

Vargas v Sabri
2014 NY Slip Op 01666
Decided on March 13, 2014
Appellate Division, First Department
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Decided on March 13, 2014
Acosta, J.P., Renwick, Feinman, Clark, JJ.

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[*1]Ana M. Vargas, et al., Plaintiffs-Appellants,

v

Akin Sabri, Defendant-Respondent.

Brand Brand Nomberg & Rosenbaum, LLP, New York (Brett J. Nomberg of counsel), for appellants.
Bleakley Platt & Schmidt, LLP, White Plains (John A. Risi of counsel), for respondent.

Order, Supreme Court, Bronx County (Laura G. Douglas, J.), entered October 1, 2013, which denied plaintiffs' motion for a *Frye* hearing, unanimously affirmed, without costs.

The court did not improvidently exercise its discretion in denying plaintiffs' request for a *Frye* hearing (*Frye v United States*, 293 F 1013 [DC Cir 1923]) to determine the admissibility of the anticipated testimony of Dr. McRae, a biomechanical engineer. The fact that Dr. McRae lacked medical training did not render him unqualified to render an opinion as an expert that the force of the subject motor vehicle accident could not have caused the injuries allegedly sustained (*see e.g. Melo v Morm Mgt. Co.*, 93 AD3d 499, 499-500 [1st

Dept 2012]). McRae's stated education, background, experience, and areas of specialty, rendered him able to testify as to the mechanics of injury (*see Colarossi v C.R. Bard, Inc.*, 113 AD3d 407 [1st Dept 2014]).

Plaintiffs' challenge to Dr. McRae's qualifications and the fact that his opinion conflicted with that of defendant's orthopedic expert go to the weight and not the admissibility of his testimony (*see Williams v Halpern*, 25 AD3d 467, 468 [1st Dept 2006]). Plaintiffs' challenge to the basis for Dr. McRae's opinion addressed only portions of the evidence relied upon by him. Furthermore, the record shows that plaintiffs improperly attempted to put defendant to his proof [*2] by asserting, in the moving papers, that "defendant has not shown that the hearsay studies Mr. McRae relies upon are reliable," without identifying any of the studies referred to or explaining the basis for the belief that the studies were not reliable.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 13, 2014

CLERK

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