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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0526**

Admire Benga, et al.,
Individually and as Parents and Natural Guardians
of Adriel Benga, a Minor,
Appellants,

vs.

Allina Health System,
Respondent.

**Filed March 30, 2026
Reversed and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-23-12912

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Considered and decided by Reyes, Presiding Judge; Harris, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellants challenge the district court's exclusion of expert testimony under Minnesota Rule of Evidence 702 and the entry of summary judgment for respondent. We reverse and remand.

FACTS

The events surrounding the injury of Adriel Benga (child) form the basis of the medical-malpractice action underlying this appeal. The action was brought on child's behalf by his parents, appellants Admire Benga (mother) and Andrew Benga (father). The facts described in this opinion are based on the allegations in the complaint and the evidence in the record.

Early one morning in November 2020, mother arrived at a hospital of respondent Allina Health System experiencing contractions. The hospital admitted mother, and by 9:40 a.m., mother entered the second stage of labor and began pushing. Thirty minutes later, when child's head was near crowning, obstetrician Dr. Casey Sprague arrived to assist with the delivery. Dr. Sprague noted in mother's medical record that "crowning was slow and arduous and lasted approximately 1 [hour]," so Dr. Sprague "prepared for the potential of a shoulder dystocia" by having another medical professional ready to assist if needed.¹ Dr. Sprague did not disclose the potential for a shoulder dystocia to mother or offer alternative delivery options, such as a cesarean section.

¹ During a vaginal delivery, a shoulder dystocia occurs when the "newborn's shoulder [becomes] stuck in the birth canal behind parts of the [birthing parent's] anatomy." *Lawrey*

When child's head, but not his shoulders, delivered, Dr. Sprague "called" a shoulder dystocia and alerted the nursing station of a need for assistance. Dr. Sprague attempted two maneuvers to dislodge child's shoulder, but they were unsuccessful. She then applied traction to child's head, noting in the medical record that "downward pressure on the fetal head was placed to dislodge the anterior shoulder. This was successful. The right, anterior arm delivered first. Shoulder dystocia lasted 60 seconds." The medical record also described the pressure applied to child's head as "downward steady traction." In total, one hour elapsed between Dr. Sprague's arrival and child's birth.

Upon delivery, it was discovered that child had suffered a brachial plexus injury to the right side of his body.² Child has since undergone several surgical procedures for this injury. Child's injury is permanent and severe, involving damage to the roots of all five of child's brachial plexus nerves. Two nerve roots ruptured, meaning they were stretched until they broke, and one or two nerve roots avulsed, meaning they detached completely from child's spinal cord. *See, e.g., Yong Juan Zhao ex rel. Zhao v. United States*, 411 F. Supp. 3d 413, 425 (S.D. Ill. 2019) (discussing types of nerve injuries), *aff'd sub nom. Zhao v. United States*, 963 F.3d 692 (7th Cir. 2020). The mobility of child's right shoulder, arm,

v. Good Samaritan Hosp., 751 F.3d 947, 949 (8th Cir. 2014); *see also Stedman's Medical Dictionary for the Health Professions and Nursing* 1535 (7th ed. 2012) (defining "shoulder dystocia" as "[a]rrest of normal labor after delivery of the head by impaction of the anterior shoulder against the symphysis pubis").

² A "brachial plexus injury" is "[d]amage to the brachial plexus related to delivery; associated with excessive lateral stretching of the head, typically in cases of shoulder dystocia or breech deliveries." *Stedman's Medical, supra*, at 236. The "brachial plexus" is "[a] complex web of spinal nerves arising from the cervical spine." *Id.* During a shoulder dystocia, "[t]hese nerves can stretch or tear while the newborn's shoulder is becoming dislodged." *Lawrey*, 751 F.3d at 949.

wrist, and hand is permanently impaired. His right arm is, and will be, shorter and smaller than his left arm.

In 2023, the Bengas filed suit against Allina, claiming in relevant part that Dr. Sprague (1) violated the applicable standard of care by failing to obtain informed consent from mother upon ascertaining the risk of a shoulder dystocia and (2) caused child's brachial plexus injury by applying improper traction to child's head.

The parties entered into evidence literature about brachial-plexus injuries as well as birth and labor management. They also engaged expert witnesses. At issue on appeal is the opinion testimony of the Bengas' expert witnesses.

The Bengas' Expert Witnesses

The Bengas engaged obstetrician Dr. Albert Phillips to testify about standards of care, violation of those standards of care, and causation.

In an affidavit, Dr. Phillips discussed both informed consent and the application of traction to child's head. He opined that the standard of care required Dr. Sprague, after recognizing the potential for a shoulder dystocia, to "advise the patient of the risks of vaginal delivery and the delivery options in light of the progress of labor." He also opined that the standard of care required Dr. Sprague to avoid applying excessive or lateral downward traction to child's head in response to the shoulder dystocia. He deduced that Dr. Sprague violated these standards of care and that those violations caused child's brachial plexus injury. Dr. Phillips opined that a brachial plexus injury as severe as that sustained by child could only have resulted from application of excessive or lateral traction

on child's head by Dr. Sprague during labor and could not have resulted solely from, as Allina argued, "the endogenous forces of labor."³

The Bengas engaged a second expert witness, pediatric orthopedic surgeon Dr. Scott Kozin, to testify about causation and damages. A focus of both Dr. Kozin's practice and his research is children with brachial-plexus injuries.

Motions to Exclude Dr. Phillips's Testimony and for Summary Judgment

Allina moved to exclude the testimony of Dr. Phillips, arguing that his opinions lacked foundational reliability under Minnesota Rule of Evidence 702. Allina did not move to exclude the testimony of Dr. Kozin. Allina moved separately for summary judgment, arguing that, if the district court agreed that Dr. Phillips's testimony was inadmissible, the Bengas would lack the expert testimony necessary to establish their claim.

District Court Order

The district court granted both of Allina's motions. It found that Dr. Phillips's informed-consent opinion lacked foundational reliability under rule 702 because no evidence indicated that a cesarean section was a medically accepted alternative or that mother would have consented to a cesarean section. It found that his traction-related opinion also lacked foundational reliability because he "presented only conjecture" that Dr. Sprague used improper traction during the delivery which caused child's injury.

³ According to exhibits submitted by Allina, the endogenous forces of labor are the body's own contractions and pushing efforts that drive the birthing process. These forces can increase pressure on a newborn's shoulder if that shoulder becomes lodged behind a part of the birthing parent's anatomy.

The district court also determined sua sponte that Dr. Kozin was unqualified under rule 702 to testify on the issue of causation because “he is not an obstetrician and is not qualified to make such an opinion.”

Without expert testimony to establish the Bengas’ medical-malpractice claim, the district court entered summary judgment for Allina.

This appeal follows.

DECISION

I. The district court abused its discretion by excluding the testimony of the Bengas’ expert witnesses under Minnesota Rule of Evidence 702.

The Bengas argue that the district court abused its discretion by (A) “weigh[ing] evidence and decid[ing] material facts” when analyzing the foundational reliability of Dr. Phillips’s testimony and (B) determining that Dr. Kozin was unqualified to opine on the issue of causation because he was not an obstetrician. We agree that the district court abused its discretion by excluding both experts’ testimony, but on different grounds.

To establish a prima face case of medical malpractice “a plaintiff must typically introduce expert testimony demonstrating: (1) the standard of care in the medical community applicable to the particular defendant’s conduct; (2) that the defendant departed from the standard of care; and (3) that the departure from the standard of care directly caused the plaintiff’s injury.” *Becker v. Mayo Found.*, 737 N.W.2d 200, 216 (Minn. 2007). All three of these elements present questions of fact for the fact-finder. *See id.* (standard of care); *Harju v. Allen*, 177 N.W. 1015, 1016 (Minn. 1920) (departure from standard of

care); *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 429-30 (Minn. 2024) (causation).

The district court determined that the opinions of the Bengas’ expert witnesses were inadmissible under rule 702 for lack of foundational reliability and lack of qualifications to offer an opinion. We review a district court’s determination of the admissibility of expert testimony for an abuse of discretion. *Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 638 (Minn. App. 2014), *rev. denied* (Minn. Oct. 14, 2014).⁴ “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

A. The district court abused its discretion by excluding all testimony of Dr. Phillips for lack of foundational reliability under rule 702.

The Bengas argue that the district court abused its discretion by excluding Dr. Phillips’s testimony on informed consent and causation for lack of foundational reliability.

To be foundationally reliable, an expert opinion must have an adequate factual foundation. *See Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019). An adequate factual foundation requires (1) inclusion of the facts and data relied upon in

⁴ The Bengas argue that, when deciding a motion to exclude expert testimony, a district court must view “all facts and inferences regarding [their] expert witnesses’ testimony, and the support for it, . . . in the light most favorable to [them] as the non-moving party.” The Bengas provide no legal authority to support this contention, so we decline to consider it. *See In re Civ. Commitment of Kropp*, 895 N.W.2d 647, 653 (Minn. App. 2017) (“Minnesota appellate courts decline to reach an issue in the absence of adequate briefing.”), *rev. denied* (Minn. June 20, 2017).

forming the opinion; (2) explanation of the basis for the opinion; and (3) evidentiary support for any fact assumed by the expert in forming the opinion. *Cf. id.* (providing characteristics of inadequate factual foundation). “The opinion need only be based on enough facts to form a reasonable opinion that is not based on speculation or conjecture.” *Mattick v. Hy-Vee Foods Stores*, 898 N.W.2d 616, 621 (Minn. 2017) (quotation omitted). “It is well established that an opinion of a medical expert witness based on an adequate factual foundation is not conjecture, and the expert is permitted to make legitimate inferences, which have probative value in determining disputed fact questions.” *Blatz v. Allina Health Sys.*, 622 N.W.2d 376, 387 (Minn. App. 2001), *rev. denied* (Minn. May 16, 2001).

The district court’s foundational-reliability analysis must not invade the realm of the fact-finder by assessing witness credibility or weighing evidence. *See Pfeiffer*, 851 N.W.2d at 638-39 (stating that “the weight and credibility to be given to” a party’s expert witness “should be decided by a finder-of-fact and not by the district court”). “Alleged deficiencies in an expert’s factual basis go more to the weight of the expert’s opinion than to its admissibility.” *Kedrowski*, 933 N.W.2d at 60 (quotation omitted). Any alleged deficiency in the factual basis “is properly the subject of a detailed cross-examination and argument to the [fact-finder], rather than a foundational-reliability determination.” *Kedrowski*, 933 N.W.2d at 60-61. When determining the admissibility of an expert opinion, the district court must read the opinion “as a whole,” rather than view its statements in isolation. *See Demgen v. Fairview Hosp.*, 621 N.W.2d 259, 262-63 (Minn. App. 2001), *rev. denied* (Minn. Apr. 17, 2001).

1. The district court abused its discretion by excluding Dr. Phillips's informed-consent testimony.

The doctrine of informed consent⁵ imposes liability “only for failure to secure the patient’s informed consent to treatment which results in harm which the patient would have avoided by declining the treatment or by choosing an alternative treatment.” *Madsen*, 431 N.W.2d at 861. “As distinguished from a cause of action for negligent treatment, the role of expert testimony in establishing a prima facie case [under the doctrine of informed consent] is not as prominent.” *Reinhardt v. Colton*, 337 N.W.2d 88, 96 (Minn. 1983). Expert testimony is needed here only to establish that (1) “a risk in fact exists,” (2) “it is accepted medical practice to know of that risk,” and (3) “it is more probable than not that the undisclosed risk did materialize in harm.” *Id.*

The Bengas allege that Dr. Sprague violated the standard of care because, when she identified the possibility of a shoulder dystocia, Dr. Sprague did not inform mother of that possibility, the risks associated with proceeding with a vaginal delivery, or the alternative delivery options available to mother.

The Bengas pleaded that Dr. Sprague had obligations related to both “risk” and “alternative treatment plans.” Dr. Phillips opined on the same obligations. Allina moved to exclude Dr. Phillips’s informed-consent opinion only with respect to cesarean sections

⁵ We note that caselaw varyingly refers to this doctrine as “informed consent” or “negligent nondisclosure.” See, e.g., *Madsen v. Park Nicollet Med. Ctr.*, 431 N.W.2d 855, 861 (Minn. 1988) (referring to cause of action as “informed consent/negligent nondisclosure”); see also 4A *Minnesota Practice*, CIVJIG 80.25 (2014) (combining informed consent and negligent nondisclosure for jury instructions). For consistency, we use the term “informed consent.”

as one “alternative treatment.” It argued that Dr. Phillips failed to provide a foundationally reliable opinion that a cesarean section was a “medically accepted” alternative treatment plan. The district court agreed, concluding that, “[a]bsent evidence that a [cesarean section] is a medically accepted alternative, or that [mother] would have consented to a [cesarean section], Dr. Phillips’s opinion lacks foundational reliability.”

Allina and the district court state that, to survive a motion to exclude an expert opinion for lack of foundational reliability, the informed-consent testimony must establish the existence of a “medically accepted” alternative treatment plan. But they cite cases that do not concern a motion to exclude expert testimony. *See generally Pratt by Pratt v. Univ. of Minn. Affiliated Hosps. & Clinics*, 414 N.W.2d 399 (Minn. 1987); *Kalsbeck v. Westview Clinic, P.A.*, 375 N.W.2d 861 (Minn. App. 1985), *rev. denied* (Minn. Dec. 30, 1985). The cases addressed whether the informed-consent doctrine provided causes of action based on a physician’s failure “to disclose risks concerning conditions not diagnosed,” *Pratt*, 414 N.W.2d at 400, 402, or a physician’s failure to disclose “*additional* treatments” rather than alternative methods of treatment, *Kalsbeck*, 375 N.W.2d at 869.

This case is different. The Bengas pleaded long-accepted theories of liability under the doctrine of informed consent: “fail[ure] to inform the patient of a significant risk of treatment” and “fail[ure] to inform the patient . . . of an alternative treatment.” *Cornfeldt v. Tongen*, 262 N.W.2d 684, 702 (Minn. 1977). We conclude that legal authority does not support exclusion of Dr. Phillips’s expert opinion on “medical acceptance” grounds in these circumstances.

Dr. Phillips opined that a risk of shoulder dystocia accompanies vaginal deliveries in circumstances like those of mother *and* that a cesarean section, as an alternative option, existed. His opinion cited literature describing the cesarean-section decision as case-specific.⁶ Even further, the “risk” part of Dr. Phillips’s opinion went unchallenged by Allina’s motion and unaddressed by the district court’s decision.

As for the district court’s statement about what mother *would have* done, it implicates no informed-consent element that requires expert testimony. Dr. Phillips was not required to opine on what mother would have done. *Cf. Reinhardt*, 337 N.W.2d at 96. (omitting from list of elements requiring expert testimony “demonstrate[ion] that a reasonable person in the plaintiff’s position would have refused the treatment had [they] been informed of the undisclosed risk” (quotation omitted)).

We conclude that the district court abused its discretion by excluding Dr. Phillips’s informed-consent testimony.

2. The district court abused its discretion by excluding Dr. Phillips’s traction-related testimony on causation.

To establish causation, a medical-malpractice plaintiff must introduce expert testimony showing “that it is more likely than not that the defendant’s conduct was a substantial factor in bringing about the [injury].” *Rygwall*, 6 N.W.3d at 429 (quotation omitted); *Cornfeldt v. Tongen*, 295 N.W.2d 638, 640 (Minn. 1980) (requiring that medical-malpractice plaintiff, to avoid directed verdict, “introduce expert medical testimony” about

⁶ Moreover, at least one article in the record notes that “cesarean [section] does appear to reduce the risk for [neonatal brachial plexus palsy],” a brachial plexus injury.

causation). A finding of causation may not rely on “mere speculation or conjecture,” but it may rely on reasonable inferences. *Rygwall*, 6 N.W.3d at 430. The expert witness “may well testify to various possibilities but express as [the expert’s] opinion that the probability rests with one of them.” *Bernloehr v. Cent. Livestock Ord. Buying Co.*, 208 N.W.2d 753, 755 (Minn. 1973). Causation generally presents “an issue of fact for the jury to decide.” *Rygwall*, 6 N.W.3d at 429-30.

The Bengas allege that Dr. Sprague caused child’s injuries when she “improperly utilized excessive and/or lateral traction to dislodge [child’s] shoulder.” The district court determined that Dr. Phillips’s traction-related opinion lacked foundational reliability, describing the opinion as conjectural.

First, the district court explained that “although the medical records suggest that Dr. Sprague used downward traction to dislodge [child’s] shoulder, there is no evidence that this traction was either excessive or lateral.” This reasoning relies on a misapplication of law. *See Bender*, 971 N.W.2d at 262. Dr. Phillips was permitted to make reasonable inferences from the evidence for his opinion. *See Blatz*, 622 N.W.2d at 387 (“[T]he expert is permitted to make legitimate inferences, which have probative value in determining disputed fact questions.”); *Reinhardt*, 337 N.W.2d at 95 (stating that medical-malpractice plaintiff “may establish [their] claim” with defendant-physician’s testimony if direct admission may be reasonably inferred from that testimony). Dr. Phillips stated that his causation opinion relied “on the description of [Dr. Sprague’s] actions in the medical record” and the “knowledge deficits evidenced in her deposition testimony,” including notes in the medical record about the pressure Dr. Sprague applied to child’s head;

Dr. Sprague’s incorrect testimony “that downward pressure can be used to dislodge and deliver [child’s] shoulder”; Dr. Sprague’s testimony that she was unfamiliar with axial traction, which, compared to lateral traction, is less likely to cause brachial plexus injuries; and Dr. Sprague’s testimony that she did not have a “gauge” to know how hard she should push on a newborn’s head, stating instead that “it’s a feel.” Based on this evidence, Dr. Phillips drew a reasonable inference that Dr. Sprague used improper excessive or lateral downward traction.

Second, the district court reasoned that Dr. Phillips failed to “reliably exclude other possible causes” of child’s injury. This is contrary to the record. *See Bender*, 971 N.W.2d at 262. The record shows that Dr. Phillips’s opinion directly addressed the other proposed cause of child’s injury, the endogenous forces of labor. He cited literature in support of his opinion that inappropriate application of traction, on its own, can cause brachial plexus injuries. Dr. Phillips also referenced Allina’s motion to exclude his testimony, in which Allina conceded that serious brachial plexus injury can be caused by improper traction. The source Allina cited for the statement likewise provides that “downward lateral traction applied by the birth attendant” may cause brachial plexus injuries.⁷

⁷ Another source cited in Allina’s motion to exclude Dr. Phillips’s testimony noted that “[d]ownward lateral traction (i.e., bending the neck away from the anterior shoulder and toward the posterior shoulder) causes increased stretching of the brachial plexus compared with downward axial traction (i.e., applying force parallel to the fetal spine).” Yet another source stated: “Evidence from cadaver studies suggests that lateral and downward traction, and rapidly applied traction, are more likely to cause nerve avulsion.” In support, it cited a Swedish study in which “downward traction on the fetal head was strongly associated with obstetric [brachial plexus injury] and had been employed in all cases of residual [brachial plexus injury] at 18 months old.” That source concluded that “downward traction on the fetal head should be avoided in the management of all births.”

We conclude that the district court abused its discretion by excluding Dr. Phillips's traction-related testimony because its determination relied on a misapplication of law and was contrary to the record.

B. The district court abused its discretion by excluding Dr. Kozin's causation testimony for lack of qualifications under rule 702.

The Bengas challenge the district court's determination that Dr. Kozin was unqualified under rule 702 to opine on causation. We review "determinations of expert witness qualifications" for an abuse of discretion. *Goeb v. Tharaldson*, 615 N.W.2d 800, 815 (Minn. 2000).

The district court provided a one-sentence explanation for its sua sponte decision to exclude Dr. Kozin's testimony: "To the extent that Dr. Kozin is offering any opinion regarding causation, he is not an obstetrician and is not qualified to make such an opinion." This reasoning contradicts caselaw. *See Koch v. Mork Clinic, P.A.*, 540 N.W.2d 526, 529 (Minn. App. 1995), *rev. denied* (Minn. Jan. 12, 1996). "[A] medical expert need not have a specialty, experience, or a position identical to a medical defendant." *Id.* It is undisputed that Dr. Kozin's research and his practice as a pediatric orthopedic surgeon substantially involves children with brachial plexus injuries. We conclude that the district court misapplied the law, thereby abusing its discretion, when it excluded Dr. Kozin's causation opinion only because he is not an obstetrician.⁸

⁸ The district court's understanding of law, which Allina endorses on appeal, would necessarily result in the exclusion of one of Allina's expert witnesses as well: Michele Grimm, Ph.D. Allina refers to Grimm as a biomedical engineer and does not argue that she is a medical doctor, let alone an obstetrician.

Because we conclude that the district court abused its discretion by excluding the expert testimony of Dr. Phillips and Dr. Kozin, we reverse those decisions.

II. The district court erred by entering summary judgment for Allina.

The Bengas also argue that the district court erred by granting Allina's motion for summary judgment. We agree.

Appellate courts review de novo a district court's entry of summary judgment. *Rygwall*, 6 N.W.3d at 427. "[S]ummary judgment is only proper if no genuine issue of material fact exists. A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented." *Id.* (citation omitted).

The district court entered summary judgment for Allina because it determined that, after excluding Dr. Phillips's and Dr. Kozin's expert opinions, the Bengas lacked the required expert testimony for their medical-malpractice claim. *See McDonough v. Allina Health Sys.*, 685 N.W.2d 688, 697 (Minn. App. 2004) ("The failure to provide such admissible expert testimony results in the failure to establish an essential element of that party's case, and the moving party is entitled to summary judgment as a matter of law."). The district court did not enter summary judgment for Allina on any other ground. Because we have reversed the district court's exclusion of the opinions of the Bengas' expert witnesses, we also reverse the entry of summary judgment for Allina and remand for further proceedings not inconsistent with this opinion.

Reversed and remanded.