

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

ROBIN L. CHARVILLE

Plaintiff

v.

UNIVERSITY OF TOLEDO MEDICAL CENTER, etc.

Defendant

Case No. 2012-03701

Judge Dale A. Crawford

DECISION

{¶1} Plaintiff brought this action alleging medical negligence against Defendant, the University of Toledo Medical Center (UTMC). The issues of liability and damages were bifurcated and the case was tried to the Court on the issue of liability.¹

{¶2} Plaintiff has a history of gastroesophageal reflux disease (GERD), a benign esophageal disease associated with difficulty swallowing and frequent regurgitation. In January 2001, Plaintiff was referred to Thomas Rice, M.D., a thoracic surgeon at the Cleveland Clinic. Dr. Rice performed a Nissen fundoplication wherein a wrap is created around the esophagus at the esophagogastric junction. The procedure was largely successful and Plaintiff was able to maintain a relatively normal diet and lifestyle following the procedure. In late 2009 and early 2010, Plaintiff experienced a reoccurrence of GERD and lost a significant amount of weight. Plaintiff returned to Dr. Rice at the Cleveland Clinic, and in March 2010, Dr. Rice performed a second Nissen fundoplication by taking down the wrap and rewrapping the esophagus in an attempt to address Plaintiff's GERD.

¹At the close of Plaintiff's case, Defendant made a Motion to Dismiss pursuant to Civ.R. 41(B)(2). Upon review, Defendant's motion is DENIED.

{¶3} Subsequent to the March 2010 procedure, Plaintiff continued to have difficulty eating and swallowing in addition to continued regurgitation. Dr. Rice performed several tests and several dilations of the esophagus over the course of the next few months in an attempt to diagnose and alleviate Plaintiff's difficulties; however, Plaintiff's symptoms did not improve. Dr. Rice advised Plaintiff to allow time for her esophagus to recover and did not recommend a new surgery at that point. After Dr. Rice did not recommend a new surgery, Plaintiff sought a second opinion. After performing an internet search, Plaintiff scheduled a consultation with Shuab Omer, M.D., a thoracic surgeon at UTMCM.

{¶4} Dr. Omer reviewed the relevant medical records and testing that had been performed at the Cleveland Clinic. Specifically, Dr. Omer reviewed a July 6, 2010 esophagogastroduodenoscopy (EGD); a June 9, 2010 ambulatory pH study; a June 9, 2010 esophageal manometry; and a June 10, 2010 barium esophagogram. At the consultation, Dr. Omer presented Plaintiff with several options: 1) continued dilations of the esophagus, 2) a third Nissen fundoplication, or 3) an esophagectomy, which, according to Dr. Omer, offered the best chance of success. After discussing the risks and benefits of the procedures, Plaintiff agreed to schedule an esophagectomy. In preparation for the esophagectomy, Dr. Omer performed a pulmonary function test and a CT Angiogram (CTA) to determine the status of the blood vessels.

{¶5} Dr. Omer also sought the assistance of Parbir Chaudhuri, M.D., a surgical oncologist at UTMCM. On September 7, 2010, Drs. Chaudhuri and Omer performed an esophagectomy with colon interposition. Following the esophagectomy, Drs. Chaudhuri and Omer suspected that Plaintiff had developed a leak and an infection. At the request of Drs. Chaudhuri and Omer, Wael Youssef, M.D., a gastroenterologist at UTMCM, performed an endoscopy in an attempt to visualize the leak and assess the colonic conduit. Although Drs. Chaudhuri and Omer were unable to confirm whether Plaintiff had developed a leak, Plaintiff's upper anastomosis of the esophagectomy was stented. Subsequent to the procedure, the upper anastomosis failed. Plaintiff subsequently underwent several additional procedures at both UTMCM and The Ohio State University Wexner Medical Center (OSU) in an attempt to deal with the complications that had developed. As a result of the complications from her surgery and the subsequent treatment, Plaintiff now receives her nutrition through a permanent feeding tube.

{¶6} The Court is sympathetic to the severe injuries that Plaintiff has suffered. However, the fact that Plaintiff suffered a bad result does not by itself prove that Defendant was negligent. *Ault v. Hall*, 119 Ohio St. 422, 164 N.E. 518 (1928). In order to prevail on a claim of medical malpractice, Plaintiff must first prove: 1) the standard of care recognized by the medical community; 2) the failure of Defendant to meet the requisite standard of care; and 3) a direct causal connection between the medically negligent act and the injury sustained. *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 346 N.E.2d 673 (1976); *Wheeler v. Wise*, 133 Ohio App.3d 564, 729 N.E.2d 413 (10th Dist.1999). The appropriate standard of care must be proven by expert testimony. *Bruni* at 130. That expert testimony must explain what a medical professional of ordinary skill, care, and diligence in the same medical specialty would do in similar circumstances. *Id.* In addition, if Plaintiff proves a breach of the standard of care by a preponderance of the evidence, she must also prove by expert testimony that the breach proximately caused Plaintiff injury. *Id.* at 131-132; *Ramage v. Central Ohio Emergency Services, Inc.*, 64 Ohio St.3d 97, 592 N.E.2d 828 (1992).

{¶7} Plaintiff advances several theories of medical negligence. Plaintiff argues that Defendant deviated from the standard of care by (1) accepting Plaintiff as a patient; (2) improperly preparing for surgery; (3) improperly performing surgery; and (4) improperly treating Plaintiff's post-operative course. Additionally, (5) Plaintiff argues that the totality of the circumstances and alleged mistakes by Defendant amount to a deviation of the standard of care. The Court notes that Plaintiff has not alleged a claim of lack of informed consent.

{¶8} Plaintiff's seminal argument is that Drs. Chaudhuri and Omer lacked the necessary experience to properly evaluate and treat Plaintiff's condition, and therefore, should have never accepted Plaintiff as a patient. In support of such a position, Plaintiff presented the expert testimony of Mary Maish, M.D., a physician board-certified in both general and cardiothoracic surgery. Dr. Maish testified that Dr. Omer was too inexperienced to handle Plaintiff's complex case and that Dr. Chaudhuri lacked the experience necessary to treat benign esophageal diseases. As a result, Dr. Maish testified that Drs. Chaudhuri and Omer should not have accepted Plaintiff as a patient. However, there is no dispute that Drs. Chaudhuri and Omer completed the proper education and training and were authorized to perform an esophagectomy. Additionally, Dr. Omer sought the assistance of Dr. Chaudhuri, a physician with more

than 30 years of experience. Dr. Maish opined that had Drs. Chaudhuri and Omer referred Plaintiff to another physician, the only acceptable choices would have been Dr. Rice at the Cleveland Clinic, thoracic surgeons at the University of Southern California, and thoracic surgeons at the University of Rochester in Rochester, New York.

{¶9} Defendant presented the expert testimony of Tom DeMeester, M.D., Emeritus Professor and Chairman of the Department of Surgery at the University of Southern California. All of the physicians agree that Dr. DeMeester is a leading authority on benign esophageal disorders. Additionally, the Court notes that Dr. DeMeester trained Plaintiff's expert, Dr. Maish. Dr. DeMeester's curriculum vitae is more than 70 pages long, and he has published 485 articles in peer-reviewed journals, 175 book chapters, 9 books, and has presented 41 lectures around the world. Dr. DeMeester testified that it was within the standard of care for Drs. Chaudhuri and Omer to accept Plaintiff as a patient inasmuch as they had received the proper training and certifications. Dr. DeMeester explained that there is no difference in a physician's skill when dealing with a benign or a malignant esophageal disease. Additionally, Dr. DeMeester testified that Plaintiff needed the surgery, a fact that Dr. Maish does not dispute. The Court is persuaded by the testimony of Dr. DeMeester. Therefore, the Court finds that it was not a breach of the standard of care for Drs. Chaudhuri and Omer to have accepted Plaintiff as a patient.

{¶10} Next, Plaintiff argues that Drs. Chaudhuri and Omer deviated from the standard of care in their preoperative preparation, performance of the surgery, and postoperative care. Dr. Maish testified that Drs. Chaudhuri and Omer should have repeated some of the tests rather than relying upon the test results from the Cleveland Clinic and that they should have called Dr. Rice to determine why he did not recommend performing a new surgery. Dr. Maish also testified that Drs. Chaudhuri and Omer should have obtained an arteriogram rather than a CTA. Dr. Maish also criticized the decision to use silk sutures rather than monofilament sutures. Additionally, Dr. Maish testified that Plaintiff should have been allowed more time to heal following the operation and that Drs. Chaudhuri and Omer should not have relied upon the endoscopy performed by Dr. Youssef. However, Dr. Maish conceded that Plaintiff more likely than not would have needed an esophagectomy within one year of September 2010.

{¶11} Dr. DeMeester testified that it was not a breach of the standard of care to rely upon the tests performed by the Cleveland Clinic. Dr. DeMeester explained that tests are not repeated when a patient's history confirms the test results, as it did in this case. Dr. DeMeester opined that the best option for Plaintiff in September 2010 was to undergo an esophagectomy and that there is no magic period of time to wait prior to obtaining surgery as suggested by Dr. Maish.

{¶12} Dr. DeMeester also testified that Drs. Chaudhuri and Omer met the standard of care by obtaining a CTA and that an arteriogram was not necessary. Dr. DeMeester opined that the use of silk sutures is not a deviation of the standard of care. Additionally, Dr. DeMeester explained that it was not below the standard of care for a leak to develop inasmuch as it is a recognized risk of the surgery. Finally, Dr. DeMeester explained that it was not below the standard of care for Dr. Youssef to perform an endoscopy. The Court finds the testimony of Dr. DeMeester to be more convincing and persuasive than that of Dr. Maish. Indeed, the Court finds that Drs. Chaudhuri and Omer met the standard of care in their preoperative preparation, in performance of their surgery, and in their postoperative treatment.

{¶13} Finally, Plaintiff argues that the totality of the circumstances and alleged mistakes by Drs. Chaudhuri and Omer evidence a deviation of the standard of care. However, the Court notes that Dr. Maish was unable to credibly testify to a reasonable degree of medical probability that any of the alleged deviations proximately caused any injury. Moreover, the Court has already concluded that Drs. Chaudhuri and Omer did not deviate from the standard of care. Therefore, the Court finds that the totality of the care rendered by Drs. Chaudhuri and Omer met the standard of care and that Plaintiff has failed to identify how any of Defendant's alleged deviations from the standard of care proximately caused any injury.

{¶14} Based upon the foregoing, the Court concludes that Plaintiff has failed to prove her claim by a preponderance of the evidence. Plaintiff has failed to prove, by a preponderance of the evidence, that Drs. Chaudhuri and Omer deviated from the

standard of care or that any alleged breach proximately caused Plaintiff injury. Therefore, judgment shall be rendered in favor of Defendant.

DALE A. CRAWFORD
Judge

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JUDGMENT ENTRY

{¶15} This case was tried to the Court on the issues of liability. The Court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of Defendant. Court costs are assessed against Plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DALE A. CRAWFORD
Judge

cc:

Andrew R. Young
Jeffrey A. Leikin
1370 Ontario Street, Suite 100
Cleveland, Ohio 44113-1792
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Anne B. Strait
Assistant Attorney General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215-3130