

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1447-16T2

KATHY PINEDA,

Plaintiff-Appellant,

v.

DIANE ARNONE,

Defendant-Respondent.

Submitted February 12, 2018 — Decided March 6, 2018

Before Judges Messano and Vernoia.

On appeal from Superior Court of New Jersey,
Law Division, Hudson County, Docket No.
L-4916-14.

Kimm Law Firm, attorneys for appellant
(Michael S. Kimm, on the briefs).

Law Offices of Viscomi & Lyons, attorneys for
respondent (Sarabraj S. Thapar, on the brief).

PER CURIAM

Plaintiff Kathy Pineda appeals from an order of final judgment
dismissing her complaint following a no-cause jury verdict.
Plaintiff argues for the first time on appeal that the court erred
by permitting defendant's accident reconstruction and

biomechanical expert to testify concerning plaintiff's alleged injuries. Because plaintiff raises all of her objections to the expert's testimony for the first time on appeal and we otherwise find no merit to plaintiff's arguments, we affirm.

Plaintiff filed a one-count complaint alleging she suffered personal injuries in an automobile accident caused by defendant Diane Arnone's negligence. During the exchange of discovery, defendant provided a fifteen-page report from Dr. Robert S. Fijan, Ph.D., an expert in accident reconstruction and biomechanics. Dr. Fijan listed 164 articles, studies and other sources he relied upon in arriving at the opinions detailed in his report.

Dr. Fijan testified without objection as a defense expert witness at trial. Plaintiff did not request a N.J.R.E. 104 hearing concerning Dr. Fijan's qualifications or testimony, and plaintiff opted not to conduct any voir dire concerning Dr. Fijan's qualifications as an expert. When the judge asked if there was any objection to Dr. Fijan's qualifications as an expert witness in areas of accident reconstruction and biomechanics, plaintiff's counsel replied "No, Your Honor." Plaintiff never asserted Dr. Fijan's testimony constituted an impermissible net opinion. See N.J.R.E. 703 (requiring that experts' opinions be founded on "facts or data"); State v. Townsend, 186 N.J. 473, 494 (2006) (stating the net opinion rule requires an expert to provide "'the why and

wherefore of his or her opinion, rather than a mere conclusion.'" (quoting Rosenberg v. Tavorath, 352 N.J. Super. 385, 401 (App. Div. 2002))).

Dr. Fijan testified that based on his review of the evidence showing the manner in which the automobile accident occurred, and the studies referred to in his report, there was insufficient impact between the vehicles to generate the force required to cause plaintiff's claimed injuries. The jury returned a no-cause verdict.

Plaintiff appealed, and presents the following arguments for our consideration:

POINT I

BECAUSE IT IMPROPERLY OFFERED SPECIFIC MEDICAL TESTIMONY AND WAS BEYOND THE WITNESS'[S] PURVIEW OF CLAIMED-EXPERTISE, THE PURPORTED "ACCIDENT RECONSTRUCTION AND BIOMECHANICS" EXPERT'S TESTIMONY SHOULD HAVE BEEN PRECLUDED AND STRICKEN.

POINT II

BECAUSE THE BIOMECHANICAL ENGINEER'S OPINION WAS A NET OPINION, THE TESTIMONY SHOULD HAVE BEEN STRICKEN.


Having failed to object in any manner to Dr. Fijan's trial testimony, plaintiff argues for the first time on appeal the testimony should have been precluded or stricken because it was beyond Dr. Fijan's area of expertise and otherwise constituted an

impermissible net opinion. It is well-settled we "will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available unless the questions so raised on appeal go to the jurisdiction of the court or concern matters of great public interest." State v. Robinson, 200 N.J. 1, 20 (2009) (quoting Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973)). We are, however, "empowered, even in the absence of an objection, to acknowledge and address trial error if it is 'of such a nature as to have been clearly capable of producing an unjust result,'" or where "it is 'in the interests of justice' to do so." Ibid. (first quoting R. 1:7-5 and next quoting R. 2:10-2).

Although plaintiff failed to challenge Dr. Fijan's qualifications or object to his testimony at trial, we have carefully considered plaintiff's arguments and they are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION