STATE OF MICHIGAN

COURT OF APPEALS

KELLIE WANG,

Plaintiff-Appellant,

v

CHRISTOPHER J. SPORLEDER, D.O., ONAWAY COMMUNITY MEDICAL CENTER, and COMMUNITY MEMORIAL HOSPITAL,

Defendants-Appellees,

and

BLUE CROSS & BLUE SHIELD,

Intervening Plaintiff- Appellee.

UNPUBLISHED
February 19, 2004

No. 244611
Presque Isle Circuit Court
LC No. 01-002415-NH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition based on a determination that the affidavit of merit in this medical malpractice case was deficient and dismissing the case because the statute of limitations had expired. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's counsel averred that before filing the affidavit of merit of John Dimanin, D.O., he was told by Dr. Dimanin that the doctor was a *practicing* general practitioner. When the affidavit was challenged on grounds that the expert qualifications had not been set forth, Dr. Dimanin stated in a subsequent affidavit that "I have devoted the majority of my professional time for approximately thirty years in active clinical practice as a general practitioner." Dr. Dimanin's curriculum vitae indicated that he had been practicing occupational medicine since 1995. He sold his family practice in 1996 and went to work for Ford Motor Company, Chrysler, and then General Motors. He explained that his practice for these companies differed from family practice in that he was primarily involved with the treatment of injuries occurring at factories, but not the treatment of colds, etc.

MCL 600.2912d(1) provides that when a medical malpractice action is filed, it must be accompanied with an affidavit of merit "signed by a health professional whom the plaintiff's

attorney *reasonably believes* meets the requirements for an expert witness under [MCL 600.2169]." (Emphasis added). Defendant Sporleder was a board-certified family practitioner. Under § 600.2169(1), an affidavit of merit against a board-certified physician must be by a physician with the same board certification. Dr. Dimanin was not a board-certified family practitioner. However, this issue involves a question currently pending before the Supreme Court in *Grossman v Brown,* 468 Mich 869; 661 NW2d 230 (2003), and *Halloran v Bhan,* 468 Mich 868; 661 NW2d 230 (2003). Since this appeal can be decided on alternative grounds, we decline to address whether the affidavit was flawed for this reason and whether counsel reasonably believed that Dr. Dimanin need not be board-certified given that he was unaware of defendant Sporleder's specialization.

When, under § 600.2169(1), the affidavit of merit has to be from a board-certified specialist in family practice, that physician must show that he or she had an active clinical family practice for a year preceding the occurrence. If the affidavit could have been from a general practitioner, the physician would nonetheless be required to have an active clinical general practice in the year preceding the occurrence. MCL 600.2169(1)(c). Dr. Dimanin did not have an active clinical family practice or an active clinical general practice. He therefore did not have the requisite expertise, and thus the affidavit of merit was inadequate.

Moreover, plaintiff's counsel's belief that Dr. Dimanin had the requisite expertise was not reasonable. Even if Dr. Dimanin told counsel that he was a *practicing* general practitioner, this Court's decision in *Geralds v Munson Healthcare,* 259 Mich App 225; ___ W2d ___ (Docket No 240159, October 28, 2003), indicates that counsel also had an affirmative duty to review the curriculum vitae to ensure that the qualifications were adequate before filing the affidavit of merit. Counsel's failure to timely review the curriculum vitae or to discern from reviewing it that the expert was not qualified cannot be regarded as reasonable.

Finally, plaintiff's counsel claims that even if the affidavit of merit was deficient, the case should not have been dismissed. He cites *Mouradian v Goldberg,* 256 Mich App 566, 574-575; 664 NW2d 805 (2003), in which the Court held that a timely filed but grossly nonconforming affidavit of merit was insufficient to toll the statute of limitations. Plaintiff asserts that dismissal is therefore appropriate only if the limitations period has expired and an affidavit was not filed or was grossly nonconforming. However, in *Geralds, supra,* the Court noted that no distinction should be made between "defective," "inadequate" and "grossly nonconforming" affidavits.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood