STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1358

Edward Gerrety,
Appellant,

vs.

Dr. Luke Bogdanowicz, et al.,
Respondents.

Filed May 11, 2026
Reversed and remanded
Schmidt, Judge

Hennepin County District Court
File No. 27-CV-24-4053

Eric C. Arch, Tewksbury & Kerfeld, P.A., Minneapolis, Minnesota (for appellant)

Julia J. Nierengarten, Nicole L. Brand, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondents)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Edward Gerrety appeals the summary judgment order dismissing his dental malpractice claims. Gerrety argues the district court abused its discretion by determining that his expert (1) did not establish a prima facie case of dental malpractice and (2) was not qualified and lacked foundational reliability. We reverse and remand.

FACTS

Gerrety sought dental treatment from respondent Dr. Luke Bogdanowicz in October 2019 to replace a dental bridge. Dr. Bogdanowicz asked Gerrety for his medical history and requested copies of the radiographs taken by a different dentist a month earlier. Gerrety provided Dr. Bogdanowicz with a list of his medications and reported having high blood pressure and diabetes. At a dental cleaning, Dr. Bogdanowicz noted decay under Gerrety's tooth number 31 and recommended an assessment of the tissue surrounding his teeth.

Between November 2019 and January 2020, Gerrety saw Dr. Bogdanowicz five times for dental work. Dr. Bogdanowicz determined that Gerrety's tooth number 31 was fractured and could not be salvaged. In February 2020, Dr. Bogdanowicz removed Gerrety's tooth and documented that the procedure had no complications.

Over a week later, Gerrety saw Dr. Bogdanowicz for treatment of a dry socket and scheduled another appointment. Gerrety missed the follow-up appointment, contacted Dr. Bogdanowicz's office, reported that he felt better, and noted that he was moving to Brainerd. Two weeks later, Dr. Bogdanowicz prescribed Gerrety an antibiotic at Gerrety's request. After that, Gerrety did not see a dentist for nearly five months.

On August 3 and 13, Gerrety saw Dr. Bogdanowicz to address a fracture in a different tooth. On August 31, Dr. Bogdanowicz found that Gerrety had a root tip "working its way out" at the site from which tooth number 31 was extracted in February. Dr. Bogdanowicz removed the root tip and prescribed Gerrety an antibiotic.

On September 9, Gerrety saw Dr. Bogdanowicz for swelling at the site of a different tooth. Dr. Bogdanowicz prescribed Gerrety an antibiotic.

On September 16, Dr. Bogdanowicz referred Gerrety to an oral surgeon. Gerrety did not see the oral surgeon and, instead, saw a second general dentist. The general dentist debrided the tissues around two of Gerrety's teeth and prescribed pain medication and antibiotics. On October 5, Gerrety returned to see the same general dentist for blistering, swelling, and difficulty swallowing. The general dentist referred Gerrety to a surgeon with a specialty in ear-nose-and-throat medicine and facial plastic surgery.

On October 6, Gerrety saw third dentist who evaluated Gerrety and prescribed a new antibiotic. On October 9, that dentist prescribed a different antibiotic.

On October 13, Gerrety saw his primary care provider. The provider noted in Gerrety's chart that his oral infection was likely not healing due, in part, to his uncontrolled diabetes. The provider also noted that Gerrety was "adamant" about not starting an injectable insulin to help control his diabetes.

On October 19, Gerrety saw the third dentist for mouth sores. That dentist again referred Gerrety to a surgeon. On October 20, Gerrety saw a different surgeon at the same ear-nose-and-throat and facial-plastic-surgery clinic. Dr. Kurtis Waters evaluated Gerrety, performed a biopsy and a culture, and prescribed him antibiotics. Dr. Waters provided an urgent referral for Gerrety to see an oral surgeon.

On November 3, Gerrety saw an oral surgeon who suspected that Gerrety had osteomyelitis[1] and made an emergency referral to North Memorial Hospital. Gerrety did not follow through with the emergency referral.

On November 14, Gerrety visited an emergency room with facial swelling. Gerrety received IV antibiotics and underwent surgery, which included an incision and drainage of a neck abscess and the extraction of six teeth. He received injectable insulin during his stay and was discharged on November 19 with long-acting insulin.

Gerrety retained Dr. Avrum Goldstein—a former dentist who taught as a professor of dentistry—as an expert witness. Dr. Goldstein reviewed Gerrety's dental records and authored a report in August 2023, which was included with Gerrety's complaint when he sued Dr. Bogdanowicz. The report included a summary of Gerrety's dental problems and treatment, an analysis of Dr. Bogdanowicz's care, and a list of 15 alleged breaches of the standard of care by Dr. Bogdanowicz.

After receiving additional dental records, Dr. Goldstein authored a supplemental report in October 2023, in which he included a modified list of 14 alleged breaches of the standard of care by Dr. Bogdanowicz. Dr. Goldstein opined that "[a]s a result of these breaches . . . [,] Gerrety suffered significant disfigurement and disability, with associated pain and suffering as indicated in [the] initial report."

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[1] "Osteomyelitis is an infection in a bone. . . . Infections can reach a bone through the bloodstream or from nearby infected tissue." *Osteomyelitis*, Mayo Clinic (2024), https://www.mayoclinic.org/diseases-conditions/osteomyelitis/symptoms-causes/syc-20375913 [https://perma.cc/5CM3-UAJE] (last visited April 10, 2026). People "with chronic health conditions, such as diabetes[,] are at higher risk" of osteomyelitis. *Id.*

Dr. Goldstein authored a third report in December 2024, in which he amended his list of alleged breaches by Dr. Bogdanowicz. Dr. Goldstein removed two alleged breaches from his prior report and added a new alleged breach of the standard of care. Dr. Goldstein also provided a more detailed opinion about Gerrety's likely progression of infection.

Dr. Bogdanowicz moved to dismiss Gerrety's complaint under Minnesota Statutes section 145.682 (2024), arguing that Gerrety failed to establish a prima facie case of medical malpractice. Alternatively, Dr. Bogdanowicz moved for summary judgment, arguing that Dr. Goldstein's testimony was inadmissible.

Following Dr. Bogdanowicz's motions, Dr. Goldstein authored a final supplemental report, in which he stated that he had "educational training in infection control and prevention"; he regularly prescribed antibiotics and treated infections in patients, including those with diabetes; and he is familiar with the clinical presentation and treatment for osteomyelitis. Dr. Goldstein opined that "[l]eaving a root fragment in a patient's mouth after an extraction can lead to infection because a root fragment can expose the underlying tissues to bacteria, disrupting the natural healing process and creating an environment ripe for infection." He opined that after extracting Gerrety's tooth, Dr. Bogdanowicz was required to "thoroughly examine the removed tooth to ensure all roots were intact" and to "take[] an x-ray to determine if any other remnants remained," which he failed to do. Dr. Goldstein avered that these failures caused Gerrety's osteomyelitis.

The district court granted Dr. Bogdanowicz's motions and dismissed the case. The court determined that Gerrety failed to "outline the chain of causation between [Dr.] Bogdanowicz's alleged breaches of the standard of care and Gerrety's injuries." The

district court also concluded that Dr. Goldstein's expert testimony was inadmissible under rule 702 because he was not qualified to offer an opinion on the causation of Gerrety's injuries and because the testimony lacked foundational reliability.

Gerrety appealed.

DECISION

I. The district court abused its discretion by dismissing Gerrety's claims on the ground that his expert's affidavit did not satisfy the statutory requirements.

Gerrety argues that the district court abused its discretion in concluding that his expert's affidavit failed to meet the statutory requirement necessary to bring a dental malpractice lawsuit. To establish a prima facie case of dental malpractice, a plaintiff must show "(1) the standard of care recognized by the medical community as applicable to the particular defendant's conduct," (2) the defendant departed from that standard, (3) the defendant's breach of this standard "was a direct cause of [plaintiff's] injuries," and (4) damages. *Plutshack v. Univ. of Minn. Hosps.*, 316 N.W.2d 1, 5 (Minn. 1982).

Where "expert testimony is necessary to establish a prima facie case," a plaintiff must serve an affidavit stating that "the facts of the case have been reviewed by the plaintiff's attorney with an expert . . . and that, in the opinion of this expert, [the defendant] deviated from the applicable standard of care and by that action caused injury to the plaintiff." Minn. Stat. § 145.682, subds. 2, 3. The affidavit must include "the substance of the facts and opinions to which the expert is expected to testify[] and a summary of the grounds for each opinion." *Id.*, subd. 4(a). If a plaintiff fails to meet the statutory requirements, the district court must dismiss the case with prejudice. *Id.*, subd. 6(a).

We review the dismissal of a case based on failure to comply with the statutory affidavit requirements for an abuse of discretion. *Tousignant v. St. Louis County*, 615 N.W.2d 53, 58 (Minn. 2000). "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." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

A plaintiff cannot satisfy its burden at the prima facie stage by alleging a "mere possibility of causation." *McDonough v. Allina Health Sys.*, 685 N.W.2d 688, 697 (Minn. App. 2004). Instead, the expert must provide "an outline of the chain of causation between the alleged violation of the standard of care and the claimed damages." *Stroud v. Hennepin Cnty. Med. Ctr.*, 556 N.W.2d 552, 556 (Minn. 1996). *See also Rygwall, as Trustee for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 430-35 (Minn. 2024) (detailing casuastion standard for medical malpractice claims and statutory requirements of section 145.682).

The district court concluded that Dr. Goldstein failed to outline a chain of causation between Dr. Bogdanowicz's alleged breaches of the standard of care and Gerrety's osteomyelitis. The court determined that Dr. Goldstein's explanation of the disease progression failed to address the antibiotics prescribed to Gerrety between the extraction of tooth number 31 and the osteomyelitis diagnosis, the nearly-six-month period during which Gerrety did not experience any symptoms, and the potential impact of Gerrety's uncontrolled diabetes and repeated failure to follow after-care instructions and referrals.

The statute, however, does not require an expert's affidavit to definitively disprove all possible alternative causes. Minn. Stat. § 145.682. Instead, the affidavit at the prima

facie stage must simply outline the chain of causation. *Stroud*, 556 N.W.2d at 556. Dr. Goldstein did so in his December 2024 affidavit:

> Incompletely removing a tooth and leaving root fragments in the socket creates a situation which is susceptible to infection, particularly in an uncontrolled diabetic patient where their ability to fight infection is compromised. An antibiotic fights infection by travelling to the site of infection in the blood stream where it acts on the susceptible organisms causing the infection. A root fragment is avascular, it has no blood supply. When left in a socket, it becomes a foreign body which acts as a nidus of infection. The foreign body was present for three weeks before the first antibiotic prescription, allowing time for the infection to establish itself. The prescriptions for antibiotics in March and August of 2020, two prescriptions over a period of [six] months, were unlikely to have prevented the osteomyelitis as long as the foreign body was present. Whether the appropriate use of antibiotics would have limited the extent of the osteomyelitis is unknown.

We contrast this outline of the chain of causation with other cases in which courts have concluded that an expert affidavit failed to sufficiently outline the chain of causation because the expert only made "broad, conclusory statements as to causation." *Stroud*, 556 N.W.2d at 556; *see also Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 429 (Minn. 2002) (concluding expert's conclusory explanation of causation was insufficient); *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006) (affirming dismissal of malpractice claim where affidavit included a "single sentence on causation").

Because Dr. Goldstein's affidavit provided a sufficient outline as to causation, we conclude that the district court abused its discretion by demanding more than is required of an expert affidavit at the prima facie stage. *See Rygwall*, 6 N.W.3d at 435 (holding that an expert affidavit must provide an "outline of the chain of causation," which "need not be

any more detailed than is required in an ordinary negligence claim involving expert testimony"); *Demgen v. Fairview Hosp.*, 621 N.W.2d 259, 262-64 (Minn. App. 2001) (concluding district court improperly focused on conclusory sentences in affidavit when ruling that expert had not outlined chain of causation), *rev. denied* (Minn. App. 17, 2001).

II. The district court abused its discretion in determining that Dr. Goldstein's opinion was inadmissible under rule 702.

Gerrety argues that the district court abused its discretion in determining that Dr. Goldstein's testimony was inadmissible under Minnesota Rule of Evidence 702. The district court excluded the expert's opinion on two grounds: qualification and foundational reliability. We address each in turn.

A. The district court abused its discretion in concluding that Dr. Goldstein was not qualified to offer an opinion on the cause of Gerrety's osteomyelitis.

For an opinion to be admissible as expert testimony, the expert witness must be "qualified . . . by knowledge, skill, experience, training, or education" that "will assist the trier of fact to understand the evidence or to determine a fact in issue." Minn. R. Evid. 702. The expert must "have both the necessary schooling and training in the subject matter involved, plus practical or occupational experience with the subject." *Marquardt v. Shaffhausen*, 941 N.W.2d 715, 719 (Minn. 2020) (quotation omitted). But an expert need not be "the person *best* qualified to give an opinion or even to some of the few persons best qualified." *Christy v. Saliterman*, 179 N.W.2d 288, 303 (Minn. 1970) (emphasis added); *see also Poppler v. Wright Hennepin Co-op Elec. Ass'n*, 834 N.W.2d 527, 538 (Minn. App. 2013) ("Minnesota courts typically have been liberal in qualifying

experts by virtue of their experience." (quotation omitted)), *aff'd* (Minn. Apr. 9, 2014). We review a district court's determination as to whether a witness is qualified as an expert for an abuse of discretion. *Marquardt*, 941 N.W.2d at 719.

The district court determined that despite Dr. Goldstein's 42 years of experience and teaching, he was not qualified to offer an opinion on the causation of Gerrety's injuries. The district court recognized that Dr. Goldstein had "received formal educational training in infection control and prevention." The district court also acknowledged that Dr. Goldstein was "familiar with the clinical presentation and treatment of osteomyelitis." Nonetheless, the district court declared Dr. Goldstein unqualified because he "did not have formal educational training in the cause of infections."

Although the district court may be correct that an infectious disease doctor would have been better positioned to opine on the cause and development of Gerrety's osteomyelitis, Dr. Goldstein did not need to be "the person *best* qualified" or even among the "few persons best qualified." *Christy*, 179 N.W.2d at 303 (emphasis added). The rule requires only that the expert have training and practical experience that would "assist the trier of fact to understand the evidence." Minn. R. Evid. 702. Dr. Goldstein's affidavit meets this standard. Dr. Goldstein attested that he received formal educational training in infection control and prevention and had experience with the clinical presentation and treatment of osteomyelitis. He also attested that, throughout his 42-year career as a clinician, he regularly treated patients with infections including patients who were also diagnosed with diabetes. He further attested that he had experience with the clinical presentation and treatment of osteomyelitis.

Because the district court ruled that Gerrety's expert needed more qualifications than required by the rule, we conclude that the district court abused its discretion by excluding Dr. Goldstein's testimony under rule 702.

B. The district court abused its discretion in determining that Dr. Goldstein's testimony lacked foundational reliability.

An expert's opinion must also have foundational reliability to be admissible. Minn. R. Evid. 702. In assessing an expert's foundational reliability, courts "look[] to the theories and methodologies" that the expert used. *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 56 (Minn. 2019). "An assessment of the foundational reliability of an expert's opinion begins by considering the purpose for which it is offered." *State v. Berry*, 982 N.W.2d 746, 757 (Minn. 2022). A "[district] court must consider the underlying reliability, consistency, and accuracy of the subject about which the expert is [opining]." *Id.* (quotation omitted). The district court must also consider whether the expert opinion "is reliable in that particular case," a burden that falls to "the party offering the [expert opinion]." *Id.* (quotation omitted).

The Minnesota Supreme Court has stated that there is inadequate foundation for an expert's proposed testimony "when (1) the opinion does not include the facts and/or data upon which the expert relied in forming the opinion, (2) it does not explain the basis for the opinion, or (3) the facts assumed by the expert in rendering an opinion are not supported by the evidence." *Mattick v. Hy-Vee Food Stores*, 898 N.W.2d 616, 621 (Minn. 2017) (quotations omitted). Having adequate foundation is not a high bar. The expert's "opinion need only be based on enough facts to form a reasonable opinion that is not based on

speculation or conjecture." *Id.* (quotation omitted). We review a district court's foundational reliability determination for an abuse of discretion. *Id.*

The district court determined that Dr. Goldstein's opinion lacked foundational reliability because it "[did] not contain the facts he relie[d] upon to conclude how [Dr. Bogdanowicz's alleged] breaches of care led to Gerrety's injuries." Even where Dr. Goldstein's opinions on breach of the standard of care directly related to Gerrety's injuries, the district court determined that the opinions were not supported by "critical substance" and, thus, lacked foundational reliability.

We conclude that the district court abused its discretion by "invading the province of the jury in its foundational reliability analysis." *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 639 (Minn. App. 2014), *rev. denied* (Oct. 14, 2014). The district court erred when it "acted as the fact-finder and based its decision on its view of the evidence." *Id.* at 638. But "[t]he reliability of [a plaintiff]'s expert opinion testimony with regard to causation goes to the relative weight of that testimony rather than to its admissibility." *Id.* at 639 (quotation omitted); *see also Kedrowski*, 933 N.W.2d at 60 ("[A]lleged deficiencies in [an expert's] factual basis go more to the weight of the expert's opinion than to its admissibility." (alterations in original) (quotations omitted)).

The alleged factual deficiencies in Dr. Goldstein's opinion are fodder for cross-examination. *See Kedrowski*, 933 N.W.2d at 60 (holding that attacking alleged factual deficiency in an expert's opinion is "properly the subject of a detailed cross-examination and argument to the jury, rather than a foundational-reliability determination under [r]ule 702"); *see also Wenner v. Gulf Oil Corp.*, 264 N.W.2d 374, 382 (Minn. 1978)

(stating that "any deficiencies" in the factual basis underlying an expert's testimony "could have been brought out . . . on cross-examination"). The supreme court's precedent requires those fact issues to be resolved by a fact-finder, not a district court on summary judgment. *See Rygwall*, 6 N.W.3d at 435 (holding that, at the summary judgment stage, plaintiff's expert must provide sufficient information to draw a reasonable inference that provider's conduct caused the injury and need not refute every alternative offered by a defendant). The district court abused its discretion in determining that Dr. Goldstein's opinion lacked foundational reliability.

Reversed and remanded.