

STATE OF MICHIGAN
COURT OF APPEALS

LARRY RICKMAN and SHARON RICKMAN,
Plaintiffs-Appellants,

UNPUBLISHED
April 24, 2014

v

NURSE MARY J. MALONE, NURSE KARI A.
STIMSON, and PORT HURON HOSPITAL,

No. 313661
St. Clair Circuit Court
LC No. 10-003028-NH

Defendants-Appellees.

Before: DONOFRIO, P.J., and CAVANAGH and JANSEN, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur in the majority's determination that Nurse Kalair was qualified to offer standard-of-care testimony pursuant to MCL 600.2169(1)(b)(i). However, I respectfully dissent from the majority's determination that the circuit court properly disqualified Nurse Kalair under MCL 600.2169(2) and (3). I acknowledge that, at the time of trial, Nurse Kalair had not worked with bed alarms for 15 years. In addition, the jury might have ultimately determined that Nurse Kalair's testimony had limited value given the particular circumstances of Rickman's fall. I conclude, however, that these factors went to the weight of Nurse Kalair's testimony rather than its admissibility.

The use of bed alarms is a matter beyond the scope of a juror's common knowledge because it requires the understanding and consideration of a patient's specific medical history and fall-risk assessment. See *Bryant v Oakpointe Villa Nursing Centre*, 471 Mich 411, 429; 684 NW2d 864 (2004). Accordingly, expert testimony was required on this issue. *Id.* at 430.

As this Court has previously explained, “[g]aps or weaknesses in the witness’s expertise are a fit subject for cross-examination, and go to the weight of his testimony, not its admissibility. The extent of a witness’s expertise is usually for the jury to decide.” *Surman v Surman*, 277 Mich App 287, 309-310; 745 NW2d 802 (2007) (citations and quotations omitted). Our Supreme Court has similarly recognized that “in some circumstances, an expert’s qualifications pertain to weight rather than to the admissibility of the expert’s opinion.” *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 788-789; 685 NW2d 391 (2004). In my opinion, while the perceived weaknesses in Nurse Kalair’s testimony were appropriate subjects for cross-examination, they were not sufficient grounds for invalidating Nurse Kalair’s overall qualification. *Ykimoff v Foote Mem Hospital*, 285 Mich App 80, 101; 776 NW2d 114 (2009).

Nor can it be said that Nurse Kalair lacked knowledge or expertise in the field, see *Gilbert*, 470 Mich at 789, or that her testimony was irrelevant as a matter of law, see MRE 401. I would reverse the circuit court's decisions to disqualify Nurse Kalair and to grant summary disposition in favor of defendant Port Huron Hospital on this basis.

/s/ Kathleen Jansen