SUPREME COURT OF MISSOURI
en banc

CHRISTOPHER HANSHAW,	)	*Opinion issued February 24, 2026*
	)	
Appellant,	)	
	)	
v.	)	No. SC101091
	)	
CROWN EQUIPMENT CORP., ET AL.,	)	
	)	
Respondents.	)	

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY
The Honorable Joel P. Fahnestock, Judge

Christopher Hanshaw appeals the circuit court's exclusion of his expert witness and the court's subsequent judgment sustaining Crown Equipment Corporation's ("Crown Equipment") motion for summary judgment. Because the circuit court did not abuse its discretion in excluding Hanshaw's expert witness and there is no genuine issue of material fact without Hanshaw's expert's testimony, the circuit court's judgment is affirmed.

Factual and Procedural Background

This case arises out of an incident involving a forklift Hanshaw alleges was defectively designed. On August 25, 2016, Hanshaw was injured while operating a forklift Crown Equipment designed, manufactured, and distributed. Hanshaw filed suit

against Crown Equipment asserting product liability claims related to the forklift's alleged defective design and requesting punitive damages.

Hanshaw's allegations of defective design stem from the forklift's open operator compartment design. Hanshaw retained an expert witness to testify the forklift was defectively designed and unreasonably dangerous and that installing a door or a bumper would improve safety.

On December 19, 2022, Crown Equipment simultaneously filed motions for summary judgment and to exclude Hanshaw's expert witness. Crown Equipment argued the expert is not qualified, his opinions are not based on reliable methodology, and his deposition testimony "amount[s] to nothing more than rank speculation and inadmissible *ipse dixit*." Further, Crown Equipment argued the expert's testimony was the only evidence adduced to demonstrate an issue of material fact and, without such testimony, summary judgment is appropriate.

On June 5, 2023, the circuit court sustained Crown Equipment's motion, finding Hanshaw failed to carry his burden of demonstrating the expert witness's deposition testimony is based on and supported by reliable research methods. The circuit court specifically noted no evidence was presented that the expert performed any tests – e.g., testing for injury potential, economic feasibility, or general safety – to support the efficacy of his alternative designs or that his alternative design was the subject of any peer review. In support of the expert's reliability, Hanshaw argued the expert previously published peer-reviewed papers related to the forklift design at issue in this case. The

circuit court, however, determined Hanshaw failed to demonstrate how the papers were relevant to or supported the expert's testimony. Hanshaw also argued the expert's opinion was based on reports maintained by Crown Equipment and the Occupational Safety and Health Administration ("OSHA") regarding forklift accidents. The circuit court found the expert again failed to demonstrate how he used the data, how the data supported his opinions, and that the data resulted from reliable research methods. The next day, the circuit court sustained Crown Equipment's motion for summary judgment. Hanshaw appeals.[1]

Discussion

The only circuit court action under review in this appeal is its decision to sustain Crown Equipment's motion for summary judgment. The circuit court's decision to sustain a defendant's motion in limine regarding the admissibility of a plaintiff's expert is not, by itself, appealable. *Lozano v. BNSF Ry. Co.*, 421 S.W.3d 448, 453 n.4 (Mo. banc 2014) ("A motion in limine, *by itself, preserves nothing for appeal*." (emphasis in original)). But, because Crown Equipment's motion for summary judgment was premised on the contention that Hanshaw had no admissible expert evidence to support his defective design or failure to warn claims, the circuit court's analysis of the motion in limine likely was relevant to its decision to sustain the summary judgment motion.[2]

[1] This Court transferred the appeal and has jurisdiction pursuant to article V, section 10 of the Missouri Constitution.

[2] To the extent the circuit court's decision to sustain the motion for summary judgment depended on its determination Hanshaw's expert testimony would not be admissible at trial under section 490.065, that determination is reviewed for an abuse of discretion.

Expert witnesses

Section 490.065 governs the admissibility of expert witnesses:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
>
> (a) The 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;
>
> (b) The testimony is based on sufficient facts or data;
>
> (c) The testimony is the product of reliable principles and methods; and
>
> (d) The expert has reliably applied the principles and methods to the facts of the case[.]

Section 490.065.2(1)(a)-(d).[3] In other words, an expert witness must be qualified, and the testimony sought to be admitted must be "not only relevant but reliable." *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 589 (1993).[4] This Court will not find a circuit

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Linton ex rel. Linton v. Carter, 634 S.W.3d 623, 626-27 (Mo. banc 2021) ("This Court reviews a circuit court's decision to admit or exclude expert testimony for an abuse of discretion." (internal quotation omitted)). "A circuit court abuses its discretion when its ruling is clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration." *Id.* at 627 (internal quotation omitted). The motion to exclude and the motion for summary judgment are separate motions, and neither the motion to exclude nor any response thereto, with related exhibits, becomes part of the summary judgment record absent compliance with Rule 74.04. Likewise, this Court has made clear, in reviewing a summary judgment motion, a reviewing court shall "determine and review summary judgment *based on that Rule 74.04(c) record, not* the whole trial court record." *Green v. Fotoohighiam*, 606 S.W.3d 113, 117 (Mo. banc 2020) (internal quotation omitted). "These summary judgment principles do not require the circuit court or any appellate court to sift through the entire record to identify disputed issues, which, in turn, would cause a court to impermissibly act as an advocate for a party." *Id.* at 118.

[3] All statutory references are to RSMo Supp. 2017, unless otherwise indicated.

[4] Section 490.065 is identical to Rule 702 of the Federal Rules of Evidence. "Where Missouri law adopts language from the Federal Rules of Evidence, federal cases applying those rules are persuasive – though not binding – authority." *State v. Carpenter*, 605 S.W.3d 355, 361 n.4 (Mo. banc 2020). *Daubert* remains a leading case on the

court abused its discretion in excluding an expert witness if any of the following apply: the expert witness is determined to be unqualified; the expert's testimony is irrelevant; or the expert's testimony is not based on reliable methodology. Here, this Court considers only the reliability requirement, finding it dispositive.

Determining reliability "entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Id.* at 593-94. The focus in evaluating admissibility of an expert witness "must be solely on principles and methodology, not on the conclusions that they generate." *Id.* at 595. *Daubert* provides a non-exhaustive and flexible set of factors that may be relevant in evaluating reliability: (1) whether the theory or technique can be and has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied and the existence and maintenance of standards and controls; and (4) whether the technique or theory has been generally accepted in the scientific community. *See* 509 U.S. at 593-94. It is apparent that if an expert's proponent fails to provide the methodology, theory, or technique to the circuit court, the court would be unable to evaluate the reliability of said methodology, theory, or technique.

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admissibility of expert witnesses, and this Court finds its analysis as to the reliability of expert testimony persuasive.

Hanshaw's expert witness intended to testify the forklift was defectively designed and to produce alternative forklift designs to demonstrate the forklift's current iteration is unreasonable because the forklift could be designed to be safe. Hanshaw argues his expert witness's opinions are reliable because they are "based on his personal observations and the information he was provided in this case." Hanshaw notes the expert witness observed and analyzed the forklift, inspected the location of the accident, created models of the location of the accident and the forklift, observed video footage of the accident, and "performed safety engineering analyses of the Crown forklifts relying on design engineering principles assessing the foreseeable failure and effects modes." Hanshaw also states the expert reviewed Crown Equipment's accident data, as well as accident data obtained through OSHA. Hanshaw argues the expert witness applied his extensive experience and training to the expert's own personal observations in this case and, therefore, the expert's testimony is reliable.[5] This argument conflates the independent requirements of section 490.065. Accepting such an argument would instruct circuit courts to blindly accept a proposed expert's testimony so long as the

[5] Hanshaw relies on *State ex rel. Gardner v. Wright*, 562 S.W.3d 311 (Mo. App. 2018), in arguing his expert witness's testimony was reliable because it was based on the expert's personal observations. Hanshaw's reliance is misplaced. First, *Gardner* stands only for the proposition that "[t]here is nothing per se unreliable about testimony based on personal observations made in the course of an expert's professional experiences." *Id.* at 321. Second, the expert at issue in *Gardner* was a social worker and forensic interviewer who planned to testify as to the process of disclosure. *Id.* at 312-13. Such testimony is not opinion testimony, and the circuit court, in its discretion, determined the expert's personal observations were sufficiently reliable to form the basis of the testimony. *See also State v. Gibbons*, 629 S.W.3d 60, 85 (Mo. App. 2021) (applying section 490.065.2(1)'s requirements to the generalized testimony of a forensic interviewer).

expert is qualified and the testimony is based on sufficient facts or data and would effectively eliminate the requirement that the testimony be the product of reliable principles and methods (paragraph (c)) and that the expert reliably applied those principles and methods to the case (paragraph (d)).

It is undisputed that witnesses may testify as to their personal observations and "[t]rained experts commonly extrapolate from existing data." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997); *see also* section 490.065.2(2). However, "nothing in either *Daubert* or the Federal Rules of Evidence requires a [circuit] court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert." *Joiner*, 522 U.S. at 146. If an expert's proponent fails to demonstrate the expert's testimony would be the product of reliable principles and methods reliably applied to the facts of the case, "[a] court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Id.* This is what occurred here.

Hanshaw has not clearly demonstrated the facts or data on which his expert relied in forming his opinions. To the extent Hanshaw claims to have provided facts or data forming the basis of the expert's opinions, Hanshaw fails to demonstrate what principles or methods formed the basis for the expert's opinions, as required by section 490.065.2(1)(c), or how the expert applied those principles and methods to the facts of the case, as required by section 490.065.2(1)(d). Hanshaw attempts to support the expert's opinions with the expert's published peer-reviewed papers and suggestions that the expert conducted different types of testing on forklifts similar to the one at issue.

Hanshaw, however, fails to demonstrate how the peer reviewed papers are relevant to the expert's opinion and failed to produce the papers for the circuit court. Further, neither the methodology nor the conclusions of the expert's supposed testing were provided to the circuit court.[6] Without such information, the circuit court is unable to effectively evaluate the reliability of the expert's testimony and cannot be found to have abused its discretion in excluding the expert's testimony.

Summary judgment

This Court reviews a grant of summary judgment *de novo*. *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 664 (Mo. banc 2009). The Court views the record in the light most favorable to the party against whom judgment was entered. *Id.* "Summary judgment is proper when there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." *Larabee v. Eichler*, 271 S.W.3d 542, 545 (Mo. banc 2008) (alteration in original) (internal quotation omitted). Hanshaw argues there

[6] The only information provided to the circuit court to establish the expert's reliability included the expert's curriculum vitae, the expert's deposition, and an affidavit from the expert reciting his qualifications and the tasks he undertook in reviewing this case. The expert states in his affidavit: "In formulating my opinions, I have reviewed a host of materials and I conducted both in the past and specifically for this case, a number of analyses and tests." The expert describes the tests he conducted or reviewed as "[p]erformance testing of forklifts, including the lateral and longitudinal acceleration of forklifts in operation during backing and steering[,] [t]esting to evaluate the acceleration and speeds during forklift collision[,] [e]valuation of egress times from stand-up forklifts[,] [t]esting of the effectiveness of horizontal instruction protection for stand-up forklifts." The only methodology stated in the expert's affidavit is "I compared all such data to the video of the actual incident involving Mr. Hanshaw." The expert's affidavit also suggests he prepared, and attached as an exhibit, a PowerPoint presentation "to detail the primary opinions [he] will offer along with some of the source material upon which [he] relied." Such PowerPoint is not in the legal file.

remain genuine issues of material fact precluding summary judgment on Hanshaw's products liability claims.

Every decision to sustain or overrule a summary judgment motion includes, to some degree, a decision that the substance, if not the precise form, of the evidence relied on by the parties will be admissible at trial. *L.A.C. ex rel. D.C. v. Ward Parkway Shopping Ctr. Co.*, 75 S.W.3d 247, 253 n.3 (Mo. banc 2002) ("Only evidentiary materials that are admissible or usable at trial can sustain or avoid summary judgment." (internal quotation omitted)); *cf.* Rule 74.04(e) ("Supporting or opposing affidavits … shall set forth such facts as would be admissible in evidence[.]"). As a result, Hanshaw's reliance on his expert's opinions to defeat Crown Equipment's summary judgment motion stands or falls on whether those opinions will be admissible at trial. Because Hanshaw's expert's opinions were excluded under section 490.065, the circuit court properly sustained Crown Equipment's summary judgment motion.[7]

Hanshaw also argues the circuit court erred in granting summary judgment in Crown Equipment's favor on Hanshaw's punitive damages claim. Hanshaw argues genuine issues of material fact exist regarding whether Crown Equipment acted with

[7] Because discovery had closed at the time the circuit court ruled on the motion for summary judgment, it was too late for Hanshaw to endorse a new expert or cure the defects with his current expert, even though a ruling on the exclusion of a witness is generally interlocutory. *See Rhoden v. Mo. Delta Med. Ctr.*, 621 S.W.3d 469, 484 (Mo. banc 2021). Had the admissibility of the expert's opinions depended on the circuit court's credibility or weight determinations, an interlocutory assessment of such factors may have been insufficient to support a related summary judgment motion, and a final, appealable decision on admissibility at trial may have been required.

complete indifference or conscious disregard for the safety of forklift operators. Punitive damages, however, are available only if the requesting plaintiff prevails on an underlying claim and is entitled to actual damages. *Ellison v. Fry*, 437 S.W.3d 762, 777 (Mo. banc 2014). Hanshaw has not prevailed on the underlying liability claim. Punitive damages, therefore, are unavailable, and the circuit court did not err in granting summary judgment on Hanshaw's punitive damages claim.

Conclusion

The circuit court's judgment sustaining Crown Equipment's summary judgment motion is affirmed.

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KELLY C. BRONIEC, JUDGE

All concur.