

NOT DESIGNATED FOR PUBLICATION

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**LAKELAND MEDICAL
CENTER**

*

NO. 2007-CA-0642

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

LADONNA TAYLOR

STATE OF LOUISIANA

CONSOLIDATED WITH:

CONSOLIDATED WITH:

**LADONNA TAYLOR WIFE OF
AND TOMMY TAYLOR**

NO. 2007-CA-0643

VERSUS

**DANIEL MENSAH, M.D.,
WILLIAM H. ROBICHAUX,
M.D., JACQUELINE HOPE,
R.N. AND LAKELAND
MEDICAL CENTER, LLC**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NOS. 99-14716, C/W 2001-2988. C/W 2003-14152 DIVISION "E-7"
Honorable Madeleine Landrieu, Judge**

Judge David S. Gorbaty

(Court composed of Judge Michael E. Kirby, Judge David S. Gorbaty, Judge Roland L. Belsome)

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AFFIRMED

In this appeal, defendant Daniel Mensah, M.D. contends that the trial court erred in finding that he breached the standard of care in his treatment of LaDonna Taylor. For the reasons set forth below, we affirm.

FACTS AND PROCEDURAL HISTORY

On June 20, 1998, LaDonna Taylor, who was eighteen weeks pregnant, was admitted to Lakeland Medical Center with a diagnosis of pre-term premature rupture of membranes (PPROM). Two days later, an ultrasound was performed that showed a fetal heartbeat. The ultrasound also revealed that the placenta had implanted in the low anterior wall of the uterus, the site of Mrs. Taylor's prior c-section scar. Mrs. Taylor was discharged on June 24 and ordered to go on strict bed rest.

On June 29, 1998, Mrs. Taylor was readmitted to Lakeland complaining of vaginal spotting. An ultrasound performed on that date showed "fetal demise with a low-lying placenta." At that time, procedures were initiated to trigger delivery. The fetus delivered spontaneously at 12:30 p.m. on June 30, 1998. Jacqueline Hope was the attending nurse at that time. She testified that she advised Dr. Mensah, Mrs. Taylor's obstetrician, of the delivery and was instructed to allow the

placenta to deliver on its own. According to the nurse's notes, the placenta delivered itself at 1:40 p.m. It was later determined that what Nurse Hope thought was the placenta was, in fact, a blood clot.

Dr. William Robichaux, the pathologist on duty in the lab when the tissue was received, testified that he examined the fetus and products of conception, and immediately realized that he did not have the placenta. He called labor and delivery to notify them. He also placed two calls to Dr. Mensah, which were not returned, and faxed a copy of his report to him.

On July 2, Mrs. Taylor contacted Dr. Mensah complaining of vaginal bleeding and fever. Dr. Mensah testified that he advised Mrs. Taylor to go to the hospital, but that she was unable to arrange care for her other children, so did not do so. Mrs. Taylor denied this, stating that Dr. Mensah simply prescribed antibiotics and told her to come to his office in the morning. The next morning, an ultrasound showed that she had retained products of conception. Dr. Mensah attempted to remove the placenta via a dilation and curettage (D&C), but during the procedure Mrs. Taylor began to hemorrhage, and a hysterectomy had to be performed to save her life.

After a trial, the court found that Dr. Mensah breached the standard of care in several respects, and that these breaches caused Mrs. Taylor's resulting hysterectomy. The trial court awarded damages of \$100,000 to Mrs. Taylor and \$10,000 to Mr. Taylor. Defendant Dr. Mensah subsequently filed this appeal.

DISCUSSION

Defendant asserts that the trial court erred in finding that Dr. Mensah violated the standard of care for practitioners of obstetrics and gynecology in his treatment of Mrs. Taylor.

La. R.S. 9:2794 sets forth the burden of proof that must be met by the plaintiff in a medical malpractice action. It states that a plaintiff must prove the degree of knowledge or skill ordinarily exercised by a physician within the involved medical specialty; that the defendant either lacked this degree of knowledge or skill or failed to use reasonable care and diligence; and that as a result of this lack of knowledge or skill, the plaintiff suffered injuries. Applying La. R.S. 9:2794, Louisiana courts have consistently held that expert testimony is necessary to establish these elements. *Richoux v. Tulane Medical Center*, 617 So.2d 13 (La. App. 4 Cir. 1993).

A physician is required to exercise that degree of skill ordinarily employed under the circumstances by others in the same profession, and also to use reasonable care, diligence, and judgment. *Hastings v. Baton Rouge General Hospital*, 498 So.2d 713 (La. 1986). Louisiana law does not require perfection in medical diagnosis and treatment, and acts of professional judgment are evaluated in terms of reasonableness under the circumstances then existing. *Jackson v. Huang*, 514 So. 2d 727 (La. App. 2 Cir. 1987).

The manifest error standard applies to our review of medical malpractice cases. *Jackson v. Tulane Medical Center Hosp. and Clinic*, 05-1594 (La.10/17/06), 942 So.2d 509. Under the manifest error standard of review, a factual finding cannot be set aside unless the appellate court finds that it is manifestly erroneous or clearly wrong. *Smith v. Louisiana Dept. of Corrections*, 93-1305 (La.2/28/94), 633 So.2d 129; *Stobart v. State through Dept. of Transp. and Development*, 617 So.2d 880 (La.1993). In order to reverse a fact finder's determination, an appellate court must review the record in its entirety and (1) find that a reasonable factual basis does not exist for the finding and (2) further determine that the record establishes

that the fact finder is clearly wrong or manifestly erroneous. *Salvant v. State*, 05-2126 (La.7/6/06), 935 So.2d 646; *Stobart*, supra. The appellate court must not reweigh the evidence or substitute its own factual findings because it would have decided the case differently. *Pinsonneault v. Merchants & Farmers Bank & Trust Co.*, 01-2217, (La.4/3/02), 816 So.2d 270. Absent an abuse of discretion or manifest error, a reviewing court cannot disturb the factual findings of a trial court. *Rosell v. ESCO*, 549 So.2d 840 (La.1989). Reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review, even though the appellate court may feel that its own evaluations and inferences are as reasonable. *Rosell*, supra.

In its Reasons for Judgment, the trial court held that Dr. Mensah breached the standard of care by failing to view the products of conception after the delivery of the fetus; by failing to respond to calls made by Dr. Robichaux; and by failing to respond properly to Mrs. Taylor's phone call reporting bleeding and fever. The trial court noted that it found Dr. Mensah's credibility to be lacking, and that it found Mrs. Taylor's testimony to be more credible. The trial court also noted that it chose to rely upon the testimony of Dr. Laura Goetzl, a gynecologist, who stated, among other things, that Dr. Mensah breached the applicable standard of care by failing to view the products of conception.

The evidence and testimony provide a reasonable basis for the trial court's conclusions. Dr. Mensah did not examine the purported placenta, did not respond to Dr. Robichaux's phone calls, and did not examine the pathology report. It was uncontradicted at trial that in ten to fifteen percent of second trimester miscarriages, the placenta is retained. Dr. Mensah should have realized this possibility and confirmed that the placenta had been entirely expelled before he

discharged Mrs. Taylor from the hospital. Further, the fever and vaginal bleeding experienced by Mrs. Taylor after the miscarriage are indicative of retained placenta; Mrs. Taylor should have been instructed to report to the emergency room immediately. Thus, we conclude that the trial court did not err in finding that Dr. Mensah breached the standard of care. This assignment of error lacks merit.

Alternatively, defendant argues that the trial court erred in finding that Dr. Mensah's breach of the standard of care was the cause in fact of the damages claimed by plaintiffs. Mrs. Taylor suffered a known complication of the surgery for which she had informed consent. Further, the overwhelming medical history revealed that a hysterectomy was inevitable, since the placenta had implanted at the site of Mrs. Taylor's cesarean section scar.

Again relying on the testimony of Dr. Goetzl, and specifically rejecting the testimony of defendant's experts, the trial court found that these breaches of the standard of care caused or contributed to Mrs. Taylor's resulting hysterectomy. The trial court found that Dr. Mensah perforated plaintiff's uterus during the D&C when he was attempting to dislodge the retained placenta from the uterine wall. Dr. Goetzl testified that "[t]he longer you wait, the more likely that infection can take hold, and if infection takes hold, there's an increased risk of a uterine perforation during" the D&C.

We find that the trial court's conclusion that the breach of the standard of care caused Mrs. Taylor's hysterectomy is well supported by the evidence and testimony. The trial court was within her discretion to reject the defendant's experts' testimony and rely upon Dr. Goetzl's statements. The evidence showed that since the uterus was infected, the risk of perforating the uterus was increased. The retained placenta should have been

immediately removed, and no infection should ever have occurred, and therefore the risk of perforating the uterus during the D&C should have been substantially lower. This assignment of error is also meritless.

CONCLUSION

The trial court's holdings were not manifestly erroneous or clearly wrong. Accordingly, for the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED