

STATE OF MICHIGAN  
COURT OF APPEALS

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MELVIN TENNYSON, Personal Representative  
of the Estate of APRIL TENNYSON, Deceased,

UNPUBLISHED  
May 25, 2004

Plaintiff-Appellee/Cross-Appellant,

v

BOTSFORD HOSPITAL GROUP, INC.,

No. 234302  
Oakland Circuit Court  
LC No. 96-524090-NH

Defendant-Appellant/Cross-  
Appellee.

ON REMAND

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Before: Sawyer, P.J., and Meter and Schuette, JJ.

PER CURIAM.

This matter is before us on remand from the Supreme Court. In our original opinion, we concluded that the trial court erred in admitting the trial deposition of plaintiff's decedent because it had not been concluded before decedent's death. We further concluded that, without the admission of decedent's deposition, defendant should have been granted a directed verdict judgment NOV. Accordingly, we remanded for entry of judgment in favor of defendant. *Tennyson v Botsford Hosp Group, Inc.*, unpublished opinion per curiam (No. 234302, rel'd July 24, 2003). In lieu of granting leave, the Supreme Court concluded that this Court erred in determining that the appropriate remedy was judgment in favor defendant. Rather, the Court concluded that we should have granted a new trial. The Supreme Court remanded the matter to this Court to consider issues raised in defendant's appeal, but not addressed in our original opinion.

The first issue raised in defendant's original appeal that we did not address was whether the trial court erred in allowing plaintiff's expert witness to testify where he failed to meet the requirements of MCL 600.2169 and was not qualified as an expert to give testimony. We disagree. This issue is partially resolved by this Court's decision in *Nippa v Botsford General Hosp (On Remand)*, 257 Mich App 387; 673 NW2d 747 (2003). In *Nippa*, this Court held that, where a medical malpractice action is maintained against an institutional defendant, an affidavit of merit must still be filed, signed by an expert who specializes or is certified in the same specialty as the institutional defendant's agent who is alleged to have been negligent. *Id.* at 393. MCL 600.2169 requires that an expert witness be of the same specialty as the physician the expert is testifying against. By logical extension of the decision in *Nippa*, the statute requires

that the expert witness be of the same specialty as the institutional defendant's agent who is alleged to have been negligent.

In the case at bar, Dr. Tenner is a primary care physician, board certified in internal medicine. Dr. Carron was a second-year resident in internal medicine. Plaintiff's expert, Dr. Singer, was board certified in internal medicine. Therefore, Dr. Singer was qualified under MCL 600.2169 to testify as an expert on plaintiff's behalf. Defendant argues that Dr. Singer should have been disqualified to testify because Dr. Singer was also certified in the subspecialties of hematology and oncology, whereas both Drs. Tenner and Carron practiced general internal medicine. We disagree. The statute only refers to the specialties of the doctors involved, not their subspecialties. Therefore, to look past the doctors' specialties to their subspecialties would add a provision to the statute that simply does not exist. Accordingly, because the expert had the same specialty, internal medicine, as did the institutional defendant's agents, Drs. Tenner and Carron, the expert was qualified under MCL 600.2169 to testify as an expert and offer an opinion on the standard of care.

The remaining issues raised in defendant's appeal need not be addressed because they represent issues that will not necessarily reoccur on retrial. Accordingly, we decline to address them. We do note, with respect to the jury instruction issue, defendant is free to request the instruction again at retrial and the trial court should evaluate the appropriateness of the instruction in light of the evidence presented at trial.

The matter is remanded to the trial court for further proceedings consistent with the opinions of this Court and the Supreme Court. We do not retain jurisdiction.

/s/ David H. Sawyer  
/s/ Patrick M. Meter  
/s/ Bill Schuette