NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2015 CA 1577

TERRLYN TROTTER AS SURVIVING PARENT OF BRENTON MIKAL TROTTER

VERSUS

BATON ROUGE GENERAL MEDICAL CENTER, EFFIE BRANTON-ANDERS, M.D., STATE OF LOUISIANA THROUGH THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY THROUGH THE LSU HEALTH CARE SERVICES DIVISION OBO EARL K. LONG HOSPITAL, ROY J. CULOTTA, M.D., JOHN R. GODKE, M.D., STEVEN J. ZUCKERMAN, M.D., THOMAS JEIDER, M.D., CHRISTOPHER THOMAS, M.D., AND DUSTIN VINCENT, M.D.

DATE OF JUDGMENT: MAR 2 1 2017

ON APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT
NUMBER 633096, SECTION 25, PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

HONORABLE WILSON FIELDS, JUDGE

* * * * * *

Terrlyn Trotter
Lafayette, Louisiana

Plaintiff-Appellant
In Proper Person

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BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.

Disposition: APPEAL MAINTAINED; JUDGMENT AFFIRMED.

CHUTZ, J.

In this medical malpractice case, plaintiff-appellant, Terrlyn Trotter (Ms. Trotter), appeals a summary judgment dismissing her claims against defendant-appellee, Baton Rouge General Medical Center (BRGMC). We affirm.

FACTS AND PROCEDURAL BACKGROUND

On November 5, 2011, Brenton Mikal Trotter (Mr. Trotter), a twenty-one-year-old man who suffered from several chronic health conditions, including autism, hypothyroidism, and growth hormone deficiency, was transported by EMS to the emergency room at BRGMC after he reportedly suffered a seizure and became unresponsive. Dr. Effie Branton-Anders was the emergency room physician who treated Mr. Trotter upon his arrival at BRGMC. At that time, Mr. Trotter was noted to be in cardiac arrest and was resuscitated. Mr. Trotter subsequently was admitted to BRGMC intensive care unit (ICU) in critical condition. After his transfer to the ICU, Mr. Trotter was found to have no pulse and was again resuscitated. On November 7, 2011, Mr. Trotter was examined by Dr. Steven Zuckerman, a neurologist. On that date, Mr. Trotter was declared brain dead, and he subsequently expired.

In October 2012, Brenton Trotter's mother, Ms. Trotter, filed a medical malpractice claim with the Louisiana Patient's Compensation Fund Oversight Board requesting review by a medical review panel pursuant to La. R.S. 40:1299.41 *et seq.*[1] BRGMC was one of several health care providers named in Ms. Trotter's complaint. On April 30, 2014, the medical review panel issued a unanimous opinion in favor of the named health care providers, including BRGMC, finding the evidence did not support a conclusion that the defendants "failed to meet the applicable standard of care as charged in the complaint." Ms.

[1] All references to provisions of Title 40 of the Louisiana Revised Statutes are to those provisions as they existed prior to the reorganization of Chapter 5 of Title 40 by House Concurrent Resolution No. 84 of the 2015 Regular Session. See Editors' Notes to La. R.S. 40:1231.1 (formerly La. R.S. 40:1299.41).

Trotter, in proper person, filed a medical malpractice lawsuit in the 19th Judicial District Court against BRGMC and several other defendants on August 28, 2014.[2] BRGMC filed an answer denying the allegations of Ms. Trotter's petition. Thereafter, on January 16, 2015, BRGMC filed a motion for summary judgment on the grounds that because Ms. Trotter had failed to obtain a medical expert to support her claims of negligence, she would be unable to sustain her burden of proving BRGMC had breached the applicable standard of care. A little over a week before the scheduled March 30, 2015 hearing, Ms. Trotter filed a motion for continuance, which the trial court denied. Following the hearing, the trial court granted summary judgment in favor of BRGMC and dismissed Ms. Trotter's claims against it, with prejudice. Ms. Trotter has now appealed.[3]

LAW AND ANALYSIS

Ms. Trotter contends the trial court erred in granting summary judgment in favor of BRGMC, alleging in brief that Mr. Trotter was hospitalized at BRGMC

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[2] Dr. Zuckerman and Dr. Branton-Anders were named as additional defendants. After the trial court granted a summary judgment dismissing Ms. Trotter's lawsuit against Dr. Zuckerman, with prejudice, she took an appeal, and this court affirmed the summary judgment. See ***Trotter v. Baton Rouge General Medical Center***, 15-1578 (La. App. 1st Cir. 8/5/16) (unpublished). The trial court also granted a separate summary judgment in favor of Dr. Branton-Anders, dismissing Ms. Trotter's lawsuit against her, with prejudice. In a separate appeal, this court also affirmed that summary judgment. See ***Trotter v. Baton Rouge General Medical Center***, 15-1579 (La. App. 1st Cir. 8/5/16) (unpublished).

Also named as defendants in Ms. Trotter's lawsuit were the State of Louisiana through the Board of Supervisors of Louisiana State University through the LSU Health Care Services Division on behalf of Earl K. Long Hospital, and several individual physicians (collectively, "the LSU defendants"). The trial court signed a judgment on April 16, 2015, granting summary judgment dismissing all claims against the LSU defendants, with prejudice. That judgment was the subject of an appeal by Ms. Trotter in docket number 2015-CA-1576. That appeal was dismissed by this court on December 29, 2015, due to Ms. Trotter's failure to file a brief within thirty days of the mailing of a notice of abandonment.

[3] This court *ex proprio motu* issued a show cause as to why the instant appeal should not be dismissed since it appeared from the date on the notice of judgment that Ms. Trotter's motion for appeal was filed untimely. In response, Ms. Trotter asserted the appeal was timely because the clerk of court actually mailed the notice of judgment on April 28, 2015, rather than the April 23, 2015 date reflected on the notice of judgment. In support of her claim, Ms. Trotter provided copies of two envelopes that included the clerk of court's printed return address and postmarks of April 28, 2015. In the interests of justice, we remanded this matter to the trial court for the limited purpose of holding an evidentiary hearing to determine the actual date on which notice of judgment was mailed to Ms. Trotter. See ***Trotter v. Baton Rouge General Medical Center***, 15-1577 (La. App. 1st Cir. 8/5/16) (unpublished). The trial court determined notice of judgment was actually mailed to her on April 28, 2015. Based on that date, Ms. Trotter's motion for new trial and subsequent motion for appeal were timely. This appeal is maintained.

for sixty-four hours against his will and during that time "received 63 hours of care [that] was clearly contraindicated according to the medical records."[4] While Ms. Trotter asserted BRGMC was vicariously liable for the actions and negligence of its employees, her brief contains few specific details regarding her claims against BRGMC. However, based on the allegations in her petition, it appears to be Ms. Trotter's position that BRGMC was negligent in the following respects: in failing to timely and properly monitor and treat Mr. Trotter and/or transfer Mr. Trotter to a facility more suited to his condition; in failing to have software, policies, or protocols in place to flag medications to which Mr. Trotter was allergic or had had a prior adverse reaction; and in failing to be properly staffed or equipped for the emergency presented by Mr. Trotter's admission. On appeal, Ms. Trotter contends her familiarity with her son's medical requirements makes her "fully capable of meeting her burden [of proof] at trial" even in the absence of a medical expert. She further maintains the trial court erred in not finding a layman's knowledge was sufficient to sustain her burden of proving it is a breach of the applicable standard of care to be given a medication you had declined, to be denied access to health care providers of your choice, and to be held against your clearly stated will.

A motion for summary judgment should be granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B)(2).[5] On appeal, appellate courts review the granting or denial of a motion for summary judgment *de novo* under the same criteria governing the district court's consideration of

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[4] Ms. Trotter filed an identical brief in all three of her appeals, raising the same assignments of error in each one regardless of whether those assignments were pertinent to the judgment under review in each particular appeal. In this appeal, we pretermit those assignments of error that are irrelevant to the claims made against BRGMC.

[5] All references made to La. C.C.P. art. 966 are made to the version of that article that existed prior to its amendment by 2015 La. Acts, No. 422, § 1, eff. 1/1/16.

whether summary judgment is appropriate. ***Schultz v. Guoth***, 10-0343 (La. 1/19/11), 57 So.3d 1002, 1005.

On a motion for summary judgment, the burden of proof is on the mover. La. C.C.P. art. 966(C)(2). However, if the mover will not bear the burden of proof at trial, the mover's burden does not require that all essential elements of the adverse party's claim be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment as a matter of law. La. C.C.P. art. 966(C)(2); ***Schultz***, 57 So.3d at 1007. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material can be seen only in light of the substantive law applicable to the case. ***Cason v. Saniford***, 13-1825 (La. App. 1st Cir. 6/6/14), 148 So.3d 8, 11, writ denied, 14-1431 (La. 10/24/14), 151 So.3d 602.

A plaintiff in a medical malpractice action is required to establish: (1) the standard of care applicable to the doctor; (2) a violation by the doctor of that standard of care; and (3) a causal connection between the doctor's alleged negligence and the plaintiff's injuries. La. R.S. 9:2794(A); ***Pfiffner v. Correa***, 94-0924 (La. 10/17/94), 643 So.2d 1228, 1233; ***Schultz***, 57 So.3d at 1006. The standard of care is generally that degree of knowledge or skill possessed or the degree of care ordinarily exercised by doctors licensed to practice in the State of Louisiana and actively practicing in a similar community or locale and under similar circumstances. La. R.S. 9:2794(A)(1); ***Lugenbuhl v. Dowling***, 96-1575 (La. 10/10/97), 701 So.2d 447, 456.

Generally, expert testimony is required to establish the applicable standard of care and whether that standard was breached, except where the negligence is so obvious that a layperson can infer negligence without the guidance of expert testimony.[6] ***Samaha v. Rau***, 07-1726 (La. 2/26/08), 977 So.2d 880, 884; ***Pfiffner***, 643 So.2d at 1233. Additionally, expert medical evidence is typically required to establish a causal connection between the breach of the standard of care and the patient's injury. ***Pfiffner***, 643 So.2d at 1233-34; ***Schultz***, 57 So.3d at 1009. Normally, in cases such as the present one involving patients with complicated medical histories and complex medical conditions, causation is simply beyond the province of lay persons to assess without the assistance of expert medical testimony. See ***Pfiffner***, 643 So.2d at 1234; ***Jackson v. Suazo-Vasquez***, 12-1377 (La. App. 1st Cir. 4/26/13), 116 So.3d 773, 776. The requirement of producing expert medical testimony is particularly apt when the defendant has supported his motion for summary judgment with expert opinion evidence that the treatment at issue met the applicable standard of care. ***Fagan v. LeBlanc***, 04-2743 (La. App. 1st Cir. 2/10/06), 928 So.2d 571, 575-76.

In this case, BRGMC's motion for summary judgment was based on the absence of a medical expert to support Ms. Trotter's allegations that BRGMC breached the applicable standard of care or to establish a causal connection between the alleged acts of negligence and any injury to Mr. Trotter. Even though BRGMC would not bear the burden of proof at trial, in support of its motion for summary judgment, BRGMC offered the opinion of the medical review panel that

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[6] Examples of the type of cases in which layman can infer negligence include a physician fracturing a patient's leg during examination, amputating the wrong limb, dropping a knife or scalpel on a patient, or leaving a sponge in a patient's body. See ***Samaha***, 977 So.2d at 884; ***Pfiffner***, 643 So.2d at 1233.

was rendered in its favor.[7] In its unanimous opinion, the medical review panel concluded the evidence did not support a breach of the standard of care by BRGMC, stating:

> Reasons as to BRGMC – Mid City and Effie Branton-Anders: The patient presented to the ER after apparently having suffered a seizure while in the bath tub and likely aspirated, which worsened his condition. After reading the mother's submission, it should be noted that the panel members all agree that this ER doctor and all of the doctors acted with due diligence in their care of this critically ill patient and their care demonstrated competence throughout this case.
>
> The panel finds no fault with the care rendered by the nurses nor any other employees of this hospital.

Contrary to appellant's claim that an expert was unnecessary in this case due to obvious negligence, we find a medical expert was required. Because of Mr. Trotter's multiple pre-existing conditions, his case was medically complicated. Whether or not BRGMC's employees were properly trained and equipped and/or breached the applicable standard of care in monitoring and treating Mr. Trotter and whether that breach caused or contributed to Mr. Trotter's death or the loss of a chance of survival turns on complex medical issues. It is clearly beyond the ability of laymen to make such determinations unassisted by expert medical testimony. See ***Schultz***, 57 So.3d at 1008-09.

Similarly, the determination as to whether or not to transfer Mr. Trotter to another facility as requested by Ms. Trotter cannot be separated from the other complex medical decisions that were made based on Mr. Trotter's critical condition. See ***Coleman v. Deno***, 01-1517 (La. 1/25/02), 813 So.2d 303, 317. Only physicians can issue transfer and acceptance orders, and negligence regarding transfer decisions cannot likely be established without expert medical testimony. See ***LaCoste v. Pendleton Methodist Hospital***, *L.L.C.*, 07-0008 (La. 9/5/07), 966 So.2d 519, 531 (Knoll, J.; dissenting); ***Coleman***, 813 So.2d at 316.

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[7] A medical review panel opinion is admissible expert medical evidence that may be used to support or oppose any subsequent medical malpractice lawsuit. La. R.S. 40:12319(H); ***Samaha***, 977 So.2d at 890.

Further, even assuming *arguendo* Ms. Trotter could establish a breach of the applicable standard of care by the administration of a declared allergen to Mr. Trotter, as well as other acts of alleged negligence regarding safety protocols, expert medical testimony would still be required to establish that the administration of the alleged allergen and/or other alleged acts of negligence caused the alleged injuries to Mr. Trotter. See ***Pfiffner***, 643 So.2d at 1234; ***Jackson***, 116 So.3d at 776. Normally, in cases such as the present one involving patients with complicated medical histories and complex medical conditions, causation is simply beyond the province of lay persons to assess without the assistance of expert medical testimony. See ***Pfiffner***, 643 So.2d at 1234; ***Jackson***, 116 So.3d at 776.

Accordingly, we reject Ms. Trotter's arguments that no expert medical testimony was needed in this case and that she would be able to sustain her burden of proof at trial because she was "very well familiarized" with her son's medical requirements. Since BRGMC would not bear the burden of proof at trial, once it pointed out the absence of expert medical testimony to establish the essential elements of a breach of the applicable standard of care and causation, the burden of proof shifted. At that point, Ms. Trotter was required to produce expert medical testimony sufficient to establish that she will be able to satisfy her evidentiary burden of proof at trial. La. C.C.P. art. 966(C)(2); ***Schultz***, 57 So.3d at 1009-10.

Ms. Trotter failed to meet this burden. She failed to present any expert medical testimony to establish any genuine issue of material fact with regard to whether BRGMC or any of its employees breached the applicable standard of care in their treatment of Mr. Trotter or whether a causal connection existed between the alleged breach and any injury to Mr. Trotter. See La. C.C.P. art. 966(C)(2); ***Schultz***, 57 So.3d at 1009-10; ***Cherry v. Herques***, 623 So.2d 131, 134 (La. App. 1st Cir. 1993). The trial court properly granted summary judgment dismissing Ms. Trotter's claims against BRGMC.

Ms. Trotter additionally contends the trial court erred in allowing counsel for BRGMC, the LSU defendants, and Dr. Branton-Anders to argue against her collectively at the joint hearing held on their respective motions for summary judgment. She complains it was not apparent to her how much time she had to address the issues pertinent to each individual defendant. Initially, we note Ms. Trotter raised no objection to the joint hearing. Further, a trial judge has great discretion in the manner in which proceedings are conducted before his court. La. C.C.P. art. 1631; ***Pino v. Gauthier***, 633 So.2d 638, 648 (La. App. 1st Cir. 1993), writs denied, 94-0243, 94-0260 (La. 3/18/94), 634 So.2d 858-59. It is only upon a showing of a gross abuse of discretion that appellate courts have intervened. ***Pino***, 633 So.2d at 648. Based on our review of the record, we find no abuse of discretion by the trial court in this case.

Lastly, we find no merit in Ms. Trotter's complaint that the trial court erred in not allowing her additional time to obtain a medical expert. A hearing was scheduled for March 30, 2015 on BRGMC's motion for summary judgment, as well as the separate motions for summary judgment filed by Dr. Branton-Anders and the LSU defendants. On March 20, 2015, Ms. Trotter filed a motion to continue the hearing in order to give her additional time to prepare an opposition to the defendants' motions for summary judgment. The trial court denied the motion to continue. On appeal, Ms. Trotter asserts the trial court should have given her more time to "'close' a deal" with the one independent expert witness she located who was willing to work with a pro se litigant after her "diligent 3 year effort" to locate an expert.

It is not an abuse of a trial court's wide discretion to entertain a motion for summary judgment before discovery has been completed. In such instances, the trial court has discretion to render summary judgment, if appropriate, or to allow further discovery. Although the parties must be given the opportunity to conduct

"adequate discovery" to present their claims, there is no absolute right to delay action on a motion for summary judgment until discovery is complete. La. C.C.P. art. 966(C)(1); ***Ellis v. Louisiana Board of Ethics***, 14-0112 (La. App. 1st Cir. 12/30/14), 168 So.3d 714, 725 (per curiam), writ denied, 15-0208 (La. 4/17/15), 168 So.3d 400. The trial court's ruling on a motion for continuance should not be disturbed on appeal in the absence of a clear abuse of discretion. ***St. Tammany Parish Hospital v. Burris***, 00-2639 (La. App. 1st Cir. 12/28/01), 804 So.2d 960, 963.

At the time that BRGMC filed its motion for summary judgment in January 2015, over three years had elapsed since Mr. Trotter's death in November 2011, over two years had elapsed since Ms. Trotter filed her request for a medical review panel review, and more than eight months had elapsed since the medical review panel rendered an opinion favorable to BRGMC in April 2014. Therefore, Ms. Trotter had ample time to familiarize herself with the issues involved in this matter and to search for a medical expert to support her claims. In fact, she admitted she had been searching for an expert for three years. Nevertheless, there is no indication Ms. Trotter requested any discovery whatsoever after she filed her lawsuit against BRGMC. Even after the motion for summary judgment was filed on the basis that Ms. Trotter lacked a medical expert and the hearing date was set for over two months later, Ms. Trotter did not request any discovery or notice the deposition of any party. Under these circumstances, we find no abuse of discretion in the trial court's denial of Ms. Trotter's motion for continuance.

CONCLUSION

For the reasons assigned, this appeal is maintained and the judgment of the trial court granting BRGMC's motion for summary judgment and dismissing Ms. Trotter's claims against it, with prejudice, is affirmed. The costs of this appeal are assessed to Ms. Trotter despite her pauper status. See La. C.C.P. arts. 2164 &

5188; ***Lake Villas No. II Homeowners' Association, Inc. v. LaMartina***, 15-0244 (La. App. 1st Cir. 12/23/15) (unpublished), writ denied, 16-0149 (La. 3/14/16), 189 So.3d 1070; ***State in Interest of EG***, 95-0018 (La. App. 1st Cir. 6/23/95), 657 So.2d 1094, 1098, writ denied, 95-1865 (La. 9/1/95), 658 So.2d 1263.

APPEAL MAINTAINED; JUDGMENT AFFIRMED.