

RENDERED: DECEMBER 5, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NOS. 2007-CA-001171-MR
AND
2007-CA-001924-MR

LINDA CARMICLE

APPELLANT

v. APPEAL FROM CASEY CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. 03-CI-00208

CASEY COUNTY HOSPITAL;
EDWARD GRIMBALL, M.D.;
JARED WILSON, M.D.;
HOUSAM HADDAD, M.D.;
WESTLAKE REGIONAL HOSPITAL;
EKRAMUL KABIR, M.D.;
UNKNOWN DOCTORS; AND
UNKNOWN MEDICAL CARE
PROVIDERS

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING AND REMANDING IN PART

** ** * ** * ** *

BEFORE: ACREE, CLAYTON, AND KELLER, JUDGES.

KELLER, JUDGE: Linda Carmicle (Carmicle) appeals from the circuit court's order granting the motions for summary judgment filed by Casey County Hospital (Casey County), Edward Grimball, M.D. (Grimball), Jared Wilson, M.D. (Wilson), Housam Haddad, M.D. (Haddad), Westlake Regional Hospital (Westlake), Ekramul Kabir (Kabir), M.D., Unknown Doctors, and Unknown Medical Care Providers (hereinafter referred to as the Appellees). Carmicle argues she provided to the Appellees the names and opinions of experts sufficient to establish a *prima facie* case that the Appellees had violated the applicable standards of care and the circuit court's summary judgment was therefore inappropriate. The Appellees argue that Carmicle failed to disclose the identity of or the opinion of any expert calling into question the care they provided; therefore, justifying the court's summary judgment. For the reasons set forth below, we affirm in part and reverse and remand in part.

FACTS

On November 27, 2002, Carmicle was involved in a motor vehicle accident. Following that accident, she received treatment at Casey County and Westlake for complaints of pain in her neck, back, and legs. During the course of her treatment, Carmicle underwent cervical spine x-rays. After her release from the hospital, Carmicle sought additional treatment with chiropractor Dr. Erica Montgomery (Dr. E. Montgomery), who took additional cervical spine x-rays, which revealed a fractured vertebra. According to Carmicle, Dr. E. Montgomery advised her the x-rays from the hospital did not extend to the level of the fracture.

Because of the fracture, Dr. E. Montgomery referred Carmicle to Dr. Yamamoto, a neurosurgeon. Dr. Yamamoto also noted the cervical spine fracture and ultimately performed surgery.

After her discharge from the hospital, Carmicle continued to suffer from low back and leg pain. She ultimately came under the care of Dr. Moore, who treated her for her lower extremity complaints. According to Carmicle, Dr. Moore stated she suffered a hematoma and sheer force injury to her legs and, because those injuries were not initially treated, they were permanent.

On November 26, 2003, Carmicle filed a complaint alleging the appellees were negligent in providing medical care following her motor vehicle accident. Specifically, Carmicle alleged the appellee physicians failed to take x-rays that would have revealed a fracture to her lower cervical spine and failed to treat her for complaints of back and right leg pain. As to the appellee hospitals, Carmicle alleged they failed to establish or follow proper protocols. Finally, Carmicle alleged the staff members of the hospitals failed to consult with appropriate specialists or to perform necessary tests.

The Appellees timely filed answers to Carmicle's complaint and propounded interrogatories and requests for production of documents. In their interrogatories, the Appellees asked Carmicle to identify her experts pursuant to Kentucky Rules of Civil Procedure (CR) 26. The Appellees filed several motions to compel and Carmicle ultimately responded to the Appellees' interrogatories. However, the Appellees took exception to the completeness of those responses and

filed multiple motions for summary judgment. Following several hearings and extensions of time so Carmicle could supplement her answers to interrogatories and/or provide the Appellees with additional information, the circuit court granted summary judgment to the Appellees. The responses by Carmicle to the Appellees' interrogatories are the crux of this appeal; therefore, we will set them forth as necessary in detail below.

Answers to Dr. Grimball's Interrogatories

On September 13, 2004, Carmicle filed responses to Dr. Grimball's Interrogatories. In pertinent part, Carmicle stated Dr. Grimball failed to take x-rays sufficient to identify a fracture in her lower cervical spine and failed to respond appropriately to her complaints of leg pain. In terms of expert opinions, Carmicle stated:

Dr. Yamamoto is expected to testify regarding the necessity of the surgery he performed on my neck and regarding his opinions as to the deviation from the normal standard of care by the physicians and other medical care providers who failed to recognize my problems and who failed to properly diagnose my problems.

...

Dr. Yamamoto generally led me to believe that all of my physicians who saw me and treated me were at fault for not giving me proper and timely treatment and for not doing further testing early on in my treatment. Dr. Yamamoto did not specifically address whether and to what extent Dr. Grimball deviated from his standard of acceptable care.

Carmicle also stated:

Dr. Moore is expected to testify regarding the necessity of the treatment he has given to me and regarding future surgeries which will be necessary and regarding the permanency of my injuries and regarding the fact that the injuries to my legs should have been addressed much earlier in my treatment. . . . Dr. Moore will also say that my leg injuries should have been discovered earlier than they were discovered and should have been attended to earlier than they were attended to, and I believe that Dr. Moore will probably testify that he believes that the failure of all my physicians, particularly those in my early care and treatment, to address my leg injuries and to treat my leg injuries and to seek other treatment for my leg injuries was a deviation from the proper standard of care.

. . .

Moreover, Dr. Moore has led me to believe, without specifically mentioning the names of any particular doctors, that my leg injuries and other similar injuries should have been discovered early on an [sic] should have received treatment far sooner that [sic] treatment was given for my leg injuries.

Answers to Haddad's Interrogatories

In general, Carmicle stated, because of the nature of her injuries, Dr. Haddad should have been "on notice that I had greater problems and injuries than were diagnosed." In particular, Carmicle noted the x-rays taken during her treatment at the hospitals did not show her fractured vertebra. Regarding specific expert witnesses, Carmicle identified Dr. Yamamoto and Dr. Moore and indicated that she expected those physicians to testify as set forth above.

Carmicle also stated she anticipated Dr. Erica Montgomery, her treating chiropractor, Dr. Yamamoto, and Dr. Moore would testify:

that the failure to diagnose my conditions and the failure to timely and properly treat my conditions and the failure to properly conduct other tests and conduct other x-ray examinations and the failure to obtain consultations from specialists and the failure to send me to specialists for further testing and further treatment were deviations from the proper standards of care in my particular situation.

Answers to Wilson's Interrogatories

In general, Carmicle stated she intended to call Drs. Yamamoto and Moore as witnesses. She set forth their anticipated testimony in terms consistent with those used in response to the interrogatories by Haddad and Grimball.

Answers to Kabir's Interrogatories

Carmicle identified Dr. J. Tucker Montgomery (Dr. T. Montgomery) as her only trial expert witness and referred to his report for a recitation of his opinions. Dr. T. Montgomery's opinions are set forth below.

Answers to Westlake and Casey County Interrogatories

Carmicle noted hospital personnel ignored or did not appropriately respond to her complaints of pain in her neck, low back, and lower extremities. With regard to a specific expert witness, Carmicle identified Dr. Jeffrey Silverman (Dr. Silverman), whose opinions are set forth below.

General Responses/Supplements to Interrogatories

In addition to the above specific responses to interrogatories, Carmicle filed medical records from Drs. Yamamoto, E. Montgomery, Moore, Burandy,

Guy, West, and from Casey County who treated Carmicle after her release from the hospital. Those records chronicle the physicians' treatment of Carmicle but do not directly address any issues with regard to standard of care or breach of any standard of care.

As noted above, Carmicle identified Dr. T. Montgomery and Dr. Silverman as expert witnesses. In his report, Dr. T. Montgomery stated emergency room physicians should obtain x-rays that include the entire cervical and the upper thoracic spine when a patient has a suspected neck injury. According to Dr. Montgomery's report, the Casey County physicians "failed to evaluate Linda Carmicle using standard and available modalities and for that reason, her C7 burst fracture was not discovered, evaluated and referred to the appropriate specialist for stabilization/treatment." As to Grimbball, Wilson, and Haddad, Dr. Montgomery stated they were "obligated to obtain and understand the appropriate history from Linda Carmicle and appropriately examine and order objective tests involving her cervical spine." Dr. Kabir, the radiologist who interpreted Carmicle's x-rays,

either did not have appropriate film quality to see C7-T1 or in the alternative, misinterpreted the cervical spine in Linda Carmicle who had a history of a motor vehicle accident and was subjected to multiple other films including skull, lumbar spine, AP pelvis, right tibia and fibula, thoracic spine, and right wrist. It is my opinion that Dr. Kabir therefore violated the standard of care.

Finally, Dr. Montgomery stated, "[g]iven the injury that she sustained, the standard of care mandated immediate referral to a neurosurgical specialist. This was not

done by any of these physicians who violated the recognized standard of care and Linda Carmicle suffered from that delayed treatment.”

The Appellees took Dr. T. Montgomery’s deposition. In pertinent part, he testified he reviewed Carmicle’s deposition testimony and the medical records forwarded to him by Carmicle’s attorney. He had not reviewed the cervical spine x-rays taken when Carmicle was admitted to Casey County and had not reviewed any testimony by any of the Appellees.¹ The following testimony by Dr. Montgomery was relied on by the Appellees in support of their motions for summary judgment.

Q: Back on the record. Dr. Montgomery, are you able to within a reasonable degree of medical probability render or level criticisms against physicians involved in this case without having read those physicians’ depositions and without having a copy of the x-ray film at issue in this case, the November 27, 2002, cervical x-ray? Do you feel like you can do that?

A: No. It would be far better for me to have statements that I could read and also the x-ray. You know, I am inferring quite a bit, as you know, from the records, which is all I need.

Q: That’s the fairest way to do it as far as the physicians concerned, to have their actual deposition [sic] where they can discuss exactly what they did and how they were involved in the case; is that fair to say?

A: Sure. Sure.

Q: And that’s the best way to give opinions when you’re deciding to give opinions in a case?

A: Sure.

¹ Carmicle has not taken any depositions of any of the physicians or of any hospital personnel.

...

Q: [D]oes the same answer apply to [Dr. Kabir] in that not having heard what he has to say about the case, not having seen a deposition of his, and not having had the film that he reviewed, do you think it would be fair for you to give an opinion against him or for him under those circumstances?

A: Correct. No.

Q: I understand . . . from your testimony, Doctor, that you do not give final opinions in this case within a reasonable amount of probability without benefit of reviewing the cervical x-ray and the depositions of the physician doctors; correct?

A: Correct.

...

Q: In reading Dr. Yamamoto's records, was it any difficulty on your part in seeing that Dr. Yamamoto quickly saw a problem at least in his opinion in the November 2002 film, cervical spine series?

A: That's the way I interpret it, yes, sir.

Q: And was it also your understanding that he told Ms. Carmicle that there was a problem and that she needed to have more x-rays?

A: That's what I understand.

With regard to the hospitals, Dr. Montgomery testified as follows:

Q: [Y]our report contains opinions whether we call them tentative or not, as to either probable or possible failures or omissions on the part of several individuals; correct?

A: Yes.

Q: Okay. It doesn't contain any opinions as to any probable or possible omissions by the hospitals or their staffs other than those individuals that you have named in the report; true?

A: True.

Q: Are you prepared to render any such opinions?

A: Well, I don't have anything to go on other than the records, so I don't have anything to say about the, quote, hospital.

Q: Okay.

A: Now, if – let me just flesh that out a little bit. If, for example, somebody is employed by the hospital that, you know, I focused on, I suppose there might be some linkage there. But again, I don't know anything that went wrong at the hospital, for example, that did the CT. I understand the lady had to be transferred to another facility for a CT and back. I mean, I can't come up with anything there, if that's part of this. I don't know if that hospital has been pulled in.

As far as this hospital, meaning Casey County Hospital, you know, I'm not a nurse obviously. I'm not another type worker that would be able to pass judgment on a nonmedical person. So, you know, I don't have a problem there. I mean, I don't have a perspective of any – that a nurse could have done wrong, et cetera. So if that kind of answers your question, that's where I am coming from.

Dr. Montgomery further testified, if discovery revealed anything regarding hospital policies, he might be able to comment.

In a supplemental answer, Carmicle stated Dr. Montgomery had reviewed copies of x-ray films supplied to her by Casey County. Additionally, Carmicle stated Dr. Montgomery:

will testify generally that any and all of the plaintiff's medical care providers should have been aware, based upon the plaintiff's continued complaints and based upon the condition of the plaintiff and based upon the plaintiff's medical chart and medical records generated by her medical care providers and generated at the hospital, that the plaintiff needed additional diagnostic testing and needed additional treatment and needed a clarification of the findings on the x-ray films and needed additional MRI Scans or CT Scans or other testing in order to determine the cause of the continued problems. Moreover, Dr. Montgomery will generally testify that the appropriate standard of care was not met by any radiologist who failed to obtain appropriate x-ray films of the plaintiff's anatomy and of the injured parts of the plaintiff's spinal column, and the appropriate standard of care was not met by any medical care provider who failed to appreciate the degree of the injury to the plaintiff and who failed to do additional testing and who failed to give additional treatment in order to determine the cause of the plaintiff's continued complaints. In addition, Dr. Montgomery will generally testify that each and every medical care provider who participated in the care and treatment of the plaintiff on the occasion in question should have checked or double-checked the x-ray films and/or should have consulted with additional medical care providers so as to determine the cause of the plaintiff's continued complaints in the various parts of her body and so as to lessen the risk of additional injury to the plaintiff and so as to alleviate the plaintiff's pain and suffering, and should have requested or ordered additional testing and/or additional studies to be done.

Carmicle reiterated that Dr. T. Montgomery would testify that the initial x-rays should have encompassed her entire cervical spine. Finally, Carmicle stated that Dr. T. Montgomery would base his opinions on his training, experience, and education.

In his affidavit, Dr. Silverman stated he “looked over various medical information pertaining to Linda Carmicle.” Based on his review of that information, Dr. Silverman stated:

If it is correct that the initial imaging studies done on Linda Carmicle’s neck failed to show the vertebral bodies below C-5 in her neck, and if it is true that Linda Carmicle did, in fact, sustain a fracture of the C-7 vertebral body in the motor vehicle accident of November 27, 2002, and if it is true that Linda Carmicle sustained a substantial trauma to her back and neck in the motor vehicle accident . . . , and if it is true that Linda Carmicle continued to report during her hospital stay at the Casey County Hospital that she was experiencing pain and symptoms in her neck and shoulder region during the couple of weeks she was in the Casey County Hospital after the accident . . . , and if it is true that Jared Wilson and Edward Grimball and Housam Haddad and physicians of the Casey County Hospital participated in the diagnosis and care of Linda Carmicle after the said motor vehicle accident, and if it is true that each of these physicians had access to the charts and the records and the films and the reports on Linda Carmicle during her hospitalization, then I am of the firm, considered opinion that Dr. Edward Grimball and Dr. Jared Wilson and Dr. Housam Haddad and Dr. Ekramul Kabir and the emergency room physician or physicians at the Casey County Hospital and any other physicians of the Casey County Hospital who may have participated in the initial care of Linda Carmicle fell below accepted standards of medical care in at least the following manners:

- a. They should have ordered more special tests and more imaging studies.
- b. They should have engaged in more follow-up care knowing that Linda Carmicle had sustained a substantial traumatic injury to her neck and upper back region.

- c. They should have engaged in substantial follow-up questions and substantial follow-up care knowing that Linda Carmicle was continuing to complain of pain and problems in her neck region and in her upper back region.
- d. They should have recognized that a potential, undiagnosed problem existed.
- e. They should have carefully checked the charts and records and the x-ray films and any available x-ray reports and any available imaging studies and reports to learn that the vertebrae in the neck were not shown on the initial x-ray films.
- f. They should have consulted each with the other and formulated a treatment plan to learn the cause of the continued pain and continued symptoms in Linda Carmicle.

Dr. Silverman stated Dr. Kabir:

fell below the accepted standard of medical care in the treatment of Linda Carmicle for the reason that he did not make any specific notation on the fact that the vertebra at C-6 and the vertebra at C-7 were not appreciated; moreover, there was nothing noted on the official radiology reports that the studies themselves were sub-optimal; moreover, there was nothing noted on the official radiology reports that the lower cervical spine was not optimally assessed.

Dr. Silverman also stated:

all the physicians who participated and hospitals which participated in the care of Linda Carmicle following the motor vehicle accident . . . should have done more than they did to learn about her injuries and to diagnose her injuries and to lessen the pain from her injuries and to get additional medical treatment for Linda Carmicle in the care of the fractured vertebra at C-7.

In a supplemental answer, Carmicle stated Dr. Silverman would testify he reviewed copies of the x-rays provided by the hospital to Carmicle. In that supplement, Carmicle at length stated Dr. Silverman would testify consistent with his affidavit, the x-ray films were not of good quality, and the films did not adequately show the fractured vertebra. Carmicle noted that Dr. Silverman would base his testimony on his training, experience and understanding of the facts.

In her witness list, Carmicle also identified Drs. John Shershow and John Hyde as expert witnesses. Carmicle stated Dr. Shershow would testify:

regarding the rules and procedures applicable to hospitals in general as such hospitals work with physicians and as such hospitals seek to oversee medical care providers who see patients at hospitals. He is also expected to testify regarding all aspects of hospital administration and staffing and quality of care required. He is also expected to testify as to hospital standards applicable in the care of Linda Carmicle. He is further expected to testify regarding physician credentialing and medical quality assessment. His testimony is expected to point out to the jury the occasions on which the hospitals and the medical care providers who attempted to provide care for Linda Carmicle fell below the standard of care and as to the occasions on which the hospitals and the medical care providers who attempted to give care to Linda Carmicle at the hospitals met the appropriate standards of care.

Carmicle stated Dr. Hyde would testify:

regarding his impressions or opinions as to the adherence to standards of healthcare administration in the care of Linda Carmicle. He is further expected to testify as to the occasions on which the standards of care were not met and when they were met with respect to the handling of Linda Carmicle's treatment at the two hospitals in

question. He is further expected to testify regarding the occasions on which the medical care providers did not provide appropriate treatment, under applicable standards, for Linda Carmicle. He is further expected to testify regarding the standard by which an emergency room physician and other physicians who attempt to provide care to patients through hospitals fell below appropriate standards in the treatment of Linda Carmicle with respect to the events mentioned in the complaint and in the evidence.

Order on Summary Judgment

On May 4, 2007, the circuit court entered an Order granting summary judgment to the Appellees.² In its order the court stated:

[t]he procedural history as it relates to Plaintiff's efforts to disclose experts is critical to the Court's decision. The record reveals that the Plaintiff was involved in a single motor vehicle accident on November 27, 2002 in Casey County and was taken to the Casey County Hospital for treatment. In her Complaint filed on November 26, 2003 she alleges generally that the Defendants herein breached the standard of care with respect to their evaluation and treatment of her. All Defendants served proper discovery that included requests for the disclosure of experts the Plaintiff expected to call at the trial of this matter pursuant to CR 26.02(4). The Plaintiff's first disclosure of experts was served on September 30, 2004 and listed a single expert, Dr. Tucker Montgomery. The Defendants took the deposition of Dr. Montgomery on October 13, 2005 during which he revealed that he had not been provided with the x-rays at issue and without benefit of those x-rays and the depositions of the Defendant doctors, (which have never been taken by the Plaintiff), he could not give any opinions within the realm of reasonable medical probability. Following that deposition the Defendants filed their first Motion for

² We note the circuit court inadvertently omitted Dr. Kabir from the order granting summary judgment. The court corrected that omission by subsequent order on August 14, 2007. The omission of Dr. Kabir from the initial order has no bearing on this appeal and we will treat the language from the initial order granting summary judgment as applicable to all of the Appellees.

Summary Judgment and in the alternative to compel pursuant to CR 37 which was heard on July 10, 2006. Although the Court found at that time that the Plaintiff's disclosure was inadequate it denied Summary Judgment but pursuant to CR 37 ordered the Plaintiff to supplement her expert disclosures. On November 10, 2006 the Plaintiff served her "Listing of Expert Witnesses" which again listed Dr. Montgomery and attempted to add additional experts. Following receipt of this listing the Defendants moved again for Summary Judgment and a Motion was heard on February 23, 2007. In an Order entered on March 8, 2007 the Court found that the Plaintiff's expert disclosure was still inadequate but again granted additional time, until March 28, 2007, to supplement the disclosures. On that date Plaintiff served a pleading which purported to supplement her disclosures but referenced only Drs. Montgomery and Silverman. The Defendants moved for summary judgment for a third time and this Motion was heard on April 23, 2007.

Based upon this review of the record and argument of counsel the Court hereby finds that the Plaintiff's disclosures of experts in this case completely fail to satisfy Plaintiff's burden pursuant to CR 26.02(4) and such failure is fatal to the Plaintiff's claims herein. The Court similarly finds pursuant to CR 37 that Plaintiff has violated its Orders to compel adequate disclosure in accordance with CR 26. The Court further finds that the Plaintiff has been given more than ample opportunity to comply with her Rule 26 obligations and concludes, as a matter of law, that she has failed to create a genuine issue of material fact as to the liability of any of the Defendants and they are each entitled to summary judgment as a matter of law. Therefore, having considered sanctions and finding that alternative inadequate, the Court grants the motions of all Defendants for summary judgment and it is hereby ORDERED and ADJUDGED that the above-styled matter, and all claims presented therein, be, and the same hereby are, DISMISSED, with PREJUDICE.

Following entry of the above order and the order granting summary judgment to Kabir, Carmicle filed this appeal. On appeal, Carmicle argues the circuit court improperly granted summary judgment because: 1) the alleged negligence was so obvious she was not required to produce any expert evidence; and 2) she filed sufficient evidence to create an issue of fact and to satisfy the dictates of CR 26.02.

STANDARD OF REVIEW

"The standard of review on appeal of a summary judgment is whether the circuit judge correctly found that there were no issues as to any material fact and that the moving party was entitled to a judgment as a matter of law." *Pearson ex rel. Trent v. Nat'l Feeding Systems, Inc.*, 90 S.W.3d 46, 49 (Ky. 2002).

Summary judgment is only proper when "it would be impossible for the respondent to produce any evidence at the trial warranting a judgment in his favor." *Steelvest, Inc., v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). In ruling on a motion for summary judgment, the Court is required to construe the record "in a light most favorable to the party opposing the motion . . . and all doubts are to be resolved in his favor." *Id.* at 480. "To survive a motion for summary judgment in a medical malpractice case in which a medical expert is required, the plaintiff must produce expert evidence or summary judgment is proper." *Andrew v. Begley*, 203 S.W.3d 165, 170 (Ky. App. 2006).

"Negligence in medical malpractice cases 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*, 551 S.W.2d 8, 9 (Ky. App. 1977); *Baptist Healthcare Systems v. Miller*, 177 S.W.3d 676 (Ky. 2005). “Whether expert testimony is required in a given case is squarely within the circuit court's discretion. Absent an abuse of discretion, we will not disturb the trial court's ruling.” (Internal citations omitted.) *Green v. Owensboro Medical Health System, Inc.*, 231 S.W.3d 781, 783 (Ky. App. 2007).

As a general rule, the “control of discovery is a matter of judicial discretion.” *Primm v. Isaac*, 127 S.W.3d 630, 634 (Ky. 2004). “The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Manus, Inc. v. Terry Maxedon Hauling, Inc.*, 191 S.W.3d 4, 8 (Ky. App. 2006).

With the preceding facts and standards of review in mind, we will address the issues raised by Carmicle in the order listed above.

ANALYSIS

1. Need for Expert Testimony

The circuit court determined, at least by inference, expert testimony was necessary to prove Carmicle’s claims of medical malpractice. We agree with that assessment.

Carmicle claims the appellee physicians and hospital staff were negligent because they did not obtain sufficient testing to diagnose and properly treat her post-accident injuries. The type of diagnostic testing required to meet the

applicable standard of care in Carmicle's case and whether the physicians and hospital staff met that standard is not within the knowledge of a lay person. Therefore, Carmicle is required to produce expert testimony with regard to her claims against the appellee physicians and hospital staff.

Carmicle also claims the hospitals failed to have in place and follow proper protocols with regard to her treatment. What protocols are required to meet the standard of care that applies to the hospitals is also not within the knowledge of a lay person; therefore, Carmicle needs expert testimony to support her direct claims against the hospitals.

Based on the preceding, Carmicle's argument that she should not have been required to produce any expert testimony is without merit.

2. Adequacy of Carmicle's Expert Disclosures vis á vis the Physician Appellees

CR 26.02(4)(a) provides that:

(i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

It is undisputed that Carmicle was dilatory in responding to the Appellees' interrogatories regarding her expert witnesses. However, she did respond. Therefore, the question is whether the circuit court's finding that those responses were inadequate under CR 26.02(4)(a) was an abuse of discretion. After

extensively reviewing Carmicle's answers and supplemental answers, as well as the transcript of Dr. T. Montgomery's deposition, we hold the circuit court abused its discretion when it granted summary judgment to the appellee physicians and hospital staff. However, the circuit court did not abuse its discretion when it granted summary judgment to the appellee hospitals on Carmicle's claims regarding the hospitals' protocols.

As noted above, CR 26.02 requires a party to: identify all experts who will be called to testify at trial; state what subject matter each expert will address; state the substance of the facts and opinions of each expert; and summarize the grounds for each opinion. Carmicle stated Dr. T. Montgomery would testify that, in order to comply with the standard of care, the physicians who treated Carmicle were required to: 1) review the x-rays films; 2) obtain additional testing; and 3) consult with additional medical care providers. According to Carmicle, Dr. T. Montgomery would testify the failure of Carmicle's medical care providers to take any of these steps amounted to a breach of that standard of care. Carmicle stated Dr. Montgomery relied on the records, copies of the x-ray films, and his training and experience in forming his opinions. This is sufficient to satisfy the requirements of CR 26.02.

The Appellees have argued, and the circuit court stated, Dr. T. Montgomery testified "he could not give any opinions within the realm of reasonable medical probability" without reviewing the x-rays and the depositions of the appellee physicians. However, taken in context, that is not a completely

accurate summary of Dr. Montgomery's testimony. In context, Dr. Montgomery testified it would be better to have copies of the x-rays and the Appellees' depositions and giving an opinion without those items would not be "fair;" however, he also stated "all I need" is the records and he was refraining from giving a "final opinion" until he could review those items.

Furthermore, following Dr. Montgomery's deposition, Carmicle provided copies of her x-rays from Casey County to Dr. Montgomery and he updated his opinion. Carmicle then supplemented her answers to interrogatories with that opinion. The Appellees have argued Carmicle did not go far enough because she did not take their depositions and offer those depositions to Dr. Montgomery for review. However, nothing in the Civil Rules requires Carmicle to do so. Under the Civil Rules, Carmicle adequately identified Dr. Montgomery and set forth what his opinions are and the basis for those opinions. That is all she was required to do. While Dr. T. Montgomery's opinions may ultimately prove wanting in terms of credibility, that is an issue for the trier of fact, not the court on summary judgment.

As to Dr. Silverman, Carmicle stated he would testify: 1) the x-ray films were not of good quality; 2) the films do not show the fractured vertebra; 3) the radiologist who read the films should have noted the lower cervical spine was not visualized on the films and ordered additional films or at least noted on the report the lower vertebrae were not visualized; 4) Carmicle's other physicians should have realized the lower vertebrae were not visualized and ordered

additional testing; 5) the physicians breached the standard of care by failing to order additional testing; and 6) his opinions are based on his review of the x-rays, his understanding of the facts of the accident, the x-ray films, records he reviewed, and his training and experience. This is all CR 26.02 requires. Therefore, Carmicle complied with CR 26.02 with regard to Dr. Silverman's opinion and the court's summary judgment in favor of the physician appellees was an abuse of discretion.

When viewed in a light most favorable to Carmicle, the opinions of Dr. T. Montgomery and Dr. Silverman create an issue of material fact. Therefore, the circuit court's summary judgment in favor of the appellee physicians and hospital staff was an abuse of discretion and is reversed.

3. Adequacy of Carmicle's Expert Disclosures vis á vis the Hospitals

Carmicle has identified two experts who will address hospital protocol and healthcare administration, Dr. Shershow and Dr. Hyde. Carmicle also set forth the subject matter each expert would address. However, she did not state what opinions either physician has regarding the specific standard of care that applies to Carmicle's claim or how any such standard of care may have been breached. Furthermore, Carmicle did not set forth the grounds for any such opinions. Therefore, the circuit court's summary judgment of Carmicle's claims against the appellee hospitals for any violation of rules, procedures, or protocols was not an abuse of discretion and is affirmed.

CONCLUSION

For the foregoing reasons, we affirm the portion of the circuit court's summary judgment that disposed of Carmicle's claims arising from allegations that the appellee hospitals violated the standard of care related to their rules, procedures, or protocols. We reverse the circuit court's summary judgment in all other respects and remand this matter for additional proceedings.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
FOR APPELLANT:

James A. Ridings
London, Kentucky

BRIEF FOR APPELLEES CASEY
COUNTY HOSPITAL AND
WESTLAKE REGIONAL
HOSPITAL:

Timothy J. Walker
Lexington, Kentucky

BRIEF FOR APPELLEE EDWARD
GRIMBALL, M.D.:

Calvin R. Fulkerson
Lexington, Kentucky

BRIEF FOR APPELLEE JARED
WILSON, M.D.:

William P. Swain
Louisville, Kentucky

BRIEF FOR APPELLEE HOUSAM
HADDAD, M.D.:

Katherine Kerns Vesely
Louisville, Kentucky

BRIEF FOR APPELLEE EKRAMUL
KABIR, M.D.:

Todd D. Willard
Lexington, Kentucky

ORAL ARGUMENT FOR
APPELLEE HOUSAM HADDAD,
M.D.:

Clay Edwards
Louisville, Kentucky