

STATE OF MICHIGAN  
COURT OF APPEALS

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Estate of KEITH HALL, by JAYNE A. HALL,  
Personal Representative,

UNPUBLISHED  
December 7, 2010

Plaintiff-Appellant/Cross-Appellee,

V

No. 291885  
Monroe Circuit Court  
LC No. 05-020901-NH

MERCY MEMORIAL HOSPITAL  
CORPORATION and DR. JEFFREY W.  
COUTURIER,

Defendants-Appellees/Cross-  
Appellants,

and

DR. SUDJONO KOSIM,

Defendant-Appellee.

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Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

In this medical malpractice action, plaintiff, the personal representative of the estate of the decedent, Keith Hall, appeals as of right, challenging the trial court's separate orders granting summary disposition in favor of defendants Dr. Sudjono Kosim, Dr. Jeffrey Couturier, and Mercy Memorial Hospital Corporation under MCR 2.116(C)(10). Defendants Mercy Memorial and Dr. Couturier have filed a cross appeal in which they raise alternative grounds for affirming the trial court's decision. We affirm.

When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must examine the documentary evidence presented by the parties and, drawing all reasonable inferences in favor of the nonmoving party, determine whether there is a genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). The nonmoving party has the burden of demonstrating through affidavits, depositions, admissions, or other documentary evidence that there is a genuine issue of fact for trial. *Id.* The party opposing the motion may not rest on the mere allegations or denials contained in the pleadings but must come forward with evidence of specific facts to establish the existence of a material factual dispute. *Id.* at 362, 371. A question of fact exists when reasonable minds could differ on the

conclusions to be drawn from the evidence. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A trial court's grant of summary disposition is reviewed de novo, on the entire record, to determine whether the prevailing party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A trial court's decision concerning the qualifications of an expert witness to testify in a medical malpractice case is reviewed for an abuse of discretion. *Gonzalez v St John Hosp & Med Ctr (On Reconsideration)*, 275 Mich App 290, 294; 739 NW2d 392 (2007). An abuse of discretion occurs only when the trial court's decision falls outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).<sup>1</sup>

Plaintiff argues on appeal that the trial court erred in granting summary disposition in favor of defendants on the basis of its conclusion that her proposed expert, Dr. Michael D'Ambrosio, was not qualified under MRE 702 and MCL 600.2169(2) to offer expert testimony whether early detection of the decedent's brain tumor would have improved his life expectancy or functional status, and the required neurosurgery to remove it.<sup>2</sup> We disagree.

The trial court relied on MRE 702 and MCL 600.2169(2). MRE 702 states:

If the court determines that 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 if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

MCL 600.2169(2) provides:

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<sup>1</sup> The relevant background facts are set forth in this Court's prior decision in *Hall v Mercy Mem Hosp Corp*, unpublished opinion per curiam of the Court of Appeals, issued November 20, 2008 (Docket No. 276814).

<sup>2</sup> Plaintiff asserts that the trial court erred in considering defendants' 2009 motion in limine because the court had previously considered Dr. D'Ambrosio's qualifications to testify as an expert in 2007, and defendants never moved for reconsideration, rehearing, or relief from judgment with regard to that decision. However, plaintiff never raised this issue in response to defendants' 2009 motion, leaving the issue unpreserved. Therefore, appellate consideration of this issue is foreclosed absent a plain error affecting plaintiff's substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Because a trial court has discretion to reconsider a prior ruling, *Kokx v Bylenga*, 241 Mich App 655, 658-659; 617 NW2d 368 (2000), plaintiff cannot establish a plain error. In any event, the two motions, while clearly overlapping, did not present precisely the same issue.

In determining the qualifications of an expert witness in an action alleging medical malpractice, the court shall, at a minimum, evaluate all of the following:

- (a) The educational and professional training of the expert witness.
- (b) The area of specialization of the expert witness.
- (c) The length of time the expert witness has been engaged in the active clinical practice or instruction of the health profession or the specialty.
- (d) The relevancy of the expert witness's testimony.

Although Dr. D'Ambrosio was certified in neurology in 1994 and in vascular neurology in 2005 and expressed a professional interest in neuro-radiology, he exclusively practiced emergency medicine and had never treated a patient for brain cancer outside the setting of the emergency department.

Dr. D'Ambrosio was expected to testify that early detection of Hall's brain tumor would have improved his life expectancy. Dr. D'Ambrosio's opinions on that issue were based on his background as a neurologist, particularly his "residency training" and his "general familiarity with the medical literature regarding those disease processes and their prognosis." In his practice as an emergency room physician, however, Dr. D'Ambrosio did not have any continuing relationship with patients who were diagnosed with such tumors. Dr. D'Ambrosio also had not performed or participated in any life-expectancy studies on brain tumor patients.

Dr. D'Ambrosio was also expected to testify that early detection of Hall's tumor would have improved his functional status, "specifically as it relates to seizures as a consequence of the tumor and/or the required neurosurgery to remove it." Plaintiff intended for Dr. D'Ambrosio to "testify that the early diagnosis with appropriate therapy makes the probability of neurological disorder during the person's lifetime less likely, specifically less likely to have neurological deficits, less likely to have cognitive impairment and less likely to have seizures that are refractory to treatment." Dr. D'Ambrosio agreed, however, that whenever a brain tumor is removed surgically, neurological deficits can occur as a result of the surgery itself.

The trial court's determination that Dr. D'Ambrosio's education, professional training, areas of specialization, and the length of time he has practiced his specialty all demonstrated that he is not an expert in the treatment and prognosis of brain tumors was well within the range of reasonable and principled outcomes. See MCL 600.2169(2). At best, Dr. D'Ambrosio familiarized himself with the medical literature on that issue and has made preliminary findings of possible tumors in his emergency room practice. His employment since 1992 has undisputedly been in emergency medicine. Accordingly, plaintiff failed to show that Dr. D'Ambrosio was qualified to provide expert testimony concerning the effects of Dr. Couturier's failure to diagnose Hall's brain tumor in 2001. The trial court did not abuse its discretion in excluding Dr. D'Ambrosio's testimony. There is no dispute that expert testimony concerning proximate cause was necessary to plaintiff's case (Expert testimony is essential to establish a causal link between the alleged negligence and the alleged injury in a medical malpractice case. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 478; 633 NW2d 440 (2001); *Thomas v McPherson Community Health Ctr*, 155 Mich App 700, 705; 400 NW2d 629 (1986)). Therefore,

the trial court did not err in granting summary disposition to Dr. Couturier and Mercy Memorial Hospital after finding that Dr. D'Ambrosio was not qualified to testify. Lacking expert testimony concerning causation, plaintiff's claims against defendants were appropriately dismissed.

In light of our decision, it is unnecessary to consider the remaining arguments raised on appeal or cross-appeal.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Deborah A. Servitto  
/s/ Douglas B. Shapiro