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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0422-22

MECCA & SONS TRUCKING CORP.,

Plaintiff-Appellant,

v.

J.B. HUNT TRANSPORT, INC.,

Defendant-Respondent.

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Submitted December 20, 2023 – Decided May 30, 2024

Before Judges Accurso and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-4303-17.

Barry, McTiernan & Moore, LLC, attorneys for appellant (Richard W. Wedinger, on the brief).

Kenneth A. Olsen and Barry N. Gutterman (Barry N. Gutterman & Associates, PC), of the New York and Illinois bars, admitted pro hac vice, attorneys for respondent (Kenneth A. Olsen and Barry N. Gutterman, on the brief).

PER CURIAM

Plaintiff Mecca and Sons Trucking Corporation appeals from an August 24, 2022 order dismissing its negligence suit against defendant, J.B. Hunt Transport, Inc., following a bench trial. Plaintiff contends the court erred in concluding its employee of forty years' experience in the industry could not offer an opinion on the standard of care for trucking a sealed container of a food grade substance across the country. Because we conclude the court erred in finding Mecca's employee could not offer testimony to establish the appropriate standard of care, we vacate and remand for a new trial.

We accept the relevant and undisputed facts the judge found during the bench trial conducted on a stipulated record. ADM Logistics (ADM) contracted with Mecca to transport and deliver twenty sacks of Fibersol—a soluble dietary fiber used in food, drinks, and supplements—in a sealed container from New Jersey to Illinois. Parke Toll Packaging (Parke Toll) was to receive the delivery when it arrived in Decatur, Illinois. The sacks were made of polyurethane and "tied at the top so the Fibersol would not fall out."

The Fibersol was packed inside a shipping container sealed with an exterior lock. Plaintiff's employee Andre Zielinski, testified in his deposition that the "[s]eal is a specific lock that you put on a load" to stop unauthorized personnel from accessing the load, and attached to the seal is a number that

corresponds to a pickup number. Zielinski also testified that seals are common in the industry and are not to be broken under any circumstances by anyone other than the receiver at the time of delivery, and "if the seal is broken, the load was tampered with."

When J.B. Hunt "took possession of the shipment on August 23, 2016," it "received a bill of lading[] and acknowledged receipt of the shipment 'at the point of origin . . . in good order.'" The bill of lading references "Seal #02036686" in the section for "special instructions." J.B. Hunt "transported the sealed container via train from New Jersey to Landers, Illinois, where it arrived still sealed."

On August 30, 2016, an inspection of the container in Landers revealed the seal remained intact. The container remained in J.B. Hunt's possession for approximately four-to-five days in its yard in Landers before non-party F&S Logistics attempted to deliver the shipment to its final destination in Decatur.

When the container arrived in Decatur, Parke Toll promptly rejected delivery because the container seal on the truck was broken although none of the twenty sacks were examined or determined to have been opened or compromised and "their contents were not tested for damage or adulteration." Although the bill of lading did not have express language "specifying that a seal

must be intact upon delivery," according to Parke Toll, it was its policy, as an entity that "deal[s] with food products" to "attempt to always maintain a good seal record" and reject shipments that arrive with a broken seal. The truck was resealed and returned to defendant's truck yard. Thereafter, the entire shipment of Fibersol was deemed unusable and eventually destroyed.

Mecca filed a claim with J.B. Hunt's cargo claims office "for product integrity compromised" due to the broken seal on food-grade shipment, precipitating a "complete loss" of the Fibersol. J.B. Hunt denied the claim, resulting in ADM filing suit in Illinois against Mecca for breach of contract. The parties settled "with ADM granting [Mecca] a release in exchange for payment of $63,425.00 without an assignment of ADM's interest."

Mecca therefore filed suit in the Law Division against J.B. Hunt alleging breach of contract and negligence "for [the] cargo loss and damage" under the Carmack Amendment, 49 U.S.C. § 14706. J.B. Hunt removed the suit to federal court. The district court determined Mecca lacked standing to bring its claims under the Carmack Amendment because it had "acted as a broker" in this transaction, and also determined that Mecca's contract claim lacked merit because "the absence of the seal alone" did not "render the shipment damaged."

The district court further declined to exercise supplemental jurisdiction over plaintiff's negligence claim and remanded the case to state court.

J.B. Hunt subsequently moved for summary judgment in the Law Division on both the negligence and breach of contract claims. The court dismissed plaintiff's breach of contract claim, concluding the district court's holding on the Carmack Amendment issue "preempted" any contract claim arising from "damages sustained to ADM's goods that were transported in interstate commerce." The court, however, declined to dismiss the negligence claim noting that Mecca's negligence claim was not "premised on damage to the Fibersol, but rather on [J.B. Hunts's] failure to deliver the Fibersol with an intact seal." The court further noted "the record contains evidence indicating the seal was broken upon delivery and that this goes against industry standard." Both parties consented to a trial on a stipulated record, without "live witness testimony."

As part of the record, a Parke Toll employee had given undisputed deposition testimony that "if the security seal is broken or the security seal numbers do not match the inbound documents, [the] customer is notified and the load is rejected" because a lack of an intact seal indicates the possibility that the food product within a container may have been "tamper[ed]" with. Plaintiff

presented Zielinski as a witness with knowledge of the seal. Plaintiff also offered Zielinski's testimony on the requisite standard of care, noting that he opined in his deposition testimony that:

> [t]hrough my years of experience and the business industry, . . . a seal is a lock. [The seal] is a specific lock that you put on a load from stopping from entering an unauthorized personnel into the load. [sic] Seal i[s] common in the industry, it is not to be broken under [any] circumstances. [It is] [o]nly to be broken by the receiver [at] the time it's delivered. That means if the seal is broken, the load was tampered with. Okay? And at that time, the receiver is able or authorized or whatever he chooses to accept the load or refuse the load because the load is not [] intact.
>
> Okay. That's why it's the main reason that I do not agree with the statement in [the opposing expert's testimony]. To my best knowledge [], the seal is like a lock.

Zielinski's opinion was premised on his time in the shipping industry—about forty years—where he "had been employed by a few companies, mostly major freight forwarding companies," working as a traffic manager, or variation of that title, on "transportation operation."

On the issue of damages, Mecca proffered the testimony of Peggy Mecca, president and owner of Mecca Trucking, who indicated damages were based on the value of the entire shipment of Fibersol as "a broken seal on a food product compromises the integrity of the product[.]"

On the eve of the bench trial, defendant made a motion in limine to bar Zielinski's deposition testimony on the standard of care given Zielinski had not been named as an expert witness. The court barred Zielinski as an expert, ruling he could not provide an opinion on the standard of care after finding that plaintiff failed to name him as an expert. The court ruled Zielinski could testify as a fact witness based on his personal observations about the seal.

In the bench trial, the court found the seal was intact when the Fibersol arrived in Landers. The court further found that while the container was in defendant's yard for four to five days, the seal had been broken by a J.B. Hunt driver prior to receipt of the delivery in Decatur.

However, as a "threshold issue," the court found that the negligence claim was predicated on a "standard of care owed by J.B. Hunt as an entity who arranged for the transport of the Fibersol for Mecca as a broker [which was] too complex to be determined without expert testimony." Relying on Davis v. Brickman Landscaping, Ltd., 219 N.J. 395 (2014), and N.J.R.E. 703 regarding the admissibility of expert testimony, the judge ultimately found that plaintiff was required to establish the appropriate standard of care through an expert.

As to Peggy Mecca's testimony on damages, the court concluded that plaintiff's lay witness could not opine on damages and that plaintiff had not

"designated, proffered[,] or qualified . . . an expert sufficient to testify that broken seals compromise the integrity of food products."

In both instances, the court determined expert testimony was necessary. Stating that "negligence must be proved and will never be presumed," the court found that plaintiff had failed to establish the standard of care owed by J.B. Hunt, and whether there was breach, or damages, through an expert. The court thereafter entered judgment for J.B. Hunt dismissing Mecca's complaint. This appeal followed.

Plaintiff now argues the trial court erred in prohibiting its long time employee with expertise acquired from forty years in the shipping industry from opining on the standard of care pursuant to N.J.R.E. 701. Plaintiff argues Zielinski "should not have been precluded from testifying as to facts known by him in his professional role" because his "testimony would not have extended beyond . . . his personal knowledge." Plaintiff further argues the court erred by determining expert proof was required to establish damages. We agree.

I.

A trial court's decision to admit or exclude evidence generally is entitled to deference absent a showing that the court abused its discretion such that the decision was so wide off the mark as to constitute a manifest injustice. E&H

Steel Corp. v. PSEG Fossil, LLC, 455 N.J. Super. 12, 24-25 (App. Div. 2017) (citing Griffin v. City of E. Orange, 225 N.J. 400, 413 (2016)). An abuse of discretion arises where a decision "is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." State v. Burney, 255 N.J. 1, 20 (2023) (quoting State v. Chavies, 247 N.J. 245, 257 (2021)).

"'To sustain a cause of action for negligence, a plaintiff must establish: (1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages.'" Funtown Pier Amusements, Inc. v. Biscayne Ice Cream, 477 N.J. Super. 499, 512 (App. Div. 2024) (quoting T.B. v. Novia, 472 N.J. Super. 80, 94 (App. Div. 2022); see also Townsend v. Pierre, 221 N.J. 36, 51 (2015)). There is "no general rule or policy requiring expert testimony as to the standard of care" in negligence actions. Butler v. Acme Mkts., Inc., 89 N.J. 270, 283 (1982).

Our courts have required expert testimony to establish the standard of care in negligence actions where the underlying facts concern "scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue." Funtown Pier Amusements, Inc., 477 N.J. Super. at 516 (quoting N.J.R.E. 702). However, N.J.R.E. 701,

specifically provides that "a party to an action with expertise gained through such personal experience may express an opinion of the sort ordinarily provided by an expert." See E&H Steel Corp., 455 N.J. Super. at 27.

As such, a lay witness may offer an opinion drawing on "the facts known by him in his professional role," including his "knowledge of codes or standards," within his industry to establish the requisite standard of care. Ibid.; see also N.J.R.E. 701 ("If a witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences may be admitted if it: (a) is rationally based on the witness' perception[;] and (b) will assist in understanding the witness' testimony or determining a fact in issue."). "The admissibility of lay opinion testimony pursuant to N.J.R.E. 701 derives from that rule's incorporation of N.J.R.E. 602's limitations, such that the foundation of the witness's opinion must be his or her personal knowledge of the matter." See E&H Steel Corp., 455 N.J. Super. at 25 (citing Teen–Ed, Inc. v. Kimball Int'l, Inc., 620 F.2d 399, 403 (3d Cir. 1980)); see also N.J.R.E. 602 ("a witness may not testify to a matter unless . . . the witness has personal knowledge of the matter.").

Here, Zielinski's testimony was admitted by the court but not accepted to establish the appropriate standard of care. That decision was error. Zielinski's

undisputed testimony is that he had been in the shipping industry for about forty years, and "had been employed by a few companies, mostly major freight forwarding companies," where he worked as a traffic manager, or variation of that title, on "transportation operation." And, Zielinski's testimony about the seal was based on facts known to him in his professional role as plaintiff's employee. By virtue of his extensive professional experience and personal knowledge about the facts of this case, Zielinski was qualified to opine on the requisite standard of care on this negligence claim. See E&H Steel Corp., 455 N.J. Super. at 27; N.J.R.E. 701. Zielinski "was not required to be designated as an expert witness or prepare a report in order to testify" as to the standard of care. See E&H Steel Corp., 455 N.J. Super. at 27.

We further find the court erred in concluding plaintiff could not establish damages without expert testimony. Plaintiff was hired to transport a food product sealed in a shipping container, as evidenced by the bill of lading. The rejection of the shipment based on the broken seal resulted in damages to Mecca. Mecca is therefore entitled to recover its actual damages flowing from the loss of the food product ADM contracted it to ship, 27-35 Jackson Ave., LLC v. Samsung Fire & Marine Ins. Co., Ltd., 469 N.J. Super. 200, 215 (App. Div. 2021), a loss "proximately caused" by defendant's alleged breach of the standard

of care, Donelson v. DuPont Chambers Works, 206 N.J. 243, 258 (2011) (quoting People Express Airlines, Inc. v. Consol. Rail Corp., 100 N.J. 246, 251 (1985)).

Mecca and ADM executed a broker-carrier agreement to deliver the Fibersol. Mecca settled a suit by ADM by paying $63,425 to ADM after the Fibersol was rejected, and thus Mecca's out of pocket loss of $63,425 is plain. As we have previously noted, plaintiff's claim is based on the broken seal and the deviation from the shipping procedure rather than an actual adulteration of the Fibersol—and the damages sought are therefore based on a straightforward calculation that is not so "esoteric" that it requires expert testimony. Lesniak v. Cnty. of Bergen, 117 N.J. 12, 31-32 (1989) (quoting Butler, 89 N.J. at 283). We can think of no clearer basis for damages as we have previously noted that Mecca paid ADM $63,425 for the lost Fibersol. Thus, we reject defendant's argument that plaintiff cannot establish its damages.

Accordingly, we remand this matter for reconsideration of the trial evidence consistent with the standards set forth in this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office
CLERK OF THE APPELLATE DIVISION