STATE OF MICHIGAN

COURT OF APPEALS

SHARON POWELL, as Personal Representative of the Estate of SHIRLEY SHAW, Deceased, and SHARON POWELL, Individually,

Plaintiff-Appellant,

v

DWIGHT E. SMITH, M.D., DWIGHT E. SMITH, M.D., P.C., a Michigan Corporation, and GRACE HOSPITAL, a Michigan Non-Profit Corporation, Jointly and Severally,

Defendants-Appellees.

UNPUBLISHED
October 3, 1997

No. 193029
Wayne Circuit Court
LC No. 94-408969

Before: Taylor, P.J., and Saad and Griffin, JJ.

PER CURIAM.

The circuit court granted summary disposition for all defendants in this medical malpractice case and plaintiff now appeals. We affirm.

Facts

Plaintiff's decedent (Shaw) was admitted to Grace Hospital on April 28, 1992, and on May 1, 1992, she was diagnosed with infective endocarditis (inflammation of the lining of the heart caused by infection), and started on medications. She was transferred to the Intensive Care Unit ("ICU") on June 10, 1992, where she died later that day of acidosis. Plaintiff, on behalf of Shaw's estate, filed suit against the defendant doctor for failing to properly evaluate, examine, and diagnose, and against Grace Hospital for improperly administering medication which allegedly caused damage to Shaw's kidneys.

The trial court granted summary disposition in favor of all defendants, finding: (1) that plaintiff's primary witness, Dr. Venus, M.D. (a critical care specialist) was not qualified to testify regarding the standard of care governing defendant physician (an internal medicine specialist) and (2) that Dr. Venus'

deposition testimony failed to show a causal connection between defendants'

acts and Shaw's death. The court also concluded that plaintiff's other witness, Dr. Schneider, Ph.D. (a pharmacologist) did not establish proximate cause between the administration of the medications and Shaw's death.

Analysis

In a medical malpractice action, the plaintiff bears the burden of proving the applicable standard of care, breach of that standard of care by the defendant(s), injury, and causation. *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). Plaintiff argues that she presented sufficient evidence to create a question of fact regarding whether defendants' alleged malpractice proximately caused decedent's death.

A

Plaintiff alleged that defendant physician was negligent because he did not administer the antibiotics Vancomycin and Gentamicin to decedent on April 29, 1992, but rather waited until May 1, 1992. Plaintiff's expert, Dr. Venus, testified in deposition that the primary cause of decedent's death was acidosis caused by persistent sepsis[1] and renal failure. Dr. Venus also testified that the delay in administering the antibiotics prevented the total eradication of the endocarditis bacteria in decedent's blood, which would have caused or exasperated her sepsis. However, Dr. Venus testified on the second day of his deposition that in decedent's case the acidosis was not in any way related to her sepsis. Dr. Venus was unable to say with any degree of medical certainty that the outcome would have been different had she been started on the antibiotics two days earlier. We therefore agree that Dr. Venus' testimony failed to establish a causal link between defendant's alleged negligence and decedent's death.

B

Plaintiff also argues that the testimony of her pharmacological expert, Dr. Schneider, was sufficient to create an issue of fact regarding whether de endant hospital's alleged negligence caused decedent's injuries or death. Again, we disagree. Plaintiff alleged that the hospital was negligent in failing to properly monitor decedent's blood levels of Vancomycin and Gentamicin. Dr. Schneider testified that in his opinion, the antibiotics were not properly administered to decedent. He drew this conclusion from her records showing her blood levels of those drugs, and from records that sometimes the drugs were given, but her blood levels of the drugs were not recorded. Dr. Schneider indicated that all of decedent's recorded doses and blood levels of the antibiotics were reasonable, except for one dose of Vancomycin which was given on May 7, 1992. However, Dr. Schneider was unable to say whether that one improper dose caused any injury to decedent. He also indicated that the Vancomycin levels returned to reasonable or decedent recovered after the improper dose. Further, Dr. Schneider testified that the recorded levels of antibiotics appeared to be sloppy record-keeping, but that the record-keeping did not have an adverse effect on decedent. Finally, Dr. Schneider testified that he could not say with any degree of medical certainty whether the outcome of decedent's case would have been any different if she had been treated with antibiotics earlier than she was. From this review of Dr.

Schneider's testimony, we conclude that Dr. Schneider was unable to causally link the hospital's alleged improper administration of Vancomycin and Gentamicin to decedent's death.

C

Plaintiff also argues that Dr. Venus was qualified to provide testimony establishing the standard of care governing Dr. Smith. We disagree. It is well-settled that the determination of an expert witness' qualifications is within the discretion of the trial court and will not be overturned on appeal absent abused of discretion. *Kinzie v AMF, Inc*, 167 Mich App 528, 530; 423 NW2d 253 (1988). An expert witness must meet the criteria set forth in MRE 702, which provides that, "If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier 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." *McDougall v Eliuk*, 218 Mich App 501, 507-508; 554 NW2d 56 (1996).

The trial court did not abuse its discretion in determining that Dr. Venus was not qualified to provide standard of care testimony against defendant physician. Defendant is an *internal medicine* specialist, while Dr. Venus is a *critical care* specialist. While a medical expert witness need not specialize in the same field or specialty in which he will testify, *Golden v Baghdoian,* 222 Mich App 220; 564 NW2d 505 (1997), the party offering the testimony must establish that the witness possesses knowledge about the standard of care for the field in which he will testify. *Carlton v St John Hospital*, 182 Mich App 166, 171; 451 NW2d 543 (1989).[2] Dr. Venus admitted in deposition that he does not hold himself out as an expert in internal medicine, and that he does not practice internal medicine. Dr. Venus testified that there was one standard of care for each disease process, regardless of the specialty of the treating physician. This testimony demonstrates that Dr. Venus would expect an internal medicine specialist to treat any disease the same as he would treat it. Such an opinion fails to account for the different methods and theories of training and teaching which inevitably vary from specialty to specialty. The trial court did not abuse its discretion when it concluded that Dr. Venus could not establish the requisite standard of care.

II

Finally, plaintiff claims that the trial court improperly denied her motion for leave to amend her complaint to add theories of liability stemming from decedent's care in the ICU on the day of her death. Permission to amend pleadings rests within the sound discretion of the trial court, and we will not reverse the trial court's decision absent an abuse of that discretion. *Kemp v Harper-Grace Hospital*, 180 Mich App 473, 478; 447 NW2d 780 (1989).

Although leave to amend should be freely given when justice so requires [MCR 2.118(A)(2)], a motion to amend a complaint may be denied where there is undue delay, bad faith or dilatory motive on the part of the movant, or undue prejudice to the opposite party by allowance of the amendment. See *Gardner v Stodgel*, 175 Mich App 241, 248; 437 NW2d 276 (1989). Our review of the record indicates that while defendants may have had notice of plaintiff's intention to assert claims of negligence in the ICU, plaintiff also exhibited extreme delay in moving to amend. Plaintiff's complaint

contained no allegations of negligence in the ICU. Plaintiff failed to raise such allegations at either mediation or settlement conferences. Plaintiff apparently discussed claims of negligence in the ICU at the hearing on defendant hospital's original motion for summary disposition. However, plaintiff did not seek to amend her complaint at that time. Plaintiff waited until only three weeks before trial to make an oral motion for leave to amend. Such a late amendment would have unduly prejudiced defendants because it would have added new theories of liability and new witnesses to the case. There was no abuse of discretion in denying plaintiff's motion to amend.

Affirmed.

/s/ Clifford W. Taylor
/s/ Henry William Saad
/s/ Richard Allen Griffin

[1] Poisoning caused by the absorption into the blood of pathogenic microorganisms.

[2] In *Waatti v Marquette General Hospital*, 122 Mich App 44, 44; 339 NW2d 526 (1982), we noted that "[a]lthough a witness may qualify as an expert by virtue of experience, knowledge, skill, training, or education, he must in all circumstances explicitly state his familiarity with the appropriate standard of care applicable in a given situation." See also *Eliuk*, 218 Mich App at 508; *Cronkrite v Fahrbach*, 853 FSupp 257 (WD MI 1994).