Circuit Court for Montgomery County
Case No. C-15-CV-22-000188

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2159

September Term, 2022

RHONICA COLEY

v.

TISCHER AUTOPARK, INC., ET AL.

Wells, C.J.
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: May 10, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellant, Rhonica Coley, filed suit in the Circuit Court for Montgomery County against appellees, Tischer Autopark, Inc. and Atlantic Automotive Corporation for negligence, breach of contract, and fraudulent misrepresentation. Coley claimed that appellees failed to properly service, maintain, and inspect her BMW vehicle, resulting in the failure of the vehicle's engine. The circuit court granted summary judgment in favor of appellees. Coley noted this appeal.

Coley presents three questions for our review, which we distill into one:[1] Whether the trial court erred in granting appellees' motion for summary judgment.

For the reasons set forth below, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Coley filed a complaint on January 14, 2022 against Tischer Autopark, Inc., doing business as BMW of Silver Spring, and Atlantic Automotive Corp. doing business as MileOne Body Shop Express (hereafter, simply "BMW of Silver Spring" or "appellees"). In her complaint, Coley alleged that on or about August 12, 2020, she brought her 2013 BMW vehicle (the "vehicle") to BMW of Silver Spring's facility for routine maintenance, including an oil and filter change. She claimed that shortly after leaving BMW of Silver

[1] Coley's verbatim questions to us are:

- Is it proper for the trial judge to judge the credentials of the expert witnesses, or is that a question reserved for the Jury?
- Why was a motion for Summary Judgment appropriate to grant if there's been a denial in the Request from the Appellee for Dismissal of the Motion for Sanction for failure to make the discovery?
- Shouldn't the Appellee's expert witness testimony be disputed due to two different statements made by him?

Spring, a light on her vehicle's dashboard illuminated warning "oil change needed" ("oil change light"). Coley contacted appellees immediately and was informed that the oil change light "would go away on its own."

On or about August 31, 2020, Coley brought the vehicle to BMW of Silver Spring for a second service appointment. At the second appointment, she advised the appellees that she was concerned that the oil change light on the dashboard was illuminated. BMW of Silver Spring allegedly "re-set" the oil change light, replaced the thrust rod bushings, and informed Coley that one of the vehicle's engine mounts required replacing. Coley asked about the engine oil level and was assured that the oil level was not low.

According to Coley, the oil change light reappeared on the vehicle's dashboard shortly after she left the shop. Coley contacted appellees and was again advised that the oil change light would "go off". On or about October 9, 2020, Coley returned to BMW of Silver Spring for the replacement of the engine mount. Coley claimed that the oil change light remained illuminated after the third service visit.

Coley alleged in her complaint that she returned to BMW of Silver Spring on October 26, 2020, complaining that the oil change light remained illuminated and a "check engine" light ("engine light") was also illuminated. Coley further alleged that appellees investigated the vehicle's dashboard warning lights, and informed her that no issue had been detected, though they failed to give her an explanation as to why the lights were illuminated.

Coley claimed that she was driving the vehicle on November 30, 2020 when an "oil pressure low" light and "transmission warning" light illuminated on the vehicle's

dashboard, and immediately thereafter, the vehicle "shut off completely and could not be restarted." According to Coley, an independent inspection of the vehicle revealed that "a fault code reading 'engine - oil level too low' had come up during a previous servicing" and "at least (2) low oil level warnings" were noted in the inspection report.

On October 11, 2022, appellees moved for summary judgment on the grounds that Coley had failed to provide adequate discovery responses and failed to designate an expert witness. Appellees also filed a motion *in limine* to preclude or strike any expert witness designated by Coley. In support of their motion, appellees submitted an Affidavit of Ian Diaz, a Certified BMW Master Technician and Certified ANSI Master Technician. Diaz stated that, on November 30, 2020, Coley's vehicle was towed to BMW of Silver Spring. Upon inspection of Coley's vehicle, "pieces of metallic debris were found in the oil filter, the timing chain was discovered to be loose due to broken/missing timing chain guides, and pieces of the timing chain guides were found in the oil pan" and "[d]ue to the broken timing chain guide, the engine required significant repair or replacement." Diaz further stated that "[t]he inspection of Coley's vehicle also revealed that the oil pump was operating and the engine was receiving oil[,]. . . the oil in the vehicle was drained and measured to be approximately less than one quart low[,]" and "[t]he breakage of the timing chain guide is unrelated to any oil level in Coley's vehicle."

At the pretrial conference on October 27, 2022, the circuit court granted in part, and denied in part, appellees' motion *in limine*. The circuit court ordered that Coley was required to produce her expert's report by November 28, 2022 and make the expert available for a deposition on or before January 15, 2023.

Following the deposition of Coley's expert witness, Herman McCray, appellees filed a supplemental memorandum to their motion for summary judgment, arguing that Coley had failed to demonstrate a dispute of material fact that would entitle her to judgment. Specifically, appellees argued that: 1) McCray lacked the requisite qualifications, and 2) his opinion that the engine's failure was caused by "a lack of oil in the vehicle" was not supported by adequate facts or data.

Coley opposed appellees' supplemental motion for summary judgment, arguing that McCray's testimony was relevant and reliable, and his conclusions were based on the documents and reports prepared by appellees. Following a hearing, the court determined that McCray's testimony was not sufficient to show a genuine dispute of material fact to overcome appellees' motion for summary judgment, and the court entered summary judgment in appellees' favor.

This appeal followed.

STANDARD OF REVIEW

A trial court's decision to grant summary judgment is a question of law, which we review *de novo*. *CX Reinsurance Co., Ltd. v. Johnson*, 481 Md. 472, 484 (2022) (citing *Rossello v. Zurich Am. Ins. Co*., 468 Md. 92, 102 (2020)). This Court reviews the record to determine whether the parties raised a dispute of material fact, and if not, whether the trial court properly granted judgment as a matter of law. *Id.* We consider the record in the light most favorable to the nonmoving party, drawing any reasonable inference against the moving party. *Id.*

DISCUSSION

Coley argues on appeal that the circuit court erred in granting summary judgment in appellees' favor because genuine issues of fact existed as to whether her vehicle's engine failure was the result of appellees' negligence and fraudulent misrepresentation to her regarding the vehicle's oil change warning light.

Appellees respond that the circuit court correctly found that Coley failed to demonstrate a dispute of material fact that would support her claims of breach of contract, negligence, and fraudulent misrepresentation. Specifically, appellees assert that the circuit court properly found that Coley's expert witness failed to set forth a sufficient factual basis and data to support his expert opinion that the cause of Coley's engine's failure was a lack of oil in the vehicle.

"Under both tort and contract law, one claiming damages must prove that tortious act or breach of contract was the proximate cause of the damages claimed." *Simard v. Burson*, 197 Md. App. 396, 415 (2011) (quoting *MLT Enters. v. Miller*, 115 Md. App. 661, 674 (1997)); *see also Lustine Chevrolet v. Cadeaux*, 19 Md. App. 30, 36 (1973) ("The requirement that a causal connection be shown between the defendant's act and the plaintiff's harm is the same in both the tort actions of fraud and negligence[.]"). Accordingly, Coley was required to prove that appellees' actions or failures to act proximately caused the damage to her vehicle's engine.

The general rule is that expert testimony is required where the issue of causation is related to a science or profession "that is beyond the ken of the average layman." *Hartford Accident & Indemnity Co. v. Scarlett Harbor Assoc. Limited Partnership*, 109 Md. App.

217, 257 (1996) (quotation marks and citation omitted) (holding that expert testimony was required for plaintiff to prove defects in the heating system of an elevator shaft), *aff'd*, 346 Md. 122 (1997); *accord Mohammad v. Toyota Motor Sales, U.S.A., Inc.,*179 Md. App. 693, 713 (2008) (holding that expert testimony was required on the issue of automotive suspension); *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 518 (2000) (holding that expert testimony was required to prove the defective design or manufacture of an air bag).

The admission of expert testimony is governed by Md. Rule 5-702, which sets forth three requirements for admissibility: "(1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony." Md. Rule 5-702; *Covel v. State*, 258 Md. App. 308, 329 (2023).

In *Rochkind v. Stevenson*, 471 Md. 1, 5 (2020), the Supreme Court of Maryland adopted the standard set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), "as the governing standard by which trial courts admit or exclude expert testimony" under Md. Rule 5-702. The Court noted that the third prong of the analysis — sufficient factual basis—includes two sub-categories: "(1) an adequate supply of data; and (2) a reliable methodology." *Rochkind*, 471 Md. at 22 (citation omitted). "Absent either element, the opinion is mere speculation or conjecture." *Id*. (quotation marks and citation omitted). *See also Exxon Mobil Corp. v. Ford*, 433 Md. 426, 478 (2013) (explaining that an expert's opinion must be based upon sufficient facts "that indicate the use of 'reliable principles and methodology in support of the expert's conclusions' so that the opinion

constitutes more than mere speculation or conjecture") (quoting *Giant Food, Inc. v. Booker*, 152 Md. App. 166, 183 (2003)). "It is well settled that the trial judge—not the expert witness — determines whether there exists an adequate factual basis for the opinion at issue." *Wood*, 134 Md. App. at 523 (citation omitted).

In this case, McCray testified that he had operated McCray's Body Shop for approximately thirty years, and he devoted his time equally between body work and mechanical work. McCray stated that he held no current automotive mechanic certification and he had never received service technician training from BMW.

With respect to Coley's vehicle, McCray testified that he reviewed documents provided to him by Coley. He did not physically inspect the vehicle's engine, nor did he review photographs of the engine. McCray reported that he had no information as to the oil level in Coley's vehicle when it was towed to BMW of Silver Spring on November 20, 2020. Cray indicated that he was unfamiliar with the BMW service technician's determination as to the cause of the engine failure.

McCray testified that his "understanding" was that "the engine had low lubrication." He explained that "[l]ubrication is oil pressure" and "[l]ow oil pressure is going to damage the motor," based on "[his] experience of dealing with engines." McCray determined that "the failure of the engine was caused by the lack of oil in the vehicle." He opined that "[d]ue to the poor services shown towards the vehicle's timing chain system; the vehicle's timing chains will stretch beyond its measure, because the lack of oil maintenance (lubrication) and negligence." McCray argued that "[t]he actions of [a] certified mechanic and a routine vehicle's maintenance diagnostic (which is preventative

maintenance check-up) would have help[ed] with catching the issues before the tragedy occur(red).” That argument failed to explain how the actions of appellees caused the engine’s failure.

In *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 740 (1993), the Supreme Court of Maryland affirmed the circuit court’s decision granting summary judgment based upon a finding that the plaintiff’s expert failed to cite scientific evidence or sound data that would create a genuine issue of material fact that the defendant’s product was foreseeably unsafe and unreasonably dangerous. The Court explained that “an expert opinion derives its probative force from the facts on which it is predicated, and these must be legally sufficient to sustain the opinion of the expert.” *Id.* at 741 (quotation marks and citation omitted). To be admissible, an expert opinion must be based on sufficient facts, “and cannot be invoked to supply the substantial facts necessary to support such [a] conclusion.” *Id.* (quotation marks and citation omitted). In other words, an expert opinion based on a “because I say so” explanation, rather than reliable facts and data to explain causation, is inadmissible. *See CSX Transp., Inc. v. Miller*, 159 Md. App. 123, 203 (2004) (citing *Wood*, 134 Md. App. at 525).

Here, McCray did not explain the facts or data to support his finding that the engine lacked oil. Because he did not inspect Coley’s vehicle, he claimed to rely on documents provided to him to conclude that the vehicle’s engine failure was the result of a lack of oil. There was no evidence in the record, however, to support McCray’s conclusion that the

engine failure was due to a lack of oil.[2] To the contrary, Diaz reported that an "inspection of Coley's vehicle . . . revealed that the oil pump was operating and the engine was receiving oil" and the oil level was low by less than one quart. In the absence of facts or data supporting McCray's opinion that the engine failure was caused by a lack of oil, there existed no genuine dispute of material fact on the issue of causation, and the circuit court did not err in granting summary judgment in appellees' favor.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] Coley submitted documents with her brief that were not presented to the circuit court in opposition to appellees' summary judgment motion. Accordingly, we will not consider them. *See* Rule 8-131(a) ("[o]rdinarily, the appellate court will not decide any … issue unless it plainly appears by the record to have been raised or decided by the trial court").