

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WAYNE KOCH,  
Plaintiff,

vs.

TROY MUSSER *et al.*,  
Defendants.

: No. CV-17-613

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: CIVIL ACTION

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: *Motion in Limine*

**ORDER**

AND NOW, after consideration and argument on the Plaintiff's Motion *in Limine* to Preclude Defendants from Offering Any Evidence of Drug Use, the Court hereby issues the following Order.

Plaintiff Wayne Koch argues that because Defendants are not asserting an affirmative defense of contributory negligence, and have not provided independent evidence that Mr. Koch was intoxicated at the time of the incident, allowing evidence of Mr. Koch's marijuana use on the date of the incident would be both of limited relevance and more prejudicial than probative. Defendants concede that Mr. Koch's marijuana use was not a contributing factor to his injury.<sup>1</sup> The Court will therefore PRECLUDE evidence of Mr. Koch's marijuana use on the date of the incident, September 8, 2015, and any testimony intended to link Mr. Koch's chronic marijuana use to the incident.

The Defendants argue, however, that Mr. Koch's chronic marijuana use is relevant and admissible to the issues of his future earning capacity and his future life expectancy. The Court agrees. The Court will allow Defendants to ADMIT evidence of Mr. Koch's chronic marijuana use as a factor relevant to his future earning capacity. The deposition testimony of Mr. Koch and Defendant Mr. Musser demonstrates that Mr. Koch has lost employment, and has had difficulty

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<sup>1</sup> See *Whyte v. Robinson*, 617 A.2d 308, 383 (Pa. Super. 1992) (“[T]he well-settled law of this Commonwealth is that where recklessness or carelessness is at issue, proof of intoxication is relevant, but the mere fact of consuming alcohol is inadmissible as unfairly prejudicial, unless it reasonably establishes intoxication.”); *Hawthorne v. Dravo Corp., Keystone Div.*, 508 A.2d 298, 303 (Pa. Super. 1986) (“The same reasons for excluding evidence of alcohol consumption where

obtaining and maintaining employment, because of his chronic marijuana use. Additionally, Mr. Koch's chronic marijuana use could bar him from certain future employment opportunities; for instance, Mr. Koch would need to be able to pass a drug test in order to obtain a commercial driver's license. Therefore, evidence of Mr. Koch's chronic marijuana use is sufficiently probative to the question of his future earnings as to be admissible on that issue.<sup>2</sup>

HOWEVER, the Court will EXCLUDE evidence of Mr. Koch's chronic marijuana use as a factor relevant to his future life expectancy, UNLESS such evidence is provided through expert testimony. The Pennsylvania Superior Court recognized in *Kraus v. Taylor* that in claims for permanent injury, evidence of chronic drug or alcohol abuse may be admissible as probative of the claimant's life expectancy.<sup>3</sup> However, even probative evidence is not admissible in all circumstances. Under the *Pennsylvania Rules of Evidence* Rule 701(c), a lay witness should not provide testimony that is based on scientific, technical, or other specialized knowledge.<sup>4</sup>

In *Labrador v. City of Philadelphia*, the Pennsylvania Commonwealth Court dealt with the issue of whether expert testimony is necessary to admit evidence of a drug or alcohol-related disease that could impact life expectancy in a claim for permanent injury. *Labrador* involved a wrongful death action in which the decedent had suffered from a heart attack. On appeal, the Commonwealth Court held that the trial court had not committed an abuse of discretion by

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intoxication is not proved apply with equal, if not added, force to situations involving the use of marijuana.”).

<sup>2</sup> See *Dembinski v. Thomas*, 48 Pa. D. & C. 4th 553, 358 (Lehigh Cty. 2000) (relying to *Kraus v. Taylor*, *infra*, to hold that evidence of the plaintiff's history of substance abuse was relevant to the question of his future earning capacity); *Pulliam v. Fannie*, 59 Pa. D. & C. 4th 1, 6 (Butler Cty. 2000) (same).

<sup>3</sup> *Kraus v. Taylor*, 710 A.2d 1142, 1143-44 (Pa. Super. 1998) (“Evidence of appellant's chronic drug and alcohol abuse strongly suggests that his life expectancy deviates from the average . . . . Accordingly, the evidence of appellant's drug abuse tended to establish a material fact and was therefore relevant.”)

<sup>4</sup> Pa.R.E. Rule 701(c) (“If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is . . . not based on scientific, technical, or other specialized knowledge[.]”).

excluding evidence that the decedent was a “known alcoholic” who had suffered from cirrhosis of the liver at the time of his death.<sup>5</sup> The Commonwealth Court held that such evidence would only be admissible through expert testimony, as it would be improper “to permit a jury to speculate” on the potential impact that cirrhosis would have on the decedent’s life expectancy.<sup>6</sup> The Commonwealth Court further stated that admitting evidence of cirrhosis of the liver without supportive expert testimony would be unduly prejudicial, as the disease carries associations of alcoholism even though it may result from various causes.<sup>7</sup>

The Court finds that that the health impacts of chronic marijuana use, and specifically its impacts on life expectancy, would not be within the common knowledge of a jury and would lack probative value absent supportive expert testimony. The issue of whether Mr. Koch’s chronic marijuana use would affect his life expectancy involves specialized knowledge only admissible through qualified expert testimony.

IT IS SO ORDERED this \_\_\_\_ day of September, 2019.

BY THE COURT:

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Eric R. Linhardt, Judge

ERL/cp

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<sup>5</sup> *Labrador v. City of Philadelphia*, 578 A.2d 634, 636-37 (Pa. Commw. 1990).

<sup>6</sup> *Id.* at 637.

<sup>7</sup> *Id.*; see also *Callahan v. National R.R. Passenger Corp.*, 979 A.2d 866, 878 (Pa. Super. 2009) (holding that defendants could not offer evidence of plaintiff’s history prescription drug abuse absent supportive expert testimony).