

DOWD, J.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Effie Stewart, et al. ,	)	
	)	CASE NO. 5:02CV2028
Plaintiff(s),	)	
	)	
v.	)	<u>MEMORANDUM OPINION</u>
	)	(Resolving Doc. Nos. 171, 172, 173, 174,
J. Kenneth Blackwell, et al. ,	)	185, 193)
	)	
Defendant(s).	)	
	)	

Plaintiffs, Sandusky Defendants and all remaining Defendants have moved for summary judgment. (Doc. Nos. 171, 172, 173). The Court recognizes that there are very few undisputed facts in this matter. However, the interpretation of these undisputed facts is based on the proffered expert testimony. The Court must assess the credibility of this expert testimony. This appraisal must be done at trial and not on summary judgment. DeGidio v. West Group Corp., 355 F.3d 506, 509 (6th Cir. 2004) (citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986)) (“In deciding a summary judgment motion, [a] court cannot weigh the evidence, judge the credibility of witnesses, or determine the truth of the matter asserted.”). Accordingly, all Motions for Summary judgment are DENIED.

All Defendants moved this Court to exclude the testimony and reports of Plaintiffs’ experts Martha Kropf and Roy G. Saltman pursuant to Fed. R. Evid. 402 and 702. (Doc. No. 174.) Defendants contend that the experts’ testimony is unreliable and irrelevant. Defendants Motion is DENIED without prejudice. It is well-established that “district courts conducting bench trials have substantial flexibility in admitting proffered expert testimony at the front end, and then deciding for themselves during the course of trial

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whether the evidence meets the requirements of [Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999)] and [Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579(1993)]and deserves to be credited.” Gonzales v. National Bd. of Medical Examiners, 225 F.3d 620, 635 (6th Cir. 2000) (citing Ekotek Site PRP Comm. v. Self, 1 F. Supp 2d. 1282, 1296 n. 5 (D. Utah.1998) (concluding that district courts presiding over bench trials can decide questions of admissibility and reliability after the proffered evidence is presented at trial); Bradley v. Brown, 852 F. Supp. 690, 700 (N.D. Ind.) (granting a motion in limine to exclude unreliable expert evidence following the completion of a bench trial), aff’d, 42 F.3d 434 (7th Cir.1994)). Thus, the Court will hear all the expert testimony at trial. Defendants may move to exclude the expert testimony after the testimony is offered at trial or renew its Motion to exclude the expert testimony following the bench trial.<sup>1</sup>

Plaintiffs filed a Motion to Strike the Hamilton County Defendants’ Response to their Motion for Summary Judgment (Doc. No. 193) and all Defendants filed a Motion to Exclude Martha Kropf’s Affidavit. (Doc. No. 185). Both Motions are DENIED as moot.

IT IS SO ORDERED.

June 18, 2004  
Date

/s/ David D. Dowd, Jr.  
David D. Dowd, Jr.  
U.S. District Judge

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<sup>1</sup> To the extent that Defendants’ Motion at issue requests the exclusion of the described expert reports for summary judgment practice, the Motion is DENIED as moot.