

STATE OF MICHIGAN
COURT OF APPEALS

ALICIA DAY, as Next Friend of MCKENZIE
SHERLOCK, a minor,

UNPUBLISHED
February 23, 2012

Plaintiff-Appellant,

v

No. 300444
St. Clair Circuit Court
LC No. 09-000762-NH

C. MORRIS, R.N., DEBORAH KOEHLER, R.N.,
SHELLY WARWICK, R.N., JEANNIE L.
ROWE, D.O., Estate of JOHN M. MURPHY,
M.D., BLUE WATER OBSTETRICS AND
GYNECOLOGY, P.C., and PORT HURON
HOSPITAL ,

Defendants-Appellees.

Before: SAAD, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this medical malpractice case, plaintiff appeals by leave granted the trial court's order limiting the number of experts that she may call to testify on the issue of causation to three. On appeal, we conclude that the trial court did not abuse its discretion when it refused to permit plaintiff to have more than three experts testify as to causation. For that reason, we affirm.

Plaintiff sued defendants for medical malpractice alleging that her daughter suffered permanent neurological damage due to a delayed delivery following a placental abruption. Given the complicated nature of the proofs, plaintiff had an extensive expert witness list. Ultimately the trial court entered an order limiting plaintiff to three standard of care nursing experts, three standard of care OB/GYN experts, one hospital administration expert, three experts on damages, and three experts on causation.

On appeal plaintiff argues that the trial court abused its discretion by limiting her to just three experts on causation. Plaintiff contends that the issue of causation in her case is complex and consists of multiple issues, including the nature and extent of the neurologic injury, the timing of the injury, the mechanism by which the failure to treat the conditions caused the injury, and proof that proper treatment would have more likely than not prevented the injury. Thus, testimony from experts in four separate fields—neonatology, maternal fetal medicine, neurology, and neuroradiology—is needed to address these issues. Plaintiff asserts that allowing her to call

only three causation expert witnesses is highly prejudicial and limits her ability to fully present her claim.

Although the Legislature has provided that no more than three experts may testify on either side as to the same issue in any given case, it has also granted trial courts the discretion to permit more experts. See MCL 600.2164(2). This Court reviews a trial court's exercise of discretion under the highly deferential abuse of discretion standard. With this standard, we recognize that there is no single correct outcome; rather, there will likely be a range of possible outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). And, although we might not have selected the outcome that the trial court did, we will nevertheless defer to the trial court's decision as long as that decision is within the range of reasonable and principled outcomes. *Id.*

A plaintiff in a medical malpractice case must present expert testimony "to establish the standard of care and to demonstrate the defendant's alleged failure to conform to that standard." *Decker v Rochowiak*, 287 Mich App 666, 685; 791 NW2d 507 (2010). The plaintiff must also generally call an expert to establish that the failure to follow the standard of care proximately caused the injury at issue. *Teal v Prasad*, 283 Mich App 384, 394-395; 772 NW2d 57 (2009). Under MCL 600.2164(2), the parties are generally limited to have no "more than 3 experts" to "testify on either side as to the same issue in any given case" However, the trial court may, "in its discretion, permit[] an additional number of witnesses to testify as experts." *Id.* As this Court has explained, "[i]f more than three witnesses are needed on an issue, the statute poses no barrier to an appropriate exercise of the trial court's discretion." *Bradbury v Ford Motor Co*, 123 Mich App 179, 189; 333 NW2d 214 (1983).

Initially, plaintiff agreed to ten expert witnesses, three OB/GYN experts, three nursing experts, one hospital administration expert, and three damage experts. The trial court then limited plaintiff to three causation experts, for a total of 13 expert witnesses. Although plaintiff claims that she must have more than three experts on causation, she has not demonstrated the necessity for more causation experts. Plaintiff's primary reason for requesting more than three experts on causation was to ensure that at least one would be available to testify live. Indeed, plaintiff stated that she might not call all the experts named on her witness list. Further, there is no record as to the proposed testimony that demonstrates the need for additional expert witnesses to aid the jury in understanding the issue of causation. See MRE 702. Accordingly, on this record, we cannot conclude that the trial court's decision to deny plaintiff's request for more than three experts on the issue of causation fell outside the range of reasonable and principled outcomes. *Maldonado*, 476 Mich at 388.

Affirmed. As the prevailing parties, defendants may tax their costs. MCR 7.219(A).

/s/ Henry William Saad
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly