

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

[REDACTED], as administrator of
the estate of [REDACTED] and as
guardian of J.H. and T.H.,

Plaintiff,

v.

MARTIN-ROBBINS FENCE COMPANY,
ARCADIS U.S., INC., GEORGIA
DEPARTMENT OF TRANSPORTATION,
and JOHN DOES 1-10,

Defendants.

Civil Action No.: [REDACTED]

[REDACTED] and [REDACTED]
[REDACTED]

Plaintiffs,

v.

MARTIN-ROBBINS FENCE COMPANY,
ARCADIS U.S., INC., and GEORGIA
DEPARTMENT OF TRANSPORTATION,

Defendants.

Civil Action No.: [REDACTED]

**ORDER DENYING DEFENDANT MARTIN-ROBBINS FENCE COMPANY'S MOTION
TO EXCLUDE PLAINTIFFS' EXPERT JEAN-PASCAL GINGRAS**

Defendant Martin-Robbins Fence Company ("Martin Robbins") seeks to exclude the testimony of Plaintiffs' economic damages expert, Jean-Pascal ("J.P.") Gingras, under O.C.G.A. § 24-7-702 and O.C.G.A. § 24-4-403. The Court has considered all the briefing relating to Mr. Gingras and conducted a hearing of the matter on May 17, 2022.

Mr. Gingras was retained to assess [REDACTED] economic damages resulting from the injuries she sustained from the subject car crash of June 3, 2018 (“Incident”). The Incident also resulted in the death of [REDACTED] niece, [REDACTED].

In [REDACTED] case, Mr. Gingras provided opinions on her lost income, lost benefits, loss of household services, and the future costs of her life care plan, all at present values. Similarly, in [REDACTED] case, Mr. Gingras was retained to provide opinions on [REDACTED] lost income, lost benefits, and loss of household services, stemming from her untimely death.

Martin Robbins contends that Mr. Gingras should be excluded because his opinions relating to [REDACTED] and [REDACTED] “are based on assumptions which are not sufficiently connected to the actual facts of the cases” and “Mr. Gingras’ analysis and presentation is misleading, likely to confuse the jury, and will unfairly prejudice [Martin Robbins].”¹ The Court disagrees. As explained more fully below, Mr. Gingras satisfies the requirements of Rule 702. Furthermore, Rule 403 does not warrant the exclusion of Mr. Gingras’ testimony. Therefore, Martin Robbins’ Motion to Exclude Mr. Gingras is DENIED.

1. Mr. Gingras satisfies Rule 702.

Rule 702 imposes three requirements for expert testimony. “Expert testimony may be admitted into evidence if: (1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches his conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue.” *City of Tuscaloosa v.*

¹ See Martin Robbins Mot. at pg. 2.

Harcros Chemicals, Inc., 158 F.3d 548, 562 (11th Cir. 1998).² The Court addresses each requirement in turn.

a) Mr. Gingras is qualified under Rule 702.

Mr. Gingras is qualified by “knowledge, skill, experience, training, or education.” *See* O.C.G.A. § 24-7-702(b). Mr. Gingras holds bachelor’s and master’s degrees in business administration, with concentrations in accounting, finance, and economics.³ Currently, Mr. Gingras teaches full-time at Georgia State University, where he teaches courses in accounting at the bachelors and graduate degree levels.⁴ In addition to his full-time teaching position, Mr. Gingras operates his own forensic accounting firm and possesses more than twenty (20) years of experience in the accounting and forensic accounting fields.⁵ Moreover, Mr. Gingras has several professional certifications and affiliations that are relevant to the subject matter at hand.⁶ At the hearing on May 17, 2022, Defendants conceded that they did not challenge Mr. Gingras’s qualifications.⁷ Therefore, the Court finds that Mr. Gingras is qualified under Rule 702 to render his opinions in these cases.

² *See also* O.C.G.A. § 24-7-702(f) (“in interpreting and applying this Code section, the courts of this state may draw from the opinions of the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137 (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases.”).

³ *See* C.V. of J.P. Gingras (Exhibit 3 to Pl.’s Resp. to Defs.’ Mot. to Exclude J.P. Gingras).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *See also* Martin Robbins Mot. at pg. 5, fn. 2 (“Martin Robbins does not object to [...] Mr. Gingras’s qualifications as an accountant...”).

b) Mr. Gingras' opinions are reliable under Rule 702.

Mr. Gingras' opinions satisfy the reliability test under Rule 702. Mr. Gingras used reliable methodologies and reputable sources in calculating the present value of [REDACTED] and [REDACTED] lost income, lost benefits, loss of household services, as well as [REDACTED] life care plan. At the hearing on May 17, 2022, Defendants conceded that they did not challenge Mr. Gingras's math or his methodology.⁸

“‘[T]he trial court has broad discretion in deciding how to assess the reliability of expert testimony.’” *Wilson v. Redmond Constr., Inc.*, 359 Ga. App. 814, 820 (2021) (quoting *Smith v. CSX Transp., Inc.*, 343 Ga. App. 508, 512 (2017)). Typically, “[t]he reliability inquiry focuses on the principles and methodology underlying the expert’s opinion, *not the expert’s conclusions.*” *Sec. & Exch. Comm’n v. Avent*, 2018 WL 8996270, at *2 (N.D. Ga. Mar. 15, 2018) (citing *Daubert*, 509 U.S. at 595) (emphasis added). This Court has “‘considerable leeway in deciding which tests or factors to use to assess the reliability of an expert’s methodology.’” *Wilson*, 359 Ga. App. at 820 (quoting *Smith*, 343 Ga. App. at 512).

Martin Robbins’ primary attack on Mr. Gingras is the factual assumptions he used in forming his calculations.⁹ However, this argument goes to the weight the jury should give Mr. Gingras’ testimony, not to its admissibility under Rule 702. Furthermore, Courts have repeatedly rejected such arguments concerning an economist’s assumptions. *See S. Ry. Co. v. Montgomery*, 192 Ga.App. 308, 311 (1989) (“To the extent that the economist’s opinion was based on insufficient facts, the weight and not the admissibility was affected.”); *see also Maiz v. Virani*, 253

⁸ *See also* Martin Robbins Mot. at pg. 5, fn. 2 (“Martin Robbins does not object to [...] Mr. Gingras’s [...] methodology of calculating present value of money.”).

⁹ *See* Martin Robbins Mot. at pg. 5 (“[Mr. Gingras] assumptions are unconnected to the actual facts in the case.”).

F.3d 641, 667 (11th Cir. 2001) (permitting an accounting expert to opine on forensic accounting issues based on “reasonable assumptions.”); *see also Vanskike v. ACF Indus., Inc.*, 665 F.2d 188, 211–12 (8th Cir. 1981) (“Assumptions such as those the economist made go to the weight of the evidence and not its admissibility.”).

Furthermore, Mr. Gingras’ assumptions relating to Plaintiffs’ lost income, lost benefits and loss of household services were based on data taken from reliable and impeachable sources, such as the American Institute of Certified Public Accountants, the Bureau of Labor Statistics, and the U.S. Department of the Treasury.¹⁰

For his calculations relating to [REDACTED] life care plan, Mr. Gingras relied on the Consumer Price Index, which allowed Mr. Gingras to project the future costs of her medical care using an appropriate growth rate and then reducing the costs to present value using an appropriate discount rate.¹¹ Mr. Gingras also relied on the United States Life Tables (“Life Tables”), which are issued by the U.S. Department of Health and Human Services, Center for Disease Control.¹² The Life Tables are a reliable source for forming reasonable assumptions about [REDACTED] life expectancy, and will assist the jury in determining the cost of [REDACTED] life care plan based on the life expectancy it deems proper.¹³

Notably, Martin Robbins does not contend that any of the sources utilized by Mr. Gingras are unreliable, nor does Martin Robbins contend that Mr. Gingras should have depended on

¹⁰ Gingras Dep., [REDACTED] Case, 22:7-14; 68:23 – 69:22; Gingras’ Report, [REDACTED] Case, pg. 54 (Exhibit 4 to Pl.’s Resp. to Defs.’ Mot. to Exclude J.P. Gingras); Gingras Dep., [REDACTED] Case, 24:13 – 25:15, 36:5-21.

¹¹ Gingras Dep., [REDACTED] Case, 97:6 – 100:11.

¹² Gingras Dep., 97: 17 – 98: 14, 118: 15 – 121: 4.

¹³ *Id.*

different sources in forming his assumptions on [REDACTED] and [REDACTED] economic damages. Based on the foregoing, the Court finds that Mr. Gingras' opinions have met the reliability test of Rule 702.

c) Mr. Gingras' opinions will assist the trier of fact.

Mr. Gingras' opinions further satisfy Rule 702 because his opinions will be helpful to the jury. Expert testimony is helpful to the trier of fact if "concerns matters that are beyond the understanding of the average lay person." *Kilgore v. Reckitt Benckiser, Inc.*, 917 F. Supp. 2d 1288, 1292 (N.D. Ga. 2013) (quotation marks and citation omitted). In other words, an expert's testimony helps the jury where it is based on "specialized knowledge." *Ga. Dept. of Transp. v. Miller*, 300 Ga. App. 857, 861 (2009).

There is no dispute that forensic accounting is beyond the understanding of the average lay person. However, in his reports, Mr. Gingras includes charts that will provide the jury with tools to calculate [REDACTED] and [REDACTED] economic damages under certain scenarios. Although economic analysis can be complex, Mr. Gingras' testimony has the potential to simplify this analysis. The jury can choose to use the tools provided by Mr. Gingras to reach a monetary verdict that reflects the jury's factual findings regarding [REDACTED] and [REDACTED] lives.

In sum, Mr. Gingras' opinions are based on his specialized knowledge of forensic accounting, which is a subject matter beyond the understanding of the average juror. Therefore, Mr. Gingras' testimony will assist the jury in understanding [REDACTED] and [REDACTED] economic damages related to the Incident.

2. Mr. Gingras' testimony is not excludable under Rule 403.

Martin Robbins also argues that Mr. Gingras' testimony should be excluded under Rule

403.¹⁴ However, this argument lacks merit. The probative value of Mr. Gingras’s analysis is not “substantially outweighed” by any risk of prejudice or confusion. *See* O.C.G.A. § 24-4-403.

Limiting or excluding evidence under Rule 403 is an extreme remedy that is not warranted in this case. The Georgia Supreme Court has held that, “[T]he exclusion of evidence under Rule 403 is ‘an extraordinary remedy which should be used only sparingly.’” *Chrysler Group, LLC v. Walden*, 303 Ga. 358, 370 (2018) quoting *Smart v. State*, 299 Ga. 414, 418 (2016). “[T]he balance should be struck in favor of admissibility.” *Barrett v. Burnette*, 348 Ga. App. 838, 840 (2019). Martin Robbins’ request to exclude Mr. Gingras’ testimony under Rule 403 is an extreme measure, which is only reserved for extraordinary circumstances. This case does not fall within that category.

Furthermore, Martin Robbins is by no means defenseless to any perceived concerns with admitting Mr. Gingras’ testimony at trial. Should Martin Robbins believe that Mr. Gingras is providing misleading testimony at trial, it will have the opportunity to object to that testimony or ask the jury to disregard it in closing arguments. Martin Robbins may also subject Mr. Gingras to a vigorous and thorough cross-examination should they find any inaccuracies or points of contention with his testimony. Moreover, perhaps most importantly, Martin Robbins has retained its own economic expert, Dr. Michael Daniels, who may critique the analysis and presentation of Mr. Gingras’ testimony, should Dr. Daniels deem it appropriate.

In sum, Rule 403 does not require the exclusion of Mr. Gingras’ testimony and presentation. There are more appropriate, and less extreme, measures available to Martin Robbins

¹⁴ *See* Martin Robbins Mot. at pg. 14 (“The Court should exercise its power and responsibility under Daubert and Rule 403 to act as a gatekeeper to exclude Mr. Gingras’ report and testimony in these cases.”).

that enable it to challenge Mr. Gingras' opinions.¹⁵

3. Conclusion

For the foregoing reasons, Defendant Martin-Robbins' motion to exclude Mr. Gingras is DENIED.

So ordered this 14th day of July 2022.


Honorable Myra H. Dixon
Judge, State Court of Fulton County

Proposed Order prepared at the request of the Court by:

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¹⁵ See *Woodard v. Dempsey*, 2016 WL 4079713, at *3 (N.D. Ga. Aug. 1, 2016) (“The concerns that Defendant expresses regarding Mr. Gingras’ opinions can be addressed through cross-examination at trial and through the testimony of their rebuttal expert...”).