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CAUSATION IN LEAD PAINT POISONING CASES: *ROSS v. HABC*

Analyzing the Necessity of Expert Testimony With Respect to “Substantial Factor” Causation in Lead Paint Actions: *Ross v. Housing Auth. of Baltimore City*

The Maryland Court of Appeals, as a matter of first impression, took up the issue of “substantial factor” causation in a lead paint poisoning action and considered whether expert testimony was necessary in order to establish that a particular property was a “source” of a child plaintiff’s elevated blood lead levels. In *Ross v. Housing Auth. of Baltimore City*, 63 A.3d 1 (Md. 2013), the Court of Appeals held that the Circuit Court did not abuse its discretion in excluding the plaintiff’s causation expert, but that summary judgment, solely based upon that exclusion, was inappropriate.

Facts and Procedural History

The plaintiff, Cherie Ross, was born on October 6, 1990. From birth through 1992, Ms. Ross lived at 934 N. Gilmore Street, owned by Bernard Dackman. She then moved to 546 N. Payson Street, owned by the Housing Authority of Baltimore City (“HABC”), and resided there from June 1992 through 1996. Ms. Ross sued Mr. Dackman and HABC alleging that she sustained injuries resulting from exposure to lead paint at both properties during the respective tenancies. Mr. Dackman settled with Ms. Ross shortly before trial.

Before trial, the Circuit Court granted HABC’s motion in limine to exclude a portion of Dr. Jacalyn Blackwell-White’s testimony concerning the source of Ms. Ross’ alleged lead exposure. The court then granted HABC’s oral motion for summary judgment on the basis that Ms. Ross could not prove causation without expert testimony.

The Court of Special Appeals, in an unreported opinion, affirmed the Circuit Court’s exclusion of Dr. Blackwell-White but did not consider whether summary judgment was appropriate because Ms. Ross failed to separately challenge that

ruling. The Court of Appeals granted certiorari to consider both issues: (1) whether the Circuit Court abused its discretion in excluding Dr. Blackwell-White, and (2) whether the Circuit Court erred as a matter of law in granting summary judgment based on the absence of a causation expert.

The Court’s Reasoning

With respect to the exclusion of Dr. Blackwell-White, the Court of Appeals held that the Circuit Court did not abuse its discretion in finding that she lacked the qualifications to provide expert testimony as to the source of a child’s lead exposure and that she lacked the necessary factual basis to identify the source of exposure. Specifically, the Court noted the undisputed evidence of various possible alternative causes of her elevated blood lead levels. Because Dr. Blackwell-White testified that she was simply identifying the “potential risk” of particular properties and could not provide any certainty with her opinions as to causation, the Court found that her conclusion as to “source” was likely to confuse the jury. Thus, the Circuit Court was within its discretion to exclude that “source” testimony.

However, this exclusion was not a “fatal blow” to Ms. Ross’ case. The Court remanded the case back to the Circuit Court on the basis that the fact-finder could infer from the evidence that lead exposure at 546 N. Payson Street was a substantial contributing factor to her blood lead levels without the testimony of a causation expert. The evidence consists of inspection reports identifying lead on the property, testimony that Ms. Ross was exposed to paint dust and chips at the property, and medical records indicating that her blood lead levels rose during the first year they resided at 546 N. Payson Street.