

TESTIMONY OF A PSYCHOLOGIST ON CAUSATION

In the case of Executive Car and Truck Leasing v DeSerio, 468 So.2d 1027 (Fla. 4th DCA), rev. denied sub. nom., Commercial Union Ins. Co. v DeSerio, 480 So.2d 1293 (Fla. 1985) the Fourth District made a blanket ruling that a psychologist was not qualified to testify concerning the cause of brain damage. That decision was receded from in the recent case of Broward County School Board v Cruz, 25 F.L.W. D1085 (Fla. 5th DCA, May 3, 2000). The Cruz case was a \$6 million verdict on behalf of a brain injured special education student who allegedly received significant injury as a result of an altercation at school. He was treated extensively by psychiatrists and neuropsychologists and during the trial a neuropsychologist was permitted to testify as to whether the injury during the altercation caused his organic brain damage. The neuropsychologist, while not a medical doctor, had extensive training and experience in neurochemistry and neuroanatomy.

In analyzing their decision to allow the testimony as to causation, the Fourth District reviewed its decision in DeSerio, supra.

In considering whether a neuropsychologist is qualified to render an opinion about the cause of organic brain damage, we must reexamine *Executive Car & Truck Leasing, Inc. v DeSerio*, 468 So.2d 1027 (Fla. 4th DCA), rev. denied sub. nom., *Commercial Union Ins. Co. v DeSerio*, 480 So.2d 1293 (Fla. 1985). In *DeSerio*, this court held that although a clinical psychologist who was not a medical doctor could testify to the existence of organic brain damage, he could not testify that the accident caused the organic

brain damage. *Id.* At 1029. The court held that since psychologists are not medical doctors, they cannot render opinions as to the physical cause of brain damage, as that is considered in Florida to be a medical subject.

In the Cruz case, the Court discussed the evolution of the science of neuropsychology as well as the wisdom of continuing a hard and fast rule that a psychologist is not qualified to give an opinion on causation and in the end receded from its holding in DeSerio

Thus, because the practice of psychology has expanded to the point where psychologists who are not doctors are increasingly becoming involved in areas which were traditionally considered to be purely medical, a blanket prohibition of testimony by psychologists concerning causation of brain injury no longer seems practical.

Instead, the more prudent approach is to allow trial judges, in their discretion, to qualify psychologists and neuropsychologists to testify on causation as any other expert would be qualified to testify in his or her area of expertise. A psychologist's or neuropsychologist's competency to give an opinion will be subject only to the limitations imposed by 90.702, Florida Statutes. We, therefore, recede from *DeSerio* to the extent that it precludes a psychologist or neuropsychologist, whose education, training and experience are found by the trial court to be sufficient, from rendering an opinion on the cause of a mental disorder or condition.

Thus, in Florida, a neuropsychologist's qualification to render an opinion on causation like any other expert, must be reviewed by the trial judge on a case by case basis. The trial judge's decision as to the competency of the witness to give such testimony will not be disturbed on appeal absent an abuse of discretion.