

FILED

AUG 15 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 317269

SUPREME COURT or COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

CATHLEEN LECAIRE AND RANDALL LECAIRE, Appellants

vs.

RODERICK W. TATARYN, and JANE DOE TATARYN, individually
and as husband and wife, and RODERICK W. TATARYN, DDS, MS, PS,
a Washington Corporation, dba RODERICK ENDODONICS,
Respondents

AMENDED APPELLANT'S BRIEF

Cathleen LeCaire and Randall LeCaire
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AMENDED BRIEF OF APPELLANT

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United States Supreme Court

Daubert v. Merrill Dow Pharmaceuticals (Rule 702)

Regulations and Rules

Rule 71d Withdrawal of Attorney

A. Assignments of error

1. The trial court erred in entering the order of May 10, 2013, which granted defendant's motion for summary judgment.

2. The trial court erred in not allowing Dr. Leon Assael to be used as an expert witness.

3. An error occurred when the appellant's attorney, Robb E. Grangroth, did not inform his clients that when advising them to fire him, that had he quit, he would have to find suitable representation to take his place.

Issues Pertaining to Assignments of Error

Did the plaintiff show a preponderance of evidence of medical malpractice? (Assignment of Error 1.)

Is Dr. Leon Assael qualified to be an expert witness? (Assignment of Error 2.)

Is an attorney allowed to advise his clients to terminate his services rather than voluntarily resign and not tell them that if he resigns that he would have to find them a suitable replacement for representation? (Assignment of Error 3.)

B. Statement of the Case

On January 20, 2012, Cathleen LeCaire and Randall LeCaire, hereafter known as appellants, filed suit against Roderick W. Tataryn, and Jane Doe Tataryn, individually and as husband and wife, and Roderick W. Tataryn, DDS, MS, PS, a Washington Corporation, dba, Roderick Endodontics, hereafter known as Respondents, alleging negligence by the respondents during a root canal dental procedure. The appellants' claims were dismissed with prejudice on May 10, 2013. The appellants will show why this case should not have been dismissed based on the assignment of errors.

C. Summary of Argument

The appellants state that their case against the respondent's should not have been dismissed because they did have a medical expert and other doctors who agreed that the appellant's injury was caused by the respondent's negligence. The appellants also allege that their former attorney, Robb Grangroth, did not follow court rules when he wanted to withdraw as their attorney.

D. Argument

Argument regarding May 10, 2013 dismissal of case

On May 10, 2013, the Honorable Judge Kathleen M. O'Connor dismissed the case in favor of the respondents because of lack of evidence that malpractice occurred. The appellant went to several different doctors to find relief to the pain that was caused by the V3 nerve that was damaged during the root canal. The appellant supplied the court with multiple doctors diagnosis that showed the damage occurred because of the root canal that was done by the respondent. Dr. Adam Hebb, MD stated on November 11, 2011, "Her history of right-sided pain arising coincident with the root canal as well as her symptoms of sensory deficit in the region of the V3 nerve would certainly support a direct nerve injury." (Sub 59). Dr. John J. Demakas, MD stated in his diagnosis, "Atypical trigeminal neuralgia, right, following root canal procedure" (Sub 59). Dr. Ahmed Raslan, MD stated, "Sensation to touch in face is present and slightly decreased to pain prick in V3 distribution on the right side." (Sub 59)

Argument regarding Declining Review of Dr. Leon Assael

The appellants tried to file a notice by Dr. Leon Assael stating he would be willing to review his diagnosis which was already on file with the court, but was denied by the Honorable Judge Kathleen O'Connor. According to Rule 702 in the United States Supreme Court Case of *Daubert v. Merrill Dow Pharmaceuticals*, rules were set out that stated how a witness was qualified to be accepted as an expert. Those rules state that an expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue. Second, that the testimony is based on sufficient facts or data. Third, that the testimony is the product of reliable principles and methods. Fourth, that the expert has reliably applied the principles and methods to the facts of the case. Dr. Leon Assael meets all facets of Rule 702 and therefore he should have been allowed as an expert witness for the appellants.

Argument regarding withdrawal of attorney Robb Grangroth

In regards to the withdrawal of the appellants' attorney Robb Grangroth, the appellants allege that the attorney advised them it would be better to fire him rather than let him withdraw. The appellants were not advised that according to Court Rule 71d, had he withdrawn, he would have to provide substitute representation. The appellants state that had they known this, they would not have fired him, but instead made him follow the court rule because they did not want him to stop acting as their attorney. As a result, the appellants were unable to find another attorney to take their case.

E. Conclusion

The appellants seek relief for past medical bills totaling \$80,000, future medical bills totaling 1,500,000 which covers a procedure that would need to be done every year at a cost of \$50,000 a year; and pain and suffering that has been caused to the appellants since Cathleen LeCaire's quality of life has been substantially changed for the worse due to this injury of \$7,900,000.

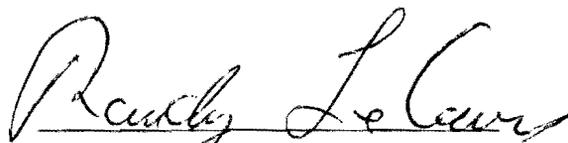
August 15, 2013

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cathleen LeCaire", written over a horizontal line.

Cathleen LeCaire, Appellant

Pro Se Legal Representation

A handwritten signature in cursive script, appearing to read "Randall LeCaire", written over a horizontal line.

Randall LeCaire, Appellant

Pro Se Legal Representation