

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA W. GRUDKA and CASS GRUDKA,
Plaintiffs-Appellants,

and

BLUE CROSS BLUE SHIELD OF MICHIGAN,
Intervening Plaintiff,

v

DR. GARY S. KAPLAN, D.P.M.,
Defendant-Appellee.

UNPUBLISHED
September 14, 2004

No. 239840
Wayne Circuit Court
LC No. 99-914108-NH

Before: Donofrio, P.J., and White and Talbot, JJ.

MEMORANDUM.

Plaintiffs appeal as of right the circuit court's order granting defendant's motion for summary disposition and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs filed suit alleging that defendant, a podiatrist, committed medical malpractice by performing unnecessary surgery on Barbara W. Grudka. Defendant moved to strike the deposition testimony of Dr. Touchton, plaintiffs' proposed expert witness, on the ground that he was not qualified to act as an expert because he was not familiar with the standard of care applicable to this case. The circuit court granted the motion, and subsequently granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) on the ground that without expert testimony, plaintiffs could not establish that defendant breached the applicable standard of care.¹

¹ Plaintiffs have not furnished the transcript of the hearing at which the trial court excluded Dr. Touchton's deposition, as required by MCR 7.210(B)(1)(a), notwithstanding the fact that they
(continued...)

Plaintiffs did not challenge below, and do not challenge on appeal, the grant of summary disposition based on their inability to submit the requisite proofs without the stricken testimony. Rather, plaintiffs argue that the court erred in striking their expert's testimony. However, plaintiffs have abandoned this issue by failing to furnish the transcript of the hearing at which the circuit court excluded the deposition. MCR 7.210(B)(1)(a); *Taylor v Blue Cross and Blue Shield of Michigan*, 205 Mich App 644, 654; 517 NW2d 864 (1994). We note that the order striking the expert's testimony expressly refers to "the reasons stated by this Honorable Court on the record on January 22, 2002, which are incorporated herein by reference thereto."

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot

(...continued)

are challenging this decision as a basis for the granting of summary disposition in favor of defendant.