

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAWN MERLONE, Personal Representative of  
the Estate of C. JOYCE DALE,

UNPUBLISHED  
December 13, 2011

Plaintiff-Appellant,

v

No. 296107  
Calhoun Circuit Court  
LC No. 2003-002832-NH

STEPHEN WILLIAM ROBINSON, JR., M.D.,  
and SECOND OPINION, P.C., d/b/a HISTORIC  
NORTHSIDE FAMILY PRACTICE,

Defendants-Appellees,

and

PETER WALTER BARRETT, M.D., GREAT  
LAKES SURGICAL SPECIALISTS, P.C.,  
DOCTORS GROUP, P.C., JIN CHUL KIM, M.D.,  
BATTLE CREEK HEALTH SYSTEM, and  
CANCER CARE CENTER,

Defendants.

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Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Plaintiff, Dawn Merlone, personal representative of the Estate of C. Joyce Dale, appeals as of right the trial court's judgment of no cause of action that was entered in favor of defendants after a jury trial. Specifically, plaintiff argues that the trial court erroneously excluded evidence regarding defendant Dr. Steven William Robinson, Jr.'s alleged sexual comment to the daughter of the decedent, C. Joyce Dale, during one of the decedent's medical office visits with Dr. Robinson. We affirm.

**I. BASIC FACTS**

On March 18, 2000, the decedent made an appointment with Dr. Robinson because she was experiencing what she believed to be heartburn. The decedent's symptoms did not improve, and on March 27, 2000, the decedent was diagnosed with adenocarcinoma. The decedent began radiation treatment for the adenocarcinoma on April 3, 2000. On April 12, 2000, a new

pathology report was issued and indicated that the decedent actually had small cell cancer, not adenocarcinoma. With the new diagnosis, chemotherapy, instead of radiation, was the recommended treatment. However, radiation treatment was still administered until May 15, 2000, when the oncologist providing the radiation therapy was finally informed of the new diagnosis.

Plaintiff's medical malpractice claim was based in part on Dr. Robinson's failure to communicate with the specialists treating the decedent for cancer regarding her new diagnosis. Plaintiff alleged that Dr. Robinson was aware of the new diagnosis by April 12, 2000, because he received a copy of the new pathology report. Plaintiff alleged that Dr. Robinson should have forwarded this new diagnosis to the other doctors, and if this had been done, decedent would have received the proper treatment sooner.

On May 9, 2000, the decedent's daughter accompanied the decedent to an appointment with Dr. Robinson. At this appointment, Dr. Robinson allegedly passed a note to the decedent's daughter that inquired about having a sexual encounter. Before trial, in a motion in limine, defendants sought to have evidence of the note excluded. The trial court granted the motion and ruled that any evidence regarding Dr. Robinson's alleged sexual advance was irrelevant and otherwise inadmissible pursuant to MRE 403. After a six-day trial, the jury returned a verdict of no cause of action in favor of defendants. On appeal, plaintiff argues the trial court erred when it prohibited introduction of evidence regarding Dr. Robinson's alleged sexual proposition.

## II. ANALYSIS

Plaintiff argues that the trial court abused its discretion when it found that the proffered evidence regarding the alleged sexual proposition was not relevant. We disagree. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

As a cornerstone of evidentiary law, relevant evidence is admissible, and irrelevant evidence is not admissible. MRE 402. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 196; 682 NW2d 100 (2004). In this case, plaintiff argues that evidence regarding Dr. Robinson's alleged sexual proposition to the decedent's daughter was relevant to whether Dr. Robinson breached the standard of care. The standard of care is breached only when the defendant's conduct is not consistent with what an ordinary family practice physician of ordinary learning, judgment, or skill would do or would not do under the same or similar circumstances. See *Jalaba v Borovoy*, 206 Mich App 17, 19-20; 520 NW2d 349 (1994) (setting forth standard of care for general practitioners).

We find that the trial court did not abuse its discretion when it found that the proffered evidence was irrelevant. It was undisputed that Dr. Robinson did not inform the other doctors about the changed cancer diagnosis. Thus, the sole issue for the jury was whether this failure to inform the other doctors of this change was a breach of the standard of care constituting

professional negligence. Whether Dr. Robinson solicited a sexual encounter from the decedent's daughter is irrelevant to whether Dr. Robinson's failure to communicate the new diagnosis breached the standard of care. Plaintiff argues that evidence regarding Dr. Robinson's proposition would have demonstrated that Dr. Robinson was preoccupied with issues not relevant to the decedent's treatment; however, plaintiff does not establish that the *reason* Dr. Robinson failed to communicate the new diagnosis was relevant to whether the standard of care was breached. Accordingly, the trial court's decision to preclude the admission of the evidence was not an abuse of discretion.

Because we find that the proffered evidence was not relevant, and therefore not admissible, we need not address plaintiff's argument that it was admissible pursuant to MRE 403 or defendants' argument that any evidentiary error by the trial court was not error requiring reversal.

Affirmed. Appellees, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Douglas B. Shapiro  
/s/ Kurtis T. Wilder  
/s/ Christopher M. Murray