

STATE OF MICHIGAN
COURT OF APPEALS

JENNIFER CHANEY,

Plaintiff-Appellant,

v

MARK WEGZYN, D.D.S.,

Defendant-Appellee.

UNPUBLISHED

August 17, 2001

No. 220207

Wayne Circuit Court

LC No. 97-721349-NH

Before: Doctoroff, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this dental malpractice action, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff contends that the trial erred when it granted defendant's motion for summary disposition after concluding that plaintiff's sole expert witness, a dentist engaged in general practice in a suburb of Atlanta, Georgia, was unfamiliar with the applicable standard of care. Contrary to plaintiff's assertion, the record reveals that the trial court granted defendant's motion for summary disposition not because plaintiff's expert could not testify to the standard of care, but because the expert could not identify a breach of the standard of care.¹

Plaintiff also says that the trial court erred when it granted defendant's motion for summary disposition on the grounds that plaintiff's expert witness expressed no opinion whether defendant breached the applicable standard of care in his treatment of plaintiff or whether plaintiff sustained damages as a result of defendant's treatment. We disagree.

¹ It should be further noted that the court denied defendant's motion to strike plaintiff's expert witness. Because the trial court ruled in plaintiff's favor on this point, plaintiff is not an aggrieved party with standing to appeal this ruling. MCR 7.203(A); *Kocenda v Archdiocese of Detroit*, 204 Mich App 659, 666; 516 NW2d 132 (1994). In addition, because we affirm the trial court's grant of summary disposition to defendant, we do not consider defendant's argument that the trial court abused its discretion in not striking the testimony of this witness.

We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Id.* When reviewing a trial court's decision regarding a motion for summary disposition brought pursuant to MCR 2.116(C)(10), we must view the depositions, affidavits, and documentary evidence in the light most favorable to the nonmoving party. *Ritchie-Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). When the nonmoving party has the burden of proof at trial, the nonmoving party must submit documentary evidence that demonstrates that a genuine issue of material fact exists and may not rest on mere allegations or denials in the pleadings. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

A plaintiff must prove the following four elements by a preponderance of the evidence to prevail on a medical malpractice claim: (1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. MCL 600.2912a; MSA 27A.2912(1); *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995). Failure to prove any one of these elements is fatal to a plaintiff's claim. *Wischmeyer, supra* at 484. In a medical malpractice action, the breach of the standard of care by the defendant and the damages caused by the defendant's breach are essential elements that must, absent exceptions not present here, be established by expert testimony. *Greathouse v Rhodes*, 242 Mich App 221, 229; 618 NW2d 106 (2000); *Thomas v McPherson Community Health Ctr*, 155 Mich App 700, 705; 400 NW2d 629 (1986). A plaintiff must present expert testimony to establish that it was more likely than not that defendant breached the standard of care and that this breach caused the plaintiff's damages. MCL 600.2912a; MSA 27A.2912(1); *Wischmeyer, supra* at 484; *Greathouse, supra* at 229.

Here, plaintiff's sole expert witness stated in his deposition testimony and in a subsequently submitted affidavit that although he believed that defendant *may* have breached the standard of care in his treatment of plaintiff, he could not state that it was more likely than not that defendant breached the standard of care. Plaintiff's expert also stated in his deposition testimony and his affidavit that plaintiff sustained no damages as a result of defendant's treatment. Because the deposition testimony and affidavit of plaintiff's expert witness did not create genuine issues of material fact concerning whether defendant breached the standard of care in his treatment of plaintiff or whether plaintiff sustained damages as a result of defendant's treatment, the trial court did not err in granting defendant's motion for summary disposition.

Finally, plaintiff argues that the trial court abused its discretion when it denied plaintiff's request for leave to amend her witness list to add a new expert witness after the trial court granted summary disposition to defendant. We disagree.

We review a trial court's decision whether to allow a plaintiff to amend her witness list to add an expert witness for an abuse of discretion. *Tisbury v Armstrong*, 194 Mich App 19, 20; 486 NW2d 51 (1992). Among other considerations, the trial court should determine whether the party seeking the amendment demonstrated good cause for the amendment or whether the opposing party will be prejudiced by the amendment. Wayne Circuit LCR 2.301; *Tisbury, supra* at 20-21; *Levinson v Sklar*, 181 Mich App 693, 698-699; 449 NW2d 682 (1989).

Here, plaintiff failed to demonstrate good cause for amending her witness list to add a new expert witness, or to establish that defendant would not be prejudiced by the addition of a new expert witness. We are satisfied that the trial court did not abuse its discretion when it denied plaintiff's motion to amend her witness list to add a new expert witness.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Henry William Saad
/s/ Kurtis T. Wilder