

STATE OF MICHIGAN
COURT OF APPEALS

BETTY J. CHRISTY, Personal Representative of
the Estate of RALPH CHRISTY,

UNPUBLISHED
March 11, 2003

Plaintiff-Appellant/Cross-Appellee,

v

No. 238540
Wayne Circuit Court
LC No. 97-704580-NH

DETROIT OSTEOPATHIC HOSPITAL
CORPORATION,

Defendant-Appellee/Cross-
Appellant.

Before: Hoekstra, P.J., and Smolenski and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff's decedent allegedly contracted the human immunodeficiency virus (HIV) following blood replacement therapy after coronary bypass surgery in April 1984. Plaintiff's decedent learned that he was HIV positive in 1996, and filed this medical malpractice action in February 1997.¹ Defendant hospital received its blood supply from the American Red Cross. Plaintiff's expert, Dr. Barry Singer, board certified in Internal Medicine, Medical Oncology, and Hematology, filed two affidavits that concluded that the standard of care required defendant hospital to maintain records regarding the background of donors and to screen the blood for risk factors. During his deposition, Dr. Singer testified that defendant hospital breached the standard of care because it did not do everything possible to prevent the transmission of the HIV virus. However, Dr. Singer acknowledged that there was no test for HIV until "1985 or so." Dr. Singer did not fault defendant hospital for receiving its blood supply from the American Red Cross and acknowledged that the only donors who were refused in 1984, were individuals exposed to hepatitis. Dr. Singer was not familiar with the questions that were posed to donors by the American Red Cross. When asked about the contents of his affidavit, Dr. Singer testified that he was unaware of hospital practices for receipt of blood in 1984. Dr. Singer could not delineate

¹ Plaintiff's theory of medical malpractice was premised on defendant hospital's breach of the standard of care, negligent record keeping, and lack of informed consent. The trial court's decision regarding the two latter theories have not been raised on appeal.

any hospital's screening procedure in 1984. When asked about his conclusion regarding the breach of the standard of care, Dr. Singer opined that he was relying on what he thought "should have been done" in this case. Dr. Singer further opined that plaintiff's decedent contracted the HIV virus as a result of the 1984 surgery. However, the testimony of plaintiff's decedent was not preserved prior to death.² Therefore, Dr. Singer's conclusions were based on his review of the testimony given by the personal representative of the estate, decedent's wife. The trial court granted defendant's motion for summary disposition, concluding that there was no issue of fact regarding screening standards and any causal connection was based on speculation.

Plaintiff alleges that the trial court erred in granting defendant's motion for summary disposition. We disagree. An appellate court reviews the grant or denial of a motion for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate that a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in opposition to a motion shall be considered only to the extent that the content or substance would be admissible as evidence. MCR 2.116(G)(6); *Maiden, supra*. An affidavit consisting of mere conclusory allegations that are devoid of detail are insufficient to demonstrate that there is no genuine issue of material fact for trial. See *Quinto, supra* at 371-372.

In order to establish a claim of medical malpractice, the plaintiff bears the burden of proving: (1) the applicable standard of care; (2) breach of that standard by defendant; (3) injury; and (4) proximate causation between the alleged breach and the injury. *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995). Failure to prove any one of the elements is fatal to the claim. *Id.* Michigan appellate courts have long recognized the significance of expert testimony in establishing a medical malpractice claim, and the need to educate the jury and the court regarding matters not within their common understanding. *Locke v Pachtman*, 446 Mich 216, 223; 521 NW2d 786 (1994). In an action alleging malpractice, the plaintiff has the burden of proving that, in light of the state of the art existing at the time of the alleged malpractice, the defendant failed to provide the recognized standard of care within the general community or specialty and as a result of breach, the defendant proximately caused an injury to the plaintiff. MCL 600.2912a. Review of the record reveals that Dr. Singer was unable to identify the standard of care for acceptance of blood products by a blood bank and any subsequent transfer to a hospital.

Plaintiff alleges that the affidavits of Dr. Singer set forth the applicable standard of care. Review of the affidavits reveals that they contain a conclusion that the standard of care was breached. However, there is no foundation within the affidavits to address the standard of care

² Although the second amended complaint continued to allege that plaintiff's decedent would die an imminent death as a result of the HIV virus, the death was attributed to an acute myocardial infarction. Dr. Singer asserted that, while the terminal event may have been cardiopulmonary, the virus did have an impact.

for hospitals in 1984 regarding blood screening. Conclusory allegations contained within an affidavit are insufficient to create a genuine issue of material fact. *Quinto, supra* at 371-372. Accordingly, the trial court properly granted defendant's motion for summary disposition.³

Affirmed.

/s/ Joel P. Hoekstra

/s/ Michael R. Smolenski

/s/ Karen M. Fort Hood

³ Because of our disposition of this issue, we need not address the alternate grounds for affirmance raised by defendant on cross appeal.