Rel: June 30, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190982

John Dee Peterson and Brenda Peterson

v.

Triad of Alabama, LLC, d/b/a Flowers Hospital

Appeal from Houston Circuit Court
(CV-16-900375)

STEWART, Justice.

John Dee Peterson and Brenda Peterson appeal from a summary judgment entered by the Houston Circuit Court ("the trial court") in favor of Triad of Alabama, LLC, d/b/a Flowers Hospital ("Triad") on the

Petersons' claims asserted in their medical-malpractice action. For the reasons discussed below, we affirm the judgment.

Facts and Procedural History

John was admitted to Flowers Hospital ("the hospital") in August 2014 for treatment of abdominal pain and fever that was caused by colitis. John was suffering from chronic lymphocytic leukemia, end-stage renal disease, and diabetes. While he was admitted to the hospital in August 2014, John had a peripherally inserted central catheter ("PICC line") in his left shoulder.[1] According to the Petersons, on August 30, 2014, after John had suffered "constant pain and aggravation" around the area where the PICC line was inserted, a doctor agreed to have John's PICC line removed the following morning. The Petersons assert that, subsequently,

[1]According to the Petersons, a PICC line had been placed in John's hand on June 19, 2014, but they do not indicate who placed that PICC line or what facility John was in when it was placed. According to Triad, John already had a PICC line inserted in his left shoulder when he was admitted to the hospital, and the staff at the hospital did not place that PICC line. Neither side contends that the dispute regarding when, and by whom, the PICC line in John's left shoulder was inserted involves a genuine issue of material fact and, for purposes of this appeal, that dispute is irrelevant.

a nurse, Matthew Starr, was advised that John was continuing to have problems with the PICC line but that Starr indicated that he was busy with other patients. The Petersons contend that another doctor was then called, that the doctor advised the nurses treating John to take out the PICC line, and that the nurses refused. The Petersons assert that Starr "abandoned" John. Thereafter, John experienced a deep vein thrombosis ("DVT"), or a blood clot, in his upper left arm, which caused swelling and tissue necrosis.

On August 30, 2016, John commenced an action against Triad[2] under the Alabama Medical Liability Act of 1987 ("the 1987 AMLA"), § 6-5-540 et seq., Ala. Code 1975.[3] Brenda was subsequently added as a plaintiff and asserted a loss-of-consortium claim. See note 2, supra. In their complaint, the Petersons alleged that, while he was a patient at the

[2]Brenda Peterson, John's wife, was subsequently added as a plaintiff, and Hospital Corporation of America, as the purported owner of Flowers Hospital, was added as a defendant, but Hospital Corporation of America was ultimately dismissed after the Petersons learned that it did not own the hospital.

[3]The 1987 AMLA is "intended to supplement" the original Alabama Medical Liability Act, which was enacted in 1975 and is codified at § 6-5-480 et seq., Ala. Code 1975. § 6-5-541, Ala. Code 1975.

hospital, John "received an excessive amount of medicine through a [PICC] line that caused the receptive arm to become burned and deformed." In July 2017, after Triad had filed a motion to dismiss based on the Petersons' alleged failure to specify the facts underlying their cause of action, the Petersons filed an amended complaint in which they asserted that "cancer relieving medication" was "administered in incorrect dosage amounts and remained in [John's] system an excessive and incorrect amount of time."

Triad then filed a motion for a summary judgment, to which it attached John's medical records and excerpts from the deposition testimony of the Petersons and Dr. Jason Beaver, one of John's treating physicians. Triad argued that the evidence indicated that John was susceptible to clotting and had suffered a DVT but that there was no evidence to suggest that medication had been administered improperly or that it had caused John's injury. Dr. Beaver testified that the administration of medication did not cause John's tissue loss or injury. Triad also asserted that the Petersons' designated medical expert, Dr. George Ansstas -- a hematologist/oncologist -- was not a health-care

provider similarly situated to Starr, the nurse who had provided the allegedly improper care to John.

The Petersons filed a response in opposition to Triad's summary-judgment motion in which they argued that Starr had caused John's injury and that a layperson could understand that without requiring expert testimony. The Petersons also asserted that the doctrine of res ipsa loquitur applied. The Petersons purportedly attached to their response excerpts from the deposition testimony of Dr. Ansstas, Dr. Beaver, and the Petersons, in addition to an excerpt from the American Medical Association's Code of Medical Ethics. Those attachments are not contained in the record. Thereafter, the trial court entered an order directing the parties to submit legal authority regarding the application of the doctrine of res ipsa loquitur.

On June 10, 2020, the trial court entered a summary judgment in favor of Triad, determining that, of the possible exceptions to the requirement that a medical-malpractice plaintiff provide expert medical testimony, "only one could conceivably apply: ' Where the plaintiff employs a recognized standard or authoritative medical text or treatise to prove

what is or is not proper practice.' [Anderson v. Alabama Reference Lab'ys, 778 So. 2d 806, 811 (Ala. 2000)]." The trial court went on to explain:

> "[Triad] submitted Dr. Jason Beaver's deposition as a fact witness. He was [John's] treating physician. (Dr. Beaver's depo, pp. 9 and 10). Dr. Beaver opined that deep venous thrombosis (DVT) was the cause of [John's] injury. (Dr. Beaver's depo. p. 10). He did not believe the injury was caused by a dirty or clogged PICC line, nor did medication cause the injury. (Dr. Beaver's depo, pp 11 and 17). Dr. Beaver further stated:
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> > " '[John] had a deep vein thrombosis. By having occlusion of the main vein out of his arm, he then developed the swelling and the swelling caused the pressure, and the pressure caused the tissue necrosis.' (Dr. Beaver's depo, p. 13).
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> "Based on the testimony of Dr. Beaver it is apparent to this Court that deep venous thrombosis (DVT) was the cause of [John's] injury.
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> "What is not clear to the Court is whether or not the PICC line had anything to do with the DVT or was a breach of the standard of care. [The Peterson's] attorney does an excellent job of linking several medical records and publications together in an attempt to establish a standard of care, but fails to satisfy [the Petersons'] burden as to the breach of the standard of care. For example, [the Petersons] state[ ]: 'PICCs are associated with higher rates of deep vein thrombosis (DVT) than other [central venous] access devices.... Critical care patients and those with cancer are also at greater risk for DVT with PICCs.' ([The Petersons'] brief p. 4). These statements fall short of proof of a breach of the standard of

> care, and certainly, cannot be left to a layperson requiring only common knowledge.
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> "[The Petersons] come[] closer to the mark when [they] refer[] to [Center for Disease Control and Prevention] guidelines and state[]: 'Although, subclavian insertion is initially suggested for adults, the treatment of dialysis is prohibited.' [They] then state[] [that John] was on dialysis treatment. ([The Petersons'] brief p. 5). However, no predicate was ever laid for the introduction of these treatises, nor was it proved that the nurse ordered the PICC line, which only a doctor can do, nor is it clear what action by the nurse, if any, was improper. Dr. Beaver opined the injury was not caused by a dirty or clogged PICC line.
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> "Based on the foregoing, it is the opinion of this Court that res ipsa loquitur does not apply. It is therefore ordered, adjudged, and decreed that [Triad's] motion for summary judgment is due to be and is hereby granted. This action is a final disposition of the case."

The Petersons filed a motion to vacate the summary judgment, which was denied. The Petersons filed a notice of appeal on July 7, 2020.

Standard of Review

> "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949,

> 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial 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 Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

The Petersons brought their action under the 1987 AMLA. Section 6-5-548(a), Ala. Code 1975, a part of the 1987 AMLA, requires a plaintiff in a medical-malpractice case to prove "by substantial evidence that the health care provider failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case." This Court has explained that, in satisfying the substantial-evidence burden, a plaintiff

> "ordinarily must present expert testimony from a 'similarly situated health-care provider' as to (1) 'the appropriate standard of care,' (2) a 'deviation from that standard [of care],' and (3) 'a proximate causal connection between the [defendant's] act or omission constituting the breach and the injury sustained by the plaintiff.' Pruitt v. Zeiger, 590 So. 2d 236, 238 (Ala. 1991) (quoting Bradford v. McGee, 534 So. 2d 1076, 1079 (Ala. 1988)). The reason for the rule that proximate causation must be established through expert testimony is that the issue of causation in a medical-malpractice case is ordinarily 'beyond "the ken of the average layman." ' Golden v. Stein, 670 So. 2d 904, 907 (Ala. 1995), quoting Charles W. Gamble, McElroy's Alabama Evidence, § 127.01(5)(c), p. 333 (4th ed. 1991). The plaintiff must prove through expert testimony 'that the alleged negligence "probably caused the injury." ' McAfee v. Baptist Med. Ctr., 641 So. 2d 265, 267 (Ala. 1994)."

Lyons v. Walker Reg'l Med. Ctr., 791 So. 2d 937, 942 (Ala. 2000). "An exception to [the expert-medical-testimony] rule exists where the lack of care is so apparent as to be within the ken of the average layman." Jones v. Bradford, 623 So. 2d 1112, 1114-15 (Ala. 1993).

In Ex parte HealthSouth Corp., 851 So. 2d 33 (Ala. 2002), this Court reformulated the exceptions to the expert-medical-testimony rule

> " to recognize first, a class of cases ' "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," ' [Tuscaloosa Orthopedic Appliance Co. v.] Wyatt, 460 So. 2d [156] at 161 [(Ala. 1984)](quoting Dimoff v.

> Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)), such as when a sponge is left in, where, for example, the wrong leg is operated on, or, as here, where a call for assistance is completely ignored for an unreasonable period of time. A second exception to the rule requiring expert testimony applies when a plaintiff relies on '"' a recognized standard or authoritative medical text or treatise,'"' Anderson [v. Alabama Reference Lab'ys.], 778 So. 2d [806] at 811 [(Ala. 2000)], or is himself or herself a qualified medical expert."

Id. at 39. Then, in Collins v. Herring Chiropractic Center, LLC, 237 So. 3d 867, 871 (Ala. 2017), this Court explained:

> "The Court's reformulation of categories in HealthSouth essentially clarifies the exceptions to the general rule requiring expert testimony in medical-malpractice actions by emphasizing in the first exception as reformulated that there are situations where the lack of skill is so apparent as to be understood by a layperson, thereby requiring only common knowledge and experience to understand it, and that further the list of examples of such situations was not exhaustive but merely set out examples of possible situations. In the second exception as reformulated, the Court simply combines the use of an authoritative treatise and the plaintiff's own testimony as a medical expert as the second exception to the general rule."

As best this Court can discern, the Petersons argue that they established causation because, they say, Triad's witness, Dr. Beaver, acknowledged in his deposition testimony that John's arm was damaged from a DVT and, although Triad asserted that the DVT occurred from

John's numerous medical conditions, "a hospital record indicated that the DVT, experienced by [John] was PICC line derived." The Petersons' brief at p. 6. The Petersons cite a document in the record that appears to be an incomplete discharge summary that states: "An ultrasound of [John's] extremity was obtained, which was positive for a PICC related DVT ...." First, the Petersons do not provide any context regarding this incomplete document, nor do they indicate who authored the document or whether that person is a health-care provider similarly situated to Starr. In addition, the Petersons alleged in the trial court that John's injury was caused by the improper administration of medication through John's PICC line; they did not allege that a DVT caused his injury. Moreover, the Petersons do not provide any legal authority or sufficient argument to support their proposition. See Rule 28(a)(10), Ala. R. App. P.; see also State Farm Mut. Auto. Ins. Co. v. Motley, 909 So. 2d 806 (Ala. 2005).

The Petersons next argue that the breach of the standard of care can be established under the doctrine of res ipsa loquitur. Although, in their appellate brief, the Petersons cite general propositions of law regarding the doctrine res ipsa loquitur, they do not explain how their case presents

an exception to the general rule requiring expert testimony in a medical-malpractice action. " 'It is well established that general propositions of law are not considered "supporting authority" for purposes of Rule 28[(a)(10), Ala. R. App. P.]. Ex parte Riley, 464 So. 2d 92 (Ala. 1985).' S.B. v. Saint James Sch., 959 So. 2d 72, 89 (Ala. 2006)." Allsopp v. Bolding, 86 So. 3d 952, 960 (Ala. 2011).

Moreover, the Petersons do not address the trial court's determination that they failed to satisfy their burden as to the breach of the standard of care. This Court has explained: "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.' " McGill v. Szymela, [Ms. 1190260, Dec. 31, 2020] ___ So. 3d ___, ___ (Ala. 2020) (quoting Rosemont, Inc. v. Marshall, 481 So. 2d 1126, 1129 (Ala. 1985)). The Petersons do not point to any expert medical testimony establishing the standard of care regarding PICC lines and the administration of medication through them.

The Petersons assert that the Centers for Disease Control and Prevention ("CDC") guidelines that they presented to the trial court

establish that the "catheter was incorrectly placed" and could have caused the harm John suffered, which, they assert establishes a jury question. The Petersons' brief at pp. 7-8. The Petersons fail to acknowledge, or challenge, the trial court's determination that they never laid a proper predicate for the introduction of the CDC guidelines. As Triad points out, although "medical treatises are admissible, as a precondition or predicate to their admission, the rule requires that the party seeking to introduce medical books authenticate them as 'standard works within that profession.' " Johnson v. McMurray, 461 So. 2d 775, 779-80 (Ala. 1984) (quoting Comment, Learned Treatises as Direct Evidence: The Alabama Experience, 1967 Duke L.J. 1169, 1171 (1967)). Because the Petersons did not properly authenticate the CDC guidelines, and because they do not even assert that they attempted to authenticate those guidelines or otherwise challenge the trial court's determination on that point, they cannot rely on those guidelines on appeal.

Conclusion

Ultimately, the Petersons do not make an argument supported by sufficient authority demonstrating that the trial court erred. They failed

to present expert medical testimony from a similarly situated health-care provider to establish the applicable standard of care, a deviation from that standard, and proximate causation linking the actions of hospital staff to John's injury. Lyons, 791 So. 2d at 942. Accordingly, the trial court's summary judgment is affirmed.

AFFIRMED.

Parker, C.J., and Bolin and Wise, JJ., concur.

Sellers, J., concurs in the result.