

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11924
Non-Argument Calendar

MELANIE THRASH,

Plaintiff-Appellee,

versus

KLLM TRANSPORT SERVICES LLC,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 5:22-cv-00501-LCB

Before ROSENBAUM, GRANT, and KIDD, Circuit Judges.

PER CURIAM:

A district court awarded Melanie Thrash over \$400,000 in damages for her injuries arising out of a crash caused by a driver employed by KLLM Transport Services, LLC. KLLM now appeals

this judgment, challenging the district court's evaluation and consideration of the testimony of Thrash's treating physician. After careful review, we are unable to discern the district court's ruling on KLLM's objections to this testimony. Did the district court consider the testimony to be lay witness testimony or expert testimony? Without a ruling, we cannot review the contested issues on appeal. We therefore vacate the district court's entry of judgment in favor of Thrash and remand this case for further proceedings.

I. BACKGROUND

In March 2020, Thrash was involved in a low-speed collision between two tractor-trailers, and she sustained minor injuries. Two years after the crash, Thrash filed suit against KLLM Transport Services, LLC, in Alabama state court, and KLLM removed the case to the United States District Court for the Northern District of Alabama. Thrash's operative complaint raised claims of "negligence/wantonness" (Count One), "negligent entrustment" (Count Two), and "negligent/wanton hiring, retention, and supervision" (Count Three) arising out of KLLM's employment of the at-fault driver.

Following discovery, KLLM moved for partial summary judgment, which the district court granted, thereby dismissing the wantonness claim included in Count One and the entirety of Counts Two and Three. The parties proceeded to a bench trial only as to the issues of "whether [the KLLM driver's] negligence was the proximate cause of Thrash's injuries, and if so, the extent of Thrash's damages."

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Throughout the litigation, KLLM consistently objected to the introduction of testimony from one of Thrash’s treating physicians—Dr. Mark Flood. Particularly, KLLM took issue with Thrash’s failure to timely disclose Dr. Flood as an expert witness, despite his being expected to offer testimony about the cause of Thrash’s injuries. Ultimately, Thrash designated Dr. Flood as a non-expert witness set to testify by deposition.

On the first day of trial, the court indicated that it was “very likely to let Dr. Flood testify,” but it would “see how close [it] w[ould] get to the ultimate issue, [as] certainly [Dr. Flood] could say that . . . [Thrash’s] injuries [were] consistent with an accident of this type.” However, the court reserved its official ruling for a later time.

When Dr. Flood’s deposition was about to be read, KLLM’s counsel again objected to the testimony. Counsel asserted that, as a lay witness, Dr. Flood was limited to offering certain opinions “rationally based on his perception” and objected to his offering “any opinions about medical causation, medical necessity, and the reasonableness of the medical charges.” Counsel further asserted that, if Dr. Flood were considered to be an expert witness, Thrash had failed to meet Rule 702’s “gatekeeping burden” of demonstrating that Dr. Flood was qualified to opine on the relevant topics. While counsel agreed with the district court “that the Eleventh Circuit gives wide discretion for treating physicians to testify as to causation in negligence cases[,]” counsel maintained that Dr. Flood’s

deposition testimony “mov[ed] away from [Federal Rule of Evidence] 701 and into [Rule] 702.”

The court overruled KLLM’s objection “at this point” and explained that, based on an off the record discussion with the parties, it would hear the full testimony of Dr. Flood and “the attorneys c[ould] make arguments to [the court] at the end on how to use it.” At the end of the two-day bench trial, the court indicated that it “[did not] find anything that was disqualifying or sinister about anybody’s expert witnesses” or “the treating physician.” Rather, in the court’s view, this case rose and fell on the issue of proximate cause, so that is where it would focus.

The district court found in favor of Thrash. In its written findings of fact and conclusions of law, the court found “Dr. Flood to be credible as to his diagnosis and treatment of Thrash’s spinal issues following the accident.” The court also found that, “[n]otwithstanding KLLM’s challenge to Dr. Flood’s testimony on the issue of causation, . . . Dr. Flood’s opinion that Thrash’s injuries were consistent with a vehicle collision [was] credible.” It stated that the trial testimony—particularly that of Dr. Flood—supported the conclusion that “the collision was more likely than not the cause of [Thrash’s] injuries.”

The court explained that Dr. Flood’s testimony, which was corroborated by Thrash’s testimony, supported the “eggshell plaintiff” theory: “Thrash’s preexisting conditions made it more likely than not that she would be more susceptible to injury in a car wreck, and that [her] surgeries were ‘reasonably necessary’ to treat

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injuries she sustained in the collision.” It noted that, while KLLM’s expert witness reached the opposite conclusion on causation, “none of that testimony proved that Thrash’s eggshell plaintiff theory was unlikely considering her” and Dr. Flood’s testimony.

The court concluded that “Thrash ha[d] proved by a preponderance of the evidence that the negligence of KLLM’s driver was the proximate cause of her injuries,” and that she was entitled to damages. In concluding its order, the court denied as moot all pending motions, including KLLM’s motions challenging the admissibility of Dr. Flood’s testimony.

The court thereafter entered judgment in favor of Thrash, awarding her \$330,115.22 in compensatory economic damages for her medical treatment and \$90,000 in compensatory non-economic damages for her pain, suffering, and permanent injury.

This appeal followed.

II. STANDARD OF REVIEW

“Following a bench trial, we review a district court’s conclusions of law de novo and its findings of fact for clear error.” *Weinstein v. 440 Corp.*, 146 F.4th 1046, 1050 (11th Cir. 2025). We review a district court’s evidentiary rulings for an abuse of discretion. *Tampa Bay Shipbuilding & Repair Co. v. Cedar Shipping Co.*, 320 F.3d 1213, 1216 (11th Cir. 2003).

We will “not reverse an evidentiary decision of a district court unless the ruling is manifestly erroneous.” *United States v. Fra-*

zier, 387 F.3d 1244, 1258 (11th Cir. 2004) (en banc) (citation modified). “The exclusion or admission of [testimony] is manifestly erroneous if the district court misapplies the law, makes a ‘clearly erroneous’ factual finding, or follows improper procedures.” *In re Deepwater Horizon BELO Cases*, 119 F.4th 937, 944 (11th Cir. 2024).

III. DISCUSSION

“Non-expert (or lay) witnesses may only testify to opinions or inferences ‘which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness’ testimony of the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.’” *United States v. Henderson*, 409 F.3d 1293, 1300 (11th Cir. 2005) (quoting Fed. R. Evid. 701). “Subsection (c) was added in 2000, in an attempt to rein in the admission of expert testimony under the guise of lay opinion.” *Id.*; see Fed. R. Evid. 702.

As a lay witness, “[a] treating physician . . . can testify narrowly, limited to personal knowledge resulting from providing medical care, involving consultation, examination, or treatment of a patient plaintiff.” *Chapman v. Proctor & Gamble Distrib., LLC*, 766 F.3d 1296, 1316 n.23 (11th Cir. 2014) (citing *Henderson*, 409 F.3d at 1300). In turn, “a treating doctor is providing expert testimony if the testimony consists of opinions based on scientific, technical, or other specialized knowledge regardless of whether those opinions were formed during the scope of interaction with a party prior to litigation.” *Id.* (citation modified).

KLLM maintains that Dr. Flood's testimony went beyond that of his personal knowledge of his treatment of Thrash, which rendered him an expert witness subject to certain disclosure and gatekeeping limitations that were not met in this case.

"The testimony of treating physicians presents special evidentiary problems that require great care and circumspection by the trial court." *Williams v. Mast Biosurgery USA, Inc.*, 644 F.3d 1312, 1316 (11th Cir. 2011). "Much of the testimony proffered by treating physicians is an account of their experience in the course of providing care to their patients." *Id.* at 1316–17. "Often, however, their proffered testimony can go beyond that sphere and purport to provide explanations of scientific and technical information not grounded in their own observations and technical experience." *Id.* at 1317. "When such a situation presents itself, the trial court *must determine* whether testimony not grounded in the physician's own experience meets the standard for admission of expert testimony." *Id.* (emphasis added). As KLLM points out, the district court failed to make any such determination in this case.

In its order following the bench trial, the district court briefly summarized Dr. Flood's testimony and found it credible "[n]otwithstanding KLLM's [causation] challenge." The district court then relied considerably on Dr. Flood's testimony in reaching its conclusion that Thrash had proven that the tractor-trailer collision was the proximate cause of her injuries. And in concluding its order, the court simply denied as moot KLLM's motions challenging

the admission of Dr. Flood’s testimony, without additional discussion. But at that point, the issue of the appropriate scope of Dr. Flood’s testimony was still very much “live.” See *Baldwin v. Express Oil Change, LLC*, 87 F.4th 1292, 1302 (11th Cir. 2023) (“An issue becomes moot when it is no longer live or the parties lack a legally cognizable interest in the outcome.” (citation modified)); see also *Cook v. Bennett*, 792 F.3d 1294, 1298 (11th Cir. 2015) (stating that we review the issue of mootness de novo).

KLLM maintained from the pre-trial motions stage through the conclusion of the bench trial that, despite being purportedly offered as a lay witness, Dr. Flood’s testimony impermissibly weighed into issues on which only a qualified Rule 702 expert witness could opine. Our review of the record shows that Dr. Flood was asked to opine on what caused Thrash’s injuries and whether certain treatments and procedures were reasonably necessary to treat those injuries. Without deciding the issue, we note that this testimony could be viewed as crossing the line from lay to expert witness testimony. See *Chapman*, 766 F.3d at 1316 n.23; *Williams*, 644 F.3d at 1316–17.

We recognize that this case ended with a bench trial, and in that context, we typically “[presume] that the district judge will rely only upon properly admitted and relevant evidence,” *Tampa Bay Shipbuilding*, 320 F.3d at 1216. But, for the purposes of appellate review, we need to know the district judge’s ruling on a contested issue, and the record here is devoid of any ruling on the objections to Dr. Flood’s testimony. In particular, the district court failed to

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indicate whether it treated Dr. Flood's testimony as that of a lay witness subject to Rule 701 or as that of an expert witness subject to the restrictions of Rule 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). See *Frazier*, 387 F.3d at 1259–60; see also *Williams*, 644 F.3d at 1317 (explaining that “distinguishing between lay and expert testimony is an important [issue]” and “arriving at an appropriate conclusion requires that trial courts be vigilant that the reliability requirements set forth in Rule 702 not be evaded through the simple expedient of proffering an expert in lay witness clothing” (citation modified)). Indeed, there is no indication in the record that the district court ever considered and resolved the substance of KLLM's objections to Dr. Flood's testimony, including the *Daubert* arguments made in its motion to exclude.

Without a proper ruling from the district court on the appropriate scope and admissibility of Dr. Flood's testimony, we are unable to undertake appellate review of the issues presented by this case. This error requires vacatur of the district court's judgment.

IV. CONCLUSION

We **VACATE** the district court's entry of judgment in favor of Thrash and **REMAND** this case for further proceedings consistent with this opinion.