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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

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Beekman Youngblood, M.D.

v.

Anthony Martin, as personal representative of the Estate of
Lanesha Martin, deceased

Appeal from Dallas Circuit Court
(CV-08-900086)

STEWART, Justice.

Beekman Youngblood, M.D. ("Dr. Youngblood"), a board-certified anesthesiologist, appeals from a judgment of the Dallas Circuit Court ("the trial court") entered on a jury

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verdict in favor of Anthony Martin, as personal representative of the estate of Lanesha Martin, deceased. Because we hold that the trial court should have entered a judgment as a matter of law ("JML") in favor of Dr. Youngblood, we reverse the judgment and remand the cause for the entry of a JML in favor of Dr. Youngblood.

Facts and Procedural History

On May 25, 2006, Lanesha Martin underwent outpatient sinus surgery at Vaughan Regional Medical Center ("the medical center"). During the surgery, Mrs. Martin was administered general anesthesia and was intubated (i.e., an endotracheal tube was inserted into her throat to help her breathe). After the surgery, Mrs. Martin developed pulmonary edema while in the post-anesthesia care unit ("the PACU") and began experiencing problems with her oxygen saturation. Mrs. Martin was subsequently reintubated and transferred to the intensive-care unit of the medical center for further treatment, but she died on May 29, 2006.

On May 28, 2008, Mr. Martin, as the personal representative of Mrs. Martin's estate, commenced a wrongful-death action against Dr. Youngblood and Vaughan Regional

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Medical Center, Inc. ("VRMC"), the owner and operator of the medical center, which eventually settled before trial, under § 6-5-410, Ala. Code 1975. In his complaint, Mr. Martin alleged that Dr. Youngblood had failed to meet the applicable standard of care in administering anesthesia and in caring for and treating Mrs. Martin after the surgery. A jury trial began on February 6, 2018.

Dr. Dennis Doblár provided expert testimony on behalf of Mr. Martin, specifically opining that Dr. Youngblood had breached the applicable standard of care in treating Mrs. Martin. Dr. Doblár testified that he had been board certified in anesthesiology since 1983. Dr. Doblár also testified that he had previously been employed with the University of Alabama at Birmingham Hospital for approximately 20 years, where he had trained anesthesia residents. Dr. Doblár's testimony indicated that he had had 11 jobs over the past 8.5 years and that, at the time of the trial, he was practicing anesthesiology, including administering intravenous sedation and nerve blocks, at a pain-management clinic in Centre.

On February 13, 2018, the jury returned a verdict in favor of Mr. Martin and against Dr. Youngblood; after setting

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off the amount of the settlement received from VRMC, the jury's verdict against Dr. Youngblood was in the amount of \$305,000. On February 26, 2018, the trial court entered a judgment in accordance with the jury's verdict. On March 23, 2018, Dr. Youngblood filed a renewed motion for a JML or, in the alternative, for a new trial.¹ That motion was denied by operation of law on June 21, 2018. See Rule 59.1, Ala. R. Civ. P. On July 24, 2018, Dr. Youngblood timely filed a notice of appeal to this Court.

Discussion

Dr. Youngblood argues that he is entitled to a JML or, alternatively, to a new trial.

"When reviewing a ruling on a motion for a JML, this Court uses the same standard the trial court used initially in deciding whether to grant or deny the motion for a JML. Palm Harbor Homes, Inc. v. Crawford, 689 So. 2d 3 (Ala. 1997). Regarding questions of fact, the ultimate question is whether the nonmovant has presented sufficient evidence to allow the case to be submitted to the jury for a factual resolution. Carter v. Henderson, 598 So. 2d 1350 (Ala. 1992). The nonmovant must have presented substantial evidence in order to withstand a motion for a JML. See § 12-21-12, Ala. Code 1975; West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989). A reviewing court must

¹Dr. Youngblood moved for a JML at the close of Mr. Martin's evidence, and he renewed his motion for a JML at the close of all the evidence.

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determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. Carter, 598 So. 2d at 1353. In reviewing a ruling on a motion for a JML, this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Id. Regarding a question of law, however, this Court indulges no presumption of correctness as to the trial court's ruling. Ricwil, Inc. v. S.L. Pappas & Co., 599 So. 2d 1126 (Ala. 1992)."

Waddell & Reed, Inc. v. United Inv'rs Life Ins. Co., 875 So. 2d 1143, 1152 (Ala. 2003).

Dr. Youngblood argues that his motion for a JML was due to be granted because, he says, Dr. Doblal did not meet the requirements of a "similarly situated health care provider," as that term is defined in § 6-5-548(c), Ala. Code 1975, which is part of the Alabama Medical Liability Act of 1987, § 6-5-540 et seq., Ala. Code 1975 ("the 1987 AMLA");² therefore, Dr. Youngblood argues, Dr. Doblal should not have been permitted to testify as an expert witness.

Section 6-5-548 provides, in pertinent part:

"(a) In any action for injury or damages or wrongful death, whether in contract or in tort,

²The 1987 AMLA is "intended to supplement" the original Alabama Medical Liability Act, which was enacted in 1975 and is codified at § 6-5-480 et seq., Ala. Code 1975. § 6-5-541, Ala. Code 1975.

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against a health care provider for breach of the standard of care, the plaintiff shall have the burden of proving by substantial evidence that the health care provider failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case.

". . . .

"(c) Notwithstanding any provision of the Alabama Rules of Evidence to the contrary, if the health care provider whose breach of the standard of care is claimed to have created the cause of action is certified by an appropriate American board as a specialist, is trained and experienced in a medical specialty, and holds himself or herself out as a specialist, a 'similarly situated health care provider' is one who meets all of the following requirements:

"(1) Is licensed by the appropriate regulatory board or agency of this or some other state.

"(2) Is trained and experienced in the same specialty.

"(3) Is certified by an appropriate American board in the same specialty.

"(4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred."

Section 6-5-542(2), Ala. Code 1975, defines the term "standard of care" as

"that level of such reasonable care, skill, and diligence as other similarly situated health care

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providers in the same general line of practice, ordinarily have and exercise in like cases. A breach of the standard of care is the failure by a health care provider to comply with the standard of care, which failure proximately causes personal injury or wrongful death. This definition applies to all actions for injuries or damages or wrongful death whether in contract or tort and whether based on intentional or unintentional conduct."

This Court has explained that a plaintiff in a medical-malpractice action

"ordinarily must present expert testimony from a 'similarly situated health-care provider' as to (1) 'the appropriate standard of care,' (2) a 'deviation from that standard [of care],' and (3) 'a proximate causal connection between the [defendant's] act or omission constituting the breach and the injury sustained by the plaintiff.' Pruitt v. Zeiger, 590 So. 2d 236, 238 (Ala. 1991) (quoting Bradford v. McGee, 534 So. 2d 1076, 1079 (Ala. 1988)). The reason for the rule that proximate causation must be established through expert testimony is that the issue of causation in a medical-malpractice case is ordinarily 'beyond "the ken of the average layman."' Golden v. Stein, 670 So. 2d 904, 907 (Ala. 1995), quoting Charles W. Gamble, McElroy's Alabama Evidence, § 127.01(5)(c), p. 333 (4th ed. 1991). The plaintiff must prove through expert testimony 'that the alleged negligence "probably caused the injury."' McAfee v. Baptist Med. Ctr., 641 So. 2d 265, 267 (Ala. 1994)."

Lyons v. Walker Reg'l Med. Ctr., 791 So. 2d 937, 942 (Ala. 2000). "An exception to [the expert-medical-testimony] rule exists where the lack of care is so apparent as to be within

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the ken of the average layman." Jones v. Bradford, 623 So. 2d 1112, 1114-15 (Ala. 1993).

Dr. Youngblood argues that Dr. Doblal did not testify that he was licensed at the time he gave his testimony, which, he asserts, is required under § 6-5-548(c). Mr. Martin argues that Dr. Youngblood did not preserve that argument for appellate review because, he asserts, Dr. Youngblood made only a general objection, rather than a specific objection, to Dr. Doblal's testimony. This Court has explained that

"'[s]pecific objections or motions are generally necessary before the ruling of the trial judge is subject to review, unless the ground is so obvious that the trial court's failure to act constitutes prejudicial error. . . . An objection without specifying a single ground, such as "I object," "objection," or "we object" is not sufficient to place the trial court in error for overruling the objection.'

"Lawrence v. State, 409 So. 2d 987, 989 (Ala. Cr. App. 1982) (citation omitted). The purpose of requiring a specific objection to preserve an issue for appellate review is to put the trial judge on notice of the alleged error, giving an opportunity to correct it before the case is submitted to the jury. Jennings v. State, 588 So. 2d 540, 541 (Ala. Cr. App. 1991)."

Ex parte Works, 640 So. 2d 1056, 1058 (Ala. 1994).

Dr. Youngblood objected multiple times to Dr. Doblal's testimony. When Mr. Martin's counsel began to elicit testimony

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from Dr. Doblar during the trial, Dr. Youngblood specifically argued that Mr. Martin's counsel had not "laid the right predicate for [Dr. Doblar] to talk about his opinions or concerns under [§] 6-5-548." Although the trial court granted Dr. Youngblood a "standing" objection in relation to the admission of Dr. Doblar's expert testimony on the standard of care, Dr. Youngblood again objected, citing § 6-5-548, when Mr. Martin's counsel offered Dr. Doblar as an expert witness. Furthermore, Dr. Youngblood again objected to Dr. Doblar's testimony in his motions seeking a JML both during and after the trial.

As noted above, § 6-5-548 concerns the proof required in an action alleging injury or wrongful death against a health-care provider based on a breach of the standard of care, and it enumerates the requirements a "similarly situated health care provider" must meet. Dr. Youngblood's objections were "sufficiently specific" to inform the trial court of the alleged error and to preserve this issue for appellate review. Ex parte Works, 640 So. 2d at 1058. Dr. Youngblood was not required "'to direct his opponent's mind to the correct law the way one would thrust a beagle's nose on a rabbit trail.'"

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Id. (quoting Works v. State, 640 So. 2d 1056, 1056 (Ala. Crim. App. 1993) (Taylor, J., dissenting)).

In support of his argument that Dr. Doblal did not meet the requirements of a similarly situated health-care provider under § 6-5-548(c), Dr. Youngblood cites Prowell v. Children's Hospital of Alabama, 949 So. 2d 117 (Ala. 2006). In Prowell, this Court upheld a trial court's refusal to admit the expert testimony of an anesthesiologist on the basis that the plaintiff had failed to establish that the anesthesiologist was qualified as a similarly situated health-care provider, as required under § 6-5-548(c). This Court determined that the trial court had properly excluded the anesthesiologist's testimony because the plaintiff had not pointed to anything in the anesthesiologist's testimony to indicate that he was a licensed physician, that he was board certified in the same specialty as the defendant physician in that case, or that he had practiced in the same field as the defendant physician during the year preceding the plaintiff's surgery. 949 So. 2d at 132.

Mr. Martin appears to concede that Dr. Doblal did not specifically testify regarding his licensure status, but, he contends, Dr. Doblal's testimony that he was a medical doctor

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with an ongoing practice at a pain clinic in Centre satisfies § 6-5-548(c)(1). Mr. Martin argues that Prowell is distinguishable because that case involved deposition testimony, rather than live testimony, because the counsel in Prowell made a specific objection, and because the trial court in Prowell was put on notice of the alleged error. Whether the proposed expert witness's testimony is presented to the trier of fact in the form of live testimony or in the form of deposition testimony is irrelevant. Further, as explained above, Dr. Youngblood's objections citing § 6-5-548 were sufficiently specific to advise the trial court of the basis of his objections.

Dr. Doblal did not give any testimony demonstrating that he was "licensed by the appropriate regulatory board or agency of this or some other state." § 6-5-548(c)(1). Therefore, based on the plain language of the statute, Dr. Doblal was not qualified to testify "concerning the standard of care [Dr. Youngblood] ought to have exercised ..., and the trial court exceeded the permissible limits of its discretion in ruling that [Dr. Doblal's] testimony was admissible." Chapman v. Smith, 893 So. 2d 293, 298-99 (Ala. 2004).

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Dr. Doblar's testimony was inadmissible; therefore, Mr. Martin did not present any evidence to the jury indicating that Dr. Youngblood breached the relevant standard of care and, further, that any such breach proximately caused Mrs. Martin's death. Accordingly, there was no admissible evidence, let alone substantial evidence, creating a factual dispute requiring resolution by the jury, and the trial court should have granted Dr. Youngblood's motion for a JML. Based on our holding, we pretermitt discussion of Dr. Youngblood's remaining arguments.

Because Dr. Doblar was not qualified to testify under § 6-5-548, the trial court should have entered a JML in favor of Dr. Youngblood. Accordingly, the judgment is reversed and the cause is remanded for the trial court to enter a JML in favor of Dr. Youngblood.

REVERSED AND REMANDED WITH INSTRUCTIONS.

Parker, C.J., and Bolin and Wise, JJ., concur.

Sellers, J., concurs in the result.