S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

DUANE WALKER, Personal Representative of the Estate of ROOSEVELT WALKER, deceased,	UNPUBLISHED November 5, 1996
Plaintiff-Appellant,	
v	No. 186576 LC No. 93-023533-NH
HURLEY MEDICAL CENTER and DR. JULIAN A. MOORE,	
Defendants-Appellees.	

DUANE WALKER, Personal Representative of the Estate of ROOSEVELT WALKER, deceased,	
Plaintiff-Appellant,	
v	No. 186577 LC No. 94-026846-NH
A.V. CHAN, M.D.,	
Defendant-Appellee.	

Before: Markman, P.J., Smolenski, and G. S. Buth,* JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right the trial court's grant of summary disposition to defendant Hurley Medical Center and directed verdicts for the two defendant physicians. We affirm the grant of summary disposition and the directed verdict for Dr. Chan, but reverse the

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* Circuit judge, sitting on the Court of Appeals by assignment.

disqualification of an expert witness on the standard of care applicable to Dr. Moore and therefore vacate the directed verdict for him.

These consolidated cases stem from a visit to defendant Hurley Medical Center's emergency room by plaintiff's decedent on October 9, 1991, his subsequent hospitalization on October 10-14, 1991, and his sudden death from cardiac arrest on October 14, 1991. Family practitioner Julian A. Moore was the decedent's physician, and cardiologist A.V. Chan treated the decedent during his hospital stay.

During discovery, plaintiff failed to answer Hurley Medical Center's requests to admit that Hurley was not vicariously liable for any claim of malpractice against Dr. Moore and Dr. Chan and that plaintiff had no independent claims of malpractice against any resident or nurse employed by Hurley for his October 10-14, 1991, hospital stay. On motion of Hurley, these requests were deemed admitted. Hurley then moved for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10), arguing that plaintiff's amended complaint failed to allege any negligence claims stemming from the October 9, 1991, emergency room visit. The trial court subsequently granted this motion and dismissed Hurley from the case.

At trial, plaintiff called Dr. Kaufman, a board certified internist, as an expert witness to testify regarding the standard of care against defendant doctors. The trial court disqualified Dr. Kaufman as an expert witness against Dr. Chan, a non-board certified cardiologist. The court also ruled that Dr. Kaufman, who practiced in the Detroit metropolitan area, was not qualified as an expert on the standard of care for a general practitioner practicing in Flint and therefore could not give evidence on the standard of care against Dr. Moore. Plaintiff then introduced the deposition testimony of general surgeon Dr. Rosenbaum, but failed to establish him as an expert on the standard of care for either defendant physician. At the close of plaintiff's proofs, the defendant physicians moved for directed verdicts, which the trial court granted.

First, plaintiff contends that the trial court abused its discretion in ruling that the amended complaint failed to give defendant Hurley Medical Center sufficient notice of any claims of negligence arising from the decedent's visit to the emergency room. We disagree.

"A complaint must provide reasonable notice to opposing parties." *Dacon v Transue,* 441 Mich 315, 329; 490 NW2d 369 (1992). To properly assert a theory of liability against a defendant, a complaint must state "the specific allegations necessary reasonably to inform the adverse party" of the pleader's claims. MCR 2.11(B)(1); *Id.* at 330. In *Porter v Henry Ford Hospital*, 181 Mich App 706, 709-10; 450 NW2d 37 (1989), this Court discussed the varying interpretations among panels of this Court of the degree of specificity required when pleading medical malpractice and concluded,

> [T]he degree of specificity required in setting forth a medical malpractice action flows from the circumstances and nature of the case, rather than from any objective heavier burden of pleading . . . Where the factual basis of the alleged malpractice is within the knowledge of the ordinary layperson, the cause may be pled with less specificity than a

> more complicated, technical malpractice claim. The crucial question is whether the complainant is specific enough to provide the defendant with notice of the allegations against which he must defend.

Nowhere in plaintiff's amended complaint does he detail any occurrences from the October 9 emergency room visit; the only subparagraphs of the complaint that mention specific dates set forth only allegations of occurrences in the non-emergency facilities of the hospital from October 10 through October 14. Because admissions of plaintiff had already released Hurley from liability for any actions during the patient's non-emergency hospital stay, the trial court did not abuse its discretion in ruling that the amended complaint did not state a cause of action against Hurley. Moreover, plaintiff's argument that the trial court erred in not granting him time to respond to the motion for summary disposition is without merit. Hurley moved for a grant of summary disposition more than five months before the trial court granted it. We believe that plaintiff had more than ample time to respond to the motion.

Plaintiff next argues that the trial court abused its discretion in ruling that Dr. Kaufman was not qualified to give standard of care testimony against Dr. Moore. We agree with plaintiff. The governing statute on the qualification of experts in medical malpractice lawsuits is MCL 600.2912a; MSA 27A.2912(1). When the lawsuit against Dr. Moore was filed on August 12, 1993, the statute read in pertinent part:

> In an action alleging malpractice the plaintiff shall have the burden of proving that in light of the state of the art existing at the time of the alleged malpractice:
>
> (a) The defendant, if a general practitioner, failed to provide the plaintiff the recognized standard of acceptable professional practice in the community in which the defendant practices or in a similar community, and that as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury.

The essential elements that a plaintiff in a medical malpractice claim must establish are: "(1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. MCL 600.2912a; MSA 27A.2912(1). To survive a motion for directed verdict, the plaintiff must make a prima facie showing regarding each of the above elements." *Locke v Pachtman,* 446 Mich 216, 222; 521 NW2d 786 (1994). In order to establish the first element, "[a] party offering the testimony of an expert witness must demonstrate the witness' knowledge of the applicable standard of care." *Bahr v Harper-Grace Hospitals,* 448 Mich 135, 141; 528 NW2d 170 (1995).

Dr. Kaufman, who had practiced in several locations in metropolitan Detroit and served as chief of medicine and family practice at a Hamtramck hospital, testified that he believed that the standard of care would be the same in Flint as in Hamtramck and the Detroit metropolitan area because "they're similar communities in my opinion. The standards would be the same." The trial judge expressed concern that Dr. Kaufman had never practiced in Flint or Genesee County and ruled that Dr. Kaufman was not qualified to testify about the standard of care for general practitioners in the Flint area.

We find that the trial court abused its discretion in imposing an overly narrow interpretation of the statute, which does not require that the expert has practiced in a community or that he is able to demonstrate a knowledge of the standard of care in the exact community. It requires only that the expert demonstrate a knowledge of the standard of care in the community in question or "a similar community." *Bahr*, *supra*. See also *Turbin v Graesser (On Remand)*, 214 Mich App 215; 542 NW2d 607 (1995). Nor is it required that the alleged expert be conversant with the type of detail concerning a community, such as its precise ethnic populations, concerning which Dr. Kaufman was questioned. While no bright-line determination is possible concerning which two communities are "similar" for purposes of MCL 600.2912a; MSA 27A.2912(1), we find that two essentially urban, metropolitan communities within the same state and within sixty-five miles of each other satisfy the requirements of the Act. Therefore, we reverse the trial court's ruling that Dr. Kaufman was not qualified to give standard of care testimony for a general practitioner in the Flint area and vacate the directed verdict granted to Dr. Moore.[1]

Plaintiff next argues that the trial court abused its discretion in ruling that Dr. Kaufman and Dr. Rosenbaum, both board certified physicians who did not specialize in cardiology, were not qualified to give standard-of-care testimony against Dr. Chan, a non-board certified cardiologist. We disagree. The qualification of expert witnesses to testify about the standard of care for specialists in medical malpractice lawsuits is governed by MCLA 600.2169; MSA 27A.2169, which was amended October 1, 1993. The amendment applies to the suit against Dr. Chan. The amended statute provides in pertinent part:

> (1) In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:
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> (a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.
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> (b) Subject to subdivision (c), during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:
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> (i) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.
>
> (ii) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which

the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

One of the primary changes this amendment effected is that it dropped language formerly contained within the statute that a witness testifying on the standard of care for a specialist could be a specialist in a "related, relevant area of medicine." Under the new language, if the party is a specialist, the witness himself must specialize "at the time of the occurrence that is the basis for the action in the same specialty as the party" and must have been engaged in the active clinical practice of the specialty or in the instruction of students in the specialty during the year proceeding the occurrence.

Neither proposed witness was therefore qualified to testify about the standard of care for Dr. Chan. Neither was a cardiologist who was actively engaged in the specialty in October 1991, and throughout the preceding year. Although plaintiff seems to imply that Dr. Chan does not qualify as a specialist under the statute because he was not a board certified cardiologist, we have previously said that board certification is not a necessary prerequisite for the court's designation of a party as a specialist. See *Dunn v Nunddkumar,* 186 Mich App 51; 463 NW2d 435 (1990). Therefore the trial court did not abuse its discretion in disqualifying both physicians as experts in the standard of care for cardiologists.[2]

For Docket No. 186576, we affirm the trial court's order granting summary disposition in favor of defendant Hurley Medical Center. However, we reverse the trial court's directed verdict in favor of defendant Dr. Julian A. Moore and remand for a new trial against him. For Docket No. 186577, we affirm the court's directed verdict in favor of defendant A.V. Chan. We do not retain jurisdiction.

/s/ Stephen J. Markman
/s/ Michael J. Smolenski
/s/ George S. Buth

[1] Although we reverse the trial court's ruling in this regard, we appreciate that the trial court devoted considerable attention to this matter, afforded both parties ample opportunity to argue their positions and, by engaging in a close analysis of the word "similar", approached its interpretative responsibilities in a commendable fashion.

[2] We do not find that *Bahr v. Harper-Grace Hospital,* 448 Mich 135*;* 528 NW2d 170 (1995) , upon which plaintiff relies offers support on this issue. As plaintiff points out, the plaintiff's expert in *Bahr* was a board-certified internal medicine specialist, as is Dr. Kaufman in the instant case, whom the trial court qualified as an expert in the standard of care for residents and interns. However, we believe that the primary theme in that case was the locality rule, whereas the issue at hand here is the qualifications of an expert witness to address the standard of care in a medical malpractice suit where the defendant is a specialist. We also note that this Court's task is limited to determining whether an abuse of discretion occurred on the part of the trial court. *Id*. at 141.