COURT OF COMMON PLEAS, LYCOMING COUNTY, PENNSYLVANIA

BRADD M. MILLER,	:	**NO. 20-01214**
Plaintiff,	:	
	:	
vs.	:	
	:	**CIVIL ACTION**
GERALD KINLEY,	:	
Defendant.	:	**Motion in Limine**

OPINION AND ORDER

This matter came before the Court on April 15, 2025, for oral argument on the Motion in Limine filed by Plaintiff on February 21, 2025, seeking to exclude the expert testimony of Anthony F. Pizon, M.D., Plaintiff's proposed medical expert (Defendant filed a Motion in Limine on February 3, 2025, on issues related to Dr. Pizon's testimony). The basis of Plaintiff's Motion appears to be that, although Plaintiff concedes that he smoked marijuana prior to attempting to fell a tree on Defendant's property, there is no record evidence that he was intoxicated at the time when he was injured by the tree.

The Court is mindful that, absent evidence of intoxication, evidence regarding the consumption of alcohol is not admissible in evidence. *Coughlin v. Massaquoi*, 170 A.3d 399, 404 (Pa. 2017). The Court is mindful that *Coughlin* involved the use of alcohol, while this matter involves the use of marijuana. The Court views that as a distinction without a difference, since the potential for unfair prejudice is even more manifest in a case involving the use of drugs.

Consistent with the request of counsel for Defendants, the Court has carefully reviewed the transcript of the testimony of Anthony F. Pizon, M.D., taken on October 2, 2024. Generally speaking, Dr. Pizon offered the opinion that anyone who consumes any quantity of marijuana is always under its influence, and is therefore unfit to engage in the activity of felling a tree.

On cross-examination, Dr. Pizon admitted that he has no idea how much marijuana the Plaintiff consumed. Notes of Testimony (hereinafter "N.T.") at 47. Dr. Pizon testified that there is a "linear correlation, the more marijuana in your system, the more intoxicating you are[.]" *Id.* Plaintiff's counsel directly asked Dr. Pizon whether there is anything "you

can point to on May 16th of 2020, other than the fact that Mr. Miller got hurt, this is evidence of his intoxication; is that accurate?", to which Dr. Pizon answered "[a]nd the fact that he openly admits to smoking marijuana hours beforehand." *Id.* at 51.

Defendant defends his claim that the medical testimony is admissible because:

1. The fact that Plaintiff was injured while felling a tree is evidence that he was intoxicated, and that
2. Dr. Pizon testified that any ingestion of marijuana results in some level of inebriation. N.T. at 49.

The Court finds Defendant's first argument unpersuasive. Plaintiff's conduct during the course on May 16, 2020, is at least unfortunate, and arguably negligent. The extent to which Defendant may have been negligent, or the apportionment of that negligence, will be the task of the jury. If the Court were to accept the premise that negligent conduct is evidence of intoxication sufficient to meet requirements of *Coughlin,* the rule of that case would become a nullity.

Similarly, the Court cannot accept Defendant's second premise that, since Dr. Pizon opined that any ingestion of marijuana results in some level of inebriation, that should lead the jury to conclude that any ingestion of marijuana results in intoxication. N.T. at 49. This Court is guided by the sound logic of the *Coughlin* Court, where the Court cited *Harvey v. Doliner*, 160 A.2d 562, 565 (Pa. 1960), for the proposition that "[t]he difficulty with such evidence, however, lies with its potential to greatly prejudice the individual against whom it is offered, as we have long recognized that '[t]he word "drinking," where alcohol is involved, carries the inevitable connotation of *considerable* drinking,' even if the individual who consumed the alcohol consumed only a small amount." 170 A.3d at 404 (quoting 160 A.2d at 565).

If Dr. Pizon had opined that the Plaintiff was intoxicated based upon objective evidence of his behavior, the Court may have reached a different result. On this record, Dr. Pizon clearly decided that anyone who consumes marijuana is not fit to engage in cutting down a tree. While that may be true, it does not equate to proof of intoxication, required by the rule in *Coughlin*.

ORDER

AND NOW, this 16th day of April, 2025, for the reasons more fully set forth above, Plaintiff's Motion in Limine, filed February 21, 2025, is granted. The Court finds that the testimony of Anthony F. Pizon, M.D., to the effect that any ingestion of marijuana by the Plaintiff would render him unfit to engage in tree felling activities, is unfairly prejudicial to the Plaintiff. Because Dr. Pizon did not have an evidentiary basis upon which to conclude that the Plaintiff was intoxicated, his conclusion that the Plaintiff was unfit was based only upon the fact that Plaintiff consumed marijuana, and was subsequently injured. Neither the fact that Plaintiff consumed marijuana, nor the fact that Plaintiff was injured in the course of felling a tree, is a sufficient basis for the conclusion that Plaintiff was intoxicated, under the rule established in *Coughlin v. Massaquoi*, 170 A.3d 399 (Pa. 2017).

For the reasons stated above, Defendant may not introduce the testimony of Anthony F. Pizon, M.D., at the trial of this matter.

By the Court,

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William P. Carlucci, Judge

WPC/aml

cc: Charles R. Rosamilia, Jr., Esquire
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