, the defendant contended that the expert had not considered all evidence produced in discovery which would challenge his ultimate opinions.

The trial court ruled that the expert could not testify that the defendant failed to use due caution. However, over the defendant’s objection, the court ruled that the expert could give an opinion on proximate causation and the defendant could challenge the opinion on cross examination. Accordingly, the expert was allowed to testify that “the defendant’s actions by failing to make observations of plaintiff crossing the roadway during clear daylight conditions,

was the proximate cause of the accident.” The expert then repeated on cross examination on two occasions that the defendant’s failure to observe the plaintiff was the proximate cause of the accident. In an attempt to rebut this testimony, the defendant then attempted to question the expert on whether there could be more than one proximate cause of an accident. Despite the trial court’s ruling that the defendant could challenge the expert’s ultimate opinions, the court would not allow that line of questioning, ruling “that’s a question of law for the Court. I’ll define proximate cause to the jury at a later time. The expert’s definition of proximate cause will not help this jury.”

During jury deliberations a question regarding proximate cause arose. The parties agreed to give the jury the Model Charge for proximate cause. Subsequently, the jury returned a unanimous verdict that the defendant was negligent and awarded \$600,000 in damages. The defendant then appealed.

In reviewing this case, the Court noted that “it is the court’s function, not that of an expert, to interpret the law” and the concept of proximate cause is of “legal significance.” It is the responsibility of the trial judge, “where the question of ‘proximate cause’ is involved, to explain to the jury in simple terms what the law means by that expression and to illustrate the application of its legal principles to the facts to the particular case which he is trying.”

The court found that in this case, plaintiff’s expert usurped the function of both the court and the jury when he repeatedly testified that the defendant’s conduct was the proximate cause of the accident. While the expert was qualified to reconstruct things such as the defendant’s rate of speed, plaintiff pace and path of travel across the roadway and sight lines, “nothing in his background gave him any special ability to apply legal concepts of proximate cause and comparative negligence to the facts that he had reconstructed.”

In vacating the liability finding, the court found that the trial court committed error by permitting the expert to express an opinion with regard to proximate cause. This was further exacerbated by the court refusing to allow the defendant to cross examine the expert on whether the plaintiff's actions could be a proximate cause of the accident.

Due to this error, the Appellate Division reserved and remanded the matter for a new trial on liability. The damage award was not disturbed as the defendant did not challenge same in its appeal.