STATE OF MICHIGAN

COURT OF APPEALS

FREDERICK ZIETZ and JUNE ZIETZ,

Plaintiffs-Appellants,

v

SURYA SANKARAN, M.D. and SURYA SANKARAN, M.D., P.C.,

Defendants-Appellees

UNPUBLISHED
May 16, 1997

No. 192147
Iosco Circuit Court
LC No. 94-008925-NH

Before: Wahls, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiff Frederick Zietz (plaintiff) appeals as of right from the trial court's order of dismissal based on the disqualification of plaintiff's only expert witness in this medical malpractice case. We affirm.

The action was based on complications following a surgical procedure performed by defendant Surya Sankaran, M.D. (defendant) to correct a stricture in plaintiff's esophagus.

In the trial court, defendant filed a motion to strike the deposition of plaintiff's expert witness pursuant to MCL 600.2169(1)(a); MSA 27A.2169(1)(a), which provides that an expert may not testify in a medical malpractice action against a board certified specialist unless the witness is also board certified in the same specialty. Defendant contended that plaintiff's expert witness was not qualified to offer testimony because he was not a board certified surgeon, but a board certified gastroenterologist and pediatrician.

Plaintiff relied on the less stringent, pre-amended MCL 600.2169(1); MSA 27A.2169(1), that provided that an expert may testify regarding the applicable standard of care if the expert "[s]pecializes, or specialized . . . in the same specialty or a related, relevant area of medicine . . . as the specialist who is the defendant in the medical malpractice action." Plaintiff contended that the pre-amended statute applied because of the effective date for the amendment.

The trial court gave a lengthy discussion regarding the question of the applicability of the statute or its amendment. The trial court, however, indicated that it was ruling on the motion on the "separate basis" of the "discretion of Court as to allowing expert testimony." In finding that plaintiff's expert witness was not qualified to give expert testimony as to the appropriate standard of care and treatment of a board certified surgeon, the trial court stated:

> That Doctor Ament has testified that he is a Pediatric Gastroenterologist, that he has never performed the procedure here that gives rise to this cause of action, that he primarily treats children, although he does include some adults in his practice. If he did not know the purpose for which the procedure was being conducted or performed on the Plaintiff in this case, and conjectured as to one of two possible alternatives in his opinion, or that came to his mind, and it does not appear from the deposition of Doctor Ament that he simply would be competent as an expert witness to testify in the malpractice action of a Board Certified General Surgeon. His specialties are significantly different. Certainly they deal with each deal with the human body, and certainly with certain aspects of the human body in common. However, the specialties are dramatically different. Doctor Ament testified that he was not a surgeon, did not perform surgery, and as such, I believe this Court would have to, in its discretion, find that Doctor Ament simply is not an expert witness who would be competent to testify as to the standards of care of a Board Certified Surgeon.

The trial court then granted defendant's motion to strike plaintiff's only expert witness. During the hearing, the trial court also denied plaintiff's oral motions to adjourn trial and for leave to add an expert witness. The trial court then entered a stipulated order for dismissal.

Plaintiff argues that the trial court abused its discretion in granting defendant's motion to strike plaintiff's expert witness. As a threshold matter, we find that plaintiff's argument regarding the applicability of MCL 600.2169; MSA 27A.2169 is moot. This Court recently held that the Michigan Supreme Court's adoption of MRE 702 precluded the Legislature from enacting a statute that imposes additional competency requirements beyond those listed in the court rule for qualification of an expert witness. *McDougall v Schanz*, 218 Mich app 501, 506-507; 554 NW2d 56 (1996). This Court explained that "to the extent that [MCL 600.2169(1); MSA 27A.2169(1)] conflicts with the procedural mandates of MRE 702, it is unconstitutional." *Id*. As a result, issues surrounding the qualification of medical malpractice experts are properly considered under the direction of MRE 702. *Id*. at 508-509.

The substantive issue is whether the trial judge abused his discretion in concluding that plaintiff's expert witness was not qualified to testify concerning the standard of care applicable to defendant's diagnosis and treatment of plaintiff. A trial court's decision to qualify a witness as an expert is reviewed for an abuse of discretion. *Bahr v Harper-Grace Hospitals*, 448 Mich 135, 141; 528 NW2d 170 (1995); *McDougall*, *supra*.

MRE 702 provides:

> If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

The proper test for determining if an expert witness is qualified to testify in a medical malpractice trial is whether the witness is familiar with the appropriate standard of care. *McDonald Ford Sales, Inc v Ford Motor Co*, 165 Mich App 321, 329; 418 NW2d 718 (1987); *Dybata v Kistler*, 140 Mich App 65, 69; 362 NW2d 891 (1985). A party offering the testimony of an expert must demonstrate the witness's knowledge of the applicable standard of care. *McDougall, supra* at 508. The plaintiff bears the burden of showing that his expert possesses the necessary learning, knowledge, skill, and experience to testify. *Id*.

In this case, we agree with the trial court's reasoning and its conclusion that the specialties of defendant and plaintiff's expert witness are "dramatically different." We therefore conclude that the trial court did not abuse its discretion in granting defendant's motion to strike plaintiff's expert witness.[1]

In regard to plaintiff's claim that the lower court erred in denying his request for leave to locate another expert witness who could testify as to the applicable standard of care, we actually need not address this issue. This issue was not preserved for appeal because it was not identified as an issue in plaintiff's statement of questions involved pursuant to MCR 7.212(C)(5). *Lansing v Hartstuff*, 213 Mich App 338, 351 ; 539 NW2d 781 (1995). In addition, the issue is given only cursory treatment in plaintiff's brief and plaintiff failed to provide us with any supporting authority for his argument. A party may not merely announce his position and leave it to us to discover and rationalize the basis for the claim. *Goolsby v Detroit*, 419 Mich 651, 655, n 1; 358 NW2d 856 (1984); *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992); *Community Nat'l Bank v Michigan Basic Property Ins Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987). We address the matter, nonetheless, in view of the dissent, and find no abuse of discretion.

The decision whether to allow a party to add an expert witness is within the discretion of the trial court. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1991). Likewise, the grant or denial of a motion for adjournment is also within the trial court's discretion. *Id.* "[C]ases where a denial was proper have always involved some combination of numerous past continuances, failure of the movant to exercise due diligence, and lack of any injustice to the movant." *Id.*, citing *Rosselott v Muskegon Co*, 123 Mich App 361, 370-371; 333 NW2d 282 (1983).

In this case, the trial court noted that the trial date had been postponed two or three times. It further noted that plaintiff had nearly two years to identify an expert witness. We have reviewed the record and find that plaintiff had sufficient time to identify a qualified expert witness.

In arguing that the trial court abused its discretion, plaintiff claims that he "had no expectation of a dispute regarding [his expert's] qualifications until Defendant filed its motion in limine." In reviewing this issue, plaintiff's expectations are irrelevant. Nevertheless, in a medical malpractice case, the plaintiff

bears the burden of proving: (1) *the applicable standard of care*, (2) breach of that standard by defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995). Defendant did not stipulate to the qualifications of plaintiff's expert. As such, plaintiff should have expected such a dispute when his proposed expert intended to testify as to the standard of care of a surgeon, but was not a surgeon and had not performed the surgical procedure at issue.

In addition, plaintiff claims that he would have been unable to attend trial as scheduled because of his medical condition. This argument is irrelevant to whether the trial court abused its discretion in denying plaintiff's request for leave to locate another expert witness. In any event, the trial court found that plaintiff could be at trial if he chose, that his deposition had been taken, and that there was no assurance, based on plaintiff's condition, that he would be more available at a subsequent time. We have reviewed the record and agree with the trial court's findings. Under the circumstances, we find no abuse of the trial court's discretion in denying plaintiff's motion for leave to locate another expert witness.

Affirmed.

/s/. Myron H. Wahls
/s/ Harold Hood

[1] We note that even if the trial court's decision that plaintiff's expert witness was not qualified was based on the statute, we would affirm the trial court. This Court will not reverse the decision of a trial court where the right result is reached for the wrong reason. *Welch v District Court*, 215 Mich App 253, 256; 545 NW2d 15 (1996).