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JUSTICES ASKED TO RELAX STANDARD FOR ADMISSION OF SCIENTIFIC EVIDENCE

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SPRINGFIELD -- A Cook County assistant state's attorney on Monday asked the Illinois Supreme Court to relax the standard for admission of evidence based on recently discovered scientific principles.

Sharon Johnson Coleman argued that the high court should reinstate a Cook County jury's verdict in favor of Bonnie Franson, plaintiff in a paternity suit against Philip Micelli.

Coleman, who represents the plaintiff because the county is seeking to enforce Micelli's obligation to pay child support, said the trial court did not abuse its discretion in admitting as evidence scientific estimates as to the probability of a match between the defendant's DNA and that of the plaintiff's 6-year-old daughter, Elizabeth Franson.

The attorney said the 1st District Appellate Court's decision reversing the jury's verdict and remanding the case for a new trial would "unduly restrict" the admission of such evidence in the "thousands" of paternity suits filed in Cook County every year.

But Micelli's lawyer, **Marc W. Martin** of Chicago, said the appeals court's decision was correct in light of the scientific debate over the validity of the probability evidence relied on by the plaintiff.

Martin asked the high court to reaffirm the existing standard for admission of novel scientific evidence, set forth in [Frye v. U.S., 293 F. 1013 \(D.C. Cir. 1923\)](#).

As described in the Appellate Court's opinion in the present case, "The Frye test requires that before expert testimony on a new scientific principle will be admitted at trial, 'the thing from which the deduction is made must be sufficiently established to have gained general accept-

ance in the particular field in which it belongs.' "

The Illinois appeals court noted that in *People v. Lipscomb*, 215 Ill.App.3d (1991), and *People v. Miles*, 217 Ill.App.3d 393 (1991), the 4th District Appellate Court had ruled that probability statistics were admissible under Frye.

The court further noted that the reasoning of *Lipscomb* and *Miles* had been followed in a number of subsequent cases.

But the court said that in *People v. Watson*, 257 Ill.App.3d 915 (1994), the 1st District Appellate Court declined to follow that line of cases, concluding that although DNA testing had been validated scientifically, the plaintiff's proposed method for determining the statistical significance of a DNA match was "not generally accepted."

The *Watson* court cited a recent report of the National Research Council, indicating that a "substantial controversy" existed with regard to that methodology.

Agreeing with the ruling in *Watson*, the appeals court reversed the verdict in the present case and remanded the case for a new trial.

The appeals court directed the trial court to conduct a hearing to determine whether two other methods of probability analysis discussed in the NRC's report would be admissible under Frye. Franson on behalf of *Franson v. Micelli*, 269 Ill.App.3d 20 (1994).

The high court on April 5 allowed Franson's petition for leave to appeal under [Supreme Court Rule 315](#).

And during oral argument Monday, Coleman said that the trial court had not abused its discretion in holding that the statistical analysis used by Franson was admissible under Frye.

The plaintiff's attorney also suggested that the Frye standard was "outdated" in view of the current rapid pace of scientific discovery.

She said that if court allowed the matter to be remanded for further testing, "these cases could go on forever." She said that by the time a case got back to the trial court for a second evidentiary hearing, the state of scientific research might have changed completely.

She suggested that the court adopt the reasoning of the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 113 S.Ct. 2786 (1993), which held that the Frye test had

been superseded by [Rule 702 of the Federal Rules of Evidence](#).

The rule allows admission of scientific "opinion" evidence that will assist the trier of fact in understanding the issues.

And Coleman said that reliance on the Frye standard of general acceptance would deprive juries of the benefit of the most recent scientific research.

But Martin said [Rule 702](#) should not be applied retroactively to the present case, which was filed in 1990.

He also said that in view of the ongoing scientific controversy, jurors were not equipped to determine the validity of the plaintiff's statistical analysis.

He asked the court to affirm the appeals court's order granting the defendant a new trial.

The Supreme Court case is *Bonnie Franson, etc. v. Philip Micelli*, No. 78421.

---- INDEX REFERENCES ---

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