STATE OF MICHIGAN

COURT OF APPEALS

JAMES T. MORRISSEY and ARLENE MORRISSEY,

Plaintiffs-Appellants,

v

LES D. GROSINGER, M.D., P.C., and LES D. GROSINGER, M.D.,

Defendants-Appellees.

UNPUBLISHED
May 26, 2000

No. 212821
Oakland Circuit Court
LC No. 96-520083-NH

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal by right an order of judgment of no cause of action entered pursuant to a jury verdict in favor of defendants in this medical malpractice case. We affirm.

On appeal, plaintiffs contend that the trial court abused its discretion by striking certain testimony of James Morrissey's treating physician, Dr. David Manzo, who treated Morrissey before and after he was treated by Grosinger and his practice. We disagree. This Court reviews a trial court's decision to exclude evidence for an abuse of discretion. *Lagalo v Allied Corp (*On Remand), 233 Mich App 514, 517; 592 NW2d 786 (1999). An abuse of discretion will be "found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *Gore v Rains & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

At trial, Manzo testified by way of deposition, which was read to the jury after portions of it were struck by the trial court on a motion brought by defendants. Specifically, defendants moved to strike questions and answers concerning Manzo's decision not to perform surgery on Morrissey's eye and his opinion that such surgery would not improve Morrissey's vision. The trial court struck that testimony as irrelevant and because any probative value would be outweighed by its confusion of the issues.

Pursuant to MCL 600.2912a(l)(b); MSA 27A.2912(1)(l)(b), in a medical malpractice action, the plaintiff has the burden of proving that

> [t]he defendant, if a specialist, failed to provide the recognized standard of practice or care within that specialty as reasonably applied in light of the facilities available in the community or other facilities reasonably available under the circumstances, and as a proximate result of the defendant failing to provide that standard, the plaintiff suffered an injury.

To prove that standard of care, the plaintiff must show "how other doctors in that field of medicine would act and not how any particular doctor would act." *Cudnik v William Beaumont Hosp*, 207 Mich App 378, 382; 525 NW2d 891 (1994), quoting *Carbonell v Bluhm*, 114 Mich App 216, 224; 318 NW2d 659 (1982). The standard of care for a specialist is nationwide. *Cudnik, supra* at 383. It is generally improper for an expert to testify about the appropriate standard of care from the basis of what he or she would have personally done in the situation. *May v William Beaumont Hosp*, 180 Mich App 728, 761; 448 NW2d 497 (1989).

Here, Manzo was James Morrissey's treating physician and, according to both parties, was not introduced as an expert witness. Plaintiffs contend, however, that the testimony was probative of whether malpractice occurred. Nonetheless, under the statute, the relevant inquiry to determine whether malpractice occurred is established through evidence of the general practice in the area of medicine and the practice in the community. Manzo's individual opinion about his specific decision not to perform surgery on Morrissey's eye, therefore, was not relevant to plaintiffs' claim because his comments about his own behavior do not tend to establish the proper standard of care, that of the general community. Even though Manzo said there would be "no surgery" on Morrissey's eye, and even though he did not think Morrissey's vision would improve with cataract surgery, the issue was whether it would be standard practice in the community to perform cataract surgery on a person with Morrissey's condition. None of the above testimony established that standard, and, therefore, Manzo's opinions were not relevant to this claim.

Further, Manzo's decision not to perform cataract surgery on Morrissey was not relevant because Manzo stopped treating Morrissey in the fall of 1993, and Grosinger performed surgery on Morrissey's eye in April 1994. Plaintiffs argue that Manzo's testimony was relevant to show the condition of Morrissey's eye and whether it was "amenable" to surgery, but the testimony does not address the condition of the eye at the time the surgery was performed or contemplated. Therefore, the testimony regarding Manzo's prior treatment did not tend to prove a relevant fact. MRE 401.

Despite plaintiffs' vigorous arguments on appeal that Manzo's testimony was still relevant and persuasive, the reasons the trial gave for excluding the evidence was lack of relevance and jury confusion. The trial court specifically struck Manzo's testimony about his reasons for not performing surgery because the testimony would cause confusion regarding the appropriate standard of care to apply to the claim. Even if the evidence was probative of plaintiffs' claim that surgery was inappropriate, the trial court was permitted to exclude the testimony if it would confuse or mislead the jury. MRE 403. The standard of care for the performance of cataract surgery was addressed by Dr.

Barton Hodes as well as the testimony of experts called by defendants. The trial court properly excluded Manzo's specific opinions regarding Morrissey because they did not prove the relevant standard and would have misled the jury about the proper standard, that of the general medical community of eye specialists. In short, the jury might have been tempted to consider Manzo's individual actions or opinions as evidence of the standard of care when those particular actions or opinions do not constitute such evidence. Plaintiffs admit on appeal that Manzo did not testify regarding the standard of care, and, thus, the jury may not have distinguished between evidence of his personal opinion and the appropriate measure of liability. Because this was a legitimate justification for the trial court's decision to strike Manzo's testimony, the trial court did not abuse its discretion in doing so. *Gore, supra*.

We affirm.

/s/ Jane E. Markey
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin