STATE OF MICHIGAN

COURT OF APPEALS

DONALD SAPPANOS, Sr. and CAROLYN SAPPANOS,

Plaintiffs-Appellants/Cross-Appellees,

v

ROBERT BROUWER, M.D., and KALAMAZOO GATROENTEROLOGY SERVICE, P.C., a Michigan professional corporation,

Defendants-Appellees/Cross-Appellants,

and

BRONSON METHODIST HOSPITAL, a Michigan corporation.

Defendant.

UNPUBLISHED
June 4, 1996

No. 164343
LC No. 91-003599-NH

Before: Holbrook, Jr., and White and L.F. Simmons,* JJ.

White J. (concurring in part and dissenting in part)

I

I dissent from the majority's affirmance of the trial court's determination that plaintiff's expert, Neil Crane, was not qualified to offer the testimony presented in his deposition.

While Dr. Crane was not a board certified gastroenterologist, as was defendant Dr. Brouwer, and was thus not in the same specialty, he did practice in a related, relevant area of medicine under MCL 600.2169(1); MSA 27A.2169(1). Dr. Crane was board certified in internal medicine and in the subspecialty of infectious diseases. Dr. Brouwer was board certified in internal medicine and in the

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* Circuit judge, sitting on the Court of Appeals by assignment.

subspecialty of gastroenterology. Both gastroenterology and infectious diseases are subspecialties of internal medicine.

The gist of Dr. Crane's testimony was that he did not consider himself an expert in the field of gastroenterology beyond issues of internal medicine, and would not presume to testify in general regarding the standard of care applicable to that subspecialty, particularly as to sophisticated gastroenterology issues. However, he explained, the issues in the instant case are not complex, and are basic, general internal medicine issues concerning the cause of pancreatitis and how to access the presence of gallbladder disease. Dr. Crane testified that a subspecialty in gastroenterology is not required to address these general medical issues, which are not subspecialty issues.

In his practice as an internal medicine and infectious diseases specialist, Dr. Crane is involved in a large number of cases involving patients with acute pancreatitis. While he would call in a gastroenterologist to treat a patient with severe pancreatitis, his testimony in this case did not concern Dr. Brouwer's treatment of plaintiff's pancreatitis, but, rather, his failure to order a particular test to determine whether the pancreatitis was caused by gallbladder disease, after the first, preferred test was, in Dr. Crane's opinion, inconclusive. Dr. Crane does order and use these tests as a practicing physician.

Dr. Crane's testimony established he specializes in a related relevant area of medicine and that he devotes a substantial portion of his professional time to the active clinical practice of medicine in a related relevant area of medicine. MCL 600.2169(1)(a)&(b). Because I conclude that Dr. Crane should have been permitted to testify, I concur in the majority's remand.[1]

II

I agree with the majority that the trial court did not abuse its discretion in granting defendant's motion in limine barring Dr. Glassford's testimony and in denying plaintiff's motion to adjourn. I also agree that the court's ruling on the insurance records was not erroneous.

III

As to the statute of limitations issues, I concur in the majority's discussion regarding the two-year period and the last treatment date.

As to the six-month period, however, I dissent. If the summons issued December 20, 1991 is viewed as a second summons issued in the action filed June 21, 1991 in Wayne County, the summons was invalid under *Durfey v Kellogg*, 193 Mich App 141; 483 NW2d 664 (1992). If the summons issued December 20, 1991 is viewed as a separate summons issued pursuant to a new complaint, as the trial court apparently viewed it, and as it is assumed to be by defendant on appeal, then the December action was not timely filed.

While the June action was timely under the six-month rule, regardless of whether the summons and complaint were given to a process server, that the action was deemed dismissed under MCR 2.102(E) when the complaint was not served and the summons was not extended within 182 days. Service of the initial complaint would have tolled the statute, as would giving the summons and complaint to the process server. However, neither was done. Thus, unless the December complaint is viewed as a continuation of the earlier action, it was untimely. In this regard, while the amended complaint was filed within the 182-day life of the first summons, an extended summons was still required to keep the June action alive.[2]

/s/ Helene N. White

[1] Had I concluded that Dr. Crane's testimony was properly disallowed, I would not remand, but would simply affirm.

[2] Plaintiff did not file a motion to amend complaint and issue second summons nunc pro tunc, or request any similar relief.