Rel: December 31, 2020

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190260

Janice McGill and Timothy McGill

v.

Victor F. Szymela, M.D.

Appeal from Jefferson Circuit Court
(CV-16-901198)

PARKER, Chief Justice.

Janice McGill and her husband, Timothy McGill, appeal from a judgment of the Jefferson Circuit Court against them in their medical-malpractice lawsuit against Victor F. Szymela, M.D. The McGills alleged that Dr. Szymela failed to properly perform Janice's temporomandibular-

joint total-replacement ("TJR") surgery. We affirm.

I. Facts and Procedural History

In February 2014, Janice sought treatment from Dr. Szymela, a board-certified oral and maxillofacial surgeon, for her temporomandibular-joint ("TMJ") disorder. Janice had been experiencing clicking and locking of her jaw and excruciating jaw and ear pain. Dr. Szymela recommended TJR surgery. Dr. Szymela performed the surgery on April 1, 2014, installing prosthetic joints.

Janice alleged that she experienced distinct, worse pain immediately after the surgery and that the new pain did not resolve with time. She continued to experience popping in her jaw. She alleged that her overbite was exacerbated by the surgery. She also alleged that she could not open her mouth as wide as previously and that she lost sensation in her lips, which diminished her ability to speak clearly.

Later in 2014, Janice sought treatment from Dr. Michael Koslin. Dr. Koslin referred Janice to a pain-management specialist but eventually determined that her pain was unresponsive to conservative treatment. In 2017, Dr. Koslin surgically removed the prosthesis. Several weeks later,

Dr. Koslin implanted custom joints. Janice alleged that Dr. Koslin's treatment relieved her pain.

In March 2016, Janice sued Dr. Szymela, alleging that he breached the standard of care for an oral and maxillofacial surgeon in the following ways relevant to this appeal:

> "a. He failed to provide or offer alternative treatments to remedy [Janice's] symptoms before recommending [TJR] surgery;
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> "...
>
> "f. He failed to install the medical devices properly;
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> "...
>
> "h. He failed to properly perform the [TJR] surgery."

Janice's husband Timothy joined the complaint, alleging loss of consortium.

The McGills identified Dr. Louis G. Mercuri as one of their expert witnesses regarding oral and maxillofacial surgery. On Dr. Szymela's motion, the trial court ruled that Dr. Mercuri did not qualify as a "similarly situated health care provider" under § 6-5-548(c)(4), Ala. Code 1975, because he had not practiced in Dr. Szymela's specialty within the

year preceding Dr. Szymela's alleged breach. Thus, the court excluded Dr. Mercuri as a witness.

At trial, the McGills called Dr. Koslin and Dr. Robert Pellecchia as experts. Dr. Szymela and defense expert Dr. Gary Warburton also testified.

At the close of all evidence, on Dr. Szymela's motion, the trial court entered a partial judgment as a matter of law ("JML") in favor of Dr. Szymela. In pertinent part, the JML eliminated the McGills' issues of improper installation of the prosthesis and improper performance of the surgery, the latter of which included Dr. Szymela's alleged failure to maintain Janice's occlusion (distinct bite alignment) in the surgery. Other issues were waived or consolidated, and the only issues submitted to the jury were whether Dr. Szymela breached the standard of care by failing to provide or offer alternative treatments to surgery and whether Timothy suffered loss of consortium as a result of that breach. The jury found in favor of Dr. Szymela, and the trial court entered a final judgment on the verdict. The McGills appeal, contending that the trial court erred in excluding Dr. Mercuri as an expert witness and in entering the partial

II. Standards of Review

"In determining whether the trial court properly precluded a designated expert from testifying under § 6-5-548[, Ala. Code 1975], we apply the [excess]-of-discretion standard of review." Tuck v. Health Care Auth. of Huntsville, 851 So. 2d 498, 501 (Ala. 2002). The standard of review of a judgment as a matter of law is the same as the standard used by the trial court in deciding the motion, i.e., whether, when the evidence is viewed in the light most favorable to the nonmovant, the nonmovant presented substantial evidence in support of his position. City of Birmingham v. Sutherland, 834 So. 2d 755, 758 (Ala. 2002). Substantial evidence is "evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989); see also § 12-21-12(d).

III. Analysis

The McGills present two issues on appeal. First, they argue that the trial court erred by excluding Dr. Mercuri as an expert witness because it

incorrectly concluded that he did not meet the statutory qualifications of a "similarly situated health care provider." Second, they argue that the trial court erred by entering the JML on their claims of improper installation of the prostheses and improper surgical performance.

A. Exclusion of Dr. Mercuri

The McGills contend that the trial court erred in excluding Dr. Mercuri as an expert on the basis that he did not meet the statutory qualifications of a "similarly situated health care provider" under § 6-5-548, Ala. Code 1975. "In determining whether the trial court properly precluded a designated expert from testifying under § 6-5-548, we apply the [excess]-of-discretion standard of review." Tuck, 851 So. 2d at 501. Although the McGills argue that this Court should conduct a de novo review because this issue involves interpreting § 6-5-548, we decline to depart from our consistent practice of applying the excess-of-discretion standard to trial courts' evidentiary rulings under this statute, see, e.g., Dowdy v. Lewis, 612 So. 2d 1149, 1152 (Ala. 1992); Biggers v. Johnson, 659 So.2d 108, 112 (Ala. 1995) ; Holcomb v. Carraway, 945 So.2d 1009, 1017 (Ala. 2006); Smith v. Fisher, 143 So. 3d 110, 122 (Ala. 2013).

Section 6-5-548, part of the Alabama Medical Liability Act of 1987, § 6-5-540 et seq., Ala. Code 1975, sets forth the criteria for qualifying a health-care provider as an expert witness where the medical-malpractice defendant is a specialist:

> "Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is certified by an appropriate American board as a specialist, is trained and experienced in a medical specialty, and holds himself or herself out as a specialist, a 'similarly situated health care provider' is one who meets all of the following requirements:
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> > "(1) Is licensed by the appropriate regulatory board or agency of this or some other state.
> >
> > "(2) Is trained and experienced in the same specialty.
> >
> > "(3) Is certified by an appropriate American board in the same specialty.
> >
> > "(4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred."

§ 6-5-548(c) (emphasis added).

The trial court explained that it excluded Dr. Mercuri on the basis of subsection (c)(4)'s "practiced" requirement. The court wrote:

> "The Court read and considered documents contained within the court file that state that Dr. Mercuri retired in 2010, and he was not actively practicing during the year preceding the date of Dr. Szymela's alleged breach of the standard of care, to wit: April 1, 2014. The Court considered testimony from the deposition of Dr. Mercuri, dated February 23, 2018, that he retired from the practice of medicine in December 2010; that the year of 2010 was the last time Dr. Mercuri performed a TMJ replacement or any type of surgical procedure; that Dr. Mercuri is board certified but in a retired status, which means that he no longer practices medicine and, thus, has not practiced medicine since 2010. Dr. Mercuri further stated that his board certification changed from active to 'reserve'/retired in 2010. The Court further considered an e-mail from Dr. Louis Mercuri on November 6, 2017, addressed to Dr. Gary Warburton, wherein, he states: '...There is a TMJR legal case in Alabama that I have been consulting on that needs an actively practicing, Boarded [oral and maxillofacial surgeon] with knowledge and experience in [TJR surgery]. I can consult, but cannot be an expert witness because I am retired.' "

(Citation omitted; emphasis trial court's.) The McGills argue that the court wrongly concluded that Dr. Mercuri had not "practiced" in the specialty in the year before Dr. Szymela performed Janice's surgery.

The Alabama Medical Liability Act of 1987 does not define "practiced" for purposes of § 6-5-548(c)(4). Here, all expert witnesses acknowledged that Dr. Mercuri was a world-renowned TMJ surgeon, scholar, and surgical instructor. Dr. Mercuri was lifetime-certified by the

American Board of Oral and Maxillofacial Surgery. However, Dr. Mercuri stopped performing surgeries in the United States in 2010, and his certification then changed to "retired" status. Dr. Mercuri then devoted himself to research in the field of TMJ prosthetics and to teaching TJR surgical technique, including supervising students performing surgery on cadavers. He also consulted for a manufacturer of custom TMJ prostheses. In August 2013, Dr. Mercuri was involved with one TJR surgery in Brazil, which his affidavit said he "performed" with another doctor. In Dr. Mercuri's deposition, he described his role in that surgery as that of a "visiting professor." He explained that he was able to practice in South America because some South American countries were "just pretty happy to get somebody who has a lot of experience to assist or to do these surgeries." He went on to say that, in Brazil, he was able to "just walk[] into the operating room" without any license verification or background check. The question is whether, under these facts, the trial court exceeded its discretion by ruling that Dr. Mercuri had not "practiced" in Dr. Szymela's specialty during the year before Dr. Szymela

performed Janice's surgery on April 1, 2014.[1]

Alabama courts have on several occasions addressed what it means to have "practiced" under § 6-5-548. Consistent with our review of trial courts' rulings on the qualification of other kinds of experts, we have reviewed this "practice" issue as a matter within trial courts' discretion. In this way, we have not attempted to comprehensively define "practiced," but have allowed the contours of trial courts' discretion to be determined over time, in a case-by-case manner. For example, and as points of reference, we will survey the most relevant of these prior cases, paying particular attention to the how the "practice" issue was resolved at the trial-court and appellate levels.[2]

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[1]The parties agree that April 1, 2014, was the "date that the alleged breach of the standard of care occurred," § 6-5-548(c)(4), for purposes of Dr. Mercuri's qualification. Thus, we do not consider whether any other date was relevant.

[2] The cases surveyed involved qualification of experts under § 6-5-548(b), which governs claims against nonspecialists and requires that a proffered expert have "practiced in the same discipline or school of practice during the year preceding the date that the alleged breach of the standard of care occurred." § 6-5-548(b)(3). Because subsections (c)(4) and (b)(3) impose a similar "practiced" requirement, cases decided under subsection (b)(3) are instructive in applying subsection (c)(4).

In Medlin v. Crosby, 583 So. 2d 1290 (Ala. 1991), this Court reversed a trial court's ruling that an expert was not a "similarly situated health care provider." The plaintiff's decedent had died from a heart attack, allegedly because of an emergency-room doctor's failure to properly diagnose her condition. During the year before the alleged breach, the plaintiff's expert was a clinical professor at a medical school, teaching emergency medicine. In that role, he saw patients in an emergency department for the purpose of teaching and participated in the patients' diagnosis and treatment. On the other hand, he spent most of his time running a company that presented educational programs on emergency-response planning for industrial accidents and medical-response issues. Nevertheless, we held that the trial court erred in ruling that the expert had not "practiced" emergency medicine within that year; we noted that "the statute does not specify the amount of time spent practicing or the nature and quality of the practice." Id. at 1296.

In Dowdy v. Lewis, 612 So. 2d 1149 (Ala. 1992), this Court affirmed a trial court's ruling that an expert was similarly situated. After the plaintiff's thyroid was removed, a hematoma blocked her airway, causing

respiratory arrest. The plaintiff alleged that her nurse had been negligent in failing to inform the surgeon about the plaintiff's postoperative complaint of choking. The plaintiff's two experts were nursing-school instructors. During the year before the alleged breach,[3] they both taught full-time at universities, and at least one of them supervised students as they performed nursing care on patients. We concluded that the trial court did not exceed its discretion by permitting those experts to testify.[4]

Similarly, in Biggers v. Johnson, 659 So. 2d 108 (Ala. 1995), this Court affirmed a trial court's ruling that an expert was similarly situated. The plaintiff had been hospitalized for an infection after a molar

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[3]This Court's opinion indicated that the alleged breach occurred on March 29-30, 1992. 612 So. 2d at 1150. However, that date was clearly a scrivener's error in the opinion, because the opinion indicated that the trial occurred in January 1992, two months earlier than that date. Id. at 1152. A review of available records reveals that the alleged breach occurred on March 29-30, 1988.

[4]In subsequent cases, this Court interpreted Dowdy as creating an exception for "highly qualified" experts, exempting them from the statute's requirement that the expert must have "practiced" in the same discipline or school of practice. See HealthTrust, Inc. v. Cantrell, 689 So. 2d 822, 827 (Ala. 1997); Tuck, 851 So. 2d at 502; Springhill Hosps., Inc. v. Critopoulos, 87 So. 3d 1178, 1189 (Ala. 2011). However, the McGills have not relied on Dowdy as creating such an exception, so we need not address the applicability of that exception here.

extraction. The plaintiff alleged that the general dentist who performed the extraction had failed to diagnose and treat an existing infection before the extraction. During the year before the alleged breach, the plaintiff's expert was both a lawyer and a licensed dentist who had retired from the "hands-on" practice of dentistry. He spent 80% of his time practicing law and 20% consulting in dentistry. He also extracted teeth for family and friends and had a working dental office in his house. In addition, he was an adjunct professor, teaching a university class on dental-medical emergencies. This Court noted that the evidentiary call was a "close one," id. at 112, but the Court could not say that the trial court exceeded its discretion by ruling that the expert had "practiced" in the year before the breach.

Finally, in King v. Correctional Medical Services, Inc., 919 So. 2d 1186 (Ala. Civ. App. 2005), the Court of Civil Appeals affirmed a trial court's ruling that an expert was not similarly situated. A prison inmate had died in a hospital from a brain infection. The plaintiff alleged that prison doctors were negligent in their evaluation and treatment of the inmate. During the year before the alleged breach, the plaintiff's expert

had not practiced "hands-on" medicine. Instead, he had been a consultant on design and management for managed-care organizations and correctional health-care systems. The Court of Civil Appeals recognized that this Court had upheld a trial court's admission of arguably similar experts in Dowdy. However, the Court of Civil Appeals astutely recognized that, when the excess-of-discretion standard applies, an appellate court's affirmance of the trial court's admission of an expert does not mean that exclusion of that expert would be error. Id. at 1195 ("The fact that the trial court's decision to allow the testimony of the proffered witnesses did not amount to an [excess] of discretion [in Dowdy and HealthTrust, Inc. v. Cantrell, 689 So. 2d 822 (Ala. 1997),] does not necessarily mean that the opposite decision -- that is, one to exclude their testimony -- would have resulted in a reversal."). Indeed, this insight follows directly from the appellate principle that, under the excess-of-discretion standard, when reasonable judicial minds could differ as to the correct ruling, a trial court's ruling in either direction must be affirmed. See Baldwin Cnty. Elec. Membership Corp. v. Catrett, 942 So. 2d 337, 344 (Ala. 2006) (" 'A trial court exceeds its discretion when it "exceed[s] the

bounds of reason ...." ' " (quoting Johnson v. Willis, 893 So. 2d 1138, 1141 (Ala. 2004)); In re Kingsley, 518 F.3d 874, 877 (11th Cir. 2008) ("In reviewing for abuse of discretion, we recognize the existence of a 'range of possible conclusions the trial judge may reach,' and 'must affirm unless we find that the ... court has made a clear error of judgment, or has applied the wrong legal standard.' " (quoting Amlong & Amlong, P.A. v. Denny's, Inc., 500 F.3d 1230, 1238 (11th Cir. 2007))); Kern v. TXO Prod. Corp., 738 F.2d 968, 971 (8th Cir. 1984) ("The very concept of discretion presupposes a zone of choice within which trial courts may go either way."); David G. Knibb, Federal Court of Appeals Manual § 31:4 (6th ed. 2013) ("Often, a [trial] court could rule for either party and still not abuse its discretion."). Accordingly, the Court of Civil Appeals held that the trial court did not exceed its discretion by excluding the expert because he lacked "hands-on" treatment of patients.

Read together, the lesson of these cases is clear: in a case involving a medical-malpractice claim based on "hands-on" medical practice, a trial court has wide latitude in deciding whether to admit or exclude as witnesses medical experts whose work in the year preceding the breach

was at the margins of active medical practice.

Here, the McGills' claim against Dr. Szymela was based on his "hands-on" medical practice. Dr. Mercuri's most similar work during the year preceding the surgery was his involvement in a TJR surgery in Brazil. However, as related above, the evidence before the trial court contained only vague information about the nature of Dr. Mercuri's participation in that surgery. In view of that absence of clarity, along with the general nature of Dr. Mercuri's post-retirement work discussed above, the trial court could reasonably have concluded that Dr. Mercuri's work during that year did not constitute having "practiced" for purposes of § 6-5-548(c)(4).

For these reasons, we cannot say that the trial court's ruling exceeded its broad discretion illustrated by the precedent cases discussed above. In particular, unlike the expert in Medlin and like the expert in King, Dr. Mercuri's general responsibilities were not shown to include direct, "hands-on" diagnosis and treatment of patients. Therefore, although the evidentiary call in this case is a "close one," Biggers, 659 So. 2d at 112, the trial court did not err by excluding Dr. Mercuri's testimony.

B. Partial JML

The McGills contend that the trial court erred by granting Dr. Szymela's preverdict motion for a JML on the issues whether Dr. Szymela failed to install the prosthetic joints correctly and failed overall to perform the TJR surgery properly. We review a JML by asking whether, when the evidence is viewed in the light most favorable to the nonmovant, the nonmovant presented substantial evidence in support of his position. Sutherland, 834 So. 2d at 758.

In support of the McGills' argument, they assert that

> "[t]he testimony established that the standard of care required that Dr. Szymela maintain the occlusion [distinct bite alignment] that Janice came into the operating room with, and that Dr. Szymela place the condyle [ball] component properly within the fossa [socket] component on each side. ... [The McGills' expert] Dr. Pellecchia offered substantial evidence to show that standard was breached."

(Record citations omitted.) Alternatively, the McGills argue that expert testimony was not needed because the nature of Janice's injuries -- altered occlusion, clicking noise in her jaw, and postoperative pain -- spoke for itself to indicate that Dr. Szymela negligently performed the surgery.

1. Standard-of-care evidence

The McGills contend that the testimony of Dr. Pellecchia amounted to substantial evidence that Dr. Szymela breached the applicable surgical standard of care. In order for a plaintiff to establish a breach of the standard of care, there must be evidence establishing that standard of care. See Collins v. Herring Chiropractic Ctr., LLC, 237 So. 3d 867, 870 (Ala. 2017). To establish the standard, "ordinarily, the plaintiff must offer expert medical testimony as to what is or what is not the proper practice, treatment, and procedure." Rosemont, Inc. v. Marshall, 481 So. 2d 1126, 1129 (Ala. 1985) (emphasis added).

In this case, the McGills' expert, Dr. Pellecchia, did not articulate such a standard of care. Thus, the McGills rely on the testimony of Dr. Szymela himself and of his own expert, Dr. Warburton, as having established the standard of care. Neither of those witnesses, however, articulated the standard of care for a TJR surgery, particularly with regard to maintenance of a patient's occlusion and placement of the condyle (ball) within the fossa (socket). Dr. Szymela discussed in detail his method for performing TJR surgeries and opined that his performance met the standard of care, but he never articulated what that standard of

care was. Dr. Warburton testified that the standard of care was "what a reasonable practitioner would do in similar circumstances with similar resources." That language merely paraphrased the general legal concept of a medical standard of care; it did not articulate "what is or what is not the proper practice, treatment, and procedure," Rosemont, 481 So. 2d at 1129, in a TJR surgery. Thus, Dr. Szymela's and Dr. Warburton's testimony was not sufficient to establish the specific standard of care applicable to TJR surgery. As a consequence, no expert testimony established the standard of care.

2. Common-knowledge exception

In the alternative, the McGills argue that expert testimony was not needed to establish that Dr. Szymela breached the standard of care. The McGills rely on our prior holding that "[a] narrow exception to [the] rule [requiring expert testimony] exists ' "in a case where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it." ' " Ex parte HealthSouth Corp., 851 So. 2d 33, 38 (Ala. 2002) (quoting Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984),

quoting in turn Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)).

In HealthSouth, the plaintiff was receiving inpatient rehabilitation after back surgery. She was placed in a bed with rails and was instructed not to get up without assistance from a nurse. While in bed, the plaintiff needed to use the restroom and rang for the nurse. The plaintiff waited between 30 minutes and an hour, but the nurse did not come. Unable to wait any longer, the plaintiff tried to get up on her own. When she placed weight on her left leg, it gave way and she fell, fracturing her hip. This Court held that expert testimony was unnecessary to establish that the nurse breached the standard of care:

> "We do not see why a medical expert would be necessary to establish that [the plaintiff's] failure to follow doctor's orders -- by getting out of bed and injuring herself -- was the result of the failure to respond to a call for assistance for an unreasonable period. In this case, where the issue is whether a nurse breached the standard of care by not responding to a routine call within a 30-minute period, laypersons could answer [that question] by using their 'common knowledge and experience.' "

851 So. 2d at 41.

Additionally, in Collins v. Herring Chiropractic Center, LLC, 237 So. 3d 867 (Ala. 2017), this Court highlighted examples where "common

knowledge and experience" were sufficient to understand a medical professional's alleged breach. See id. at 871-72 (citing cases involving failing to adequately cool a medical implement, causing burns; leaving bed rails down contrary to orders; and failing to provide available speedier transportation to a patient with a crushed hand). In Collins, we held that expert testimony was not required to establish that a chiropractor had breached the standard of care by applying a frozen cold pack to the plaintiff's knee, when the plaintiff experienced blistering and scarring after the cold pack was removed. Id. at 873.

The McGills argue that expert testimony was unnecessary here because, they assert, Janice's injury "speaks for itself." However, the record reveals that the TJR surgical process and potential complications were anything but simple or self-explanatory. Dr. Szymela testified at length about the many detailed steps in the surgical technique, including, for example, how a patient's occlusion could be maintained during surgery with screws and wires, how the patient's own bones would be sawed or remolded to accommodate the prostheses (on both sides of the jaw), how the prostheses would be attached, and how all this would be done without

injuring the patient's facial nerves and blood vessels. In light of the inherent complexity of the surgery and the anatomical modification it involved, this is not "a case where want of skill or lack of care is so apparent," HealthSouth, 851 So. 2d at 38, that a layperson would understand it without expert assistance. Particularly with reference to the McGills' claim, the common knowledge and experience of a layperson was insufficient to establish the limits of reasonable practice in placing the prosthesis and maintaining the patient's occlusion.

Importantly, the common-knowledge exception does not allow a jury to infer the standard of care or breach thereof based solely on an unsuccessful outcome, if the procedure itself is not within the ken of a layperson. Under the Alabama Medical Liability Act, § 6-5-480 et seq., Ala. Code 1975, "[n]either a physician, a surgeon, a dentist nor a hospital shall be considered an insurer of the successful issue of treatment or service." § 6-5-484(b). Consistent with the statute, it is well established in Alabama that a poor medical outcome alone does not give rise to medical-malpractice liability. See Ingram v. Harris, 244 Ala. 246, 248, 13 So. 2d 48, 48-49 (1943) ("[T]he burden of proof is on the plaintiff to show

negligence in the diagnosis or treatment, and it is not enough to show that an unfortunate result followed such diagnosis or treatment."); Piper v. Halford, 247 Ala. 530, 532, 25 So. 2d 264, 266 (1946) ("[A] physician or surgeon does not warrant a cure or a successful result .... It is not enough to show that an unfortunate result followed."); Watterson v. Conwell, 258 Ala. 180, 182-83, 61 So. 2d 690, 692 (1952) ("There is no requirement of law that a physician should have been infallible in his diagnosis and treatment of a patient. ... A showing of an unfortunate result does not raise an inference of culpability."); Holt v. Godsil, 447 So. 2d 191, 193 (Ala. 1984) ("[T]he existence of an unfortunate result does not raise an inference of culpability ...."); Bates v. Meyer, 565 So. 2d 134, 137 (Ala. 1990) (same); 2 Stuart M. Speiser, The Negligence Case: Res Ipsa Loquitur § 24:9 (1972) ("In actions for medical malpractice it is well established that no ... inference of negligence on the part of a physician or surgeon arises from the mere fact that a medical treatment or surgical operation was unsuccessful ...."). Thus, the mere fact that a layperson could easily understand Janice's poor outcome does not mean that expert testimony was not needed to establish the standard of care and a breach

thereof. As explained above, the standard of care for a TJR surgery is not within the ken of a layperson. Therefore, expert testimony regarding the standard of care was needed.

Because of the absence of expert testimony articulating the standard of care and the inapplicability of the common-knowledge exception, the evidence was insufficient to establish the standard of care. Therefore, the trial court did not err in entering a JML on the McGills' installation and surgical-performance claims.

IV. Conclusion

The trial court did not exceed its discretion by excluding the testimony of Dr. Mercuri on the basis that he was not statutorily qualified as an expert. Because the McGills did not present or point to substantial evidence of the standard of care for Dr. Szymela's performance of Janice's TJR surgery, the trial court properly entered a JML on the claims relating to the surgery. Accordingly, we affirm the judgment.

AFFIRMED.

Stewart, J., concurs.

Bolin, Sellers, and Mendheim, JJ., concur in the result.