

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

LEROY CROOM and wife, JOYCE CROOM,

Plaintiffs,

vs.

No. 06-CV-1238

GUIDEONE AMERICA INSURANCE CO.,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
TO EXCLUDE DEFENDANT'S EXPERT WITNESS RICK ELEY AND
TO STRIKE HIS OPINIONS FROM THE RECORD**

Before the Court is Plaintiffs' Motion in Limine to Exclude Defendant's Expert Witness Rick Eley and to Strike his Opinions from the Record ("Motion," Doc. 59). Defendant has responded, and on March 11, 2009, this Court heard oral arguments from the parties. After consideration of the arguments of the parties and the record as a whole, this Motion is DENIED.

Plaintiffs seek to exclude the testimony of Mr. Eley, Defendant's expert regarding the origin and cause of the fire that destroyed Plaintiffs' home, arguing that Mr. Eley's opinions are unreliable. Mr. Eley prepared two reports regarding the cause and origin of the fire, his original report on May 11, 2005 and a supplemental report on July 1, 2007. In their Motion, Plaintiffs contend that Mr. Eley's conclusions are not reliable because these two reports conflict with one another and are based on a factual mistake as to the location of Plaintiffs' kitchen range.

As Defendant notes, generally the evaluation of expert testimony is left to the jury. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597-98 (1993); *Pride v. BIC Corporation*, 218 F.3d 566, 577 (6th Cir. 2000). However, Rule 702 invests in the trial judge a

“gatekeeping” role with respect to expert proof. *Pride* at 577 (citing *Daubert*, at 597-98). This “gatekeeping” obligation is to ensure that expert testimony is both reliable and relevant. Specifically, Rule 702 requires that: “(1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.” Plaintiffs correctly note that when considering the reliability of expert testimony, a court should focus on the soundness of the expert’s methodology and not the correctness of his conclusions. *See Daubert* at 594-95 (the focus of the Rule 702 inquiry “must be solely on principles and methodology, not on the conclusions that they generate.”).

Here, while Plaintiffs purport to frame their argument in terms of unreliable methodology, in reality Plaintiffs’ Motion attacks Mr. Eley’s *conclusions* as unreliable. Plaintiffs argue that the opinions Mr. Eley sets forth in his first and second report are unreliable because they contradict one another. Such contradiction, while certainly appropriate to explore in cross-examination, does not bear on the methodology Mr. Eley used in reaching his conclusions. *See Daubert* at 596 (“Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.”); *see also Layton v. Whirlpool Corp.*, 2007 WL 4792438 *4,5 (S. D. W. Va. 2007) (noting that the method for challenging the conclusions of an expert is through cross-examination).

Plaintiffs also argue that Mr. Eley’s opinion is unreliable because he was mistaken as to the location of the stove. Generally the factual basis of an expert opinion goes to the credibility of the testimony and not to its admissibility. *See Ellipsis, Inc. v. The Color Works, Inc.*, 428 F.

Supp. 2d 752 (W.D. Tenn. 2006); *see also Hartley v. Dillard's, Inc.*, 310 F.3d 1054, 1061 (8th Cir. 2002) (“As a general rule, the factual basis of an expert opinion goes to the credibility of the testimony, not the admissibility . . . Only if the expert's opinion is so fundamentally unsupported that it can offer no assistance to the jury must such testimony be excluded.”); *McLean v. 988011 Ontario, Ltd.*, 224 F.3d 797, 801 (6th Cir. 2000) (“Mere weaknesses in the factual basis of an expert witness's opinion . . . bear on the weight of the evidence rather than on its admissibility.”). Here, Mr. Eley’s statement regarding the location of the stove, even if mistaken, is not such a fundamental flaw that his testimony must be excluded, especially given that his opinion as to the origin of the fire is not based solely on the location of the range.

After considering the parties’ arguments and the entire record in this case, the Court finds that Mr. Eley, through his experience investigating fires and his training, is qualified as an expert. The Court also finds that Mr. Eley’s testimony will assist the trier of fact to understand the evidence and to determine one of the ultimate issues in this case: what caused the fire in question. Furthermore, the Court finds that Mr. Eley’s testimony is admissible in the sense that it is based upon reliable principles and methods, and the Court believes that Mr. Eley has applied these principles and methods in this case in such a manner so as to allow him to testify. IT IS THEREFORE ORDERED that Plaintiff’s Motion to Exclude Defendant’s Expert Witness Rick Eley and To Strike His Opinions from the Record is DENIED.

IT IS SO ORDERED.

s/ Edward G. Bryant
EDWARD G. BRYANT
UNITED STATES MAGISTRATE JUDGE

DATE: March 23, 2009