

Order

Michigan Supreme Court
Lansing, Michigan

December 15, 2017

Stephen J. Markman,
Chief Justice

154489 & (86)

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

TERI WALTERS and KIM WALTERS,
Plaintiffs-Appellees,

v

SC: 154489
COA: 319016
Eaton CC: 12-000658-NH

DONALD S. FALIK, D.D.S., d/b/a FALIK
FAMILY DENTISTRY, ROBERT C.
FALIK, D.D.S., and JANE DOE,
Defendants-Appellants.

On December 6, 2017, the Court heard oral argument on the application for leave to appeal the August 16, 2016 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.305(H)(1). In lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals and REINSTATE the order of the Eaton Circuit Court granting the defendants' motion in limine to exclude the plaintiffs' expert's testimony on causation. The trial court did not abuse its discretion in finding that the plaintiffs' proposed expert witness's opinion was unreliable, especially since the scientific articles presented by the plaintiffs indicated that the etiology of Wegener's granulomatosis ("Wegener's") is unknown and that no study has referred to an association between phosphoric acid and Wegener's. Further, the plaintiff's proposed expert failed to explain why phosphoric acid was analogous to other environmental factors potentially associated with Wegener's. The trial court thus did not abuse its discretion when it held that his testimony was not sufficiently reliable to proceed to the jury because it amounted to speculation. See *Elher v Misra*, 499 Mich 11 (2016); *Edry v Adelman*, 486 Mich 634, 639 (2010). Defendants' motion for leave to file a response to amicus curiae brief of the Michigan Association for Justice is GRANTED.

BERNSTEIN, J. (*dissenting*).

I would affirm for the reasons stated in the Court of Appeals majority opinion. I believe the Court of Appeals majority reached the right result for the right reasons.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 15, 2017

Clerk