
This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 30
Kamel R. Sadek,
Respondent,
v.
Jenkins A. Wesley, et al.,
Appellants.

Gerald T. Ford, for appellants.
Robert A. Skoblar, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed,
with costs, and the certified question answered in the
affirmative.

In view of the Appellate Division's substitution of its

discretion for that of the trial court, our review is limited (see Brady v Ottaway Newspapers, 63 NY2d 1031, 1032 [1984]; Matter of Von Bulow, 63 NY2d 221, 225 [1984]; see also Andon v 302-304 Mott St. Assoc., 94 NY2d 740, 745 [2000]). That narrow scope of review and the unique facts present here drive our determination of this case. We conclude that the Appellate Division did not abuse its discretion as a matter of law in refusing to preclude plaintiff's proposed expert neurological testimony with respect to what is alleged to have been a neurological injury inasmuch as the subject matter of that testimony is within the competence of plaintiff's experts and is supported by medical literature.¹ As the Appellate Division noted, any defects in the opinions of plaintiff's experts or the foundation on which those opinions are based should go to the weight to be accorded that evidence by the trier of fact, not to its admissibility in the first instance.

* * * * *

Order affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

Decided April 28, 2016

¹ We agree that this case is not one to which Frye v United States (293 F 1013 [DC Cir 1923]) applies, and we have no reason to address the Appellate Division's Frye discussion.