

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

STEVEN J. ROCKEY and : NO. CV-2022-00791  
ELAINE M. ROCKEY, :  
Plaintiffs, :  
vs. :  
NANCY A. STEARNS, *et al.*, : CIVIL ACTION - LAW  
Defendants. : Motion in *Limine*

**OPINION AND ORDER**

The matter captioned above came before the Court on July 1, 2024, for oral argument on Defendants’ Motion in *Limine* seeking to preclude lay witness testimony on the subject of causation of the railing collapse, which is the subject of Plaintiffs’ claims. The Court hereby issues the following OPINION and ORDER on that Motion.

**I. Background:**

This matter was commenced by Writ of Summons filed August 17, 2022. After a Rule, Plaintiff filed their Complaint on October 6, 2022. After close of the pleadings, Defendants filed a Motion for Summary Judgment on January 11, 2024, which was denied. The matter is now scheduled for trial. On May 28, 2024, Defendants filed a Motion in *Limine*, seeking to preclude Plaintiffs from introducing lay witness testimony on the subject of causation of the collapse of the porch railing, which is the subject of Plaintiff’s claim.

**II. The Record Evidence:**

The events which gave rise to Plaintiffs’ claims are substantially undisputed. Plaintiffs claim that Plaintiff Steven J. Rockey sustained injuries on August 28, 2020, as a result of falling off a porch at the former residence of Defendant Nancy A. Stearns (now deceased). Steven J. Rockey was on the premises at the invitation of Nancy A. Stearns, for the purpose of painting a porch at the home. Plaintiffs contend that both Steven J. Rockey and Nancy A. Stearns fell from the porch when an allegedly defective porch railing broke loose from a structural post, causing the railing to collapse. The gravamen of Plaintiffs’ claim is that Defendant Nancy A. Stearns permitted a porch railing to exist on her real property in a defective condition, and that the defective condition of that porch railing was the proximate cause of its collapse, and of Plaintiff’s damages.

### **III. Question Presented:**

Whether Plaintiffs are entitled to introduce lay witness opinion evidence on the cause of the collapse of the porch railing.

### **IV. Response:**

Plaintiffs are not entitled to introduce lay witness opinion evidence on the cause of the collapse of the porch railing, but certainly may introduce fact testimony.

### **V. Discussion:**

Rule 701 of the Pennsylvania Rules of Evidence (hereinafter “Pa.R.E.”) permits opinion evidence by a lay witness, provided that the testimony is “(a) rationally based on the witness’s perception; [and] (b) helpful to clearly understanding the witness’s testimony, or to determining a fact in issue; and (c) not based upon scientific, technical, or other specialized knowledge within the scope of Rule 702.”

Pa.R.E. 702 permits testimony in the form of an opinion by an expert who has been qualified by knowledge, skill, experience, training or education. A qualified expert may offer opinions which require unique scientific, technical, or specialized knowledge.

More recently, our Courts have created something of a “twilight zone” within which a lay witness may offer an opinion on a technical matter, provided that such “testimony is based on sufficient personal experience or specialized knowledge of the witness.” *William Penn Sch. Dist. v. Pennsylvania Dep’t of Educ.*, 2022 WL 20099478, 1 (Pa. Commw. Ct. 2022) (citing *Gibson v. W.C.A.B. (Armco Stainless & Alloy Prod.)*, 861 A.2d 938, 945 (Pa. 2004)).

A lay witness may express a personal opinion on a range of subject areas based upon their own experiences, which are helpful to the fact finder. *Commonwealth v. Berry*, 172 A.3d 1, 3-4 (Pa. Super. Ct. 2017)(citing *Commonwealth v. Davies*, 811 A.2d 600, 602 n.1 (Pa. Super. Ct. 2002)). Naturally, there are many facts related to the condition of a wood railing which can properly be the subject of lay testimony. A layperson can testify to whether the railing appeared weathered or new, to the type and number of the attachment devices, to whether the railing was screwed or bolted, to whether the railing appeared to be solid or loose, or to whether the railing snapped or remained intact.

What might be beyond the knowledge of a layperson is the precise amount of force which was applied to the railing, or how that force caused the railing to collapse. Further,

a layperson would likely not be qualified to offer an opinion about what remedial measures would have prevented the collapse. Opinions on those matters would almost certainly require technical knowledge or skill beyond that possessed by an ordinary layperson.

**ORDER**

**AND NOW**, this 2<sup>nd</sup> day of July 2024, Defendants' Motion in *Limine* seeking to preclude lay witness testimony on the subject of causation of the railing collapse is granted in part and denied in part. Plaintiffs may not introduce lay witness opinion testimony on the quantity of force that was applied to the railing, or how that quantity of force caused the railing to collapse, or other matters which require unique scientific, technical, or specialized knowledge.

Nothing set forth herein will be interpreted to preclude Plaintiffs' lay witnesses from testifying to any matter which they personally saw or heard or experienced, such as whether or not the railing appeared weathered, the type and number of the attachment devices, whether the railing was screwed or bolted, the condition of the attachment devices, whether the railing snapped or remained intact, or other matters about which they have personal knowledge, or opinions which qualify under the test set forth in Pa.R.E. 701.

By the Court,

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William P. Carlucci, Judge

WPC/aml

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