STATE OF MICHIGAN

COURT OF APPEALS

TERRI BEHRENS,

Plaintiff-Appellant,

v

MARVIN ARONOVITZ, D.P.M., MARVIN ARONOVITZ, D.P.M., P.C., and DANIEL ARONOVITZ, D.P.M.,

Defendants-Appellees.

UNPUBLISHED
July 16, 2002

No. 226676
Macomb Circuit Court
LC No. 98-005004-NH

Before: Holbrook, Jr., P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendants in this medical malpractice suit against podiatrists (D.P.M.) Marvin and Daniel Aronovitz, father and son, respectively, and their employer. We affirm.

I.

Plaintiff first asserts that the trial court improperly struck her only expert witness, Jack B. Gorman, D.P.M. The trial court found that Gorman was not familiar with the standard of care in the local community or similar communities. Plaintiff presents a three-pronged argument: that Gorman testified that he was familiar with the standard; that the trial court should have taken judicial notice of the fact that Gorman's home community was similar to defendants' community; and that the "local community" standard is outdated and burdensome and should not be applied in this case. We disagree on all three points.

A general practice physician is held to the standard of care in the local community or similar communities. MCL 600.2912a(1)(a); *Bahr v Harper-Grace Hospitals*, 448 Mich 135, 138; 528 NW2d 170 (1995). A podiatrist is considered a general practitioner; therefore, the local standard of care applies in this case. *Jalaba v Borovoy*, 206 Mich App 17, 21; 520 NW2d 349 (1994). When offering expert testimony in a medical malpractice case, the plaintiff generally must demonstrate the expert's knowledge of the applicable standard of care. *Turbin v Graesser (On Remand)*, 214 Mich App 215, 217; 542 NW2d 607 (1995). A non-local expert may be qualified to testify if he demonstrates familiarity with the standard of care in an area similar to the community in which the defendant practiced. *Id.* at 217-218. We review a trial court's

decision to disqualify an expert for abuse of discretion. *Franzel v Kerr Mfg Co*, 234 Mich App 600, 620; 600 NW2d 66 (1999).

Although Gorman stated that he believed he was familiar with the local standard, his answers to further questioning clearly indicate that he did not know anything about the defendants' community of Sterling Heights, Michigan. He was apparently familiar with Michigan, in general; and he had considered statewide materials and reviewed for an earlier case a booklet of information about a Michigan city, but he could not remember what city. He thought he could find more information about Sterling Heights on the Internet, but had not done this research. We agree with the trial court that, despite Gorman's assertion of his knowledge, he failed to demonstrate that he was familiar with the local standard of care in Sterling Heights, and plaintiff did not present any evidence about the community to prove that it was similar to Gorman's home community. Gorman's promise to look up more information does not equate to having familiarized himself with the community. See, *Turbin, supra* at 218.

Likewise, the trial court correctly refused to take judicial notice of the similarity of the communities. The court admitted it had no such knowledge, and plaintiff has not provided any reliable sources in support of her conclusory statement. MRE 201(b).

Finally, defendants are correct in noting that neither the trial court nor this Court has the power to overrule the "local community" standard. The Michigan Supreme Court has said that "the standard of care for general practitioners is that of the local community or similar communities." *Bahr, supra* at 138. That is also the standard set out by statute. MCL 600.2912a(1)(a). This Court is bound by the authority of our Supreme Court. *Boyd v W G Wade Shows*, 443 Mich 515, 523; 505 NW2d 544 (1993).

II.

Plaintiff next asserts that the trial court improperly granted summary disposition regarding defendant Daniel Aronovitz. We review a grant of summary disposition de novo. *Arias v Talon Development*, 239 Mich App 265, 266; 608 NW2d 484 (2000). In his deposition, Gorman noted that, although Daniel had properly treated plaintiff in some respects, the office's records were so poor he could not tell whether Daniel had participated in the claimed negligent treatment and allegedly injurious surgery.

MCL 600.2912d(1)(d) requires plaintiff to state "[t]he manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice." Plaintiff does not explain how defendants' failure to keep clear records was a proximate cause of her injuries. Thus, Gorman's assertions that defendants kept poor records may be true, but are immaterial to the issue of the cause of plaintiff's injuries.

Likewise, Gorman's comments about what *might have* happened do not make a prima facie case of negligence against Daniel Aronovitz. The "mere promise" to provide specific facts in support of allegations is not sufficient to overcome a motion for summary disposition brought under MCR 2.116(C)(10). MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). Plaintiff has provided nothing more than speculation to support her theory that Daniel, by failing to communicate to his father, breached the standard of care he owed her.

Therefore, the trial court correctly granted defendants' motion for summary disposition in Daniel's favor.

III.

Finally, plaintiff asserts the trial court erred in granting summary disposition for defendants solely because she had no expert witness. Expert testimony is generally required in a medical malpractice case to establish the applicable standard of care and to demonstrate that the defendant somehow breached that standard. *Birmingham v Vance*, 204 Mich App 418, 421; 516 NW2d 95 (1994). A plaintiff is not required to provide her own expert witness but may elicit testimony about the applicable standard from defendants or other adverse witnesses. *Rice v Jaskolski*, 412 Mich 206, 212; 313 NW2d 893 (1981). However, she must provide some evidence of that standard to overcome defendants' motion. See *Maiden, supra* at 121; MCR 2.116(G)(4).

In this case, plaintiff had no expert, and nothing in the lower court record indicates that defendants or any of their witnesses set forth the standard. Plaintiff only asserted that she *could* elicit testimony of the standard by examining defendants as adverse witnesses. This was not sufficient to overcome defendants' motion. Although plaintiff's lack of an expert would not prevent her from proving defendants breached the standard of care, she must first establish that standard through either her own or defendants' expert. *Baldwin v Williams*, 104 Mich App 735, 739-740; 306 NW2d 314 (1981). Because plaintiff failed to present any competent evidence regarding the standard of care, the trial court was correct in granting summary disposition for defendants.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder