

STATE OF MICHIGAN
COURT OF APPEALS

HEIDI ROACH,

Plaintiff-Appellant,

v

JOFFER HUSSEIN HAKIM, M.D.,

Defendant,

and

MERCY HEALTH SERVICES OF MICHIGAN,
d/b/a ST. JOSEPH MERCY HOSPITAL
PONTIAC, and PEGGY MATO, R.N.,

Defendants-Appellees.

UNPUBLISHED

June 10, 2004

No. 242930

Oakland Circuit Court

LC No. 00-026881-NH

Before: Gage, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right from the trial court's pretrial order disqualifying Larry Boyd, R.N., as an expert witness against defendant Peggy Mato, R.N. The trial court subsequently granted summary disposition in favor of defendant Mato and partial summary disposition in favor of defendant Mercy Health Services because plaintiff did not retain an expert witness to address Mato's alleged negligence.¹ We reverse and remand for further proceedings consistent with this opinion.

¹ After disqualifying Boyd as an expert witness, the trial court gave plaintiff an additional period of time to retain a new expert. After plaintiff did not submit a new nursing expert by the given deadline, defendant's motion for summary disposition regarding the allegations of negligence involving nursing services was granted. In granting summary disposition, the trial court rejected plaintiff's assertion that expert testimony was unnecessary because the alleged acts of negligence involved acts within the knowledge of laypersons for which expert testimony was not required. The case proceeded to a jury trial on the remaining claims against Mercy Health Services and defendant Dr. Joffer Hussein Hakim. The jury returned a judgment of no cause of action. The

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Plaintiff filed this malpractice action alleging that Dr. Hakim negligently administered an epidural anesthetic before plaintiff gave birth to her daughter. Several hours after the birth, plaintiff alleged that defendant Mato directed her to come to the bathroom for a shower. According to plaintiff, her legs were still numb from the epidural, causing her to fall when she attempted to get out of bed. It was alleged that defendant Mato failed to properly assess plaintiff and failed to assist plaintiff in getting out of bed. With the complaint, plaintiff filed an affidavit of merit from Larry Boyd, R.N.

Defendant Mato moved for summary disposition, contending that Boyd was not qualified to offer expert testimony because he did not specialize as a labor and delivery nurse, the specialty area of defendant Mato. The trial court granted the motion and later dismissed defendant Mato from the litigation when plaintiff failed to offer a new expert within the allotted time period. Plaintiff alleges that the trial court erred in concluding that a nurse must specialize within the same area in order to offer expert testimony.

The trial court's decision regarding qualification and admission of expert testimony is reviewed for an abuse of discretion. *Tate v Detroit Receiving Hospital*, 249 Mich App 212, 215; 642 NW2d 346 (2002). We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in opposition to a motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden, supra*.

MCL 600.2912a sets forth a plaintiff's burden of proof with regard to the applicable standard of care in a malpractice action. The statute recognizes a distinction between the standard of care for general practitioners and specialists. MCL 600.2169(1) governs expert testimony in a malpractice action and similarly distinguishes between expert testimony offered against a general practitioner and expert testimony offered against a specialist, requiring that expert testimony against a specialist be given only by a person who practices in that same specialty.

Although nurses are licensed health care professionals, they "do not engage in the practice of medicine." *Cox v Flint Board of Hospital Managers*, 467 Mich 1, 19-20; 651 NW2d 356 (2002). Neither the standard for general practitioners nor the standard for specialists applies to nurses. *Id.* at 18. Rather, the common law standard of care applies to malpractice or negligence actions against nurses. *Id.* at 21. "[T]he applicable standard of care is the skill and care ordinarily possessed and exercised by practitioners of the profession in the same or similar localities." *Id.* at 21-22.

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trial court's conclusion that expert testimony was required and the jury verdict are not challenged on appeal.

In the present case, the record discloses that defendant Mato and plaintiff's expert, Boyd, were both members of the same profession, registered nurses, and worked in the Detroit area. Because the distinction between a general practitioner and specialist in MCL 600.2169(1) is not relevant to nurses, *Cox, supra*, the trial court erred in relying on that distinction to strike Boyd's expert testimony. Rather, the qualifications of an expert are examined based on knowledge, skill, experience, training, or education. MRE 702.² Accordingly, the trial court erred in granting defendant Mato's motion to strike Boyd as an expert and subsequent grant of summary disposition based on MCL 600.2169(1). *Cox, supra*.

Reversed and remanded for proceedings consistent with this opinion.³ We do not retain jurisdiction.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

² We note that defendant Mato blanketly asserted in her motion to disqualify Boyd as an expert that "[l]abor and delivery nurses undergo special training in this area." However, defendant Mato failed to provide any foundation for this assertion or delineate the type of training that was required to be assigned to this area. Also, the affidavit in support of meritorious defense filed by defendant Mato was submitted by a registered nurse and the area of her assignment and qualifications for her assignment were not delineated in the affidavit. Moreover, the complaint alleging negligence did not pertain to the actual labor and delivery itself, but rather the assessment of the patient following a procedure involving administration of anesthesia. These considerations are relevant when assessing the credentials of an expert in accordance with MRE 702. The trial court is not foreclosed from addressing the qualifications of Boyd in light of MRE 702 on remand.

³ In the prayer for relief portion of the brief on appeal, plaintiff requests that this Court "order a new trial against all Defendants." (Emphasis in original). Plaintiff failed to raise the issue of a new trial against all defendants in the statement of questions presented, and therefore, we do not address the issue. *Kirkaldy v Rim*, 251 Mich App 570, 584; 651 NW2d 80 (2002). Furthermore, a statement of position by a party without citation to authority is insufficient to raise an issue, and a party may not leave it to this Court to search for authority to sustain a position. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002). Accordingly, plaintiff abandoned any claim to a new trial against all defendants.