

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JACQUE FANUIEL

Appellant

v.

ROXBOROUGH MEMORIAL HOSPITAL, ET
AL

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2643 EDA 2013

Appeal from the Order Entered August 5, 2013
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 110802022

BEFORE: PANELLA, J., LAZARUS, J., and JENKINS, J.

MEMORANDUM BY JENKINS, J.:

FILED JULY 09, 2014

Appellant Jacque Fanuiel appeals from the order of the Philadelphia Court of Common Pleas granting Appellees R. Jerry Salomone, M.D., and Roxborough Emergency Physician Associates LLC's motion for summary judgment and Appellees Roxborough Memorial Hospital and Solis Healthcare, L.P.'s motion for summary judgment. We affirm.

On August 13, 2009, Fanuiel injured his knee and went to Roxborough Memorial Hospital. Transcript of Deposition of Jacque Fanuiel, at 94 [hereinafter "Fanuiel Dep."]. Dr. Salomone, an emergency room physician, diagnosed Fanuiel with a fracture and provided Fanuiel with a knee brace and a business card for an orthopedist, Dr. Paul Horenstein. **See** Complaint, at Exh. B.; Transcript of Deposition of R. Jerry Salomone, at 22 [hereinafter "Salomone Dep."]. Dr. Salomone told Fanuiel to see Dr. Horenstein at 1:00

p.m. that afternoon or call Dr. Horenstein's office to make an appointment. **See** Salomone Dep., at 16. Fanuiel did not visit Dr. Horenstein. Fanuiel Dep., at 108-13. Later that afternoon, Fanuiel went to Jefferson Hospital, where he was diagnosed with compartment syndrome.¹ Complaint, at Ex. C. Fanuiel claims he did not visit Dr. Horenstein because the doctor did not take uninsured patients and required an up-front cash payment, which Fanuiel could not afford. Fanuiel Dep., at 108-09, 113.

Fanuiel provided no expert report addressing the standard of care applicable to referral and discharge procedures. **See** Plaintiff's Reply to Summary Judgment Motion at ¶¶ 23-24. He provided one expert report – the report of Bruce Grossinger, D.O. – as to causation. **Id.**

Appellees filed motions for summary judgment arguing Fanuiel failed to establish a prima facie medical malpractice case because he lacked expert testimony. The trial court granted the motions. The trial court found Fanuiel would be unable to establish his case because he lacked expert testimony on the standard of care. Trial Court 1925(a) Opinion, 10/29/2013, at 5. The trial court noted Fanuiel not only challenged the referral, but also challenged the assessment, diagnosis, and treatment plan.

¹ Compartment syndrome is a condition involving "increased pressure in a muscle compartment," which "can lead to muscle and nerve damage and problems with blood flow." U.S. National Library of Medicine, MedlinePlus, available at <http://www.nlm.nih.gov/medlineplus/ency/article/001224.htm>, last visited June 5, 2014.

Id. Further, the court found Fanuiel's causation expert unqualified. **Id.**, at 5-7. Fanuiel filed a motion for reconsideration, which the trial court denied.

Fanuiel raises the following issue on appeal:

Is a medical expert required to establish a prima facie case of medical negligence when the standard of care is not at issue and when the alleged breach of one prong of the standard of care is a matter of common knowledge within the province of any layman?

Appellant's Brief at 4.

Fanuiel claims the trial court erred because expert testimony as to the breach of the standard of care is not required in this case. Although his complaint alleged numerous breaches, Fanuiel claims his sole allegation of a breach of the standard of care is Dr. Salomone's referral to an orthopedist that he knew or should have known did not accept uninsured patients, which is within the realm of knowledge of the common layperson.² Fanuiel maintains he can call the defendant, Dr. Salomone, to establish the appropriate standard of care, and the jury could answer the question of whether it was a breach of that standard of care to provide the patient a

² The certificate of merit filed with Fanuiel's complaint stated Robert F. Sing, D.O., an appropriate licensed professional, supplied a written statement that there was a basis to conclude the care, skill, or knowledge exercised or exhibited by these defendants in the treatment, practice, or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. Certificate of Merit 10/19/2011.

business card of an orthopedist whom the defendant knew or should have known did not accept uninsured patients. Appellant Brief at 11.

“Our scope of review of a trial court's order granting or denying summary judgment is plenary[.]” **Vazquez v. CHS Professional Practice, P.C.**, 39 A.3d 395, 397 (Pa.Super.2012) (quoting **Krapf v. St. Luke's Hospital**, 4 A.3d 642, 649 (Pa.Super.2010) (alteration in original). “We may not disturb the order of the trial court unless it is established that the court committed an error of law or abused its discretion.” **Id.** (quoting **Coleman v. Wyeth Pharmaceuticals, Inc.**, 6 A.3d 502 (Pa.Super.2010)).

“[T]o prevail in a medical malpractice action, a plaintiff must ‘establish a duty owed by the physician to the patient, a breach of that duty by the physician, that the breach was the proximate cause of the harm suffered, and the damages suffered were a direct result of the harm.’” **Ditch v. Waynesboro Hosp.**, 917 A.2d 317, 322 (Pa.Super.2007) (quoting **Toogood v. Owen J. Rogal, DDS, P.C.**, 824 A.2d 1140, 1145 (Pa.2003) (alterations in original). “Because the negligence of a physician encompasses matters not within the ordinary knowledge and experience of laypersons[,], a medical malpractice plaintiff must present expert testimony to establish the applicable standard of care, the deviation from that standard, causation and the extent of the injury.” **Grossman v. Barke**, 868 A.2d 561, 566 (Pa.Super.2005) (quoting **Toogood**, 824 A.2d at 1145). Expert testimony is required because a jury usually lacks the knowledge required to determine factual issues of medical causation, the degree of skill, knowledge and

experience required of a physician, and a breach of a standard of care. **Id.** at 566-67.

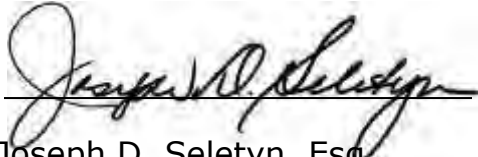
Expert testimony is not required in a medical malpractice case if “the alleged negligence is obvious or within the realm of a layperson's understanding.” **Grossman**, 868 A.2d at 567; **see also Cangemi v. Cone**, 774 A.2d 1262, 1266-67 (Pa.Super.2001) (expert testimony not required to establish the plaintiff's corporate negligence claim where the issue was “simple and the want of care is so obvious; when the hospital's radiologist has a report that suggest[ed] [the plaintiff] [had] an abdominal aneurysm and the attending physician does not get the report, it is either because of the negligence of the hospital or the negligence of the physician”); **Brannan v. Lankenau Hosp.**, 417 A.2d 196, 201 (Pa.1980) (no expert testimony required where staff failed to notify the attending physician of the deteriorating condition of one of his patients even though the doctor gave instructions to be notified if the patient's condition deteriorated).

An emergency medical professional's referral and discharge procedures are not within the common knowledge of a layperson. Moreover, any assessment of his referral would require a determination of the assessment, diagnosis, and treatment provided. Accordingly, Fanuiel's claim required expert testimony regarding the alleged the standard of care and deviation of such standard. Because Fanuiel lacked expert testimony, the trial court properly granted the motions for summary judgment.

Order affirmed.

J-A15036-14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/9/2014