

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL McCLELLAN and RUBY McCLELLAN,

Plaintiffs-Appellants,

v

ALONSO COLLAR, M.D., and THORACIC
CARDIOVASCULAR INSTITUTE OF MID-
MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

April 11, 1997

No. 185809

Ingham Circuit Court

LC No. 92-073385-NM

Before: Hoekstra, P.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting a directed verdict in favor of defendant Thoracic Cardiovascular Institute of Mid-Michigan (TCI) and dismissing plaintiffs' action in its entirety. Plaintiffs also challenge on appeal (1) an order prohibiting plaintiffs' expert witness, Dr. Andrew Rosenblum, from testifying with regard to cardiovascular surgery issues; (2) an order granting defendants' motion for summary disposition as to defendant Alonso Collar, M.D., and as to defendant TCI for any and all vicarious liability of Dr. Collar, and; (3) an order prohibiting plaintiffs' expert witnesses, Dr. Raymond Tracy and Mr. James Leischman, from providing causation testimony regarding plaintiff Daniel McClellan's post-traumatic stress disorder. We reverse.

Plaintiff Daniel McClellan had a history of vascular aortic stenosis. On December 4, 1991, he was examined by Dr. Collar, who recommended that he have aortic valve replacement surgery and scheduled the surgery for December 17, 1991. On December 13, 1991, McClellan's wife, plaintiff Ruby McClellan, drove him to Ingham Medical Center's emergency room because he was experiencing coughing, a runny nose, fever and chills. Dr. Daryl Melvin, an employee of TCI, admitted McClellan into the hospital. From the time of his admission until the December 17, 1991, surgery, McClellan continued to experience the same symptoms and, although he had a temperature of 101.4 degrees the night before the surgery, Dr. Collar performed the surgery as scheduled. After his discharge on December 25, 1991, McClellan's condition continued to deteriorate in that he could not breathe and he developed an egg-like formation near the top of his chest. On December 29, 1991, Dr. J. Jung

operated to alleviate these conditions. Plaintiffs' theory of liability was that McClellan's second surgery was necessary because of Dr. Collar's and Dr. Melvin's negligence in that they improperly went ahead with the first surgery even though McClellan was suffering from a severe infection.

Plaintiffs first argue that the trial court abused its discretion in ruling that Dr. Rosenblum was not qualified as an expert in cardiovascular pre- and post-operative care of patients or in the decision making processes of a cardiovascular surgeon. We agree. MRE 702 governs the determination of whether Dr. Rosenblum was qualified to testify as an expert witness in matters relating to cardiovascular surgery. *McDougall v Eliuk*, 218 Mich App 501, 507; 554 NW2d 56 (1996). In this case, plaintiff demonstrated Dr. Rosenblum's knowledge of the applicable standard of care where Dr. Rosenblum testified that based on his experience he was familiar with the applicable national standard of practice governing cardiovascular surgeons. *Id.* at 508; *Carlton v St John Hosp*, 182 Mich App 166, 171-172; 451 NW2d 543 (1989). Any gaps or weaknesses in Dr. Rosenblum's expertise are a proper subject for cross-examination and go to the weight to be accorded his testimony, not its admissibility. *People v Gambrell*, 429 Mich 401, 408; 415 NW2d 202 (1987); *People v Whitfield*, 425 Mich 116, 123-124; 388 NW2d 206 (1986).

Next, plaintiffs argue that the trial court erroneously granted TCI's motion for directed verdict on the basis that there was no evidence to show that Dr. Melvin was the cardiologist or attending physician in charge. We agree. Viewing the evidence and the reasonable inferences arising therefrom in a light most favorable to plaintiffs, there was sufficient evidence to create a question of fact concerning whether Dr. Melvin was responsible for McClellan's medical care and had the authority to stop the surgery. *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 603-604; 552 NW2d 523 (1996); *Lamson v Martin (After Remand)*, 216 Mich App 452, 455-456; 549 NW2d 878 (1996). On McClellan's admission forms, Dr. Melvin was listed as the attending physician. Dr. Melvin testified that he was medically in charge and Dr. Rosenblum testified that Dr. Melvin, as a cardiologist, had the authority to stop the surgery and should have stopped it because of the fever and infection.

Next, plaintiffs argue that the trial court abused its discretion in ruling that Dr. Raymond Tracy and Mr. James Leischman, plaintiffs' expert witnesses, were not qualified to testify about the cause of McClellan's depression. We agree. Dr. Tracy was qualified to testify with regard to the cause of McClellan's post-traumatic stress disorder by virtue of his experience as medical director of the Oceana County Mental Health Department. The trial court abused its discretion in ruling otherwise. *McDougall, supra*. Again, any gaps or weaknesses in Tracy's expertise are a proper subject for cross-examination and go to the weight to be accorded his testimony, not its admissibility. *Gambrell, supra; Whitfield, supra*. With regard to Leischman, the trial court abused its discretion by ruling that only a psychiatrist or a psychologist could testify as to the causation of McClellan's mental illnesses because Leischman demonstrated that he had knowledge and skill in the area of identifying and determining the causes of mental illnesses. *McDougall, supra; Carlton, supra*.

Finally, plaintiffs argue that the trial court erred when it ruled that Dr. Rosenblum's testimony with regard to the cause of McClellan's nerve damage was too speculative to go to the jury. We agree. Using words expressing "but for" causation, such as "entirely explainable by" and "follow," Dr.

Rosenblum testified that the nerve damage was caused by the second surgery. Although he never expressly used the words “caused by,” from the context of Rosenblum's testimony, it was clear that, in his opinion, the second surgery caused the disorder. *Jones v Porretta*, 428 Mich 132, 154; 405 NW2d 863 (1987).

Reversed.

/s/ Joel P. Hoekstra

/s/ William B. Murphy

/s/ Michael R. Smolenski