

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-1736**

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BRENDA M. LOCKLEAR,

Plaintiff - Appellant,

versus

KECIA GAITHER, M.D.,

Defendant - Appellee.

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (7:04-cv-00111-F)

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Submitted: March 30, 2007

Decided: April 20, 2007

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Before MICHAEL and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed by unpublished per curiam opinion.

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Larry M. Coe, Wilmington, North Carolina, for Appellant. Charles D. Creech, W. Gregory Merritt, HARRIS, CREECH, WARD & BLACKERBY, P.A., New Bern, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Brenda Locklear appeals from the jury verdict in favor of Kecia Gaither, M.D., whom Locklear named as the sole Defendant in a medical malpractice action.\* Locklear contends that the district court improperly instructed the jury on the governing law and that the district court abused its discretion in declining to instruct the jury in accordance with her proposed instructions. Because we find neither of Locklear's contentions have merit, we affirm.

This court reviews de novo whether a district court's instructions are a correct statement of the law. Emergency One, Inc. v. American FireEagle, Ltd., 228 F.3d 531, 538 (4th Cir. 2000). In reviewing the instructions, however, "we are mindful that district courts are necessarily vested with a great deal of discretion in constructing the specific form and content of jury instructions, and they are not required to accept all the suggested instructions offered by the parties." Id. (internal quotation marks and citation omitted).

We review a district court's decision to give (or not to give) a jury instruction for abuse of discretion. See United States v. Abbas, 74 F.3d 506, 513 (4th Cir. 1996). A district court abuses its discretion when it fails or refuses to exercise

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\*Locklear originally brought suit in the North Carolina Superior Court for Robeson County. Gaither, a New York resident, removed the action to federal court pursuant to 28 U.S.C. § 1332 (2000).

its discretion or when its exercise of discretion is flawed by an erroneous legal or factual premise. James v. Jacobson, 6 F.3d 233, 239 (4th Cir. 1993). When jury instructions are challenged on appeal, the issue is whether, taken as a whole, the instructions fairly stated the controlling law. United States v. McQueen, 445 F.3d 757, 759 (4th Cir.), cert. denied, 127 S. Ct. 116 (2006).

We have thoroughly reviewed the jury instructions given by the district court and conclude that they accurately apprised the jury of the governing law. Further, the district court did not abuse its discretion in declining to give the jury instructions proposed by Locklear. Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED