

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

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JASPER LEE TODD, Personal Representative of  
the Estate of DONNA TODD, Deceased,

UNPUBLISHED  
April 24, 2003

Plaintiff-Appellant,

v

No. 234007  
Wayne Circuit Court  
LC No. 99-915891-NM

CHAMBERS STEINER and JEFFREY T.  
MEYERS,

Defendants-Appellees,

and

MICHAEL MAZUR,

Defendant.

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Before: Saad, P.J., and Zahra and Schuette, JJ.

PER CURIAM.

Plaintiff retained defendants to prosecute a medical malpractice action. A portion of the medical malpractice claim was dismissed because it was not filed within the applicable period of limitations. Plaintiff subsequently commenced this action against defendants for legal malpractice. After a jury was selected, but before the presentation of proofs, the trial court made several rulings that had the effect of precluding plaintiff from presenting evidence to establish the standard of professional care applicable to the health care providers in the medical malpractice action. As a result, plaintiff was unable to proceed with his case. The trial court consequently dismissed this action with prejudice. Plaintiff appeals as of right and we affirm.

I. Facts and Procedure

A. The Medical Malpractice Action

Donna Todd died of cancer on March 31, 1997. Ms. Todd had been examined at Pontiac Osteopathic Hospital (POH) by Dr. Robert Belf in May 1990, and by Dr. Carroll Knauss and Dr. Dennis Lynch in February 1991, for complaints relating to an enlarged lymph node. These three physicians examined Ms. Todd several more times before February 1995, when Ms. Todd was

diagnosed with terminal malignant lymphoma. Plaintiff claims each of these physicians failed to act within the medical professional standard of care in diagnosing and treating Ms. Todd.

In February 1995, Ms. Todd retained defendants to represent her in a medical malpractice action premised upon a theory that her cancer was not timely diagnosed. Sometime thereafter, defendants initiated a suit against Dr. Belf, but not against POH, Dr. Lynch, or Dr. Knauss. Defendants maintain that at the time the initial suit was filed, they did not have sufficient reason to believe that anyone other than Dr. Belf breached the standard of care relating to the diagnosis and treatment of Ms. Todd. After additional medical records were produced by POH and reviewed by defendants, defendants concluded they had a reasonable basis on which to base claims of medical malpractice against POH, Dr. Lynch and Dr. Knauss. Notices of intent to pursue such claims were filed and on March 26, 1996, defendants filed a separate suit against POH, Dr. Lynch and Dr. Knauss, asserting claims of medical malpractice.

On July 22, 1997, plaintiff discharged defendants as his attorneys in the underlying medical malpractice suits. On August 4, 1998, the trial court dismissed the complaint filed against POH, Dr. Lynch, and Dr. Knauss, because it was filed beyond the statutory limitation period. Thereafter, plaintiff settled the medical malpractice claims against Dr. Belf and Dr. Lynch.<sup>1</sup> Plaintiff did not appeal the trial court's dismissal order.

## B. The Legal Malpractice Action

### 1. Pretrial Proceedings

On May 21, 1999, plaintiff filed the instant lawsuit alleging legal malpractice against defendants, for failing to timely pursue medical malpractice claims asserted in the March 26, 1996, medical malpractice lawsuit.<sup>2</sup> A scheduling conference was held by the court during which several pretrial procedure dates were established. The parties were ordered to exchange witness lists by January 4, 2000, and to submit their claim for case evaluation in February 2000.

While defendants complied with the scheduling order and timely filed a witness list on January 4, 2000, plaintiff did not. At no point in these proceedings did plaintiff seek leave of the court to file a late witness list.

Less than one week prior to the scheduled case evaluation date, plaintiff filed an unopposed emergency motion to adjourn the case evaluation. The court granted plaintiff's motion to adjourn case evaluation and set the matter for evaluation in May 2000, with a settlement conference to follow case evaluation.

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<sup>1</sup> It appears that Dr. Lynch settled the claims against him, notwithstanding the fact that these claims were dismissed on statute of limitations grounds.

<sup>2</sup> According to plaintiff's complaint, the claims asserted against Dr. Lynch in the second medical malpractice suit were dismissed as time barred. Although the legal malpractice complaint sought damages for the failure to timely file suit against Dr. Lynch, Dr. Knauss, and POH, by the time the case was set for trial, plaintiff was not seeking damages for the failure to bring suit against Dr. Lynch, presumably because plaintiff settled the claims against him.

On March 3, 2000, plaintiff filed a late witness list without leave of the court. Pursuant to MCR 2.401(I)(a), the witness list must include “the name of each witness.” This rule also requires disclosure of “whether the witness is an expert, and the field of expertise.” MCR 2.401(I)(b). Plaintiff did not name, as expert witnesses or otherwise, any of the putative experts that plaintiff subsequently attempted to call as expert witnesses during trial.

A settlement conference was held on August 17, 2000. No settlement was reached and the court set the matter for trial on January 8, 2001. The court issued an order (the first trial procedure order) that set forth the procedures to be followed through the conclusion of litigation. The litigants were required to prepare and file by December 18, 2000, a joint final pretrial order. The first trial procedure order also stated: “Counsel for plaintiff must assume the responsibility for convening a conference of all parties to confer and collaborate in formulating a . . . final pretrial order (FPTO) which is to be drafted by counsel for all parties, and submitted to the Court for approval and adoption.” The first trial procedure order also required the litigants to list all witnesses who will or may be called at trial and to disclose whether the witness will offer lay or expert testimony. The first trial procedure order stated in bold print capital letters:

**GENERALIZED DESCRIPTIONS OF WITNESSES SUCH AS “ALL OR ANY EMPLOYEES OF THE DEFENDANT” ARE NOT SATISFACTORY.**

The final page of the first trial procedure order further warned, also in bold print capital letters:

**THIS ORDER CONSTITUTES A DULY ENTERED ORDER OF THIS COURT, AND FAILURE TO COMPLY STRICTLY WITH ALL ITS TERMS MAY RESULT IN DISMISSAL, STRIKING OF ANSWERS AND AFFIRMATIVE DEFENSES, ENTRY OF DEFAULT, DEFAULT JUDGMENT, REFUSAL TO LET WITNESSES TESTIFY, REFUSAL TO ADMIT EXHIBITS OR OTHER ACTION, INCLUDING THE ASSESSMENT OF SPECIAL COSTS AND EXPENSES, INCLUDING ACTUAL ATTORNEY FEES.**

Plaintiff did nothing to timely prepare or file a final pretrial order. On January 4, 2001, just four days prior to the scheduled trial date, the trial court conducted a telephone conference with counsel.<sup>3</sup> The trial court was informed that plaintiff had not yet prepared any portion of the joint final pretrial order. Plaintiff alleged that his medical expert from California was not able to appear for trial on January 8, 2001.<sup>4</sup> Plaintiff requested an adjournment of the trial date. On

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<sup>3</sup> It is not clear from the record whether the court or counsel initiated the telephone conference.

<sup>4</sup> Although plaintiff alleged that the medical expert who could not appear for the January 8, 2001, trial was from California, when the trial court ordered plaintiff to produce an affidavit from the expert to substantiate the conflict, it was disclosed that the expert, Dr. Singer, was from Pennsylvania. The three paragraph affidavit is woefully short on facts and merely concludes that Dr. Singer was “not available” to testify as a witness during the week of January 8, 2001. The

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January 5, 2001, defendants received what was purported to be plaintiff's contribution to the final pretrial order. In this document, plaintiff identified as an expert witness Terrance Baulch, CPA. This witness was never before disclosed by plaintiff. Consequently, defendants filed with the trial court a motion for dismissal of plaintiff's complaint for failure to timely file the joint final pretrial order. Defendants alleged plaintiff had engaged in a pattern of deliberate dilatory conduct prejudicial to defendants. Defendants asked the court to either strike Baulch as a witness, dismiss plaintiff's complaint, or both. Defendants also filed a motion to strike plaintiff's witness list. Defendants asserted that plaintiff failed to timely file his witness list and that plaintiff had engaged in a pattern of deliberate dilatory conduct prejudicial to defendants.

The trial court adjourned the trial to March 1, 2001, and ordered that the joint final pretrial order be filed with the court by February 15, 2001.<sup>5</sup> The trial court also denied defendants' motion to dismiss the complaint for failing to file a timely joint final pretrial order and defendants' motion to strike plaintiff's witness list. The trial court treated the late disclosure of Baulch in the untimely filed joint final pretrial order as a request to amend plaintiff's witness list and allowed plaintiff to add Baulch as an expert witness. The trial court denied the motion to dismiss, but acknowledged that there was merit to defendants' claims that plaintiff's counsel was dilatory in the prosecution of this litigation.<sup>6</sup> At the close of the January 12, 2001, hearing, the trial court indicated, "I just want to make it very clear, I intend to start this trial on [March 1, 2001] . . . . [E]verybody better be ready." Plaintiff's counsel replied, "I shall be ready, your Honor." The trial court also admonished counsel for both sides to pay strict attention to the trial court's recently issued second trial procedure order and final scheduling order. The second trial procedure order contained the same warnings found in the first trial procedure order regarding the need to disclose the specific identity of witnesses and the fact that witnesses not specifically disclosed by the litigants may be barred from testifying.

## 2. Trial Proceedings

On March 1, 2001, the parties appeared in court and began the jury selection process in anticipation of trial. During the voir dire process, the court asked counsel to identify their witnesses for the prospective jurors. Plaintiff's counsel identified two medical experts, Dr. David Balfour and Dr. Eugene Cooper, neither of whom were disclosed in plaintiff's witness list or in the joint final pretrial order. After the jury was selected, defendant moved to exclude Drs.

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trial court observed that the affidavit of Dr. Singer was "terse," but nonetheless granted an adjournment of the trial.

<sup>5</sup> In commenting on the reason for adjourning the trial, the trial judge indicated that it was a "gracious gesture" on her part not to disclose the basis for the adjournment on the record. Nonetheless, the trial judge noted at the conclusion of the January 12, 2001, hearing that plaintiff's counsel was not prepared to proceed to trial when all other parties and the court were prepared to go to trial. Further, before dismissing the case on the second scheduled trial date, the trial court reiterated that the first adjournment of trial was to accommodate plaintiff's counsel, who had failed to prepare the case for trial.

<sup>6</sup> The trial court stated, "[w]ell, the misconduct was, you not being ready for trial when everybody else was, Mr. Schwartz."

Balfour and Cooper as experts. Plaintiff argued he should be permitted to call both witnesses because, in his untimely witness list of March 3, 2000, plaintiff generally identified as witnesses, “all witnesses listed on defendants’ witness list” and both witnesses were listed on defendants’ witness list of January 4, 2000. Plaintiff further argued that he should be permitted to call Dr. Cooper because defendants listed Dr. Cooper as an expert witness under defendants’ portion of the final joint pretrial order. The trial court excluded both witnesses. The trial court stated:

[B]y grace that I still cannot believe . . . you had two months to correct any deficiencies in your final pretrial order, because this case was originally set for trial [on] January . . . 8<sup>th</sup> I think. You begged me to adjourn it, because you were not ready. Everyone else was ready, you were not ready. You hadn’t even filed your final pretrial order. I let you add witnesses, I let you file your final pretrial order late. Two months have now passed, where have you been?

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Counsel, I don’t know what more I can do. I do a very detailed final pretrial order. I give you, again, by the grace of my discretion, I adjourn your trial, let you call more witnesses and let you file a late final pretrial order, and you come to me two months later and say, oh, Judge, I meant to list him, I guess, but I didn’t[. T]hat’s just not credible, Mr. Schwartz.

Plaintiff then indicated his intent to call Dr. Feemster as an expert witness. Like Dr. Cooper, Dr. Feemster was not listed as an expert witness in plaintiff’s untimely witness list of March 3, 2000, or in plaintiff’s joint final pretrial order witness list, but he was listed on defendants’ joint final pretrial order witness list. Like Dr. Cooper, the trial court precluded plaintiff from calling Dr. Feemster as an expert witness. The trial court elaborated on its reasoning:

[T]he whole point of the final pretrial order is to give the other side notice of who will be called at trial. There’s a specific category for plaintiffs, a specific category for expert witnesses. As far as I’m hearing now, you’re now saying, Judge[,] we’ve always intended to call these expert witnesses, we just didn’t think we had to tell them?

Defendant then sought to limit or prohibit the testimony of Dr. Singer, the only medical expert listed in plaintiff’s final pretrial order witness list. Dr. Singer is an oncologist. Defendants argued plaintiff would attempt to utilize Dr. Singer as an expert in general surgery. The trial court reviewed the deposition transcript of Dr. Singer and concluded that Dr. Singer was not qualified under MCL 600.2169 or MRE 702 to render expert medical testimony in the field of general surgery.

The trial court then considered whether plaintiff could place in evidence the affidavit of merit executed by Dr. Feemster in the underlying medical malpractice case. Plaintiff indicated an intent to use this affidavit to prove the standard of care and breach of that standard as it related to Dr. Knauss, a general surgeon. The trial court rejected admission of the affidavit of merit for that purpose. Plaintiff sought to dismiss his claims without prejudice, because plaintiff could not

establish a prima facie case in light of the trial court's rulings. The trial court rejected plaintiff's request and entered a dismissal with prejudice. This appeal followed.

## II. Analysis

### A. Standard of Review

The enforcement of a pretrial scheduling order and whether to allow a party to add expert witnesses not properly identified in a final pretrial order is a matter left to the sound discretion of the trial court. *Carmack v Macomb Co Community College*, 199 Mich App 544, 546; 502 NW2d 746 (1993). Likewise, sanctions imposed for failing to comply with a court order are reviewed for an abuse of discretion. *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). By definition, discretionary rulings may not be disturbed merely because the reviewing court would have ruled differently. Discretionary rulings may only be disturbed when the lower court is found to have committed an abuse of discretion. An abuse of discretion "occurs only when the result is 'so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.'" *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999), quoting *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985), and *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). Factual determinations made by a trial court in conjunction with discretionary rulings are reviewed for clear error. MCR 2.613(C). Clear error exists where a reviewing court is left with a definite and firm conviction that a mistake was made. *Boyd v Civil Service Comm*, 220 Mich App 226, 235; 559 NW2d 342 (1996).

### B. Expert witness

In this appeal, plaintiff does not take issue with the trial court's order precluding Dr. Balfour and Dr. Cooper from testifying at trial. However, plaintiff maintains the trial court abused its discretion by precluding Dr. Feemster from testifying as an expert witness at trial.<sup>7</sup> Although plaintiff did not name Dr. Feemster as an expert on his witness list, he contends that he should have been permitted to call Dr. Feemster because Dr. Feemster was named on defendants' witness list. Further, defendant named Dr. Feemster in defendants' final pretrial witness list.

The factors a court should consider before sanctioning a party for not timely disclosing witnesses include:

- (1) whether the violation was wilful or accidental;
- (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses);
- (3)

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<sup>7</sup> Although plaintiff's statement of question presented generically states, "the trial court erred in denying plaintiff the opportunity to call expert witnesses listed by defendant and in the joint final pretrial order as part of plaintiffs' [sic] case to establish the merits of the underlying medical malpractice case," plaintiff's brief argues only that the trial court erred by precluding Dr. Feemster from testifying at trial. Plaintiff's brief makes no mention of the propriety of the trial court's ruling relating to Dr. Balfour and Dr. Cooper.

the prejudice to the defendant; (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice; (5) whether there exists a history of plaintiff's engaging in deliberate delay; (6) the degree of compliance by the plaintiff with other provisions of the court's order; (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. This list should not be considered exhaustive. [*Bass, supra* at 26-27, citing *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990).]

Considering the above listed factors that are applicable to the present case, we cannot conclude the trial court abused its discretion by precluding plaintiff from calling Dr. Feemster or any other witness plaintiff failed to expressly identify in his joint final pretrial order witness list. The trial court found that plaintiff's counsel's claims of inadvertence and neglect lacked credibility. We cannot conclude that the trial court's credibility determination was clearly erroneous, given that the court allowed plaintiff to add an expert witness on the eve of the first scheduled trial date, adjourned the trial to allow plaintiff's counsel to prepare for trial, and warned all of the attorneys to be prepared for the second scheduled trial date and to adhere strictly to the requirements of the court's orders relating to pretrial procedures.

Plaintiff's discovery and litigation history also support the action taken by the trial court. Plaintiff failed to file a timely witness list and never sought leave of the court to file a witness list. The witness list eventually filed by plaintiff failed to comport with the requirements of MCR 2.401(I). Plaintiff's conduct of filing an emergency motion to adjourn case evaluation when no emergency was evident and plaintiff's failure to convene a final pretrial conference to prepare or file a joint final pretrial order prior to the first scheduled trial date supports the conclusion that plaintiff did not diligently prosecute this action and also supports the trial court's conclusion that plaintiff was not prepared for trial on the first scheduled trial date.

Plaintiff did not disclose to defendants the identity of their intended experts until the litigants were in trial and plaintiff was instructed by the court to disclose the identity of his witnesses to the jury. Contrary to plaintiff's claims, this in-trial disclosure of plaintiff's experts did indeed prejudice defendants. Granted, defendants were familiar with the identity of Dr. Feemster (as well as Dr. Balfour and Dr. Cooper), but it was very clear that defendants had no intention of calling these witnesses during their case. Defendants also disclosed the identity of their witnesses to the jury and defendants did not inform the jury that they intended to call as witnesses Dr. Feemster, Dr. Cooper or Dr. Balfour. Thus, defendants' trial preparation did not include review of the possible testimony of these witnesses nor preparation to cross-examine them. Under these circumstances, we cannot conclude the trial court abused its discretion by precluding plaintiff from calling witnesses. Plaintiff did not disclose his intent to call these witnesses in his case until the first day of trial. Further, there is no indication from the record that defendants intended to call these witnesses in defendants' case or otherwise prepared themselves to address these witnesses as part of plaintiff's case.

Plaintiff's argument that he should have been able to call Dr. Feemster as an adverse witness is also without merit. Even where a party intends to rely on the adverse party statute, MCL 600.2161, the litigant/witness is still entitled to notice that he will be called as a witness for

the opposing party by including the litigant/witness's name on the opposing party's witness list. *Moy v Detroit Receiving Hosp*, 169 Mich App 600, 607; 426 NW2d 722 (1988); *Beattie v Firmschild*, 152 Mich App 785, 794; 394 NW2d 107 (1986). If a party to litigation is entitled to notice that he will be required to testify in the adverse party's case under the adverse party statute, then it stands to reason that any witness that an opposing party intends to call as an adverse witness must be listed on that party's witness list to provide proper notice and to prevent unfair surprise. Plaintiff's reliance on *Rice v Jaskolski*, 412 Mich 206; 313 NW2d 893 (1981), *Porter v Henry Ford Hosp*, 181 Mich App 706, 710-711; 450 NW2d 37 (1989), and *Niemi v Upper Peninsula Orthopedic Associates, Ltd*, 173 Mich App 326; 433 NW2d 363 (1988), is misplaced because those cases do not address the issue of notice.

In sum, given the extensive history of this case and the fact that the trial court had previously adjourned trial at the last moment to accommodate plaintiff, who was not prepared for trial, we cannot find that the trial court abused its discretion in refusing to allow plaintiff to amend his witness list to include Dr. Feemster or any of the other witnesses barred by the trial court.

#### C. Exhibits-Affidavit of Merit

After the trial court refused to allow Dr. Feemster to testify, leaving plaintiff with no available experts, plaintiff argued that he should be permitted to establish the standard of care for Dr. Knauss (the surgeon in the underlying case) by offering into evidence the affidavit of merit prepared by Dr. Feemster in the underlying medical malpractice case. We agree with the trial court that the affidavit was not admissible as substantive evidence on the standard of care.

An affidavit of merit must accompany a complaint for medical malpractice. MCL 600.2912d. The affidavit need only be "signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under" MCL 600.2169. Nothing in MCL 600.2912d requires that the health professional set forth his credentials. Here, Dr. Feemster's affidavit, while complying with MCL 600.2912d, does not include any discussion of his credentials. As discussed in section E of this opinion, MCL 600.2169 is applicable to this case and required plaintiff to produce expert testimony in accordance with the standards prescribed by that statute. Dr. Feemster's affidavit lacks any information about his background, other than that he is a medical doctor. Thus, the affidavit itself was inadmissible to establish the standard of care because plaintiff could not show, from the affidavit, that Dr. Feemster was qualified as an expert, pursuant to MCL 600.2169. See *Watts v Canady*, 253 Mich App 468; 655 NW2d 784 (2002) (the Legislature has set a lower threshold for evaluating the adequacy of an affidavit of merit and it was premature to determine if the plaintiff's expert witness would be qualified to testify at trial under MCL 600.2169). Therefore, the trial court properly excluded the affidavit for this reason.<sup>8</sup>

#### D. Respondent's Brief to Defendant's Motion in Limine

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<sup>8</sup> We find it unnecessary to decide whether an affidavit of merit is admissible as a party admission under MRE 801(d)(2), or whether an affidavit of merit should be excluded as substantive evidence on public policy grounds.

Next, plaintiff argues that the trial court should have adjourned the trial to give him time to respond to the motion in limine to preclude certain exhibits, including the Feemster affidavit, brought by defendants on the first day of trial. We disagree.

The grant or denial of a motion for an adjournment is within the trial court's discretion. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1991). Typically, a trial court does not abuse its discretion by denying a motion for an adjournment where past continuances have been granted, the moving party failed to exercise due diligence, or there is a lack of injustice to the moving party. *Id.*

It is apparent that defendants did not file their motion in limine sooner because the grounds for the motion did not become apparent until the time of trial, after plaintiff disclosed what evidence he intended to produce at trial. Defendants prepared a written memorandum to accompany their motion, but it was only four pages long and discussed only a single case. Plaintiff asked the court to adjourn the trial to give him additional time to respond to the motion. Instead, the trial court allowed plaintiff time to review the relevant law during a break. Considering the circumstances and the brief nature of defendants' memorandum, the trial court afforded plaintiff sufficient time in which to properly respond to the motion. Given plaintiff's earlier request for an adjournment and his failure to show prejudice as a result of the trial court's decision, the trial court did not abuse its discretion by refusing to grant an adjournment. *Tisbury*, *supra* at 20.

#### E. Applicability of MCL 600.2169

Plaintiff also argues that the trial court erred in applying MCL 600.2169, thereby barring Dr. Singer from testifying as an expert. We disagree.

Contrary to plaintiff's argument, because this case involved allegations that the underlying suit was lost because the period of limitations was allowed to run, the "suit within a suit" theory applied. *Coleman v Gurwin*, 443 Mich 59, 63; 503 NW2d 435 (1993). As a result, plaintiff was required to offer proper expert testimony on the applicable standard of care for the underlying medical malpractice case.

The 1993 amendments to MCL 600.2169 were also required to be satisfied. The amended version of the statute applies to cases filed after April 1, 1994. *Tobin v Providence Hosp*, 244 Mich App 626, 663, 666; 624 NW2d 548 (2001). Plaintiff alleged in his complaint that plaintiff's decedent did not discover the alleged medical malpractice until 1995. Thus, the malpractice action could not have been filed before 1995 and, therefore, the malpractice action would have been subject to the amended version of MCL 600.2169. Accordingly, pursuant to that statute, plaintiff was required to show that Dr. Singer specialized in the same area as Dr. Knauss.<sup>9</sup>

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<sup>9</sup> We also find no merit to plaintiff's argument that the amended version of MCL 600.2169 would not have applied because this Court held in 1996 that the statute, before it was amended in 1993, was unconstitutional. See *Nippa v Botsford General Hosp*, 251 Mich App 664, 679; 651 (continued...)

At his deposition, Dr. Singer stated that he was board certified in internal medicine, hematology and oncology. However, he admitted that he had never practiced in the area of surgery. Because it was undisputed that Dr. Knauss was a surgeon, Dr. Singer was not qualified to offer expert testimony on the standard of care for Dr. Knauss. MCL 600.2169(1)(a). Whether Dr. Singer was qualified to testify under MRE 702 was irrelevant because plaintiff was required to show that Dr. Singer was qualified under both MCL 600.2169 and MRE 702. *Tate v Detroit Receiving Hosp*, 249 Mich App 212, 215; 642 NW2d 346 (2002).

Affirmed.

/s/ Henry William Saad

/s/ Brian K. Zahra

/s/ Bill Schuette

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NW2d 103 (2002); *Kirkaldy v Rim*, 251 Mich App 570, 579; 651 NW2d 80 (2002).