

RENDERED: December 11, 1998; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001149-MR

CAROL CRABTREE

APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE T. STEVEN BLAND, JUDGE
ACTION NO. 95-CI-001236

HARDIN MEMORIAL HOSPITAL AND
THOMAS R. TAYLOR, M.D.

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: HUDDLESTON, JOHNSON AND MILLER, JUDGES.

JOHNSON, JUDGE: Carol Crabtree (Crabtree) pro se appeals from the judgment of the Hardin Circuit Court entered on April 10, 1997, which summarily dismissed her medical malpractice claims against Hardin Memorial Hospital (the hospital) and Thomas R. Taylor, M.D. (Dr. Taylor) (collectively, the appellees). We affirm.

On September 7, 1994, while driving on Highway 313, from Vine Grove to Radcliff, Crabtree applied the brakes of her automobile to avoid hitting a deer. Her car's engine stopped running, causing Crabtree to lose control of the vehicle and careen off the road. Crabtree was taken by ambulance to Hardin Memorial Hospital where she complained of pain in the left side of her body and in her head. She was admitted to the hospital where she was treated by Dr. Taylor until her release on September 10. Because of her continuous complaints of head pain, Dr. Taylor had Crabtree undergo a CT scan on September 9. The scan was read by Jeff Haynes, M.D. (Dr. Haynes), who reported to Dr. Taylor that Crabtree had an old right parietal lobe infarct. Before releasing her, Dr. Taylor informed Crabtree that she had had a stroke some time in the past, but he could not determine when the stroke occurred or its cause. He referred her to a neurologist for further investigation into the cause of the stroke.

After her release from the hospital, Crabtree continued to experience problems with the left side of her body. Specifically, she had numbness on her left side and weakness in both her left arm and leg. Before her scheduled appointment with the neurologist recommended by Dr. Taylor, she returned to the emergency room of the hospital. Further tests, including an MRI, were ordered by Joseph Oropilla M.D. (Dr. Oropilla). The MRI report, prepared by Karen Williams, M.D., (Dr. Williams), stated:

"There is abnormal signal in the high right posterior parietal area, corresponding to the findings on the CT examination [of September 9], and consistent with an old infarct." The discharge summary for the hospitalization indicated that Crabtree's headaches were "most likely whiplash injury/tension type headache[s]."

On August 7, 1995, Crabtree filed a pro se complaint in the Hardin Circuit Court. She alleged that while she was in the hospital, she was not given her blood pressure medicine and "suffered a stroke as a direct result of the negligence of Hardin Memorial Hospital, its physicians, nursing staff, and other staff, and Dr. Thomas A. [sic] Taylor." She further alleged that the negligence of the appellees "was a substantial factor in causing her serious and permanent injuries, great pain of body and mind, medical expenses to date and in the future, and permanent impairment to her ability to labor and earn money. . . . "

Over the next several months, the appellees made several unsuccessful attempts to depose Crabtree and to discover the identity of her expert witnesses. Finally, after obtaining a court order, the appellees took Crabtree's deposition on August 21, 1996. In that deposition, Crabtree admitted that no doctor had diagnosed her as having had a stroke during or after her hospitalization in September 1994, and further that no doctor had

expressed any criticism of the treatment she had received either by the hospital or its staff, or by Dr. Taylor.¹

Thereafter, the hospital and Dr. Taylor moved for summary judgment based upon Crabtree's failure to identify an

¹The following exchanges between counsel for the hospital and Crabtree are representative of her deposition testimony:

Q Has anyone told you that -- I want to make -- get this clear, because I thought I've asked this before.

A. Okay.

Q. No physician has reviewed your blood pressure readings from the stay --

A. Not that I know of.

Q. --at Hardin Memorial Hospital, and told you that you should have received blood pressure medicine during that stay, have they?

A. Not that I know of.

. . .

Q. Mrs. Crabtree, I just have a few more questions for you. I'm just going to kind of summarize your testimony a little bit. As I see it, from your testimony, it doesn't appear that any physician has told you that you have suffered a stroke as a result of not receiving your high blood pressure medicine while you were a patient at Hardin Memorial Hospital; is that correct?

A. No one has told me that, specifically, but no one has told me otherwise, either. I told you that earlier.

Q. So your testimony is that's correct, but no one has told you otherwise, either? [sic]

A. Right.

expert witness to establish her claims that she had been injured as a result of their negligent care. The hospital's motion was accompanied by the affidavit of Dr. Haynes who stated that the infarct seen on the CT Scan that Crabtree underwent during her stay at the hospital "occurred at least one month prior to September 9, 1994[,]" and could have occurred at any time from Ms. Crabtree's date of birth on July 5, 1950[,]" until August 9, 1994[,]" and, in his opinion, could not possibly have occurred while Crabtree was in the hospital. In response to these motions, Crabtree stated that she was in possession of a report from Dr. Haynes that contained a diagnosis of CVA² and "not an 'old infarct'."

On November 11, 1996, the Hardin Circuit Court³ denied the motions for summary judgment and stated as follows:

Of course, [Crabtree's] response is not submitted in the proper form, i.e., it is not in the form of an affidavit and does not contain a copy of the alleged report [of Dr. Haynes]. Nevertheless, it is almost impossible to obtain a summary judgment in Kentucky. Steelvest, Inc. v. Scansteel Service Center, Inc., Ky., 807 S.W.2d 476 (1991). If [Crabtree] has the evidence which she claims, summary judgment is inappropriate. If she does not, Rule 11 sanctions may be appropriate.

²Cerebral vascular accident, or commonly, a stroke.

³The Hardin Circuit Court Judge presiding at this time was the Honorable William S. Cooper.

The trial court also set the matter for trial on May 7, 1997, and established a deadline for all the parties to identify their expert witnesses.

At no time before or after the deadline did Crabtree identify an expert witness. In April 1997, a month before the trial was to commence, both the hospital and Dr. Taylor renewed their motions for summary judgment. In its order from which Crabtree has appealed, the Hardin Circuit Court⁴ granted the renewed motions and stated as follows:

Although admittedly difficult to obtain summary judgment, it is not impossible, particularly in a medical malpractice case where the burden of proof imposed upon the Plaintiff is quite specific. In a medical malpractice case, negligence must be established by expert testimony unless negligence and injurious results are so apparent that a layman with general knowledge would have no difficulty recognizing it. Morris v. Hoffman, Ky. App., 551 SW2d 8 (1977); Baylis v. Lourdes Hosp., Inc., Ky., 805 SW2d 122 (1991)[.] The allegations of negligence made by the Plaintiff in this case do not fall within the exceptions to the expert testimony rule [emphasis original].

The Plaintiff has had opportunity after opportunity to produce an expert witness. The Plaintiff did not identify an expert witness during her deposition. The Plaintiff did not identify an expert witness in her answers to interrogatories. The Plaintiff did not identify an expert witness even after

⁴At this time, the Honorable T. Steven Bland had become Judge of the Hardin Circuit Court, Division One.

two separate orders were entered by this Court giving Plaintiff the opportunity to do so. The Plaintiff insists that the existing record is sufficient to establish negligence on the part of the Defendants. The Court has examined the records referred to and can find no document which supports Plaintiff's claim. Specifically, the Plaintiff has not produced the document which she claimed she had at the September 17, 1996 hearing. Her claim that she had such a document appears to have been the only reason summary judgment was not granted previously in this case. Without the testimony of an expert witness, it will be impossible for the Plaintiff to prevail in this case. Since the Plaintiff has no expert witness, after being afford[ed] every opportunity by the Court and the Defendants to produce one, the Defendants are entitled to summary judgment.

In this appeal, Crabtree has reiterated her theory that Dr. Taylor was negligent in failing to give her any medication for her blood pressure for the three days she was hospitalized after her automobile accident. She also complains that he was insensitive when he "blurted" out that she had had a stroke at some time in the past. She further faults the hospital for bringing her a pain medication to which her records indicated she was allergic. Crabtree did not take the medicine, and thus, admittedly, incurred no physical injury from this mistake. However, she insists that the stroke she allegedly suffered while in the hospital could possibly have been the result of a combination of being deprived of her blood pressure medicine and

from being "frightened so badly by nearly taking Darvon" and her knowledge of her reaction to such medicine.

The essence of Crabtree's argument that the summary judgment was inappropriate, is summed up in her brief as follows:

With all of the information that is available today about strokes and the risks of high blood pressure, I see no reason why almost anyone couldn't be able to see the negligence performed by Dr. Taylor by his not resuming my blood pressure medicine or by the hospital's negligence in administering a drug that was amply stated that I was allergic to.

One of the many problems with Crabtree's argument is that there is no competent medical evidence that Crabtree suffered a stroke at any time during or after her stay in the hospital. She injured her left side in the automobile accident. She continued to have numbness and weakness in her left side after she was released from the hospital, symptoms that could possibly be related to a stroke. However, whether those symptoms were caused by a stroke, or by the accident, or by some other event is not an issue capable of resolution by a layman utilizing "general knowledge" about strokes. See Morris v. Hoffman, supra at 9.

The fallacy in Crabtree's argument that her injury and the cause thereof are obvious can be gleaned from a medical report filed in the record by Crabtree herself. The report, prepared by Hal M. Corwin, M.D. (Dr. Corwin), a neurologist who examined Crabtree in January 1995, reveals several possible causes for Crabtree's symptoms, including hysteria, multiple

sclerosis, stress or anxiety. The report also indicated that before the author could be any more specific about the etiology of Crabtree's complaints, several tests would have to be performed which Crabtree would not authorize. Clearly, whether Crabtree suffered a stroke during her hospitalization and, if so, whether it was caused by a deviation from the standard of care owed her by the hospital and/or Dr. Taylor are questions that cannot be answered in the affirmative without proof from an expert witness. Jarboe v. Harting, Ky., 397 S.W.2d 775, 778 (1965).

Crabtree also argues that she did supply the name of an expert witness. She states in her brief as follows:

I declared a physician [more than one (1)] several times as an expert witness and not once was this acknowledged. I was never told why it didn't count. I also submitted a hand written statement from Dr. Ringel saying that prior [to] this accident; [sic] I had no signs of a CVA. I submitted my witness list in writing and I declared an expert in Court.

Other than the doctors and radiologists who were involved in treating or testing Crabtree during her two hospitalizations (none of whom she identifies as willing to testify in support of her claims of negligence), the only doctor ever mentioned or identified as a potential witness is David R. Ringel, M.D. (Dr. Ringel), Crabtree's family physician since 1992. She testified that Dr. Ringel would testify that she had no symptoms of stroke prior to the automobile accident. However, according to

Crabtree's deposition testimony, she had never discussed the propriety of the treatment that she received at the hospital or the care provided by Dr. Taylor with Dr. Ringel and Dr. Ringel had not expressed any opinion, much less a negative opinion, about the standard of care provided by the appellees.⁵

In her reply brief, Crabtree states that "Dr. Corwin did criticize the method in which Dr. Taylor 'blurted' out the test results of the bran scan. . . ." She also states that he criticized "the fact that I wasn't returned to my blood pressure medication following [Dr. Taylor's] ruling out the need for surgery." She further states that Dr. Corwin, who was never

⁵During her deposition, Dr. Taylor's counsel asked Crabtree about Dr. Ringel's opinion as follows:

Q. All right. But, getting back to the original point, Dr. Ringel, although he may have looked at some of these records, has never said that the hospital did anything wrong, or Dr. Taylor did anything wrong, right?

A. He didn't say it, because -- I didn't even bring it up. I didn't ask him.

Q. Have you ever told Dr. Ringel you have a lawsuit pending?

A. I have told him that there is a lawsuit pending, yes. But I have not actually discussed --

Q. That it's--

A. -- whether he thought it was right or wrong. Because I know that doctors do have, what's that, [H]ippocratic oath, or something that they have, and it's like lawyers don't talk about other lawyers, and I know this, so I just never did bring it up.

named on her witness list, did not put these criticisms in writing, but expressed them to her during an office visit. Significantly, for purposes of determining the propriety of the summary judgment, the written report authored by Dr. Corwin does not support Crabtree's claims against the appellees. In fact, Dr. Corwin stated that he could not find any "objective evidence of weakness." Although he recognized that she might experience "mild weakness," he opined this could be caused by several possibilities none of which was a stroke, the failure of Dr. Taylor to administer blood pressure medicine during her stay in the hospital, or the fright occasioned by being offered medicine to which she was allergic. Thus, even if Crabtree contemplated offering the testimony of Dr. Corwin at trial, the "criticisms" she argues he mentioned to her would not allow a reasonable jury to determine the existence of a causal link between her alleged symptoms and the appellees' treatment of her during her stay in the hospital.

Having reviewed the record, it is apparent that the trial court did not err in dismissing Crabtree's complaint. The medical reports filed by Crabtree herself reveal that the weakness she experiences on her left side of her body could have numerous sources. She has offered no evidence from which a jury could determine that she suffered a stroke after September 7, 1996, much less that she suffered one due to any neglect in the appellees' care or treatment of her.

Accordingly, the judgment of the Hardin Circuit Court
is affirmed.

ALL CONCUR.

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