

Commonwealth Of Kentucky

Court Of Appeals

No. 1996-CA-003310-MR

MICHELLE DAWN HARDEN LEWIS
and WILMA EVERSOLE

APPELLANTS

v.

APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 95-CI-00083

FAZAL AHMAD, M.D.

APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: GARDNER, JOHNSON, and MILLER, Judges.

MILLER, JUDGE. Michelle Dawn Harden Lewis (Lewis) and her mother, Wilma Eversole (Eversole), bring this appeal from a November 22, 1996 judgment of the Harlan Circuit Court. We affirm.

In February 1995, Lewis and Eversole instituted the instant medical malpractice action against appellee, Fazal Ahmad, M.D. (Dr. Ahmad). The action stems from Dr. Ahmad's (what proved unnecessary) laparoscopic appendectomy upon 17-year-old Lewis in

June 1994. Complications involving vital organs arose from injuries sustained during the procedure. The injuries occurred during surgery when a device (a "trocar") improperly lacerated internal organs.

Believing Dr. Ahmad to be an agent of Appalachian Regional Health Care, Inc. (Appalachian), Lewis and Eversole filed an amended complaint naming Appalachian as a defendant. Thereafter, they voluntarily dismissed Appalachian from the action. Ultimately, the jury found in Dr. Ahmad's favor, and the court entered judgment dismissing the action. This appeal followed.

Lewis and Eversole assert that the circuit court committed reversible error by failing to grant a directed verdict. Ky. R. Civ. P. (CR) 50.01. They argue that the evidence conclusively establishes that Dr. Ahmad negligently caused Lewis's injuries "by the improper insertion of the trocar" during surgery. A directed verdict is proper when, viewing the evidence most favorable to the non-moving party, reasonable minds could only conclude that the moving party is entitled to judgment. At trial, Dr. William Stephen Aaron testified that in his expert opinion Dr. Ahmad breached no applicable standard of care. Based upon this testimony alone, we are compelled to conclude that the circuit court did not commit reversible error by denying the motion for a directed verdict. See Kroger Company v. Willgruber, Ky., 920 S.W.2d 61 (1996).

Lewis and Eversole also contend that the circuit court committed reversible error by admitting the testimony of two

expert witnesses. Specifically, Lewis and Eversole claim that Dr. Ahmad failed to list Dr. Benjamin Esparez and Dr. Timothy Nypaver as expert witnesses pursuant to CR 26, and thus, the court should have excluded their testimony. We disagree. Considering that Lewis and Eversole failed to request a continuance and that they had notice of the witnesses' testimony, we believe the admittance of such expert testimonials was simply not reversible error. See Thompson v. Mills, Ky., 432 S.W.2d 448 (1968), and Hicks v. Cole, Ky. App., 566 S.W.2d 169 (1977).

For the foregoing reasons, the judgment of the circuit court is affirmed.

ALL CONCUR.

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