[Cite as *Korreckt v. Ohio Health*, 2011-Ohio-3082.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Blaine Korreckt et al.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 10AP-819 (C.P.C. No. 08CVA-09-13432)
Ohio Health dba Doctors West Hospital et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on June 23, 2011

Mishkind Law Firm Co., L.P.A., *David A. Kulwicki*, and *Howard D. Mishkind*, for appellants.

Roetzel & Andress, LPA, and *Thomas A. Dillon*, for appellees Central Ohio Surgical Specialties, Inc., and Mark H. Cripe, D.O.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Plaintiffs-appellants, Blaine and Goldia Korreckt (collectively, "appellants"), appeal the Franklin County Court of Common Pleas' entry of summary judgment in favor of defendants-appellees, Central Ohio Surgical Specialties, Inc., and

Mark H. Cripe, D.O. ("Dr. Cripe") (collectively, "appellees"), on appellants' medical malpractice and loss of consortium claims. For the following reasons, we affirm.

{¶2} On September 19, 2008, appellants filed a complaint against appellees in the Franklin County Court of Common Pleas.[1] In their complaint, appellants alleged claims of medical malpractice on behalf of Mr. Korreckt and a loss of consortium claim on behalf of Mrs. Korreckt. Appellants' claims arise out of Mr. Korreckt's diagnosis and treatment at Doctors Hospital West for a bacterial, soft-tissue infection known as necrotizing fasciitis, which affects the fascia and subcutaneous tissues above it and which continues to expand and progress until treated surgically. In their complaint, at ¶28, appellants alleged that Dr. Cripe "negligently failed to order a CT scan, assess, test, diagnose and/or otherwise undertake to determine that Mr. Korreckt had an infection and the source, nature and extent of said infection as required by the applicable standard of care. Further, [he] negligently failed to undertake surgical treatment of said infection as required by the applicable standard of care." Appellants further alleged that, as a direct and proximate result of the alleged negligence, Mr. Korreckt's diagnosis was delayed from April 5, 2007 to April 6, 2007, allowing his infection to progress. Appellants claim that Central Ohio Surgical Specialties, Inc., is vicariously liable for Dr. Cripe's alleged negligence as his employer.

{¶3} Mr. Korreckt reported to the emergency room of Doctors Hospital West on the morning of April 5, 2007, and was admitted to the hospital later that day. Prior to

[1] The complaint named seven additional doctors or entities as defendants, but appellants voluntarily dismissed their claims against all defendants other than appellees.

Mr. Korreckt's admission, a surgical intern, Jennifer Greiner, D.O. ("Dr. Greiner"), conducted a surgical consult of Mr. Korreckt at approximately 11:50 a.m. She noted complaints of right groin pain for the previous four days, nausea and vomiting, decreased appetite, and chills, and she observed a large area of erythema,[2] tenderness, and edema[3] on Mr. Korreckt's right thigh, which Mr. Korreckt reported had been expanding. She also noted a bulla, a collection of fluid under the skin, like a blister, on Mr. Korreckt's right, medial thigh. Dr. Greiner's assessment was right groin cellulitis, and she recommended treatment with antibiotics.

{¶4} At approximately 10:30 p.m. on April 5, 2007, an infectious disease consultant, having reviewed a CT scan performed on Mr. Korreckt, ordered a surgical consultation for an evaluation for deep abscess or necrotizing fasciitis. Alan Michael Parks, D.O., the surgical resident on call, was then contacted, and he conducted a physical assessment of Mr. Korreckt and reviewed the CT films and the radiologist's preliminary report. Dr. Parks did not read the preliminary radiology report as ruling out necrotizing fasciitis nor did he personally rule out that diagnosis. Dr. Parks, however, did not observe air underneath the fascia, a bulla, or other "hard signs to tell [him] that Mr. Korreckt had necrotizing fasciitis." Parks deposition 30. During his assessment, Dr. Parks marked the location of the erythema on Mr. Korreckt's leg with a Sharpie pen. Dr. Parks testified that he called Dr. Cripe, the attending surgeon, at approximately 11:30

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[2] "Redness of the skin; inflammation." Stedman's Medical Dictionary Unabridged Lawyers' Edition (The Williams & Wilkins Co. 1961).

[3] "A perceptible accumulation of excessive clear watery fluid in the tissues." Stedman's Medical Dictionary Unabridged Lawyers' Edition (The Williams & Wilkins Co. 1961).

p.m. and "[b]asically stated that I had received a call that we have been consulted on this patient * * * however we were already on the case; that a CT has been ordered and I have reviewed it and there is no definitive evidence of necrotizing fasciitis for which we were consulted for and/or abscess." Parks deposition 20. Dr. Parks reevaluated Mr. Korreckt at 6:00 a.m. the next morning, and noted that the erythema had not extended past the mark on his leg.

{¶5} Dr. Cripe first visited Mr. Korreckt later that morning, at which time he noted "[i]ncreasing erythema [and] positive purulent drainage." Cripe deposition 23. His review of the CT scan revealed "positive fluid with fat stranding throughout lower leg and onto abdomen." Cripe deposition 23. After examining Mr. Korreckt, reviewing the progress notes in Mr. Korreckt's medical chart, and reviewing the CT scan, Dr. Cripe recommended that Mr. Korreckt be taken to the operating room for incision and drainage. Dr. Cripe performed two surgeries on Mr. Korreckt that day. The first involved an incision of approximately one-and-one-quarter to one-and-one-half feet in length to open the necrotic area and allow it to drain. The second surgery involved excision from approximately Mr. Korreckt's nipple line down almost to his knee.

{¶6} On June 9, 2010, appellees filed a motion for summary judgment, in which they argued that appellants are unable to establish a prima facie case of medical malpractice. They specifically argued that they are entitled to summary judgment because appellants' expert witness did not testify that Dr. Cripe deviated from the applicable standard of care, an essential element of a malpractice claim. The trial court

agreed and granted appellees' motion for summary judgment in a decision and entry, filed August 2, 2010, from which appellants filed a timely notice of appeal.

{¶7} Appellants assert the following single assignment of error:

> ASSIGNMENT OF ERROR NO. 1: THE TRIAL COURT ERRED GRANTING SUMMARY JUDGMENT WHEN [APPELLANTS] PRESENTED PRIMA FACIE EVIDENCE OF MEDICAL NEGLIGENCE.

{¶8} We review a summary judgment de novo. *Koos v. Cent. Ohio Cellular, Inc.* (1994), 94 Ohio App.3d 579, 588, citing *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711. When an appellate court reviews a trial court's disposition of a summary judgment motion, it applies the same standard as the trial court and conducts an independent review, without deference to the trial court's determination. *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio App.3d 103, 107; *Brown* at 711. We must affirm the trial court's judgment if any grounds the movant raised in the trial court support it. *Coventry Twp. v. Ecker* (1995), 101 Ohio App.3d 38, 41-42.

{¶9} Pursuant to Civ.R. 56(C), summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Accordingly, summary judgment is appropriate only under the following circumstances: (1) no genuine issue of material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the non-moving party, reasonable

minds can come to but one conclusion, that conclusion being adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

{¶10} "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 1996-Ohio-107. Once the moving party meets its initial burden, the non-movant must set forth specific facts demonstrating a genuine issue for trial. Id. at 293. Because summary judgment is a procedural device to terminate litigation, courts should award it cautiously after resolving all doubts in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-59, 1992-Ohio-95, quoting *Norris v. Ohio Std. Oil Co.* (1982), 70 Ohio St.2d 1, 2.

{¶11} To succeed on a medical malpractice claim, the plaintiff must establish the following three elements: (1) the standard of care within the medical community; (2) the defendant's breach of that standard of care; and (3) proximate cause between the breach and the plaintiff's injuries. *Adams v. Kurz*, 10th Dist. No. 09AP-1081, 2010-Ohio-2776, ¶11; *Williams v. Lo*, 10th Dist. No. 07AP-949, 2008-Ohio-2804, ¶11. In order to establish medical malpractice, a preponderance of evidence must show that the injury (1) "was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions

and circumstances," and (2) that the injury "was the direct and proximate result of such doing or failing to do some one or more of such particular things." *Bruni v. Tatsumi* (1976), 46 Ohio St.2d 127, paragraph one of the syllabus.

{¶12} When the elements of a medical malpractice claim are beyond the common knowledge and understanding of the trier of fact, expert testimony regarding the elements must be offered to prove the claim. *Campbell v. Ohio State Univ. Med. Ctr.*, 10th Dist. No. 04AP-96, 2004-Ohio-6072, ¶10. Proof of the recognized standards of the medical community must be provided through expert testimony. *Bruni* at 131-32. Where the plaintiff fails to present expert testimony that a physician breached the applicable standard of care and that the breach constituted the direct and proximate cause of the plaintiff's injury, a court may enter summary judgment in favor of the defendant-physician. See *Click v. Georgopoulos*, 7th Dist. No. 08 MA 240, 2009-Ohio-6245.

{¶13} In support of their motion for summary judgment, appellees submitted the deposition testimony of Drs. Cripe, Parks, and Greiner, as well as that of appellants' expert witness, Louis A. Viamontes, M.D. ("Dr. Viamontes"). Appellees argued that Dr. Viamontes offered no opinion testimony that Dr. Cripe deviated from the applicable standard of care and that they were, therefore, entitled to summary judgment. To the contrary, appellants argue that a trier of fact could conclude, based on Dr. Viamontes' testimony, that Dr. Cripe fell below the applicable standard of care by failing to timely perform surgery on Mr. Korreckt.

{¶14} Dr. Cripe's supposed delay in seeing and evaluating Mr. Korreckt is the only possible basis for appellants' malpractice claim. Dr. Cripe first observed and evaluated Mr. Korreckt on the morning of April 6, 2007, at which time he ordered Mr. Korreckt to surgery. Dr. Viamontes had no criticism of the nature or the extent of the care actually rendered by Dr. Cripe, including the two surgeries. Dr. Viamontes specifically stated that Dr. Cripe did not deviate from the standard of care by taking Mr. Korreckt to surgery on April 6, 2007, did not deviate from the standard of care in terms of the surgical procedures he performed, and did not deviate from the standard of care in terms of the delay between the two surgeries.

{¶15} With respect to Dr. Cripe's alleged delay in seeing Mr. Korreckt, appellees pointed to Dr. Viamontes' testimony that, if Dr. Cripe was not notified of particulars regarding Mr. Korreckt's condition, he did not deviate from the standard of care by not seeing the patient sooner. Dr. Viamontes specifically testified that, "if [Dr. Cripe] wasn't notified to see the patient, * * * he did not deviate from the standard of care." Viamontes deposition 124. Appellants respond that, based on evidence that Dr. Parks contacted Dr. Cripe late on April 5, 2007 regarding Mr. Korreckt, a jury could conclude that Dr. Cripe fell below the applicable standard of care by waiting to evaluate Mr. Korreckt until the following morning. Ultimately, the issue in this appeal resolves to whether Dr. Viamontes' testimony can be read to offer the opinion that Dr. Cripe fell below the standard of care regarding the timing of his examination and treatment of Mr. Korreckt.

{¶16} Dr. Cripe does not specifically recall receiving a call from Dr. Parks on April 5, 2007, but Dr. Parks testified that he spoke with Dr. Cripe regarding Mr. Korreckt,

and Dr. Cripe confirmed that a surgical resident would generally contact him, as the attending physician, after evaluating the patient in a case like this. Even were we to consider the existence of a call from Dr. Parks to Dr. Cripe a disputed fact, for purposes of summary judgment, we view the evidence in the light most favorable to the non-moving party. We, therefore, assume, for purposes of summary judgment, that Dr. Parks called Dr. Cripe about Mr. Korreckt's condition at approximately 11:30 p.m. on April 5, 2007, as Dr. Parks testified.

{¶17} Appellants submitted an affidavit from Dr. Viamontes in opposition to appellees' motion for summary judgment, in an attempt to clarify Dr. Viamontes' deposition testimony. In his affidavit, Dr. Viamontes stated, "assuming Dr[.] Parks called Dr[.] Cripe to report the patient's status and CT findings on the evening of 4/5/07 or the early morning of 4/6/07, then Dr[.] Cripe fell below accepted standards of care in not emergently taking Blaine Korreckt to surgery." In his deposition, however, Dr. Viamontes testified that, assuming Dr. Parks called Dr. Cripe and assuming the truth of Dr. Viamontes' understanding of Dr. Parks' testimony that he told Dr. Cripe that the CT scan "did not show necrotizing fasciitis per [Dr. Parks'] interpretation," Dr. Cripe would have had no duty to report to the hospital to evaluate Mr. Korreckt that evening. Viamontes deposition 87-89. That testimony, coupled with Dr. Viamontes' acknowledgment that the record indicated that Dr. Cripe "was not notified or that sufficient information was not conveyed to him to prompt him to come to see the patient," makes clear that more than the simple fact of a call from Dr. Parks was necessary to require Dr. Cripe to see Mr. Korreckt sooner. Viamontes deposition 124.

Thus, assuming that Dr. Parks contacted Dr. Cripe on April 5, 2007, the question becomes whether Dr. Parks conveyed sufficient information to give rise to a duty for Dr. Cripe to report to the hospital and examine Mr. Korreckt before the next morning.

{¶18} Further review of Dr. Viamontes' deposition testimony clarifies the information Dr. Viamontes believed was essential to have required Dr. Cripe to immediately report to the hospital and examine Mr. Korreckt to satisfy the standard of care. Dr. Viamontes defined the standard of care in this regard by testifying to what Dr. Cripe would have needed to know to impose a duty for him to see the patient. Dr. Viamontes stated, "[Dr. Parks] should have said, you know, the infectious disease attending has seen the patient and he believes that this is necrotizing fasciitis, and the radiologist has read the CT consistent with necrotizing fasciitis * * * [and that] Dr. Parks should have told Dr. Cripe 'we need you to come in and see this patient.' " Viamontes deposition 89. The trial court found that the record contained neither evidence that Dr. Parks conveyed the information stated by Dr. Viamontes to Dr. Cripe nor evidence that Dr. Parks requested that Dr. Cripe examine the patient that night. We agree.

{¶19} Dr. Parks testified that he told Dr. Cripe only that a surgery consult had been requested and that the CT scan ordered showed no definitive evidence of necrotizing fasciitis. The record contains no evidence that Dr. Parks informed Dr. Cripe that the infectious disease attending physician believed Mr. Korreckt had necrotizing fasciitis or that the radiologist read the CT scan as consistent with necrotizing fasciitis. Nor is there evidence that Dr. Parks requested Dr. Cripe to come in that night to see Mr. Korreckt. In fact, Dr. Viamontes, having reviewed both Dr. Cripe and Dr. Parks'

deposition transcripts, held no opinion and had no intention of testifying, that Dr. Cripe was conveyed information that imposed upon him a duty to see the patient sooner than he did. See Viamontes deposition 89.

{¶20} At oral argument, appellants' counsel referred this court to *Lownsbury v. VanBuren*, 94 Ohio St.3d 231, 2002-Ohio-646, and argued, based on that case, that Dr. Cripe, as the attending surgeon, had an independent duty to report to the hospital and evaluate Mr. Korreckt, as part of his duties in supervising the surgical residents. The only issue before the Supreme Court of Ohio in *Lownsbury*, however, was whether the plaintiffs-appellants presented sufficient evidence to create a genuine issue of material fact as to the existence of a consensual physician-patient relationship between an attending physician and the patient. The court noted that the predicate for a physician's duty of care is the existence of the physician-patient relationship and held that such a relationship "can be established between a physician who contracts, agrees, undertakes, or otherwise assumes the obligation to provide resident supervision at a teaching hospital and a hospital patient with whom the physician had no direct or indirect contact." Id. at the syllabus. In that case, though, the plaintiffs-appellants presented expert testimony as to the existence and the nature of the attending physician's duties and that the attending physician breached the standard of care. Accordingly, we conclude that *Lownsbury* does nothing to alter the established principle that, unless they are within the common knowledge of a layperson, the elements of medical malpractice must be established by expert testimony.

{¶21} Upon review, we conclude that the record contains no expert testimony that sufficient information was conveyed to Dr. Cripe so as to require him to see and evaluate Mr. Korreckt prior to his rounds on the morning of April 6, 2007, in order to satisfy the applicable standard of care, as defined by Dr. Viamontes. Contrary to appellants' argument, this determination does not rest on whether Dr. Viamontes believed that Dr. Parks contacted Dr. Cripe. Indeed, we assume that fact for purposes of summary judgment. Instead, this determination is based on the lack of evidence that Dr. Parks conveyed the necessary information to Dr. Cripe to impose a duty to see Mr. Korreckt immediately. Because there is no evidence that either the timing of Dr. Cripe's actual evaluation of Mr. Korreckt or any other of Dr. Cripe's actions with respect to Mr. Korreckt's care fell below the applicable standard of care, the trial court did not err in granting appellees' motion for summary judgment.

{¶22} In conclusion, we overrule appellants' single assignment of error, and we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and KLATT, JJ., concur.