

ELECTRONICALLY FILED
COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION
CIVIL ACTION NO. 22-CI-02477

ROY HOWARD

PLAINTIFF

v.

**ORDER GRANTING DEFENDANTS' AND INTERVENING
PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT**

GCHNC3, LLC d/b/a
HEMP XR; F&W ENTERPRISES, LLC,
LOUIS AARON BALDWIN, and,
JALEAH SYKES

DEFENDANTS

These matters having come before the Court on Defendants' and Intervening Plaintiff State Automobile Mutual Insurance Company's Motions for Summary Judgment, which motions were heard at the Court's Motion Hour held on Friday, October 4, 2024; the Court having reviewed the record; having reviewed the respective Motions, Responses and Replies; having reviewed Plaintiff Roy Howard's ("Plaintiff") Rule 26.02 Disclosure, and the Responses and Objections thereto; having heard arguments of counsel; and being otherwise sufficiently advised:

The Court hereby finds and **ORDERS** as follows:

A. FACTUAL BACKGROUND AND PROCEDURAL HISTORY.

1. Plaintiff filed this action against Defendants GCHNC3, LLC d/b/a Hemp XR ("Hemp XR"), F&W Enterprises, LLC ("F&W"), Louis Aaron Baldwin, and Jaleah Sykes ("Baldwin and Sykes") (collectively referred to herein as "Defendants"), alleging that Plaintiff's use of a Delta 8 THC vaporizer pen ("Vaporizer"), that he purchased from a Hemp XR store,

caused him to become intoxicated, lose consciousness, wreck his motor vehicle, and to ultimately suffer injuries and damages.

2. F&W was the manufacturer of the Vaporizer, and Baldwin and Sykes were the employees working at the Hemp XR store when Plaintiff purchased the Vaporizer.

3. Plaintiff asserted the following claims against the Defendants: (a) negligence in the design, testing, manufacturing and selling of the Vaporizer; (b) failing to warn Plaintiff of the possible consequence of using Delta 8 THC; and, (c) violations of the Kentucky Consumer Protection Act.

4. Plaintiff's Kentucky Consumer Protection Act claims were dismissed via this Court's Order Regarding Defendants Louis Aaron Baldwin, Jaleah Sykes and F&W Enterprises, LLC's Motion for Partial Summary Judgment, which was entered on October 20, 2023.

5. Plaintiff asserted separate additional claims against Hemp XR for negligent hiring, training and supervision, as well as for violations of KRS § 311.590, alleging that Hemp XR engaged in the unauthorized practice of medicine, but that claim was dismissed via an Agreed Order Dismissing Plaintiff's Unauthorized Practice of Medicine Claims, which this Court entered on June 27, 2023.

6. Intervening Plaintiff State Farm Automobile Insurance Company ("Intervening Plaintiff") asserted an intervening claim in this action against Hemp XR, asserting that it owed no duty to provide insurance coverage to Hemp XR because the insurance policy it issued to Hemp XR was void.

7. Intervening Plaintiff filed a Motion for Summary Judgment, which was not objected to by Hemp XR.

8. Defendants filed Motions for Summary Judgment and Renewed Motions for Summary Judgment alleging, *inter alia*, that Plaintiff failed to have any evidence that the use of the Vaporizer caused him to suffer a medical episode resulting in his loss of consciousness.

9. This Court did not enter summary judgment at the time, but warned Plaintiff at both the October 13, 2023, and the May 17, 2024, hearings on the dispositive motions that if he failed to develop his case and have proof as to causation, then the Court would ultimately have to grant Defendants' motions for summary judgment.

10. This Court subsequently entered an Order Regarding Defendants' and Intervening Plaintiff's Motions for Summary Judgment dated May 24, 2024 ("Order"), which ordered Plaintiff to "within 120 days of entry of th[e] Order, fully disclose to all parties in this action his medical expert and his/her opinions as to any causal link between Plaintiff's use of the vaporizer and the medical episode suffered immediately prior to the car accident that is the subject matter of this action[.]"

11. The Order further stated that "All pending Motions for Summary Judgment shall be held in abeyance until the earlier of Plaintiff disclosing his medical experts or the running of the 120 days from entry of th[e] Order."

12. Plaintiff failed to disclose any medical expert by Monday, September 23, 2024, which was the final day to do so.

13. After Plaintiff's disclosure deadline passed, Defendants renewed their pending Motions for Summary Judgment, and noticed those Motions to be heard at this Court's Motion Hour on Friday, October 4, 2024.

14. Plaintiff subsequently disclosed his expert, Kaitlyn M. Brown, PharmD, DABAT, on Thursday, October 3, 2024, when he filed and served his Rule 26.02 Disclosure.

15. Plaintiff's expert is a pharmacist and toxicologist who "relied on her education, experience, and training in the field of Clinical and Applied Toxicology" to arrive at her causation opinions.

16. Plaintiff's expert is not a licensed physician and is not authorized to practice medicine in the state of Kentucky.

17. Plaintiff's expert opinions were limited to the following:

Mr. Howard's symptoms are consistent with and more likely than not caused by the consumption of Delta 8 THC and other substances contained within the vaporizer Plaintiff testified he used prior to the subject motor vehicle collision. Ms. Brown is expected to testify that the use of Delta 8 THC has been found to cause loss of consciousness.

18. Defendants Louis Aaron Baldwin and Jaleah Sykes filed their Response and Objection to Plaintiff's Expert Disclosure ("Response and Objection"), which argued that (a) Plaintiff's expert did not comply with this Court's Order because the disclosure came after the Court ordered disclosure deadline, (b) that he failed to file a motion for enlargement of time pursuant to CR 6.02, (c) that the disclosure failed to satisfy the requirements of CR 26.02(4), and, (d) that his expert was not qualified to render expert medical opinions as to causation because that expert was a pharmacist and toxicologist, not a licensed physician.

19. Defendants Baldwin and Sykes' Response and Objection was adopted in full by Defendants GCHNCS, LLC d/b/a Hemp XR and F&W Enterprises, LLC.

20. On October 4, 2024, this Court held a hearing to determine whether Plaintiff complied with this Court's Order and, if not, whether to grant Defendants' summary judgment. At the hearing, the Court also addressed Intervening Plaintiff's pending Motion for Summary Judgment.

B. FINDINGS AND ORDERS OF THIS COURT

1. Plaintiff failed to comply this Court's Order because he did not disclose his causation expert within the 120 day deadline, and further failed to move for an enlargement of time pursuant to CR 6.02 after the expiration of that deadline.

2. Plaintiff failed to comply with this Court's Order because his generalized and brief disclosure did not satisfy the mandates of CR 26.02(4), which requires that expert disclosures contain "the subject matter on which the expert is expected to testify, and to state the substance and the facts and opinions to which the expert is expected to testify and a summary of the grounds of each opinion."

3. Plaintiff failed to comply with this Court's Order because his expert, who is a pharmacist and toxicologist, is not qualified to render an expert medical opinion as to causation. Specifically, his expert is unqualified to opine that the use of the Vaporizer caused Plaintiff to suffer a medical episode, including his loss of consciousness.

4. Plaintiff's expert disclosure is further insufficient because his expert proposes to testify as to how the use of Delta 8 THC has been found to cause loss of consciousness, but not that it caused Plaintiff here to suffer loss of consciousness.

5. For the reasons above, this Court hereby **GRANTS** each of the Defendant's Motions for Summary Judgment, and dismisses all of Plaintiff's remaining claims with prejudice.

6. The Court further **GRANTS** Intervening Plaintiff's Motion for Summary Judgment.

7. This is a final and appealable Order, and there is no just cause for delay in its enforcement.

Dated this, the _____ day of October, 2024.



JUDGE, FAYETTE CIRCUIT COURT

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CLERK'S CERTIFICATE OF SERVICE

I, Clerk of the Fayette Circuit Court, hereby certify that a true and accurate copy of the foregoing Order was served via U.S. mail, postage prepaid, on this, the _____ day of October 2024, on the following:

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