

Defendant's failure to comply with this order in an amount equal or greater than one month's support obligation or such date as the Court may designate an attachment of income shall automatically issue.

The Defendant and Plaintiff are further ordered to advise the Domestic Relations Section at Court House Annex, 100 Lincoln Way East, Chambersburg, PA 17201, every change of address or employment, including the name and address of new employer. Costs shall be paid by Donald R. Stouffer within thirty (30) days.

SKVARKA V. HAWKINS, C.P. Fulton County Branch, No. 133 of 1986-C

Expert Witness - Permanent Injuries

1. As long as the expert, at some point, states his opinion with sufficient definiteness the opinion will not be held inadmissible merely because it is expressed in weaker terms in other portions of his testimony.
2. A party must identify specifically which of his alleged injuries are permanent and which are not.

Bradley R. Bolinger, Esquire, Counsel for the Plaintiffs

Daniel W. Long, Esquire, Counsel for the Defendant

OPINION AND ORDER

WALKER, J., August 11, 1987:

Plaintiffs, Mary and John Skvarka, filed suit against defendant, Olive Hawkins, for injuries arising out of an automobile accident. A jury trial was requested; at the pre-trial conference, two issues remained unresolved. Both parties submitted briefs on the matter.

The first issue presented deals with the admissibility of the testimony of plaintiff's expert witness with regard to carpal tunnel syndrome. Specifically, defendant contends that the plaintiff's expert could not state to the requisite degree of certainty



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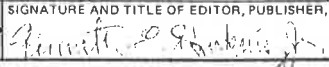


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1A. TITLE OF PUBLICATION Franklin County Legal Journal		1B. PUBLICATION NO. 3 7 8 9 5 0	2. DATE OF FILING Oct. 1, 1987
3. FREQUENCY OF ISSUE Weekly		3A. NO. OF ISSUES PUBLISHED ANNUALLY 52	3B. ANNUAL SUBSCRIPTION PRICE \$25.00 in county*; outside \$20.00
4. COMPLETE MAILING ADDRESS OF KNOWN OFFICE OF PUBLICATION (Street, City, County, State and ZIP+4 Code) (Not printers) *includes bound vol c/o Kenneth E. Hankins, Jr., Managing Editor 210 Chbg. Trust Co. Bldg., Chambersburg, PA 17201			
5. COMPLETE MAILING ADDRESS OF THE HEADQUARTERS OF GENERAL BUSINESS OFFICES OF THE PUBLISHER (Not printer) c/o Kenneth E. Hankins, Jr., Managing Editor 210 Chbg. Trust Co. Bldg., Chambersburg, PA 17201			
6. FULL NAMES AND COMPLETE MAILING ADDRESS OF PUBLISHER, EDITOR, AND MANAGING EDITOR (This item MUST NOT be blank)			
PUBLISHER (Name and Complete Mailing Address) Franklin County Legal Journal, c/o Kenneth E. Hankins, Jr., Managing Editor, 210 Chbg. Trust Co. Bldg., Chambersburg, PA 17201			
EDITOR (Name and Complete Mailing Address) Kenneth E. Hankins, Jr., 210 Chbg. Trust Co. Bldg., Chambersburg, PA 17201			
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FULL NAME Franklin County Legal Journal (a corporation not for profit, organized on a nonstock basis, comprised of the members of the Franklin County, Pennsylvania, Bar Association).		COMPLETE MAILING ADDRESS c/o Kenneth E. Hankins, Jr. 210 Chbg. Trust Co. Bldg. Chambersburg, PA 17201	
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(See instruction on reverse)

that the accident in question caused, or contributed to, plaintiff's carpal tunnel syndrome.

Expert testimony is properly considered when, taken in its entirety, it expresses reasonable certainty that the incident in question was a substantial factor in bringing about the injury. *Smialek v. Chrysler Motors Corp.*, 290 Pa. Super. 496 (1981). As long as the expert, at some point, states his opinion with sufficient definiteness, the opinion will not be held inadmissible merely because it is expressed in weaker terms in other portions of his testimony. *Kravinsky v. Glover*, 263 Pa. Super. 8 (1979).

Looking at plaintiff's expert's deposition testimony in its entirety, it appears that he is sure to a reasonable degree of medical certainty that the accident at least aggravated, if not initiated, plaintiff's carpal tunnel syndrome. Since the expert is reasonably certain that the accident was a substantial factor in bringing about the injury, under the *Smialek* standard, his testimony shall be admissible at trial.

The second issue deals with the specificity of plaintiff's pleading with regard to the permanency of her injuries. In paragraph 12 of plaintiff's complaint, she alleges that she has suffered four distinct injuries as a result of the accident in question. Later, in paragraph 14 of the complaint plaintiff alleges generally that her injuries will continue to endure for a period of time unknown. Defendant now protests that plaintiff has not sufficiently identified which of the injuries are expected to be permanent.

It is true that a party must identify specifically which of the injuries alleged are permanent and which are not. See 2A Anderson Pa. Civ. Prac. §1019.69(c) and cases cited therein. Reviewing the precedent cited by defendant, though, it appears that the appropriate remedy is for plaintiff to amend the complaint to specify which injuries are permanent. Though defendant protests that he would be prejudiced if an amendment were allowed at this late date, the prejudice is entirely self-inflicted. Defendant should have brought this deficiency to the court's attention by way of a preliminary objection and a motion for a more specific pleading. Pa. R.C.P. Rule 1017(b)(3). Not having filed such an objection within 20 days of receiving the complaint, defendant's right to do so has been waived. Pa. R.C.P. Rules 1026, 1032.

Since the plaintiffs have offered to amend their complaint, the court shall exercise its power under Pa. R.C.P. Rule 1028(e) and order plaintiffs to make an amendment specifying which of her

injuries are permanent within 5 days of the entry of this order.

ORDER OF COURT

August 11, 1987, it is hereby ordered that the plaintiffs' expert witness may testify concerning the cause and/or effect of the accident regarding plaintiff's carpal tunnel syndrome; and the plaintiffs shall amend the complaint within five days of the entry of this order to specify which of her injuries are permanent.

DEARDORFF, ET AL. V. SHEW, ET AL., C.P. Franklin County Branch, No. A.D. 1985-271

Local Rule 39-1801 - Lack of Prosecution - Extension of Time

1. Where an action has been dismissed for want of prosecution the burden to establish good cause for reinstatement is affirmatively on the petitioner.
2. The trial courts have an affirmative duty to apply all procedural rules with fairness.
3. Where the only prejudice to defendant in reinstating plaintiff's case is the need to defend against the action and plaintiff has given a reasonable explanation for his actions, the requirement of fairness in interpreting rules of court would be violated.
4. Where plaintiff sustains injuries in an accident that have not healed to the point where his damages are ascertainable and this is verified by medical evidence, an application for extension is appropriate.

Philip S. Cosentino, Esq., Counsel for Plaintiffs

Eileen F. Schoenhofen, Esq., Counsel for Defendants

OPINION AND ORDER

KELLER, P.J. August 26, 1987:

On April 16, 1985, plaintiffs were injured in a motor vehicle accident in Franklin County Pennsylvania.

On October 16, 1985, a writ of summons was issued against Michael Ray Shew, George Transfer and Rigging Company, Inc., and the Commonwealth of Pennsylvania, Department of Trans-



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