

Court of Claims of Ohio

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EDWARD SCHOEWE, Admr., etc.

Plaintiff

v.

UNIVERSITY OF TOLEDO

Defendant

Case No. 2009-07369

Judge Patrick M. McGrath
Magistrate Holly True Shaver

JUDGMENT ENTRY

{¶1} Plaintiff brought this action alleging medical negligence and wrongful death.

The court conducted a trial on the issue of liability, and on October 24, 2014, the magistrate issued a decision recommending judgment in favor of defendant.

{¶2} Civ.R. 53(D)(3)(b)(i) states, in part: “A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i).” On November 7, 2014, plaintiff timely filed objections to the magistrate’s decision, and defendant filed a memorandum contra on November 13, 2014.

{¶3} According to the magistrate, the decedent, Sherry Schoewe (Schoewe), presented to the emergency room at Fisher Titus Medical Center on September 3, 2008, for chest pain. Schoewe was 44 years old, premenopausal, obese, and taking medication for hypertension. She was not a smoker and not diabetic. Furthermore, she had no cardiac history and no family history of premature coronary artery disease. Upon her admission to the hospital, Schoewe underwent standard cardiac tests,

including a chest x-ray, EKGs, enzyme tests, and a D-Dimer test. Test results ruled out a myocardial infarction.

{¶4} Daniel Kosinski, M.D., a cardiologist employed by defendant, performed an examination on Schoewe on September 4, 2008, pursuant to a cardiac consultation request. Upon examining Schoewe and reviewing the test results, Dr. Kosinski concluded that Schoewe had a “low risk profile” and prescribed her baby aspirin and instructed her to schedule an outpatient stress test. Schoewe was released later that evening.

{¶5} The next evening, Schoewe felt unwell after dinner and on the way to the hospital, became unresponsive and subsequently died. As a result of the autopsy, it was discovered that Schoewe had advanced atherosclerosis and died from a blockage of her left anterior descending coronary artery.

{¶6} The magistrate concluded that plaintiff failed to prove by a preponderance of the evidence that the standard of care required an inpatient stress test to be conducted. The magistrate was not persuaded by plaintiff’s expert, Alan Feit, M.D. Rather, the magistrate found defendant’s expert, Louis Cannon, M.D., to be more persuasive. Dr. Cannon testified that Dr. Kosinski met the standard of care when he sent her home and ordered an outpatient stress test.

{¶7} Plaintiff objects to two of the magistrate’s factual findings and a conclusion of law. First, plaintiff argues that the magistrate mischaracterized Dr. Kosinski’s testimony with regard to the standard of care required when he examined Schoewe. Plaintiff states that Dr. Kosinski testified that if coronary artery disease is a potential explanation for a patient’s symptoms, it was necessary to diagnose it as soon as possible rather than simply evaluating it along with the two other potentially life-threatening conditions, which are pulmonary embolism and aortic dissection. Furthermore, plaintiff argues that Dr. Kosinski admitted that the only life-threatening condition remaining at the time of his examination of Schoewe was unstable angina.

{¶8} Defendant argues that this objection is not an objection to the magistrate's findings of fact but rather an objection to the magistrate's summary of expert testimony. Indeed, plaintiff's objection is directed at the testimony that the magistrate summarized in her recommendation, and the court finds that the magistrate accurately described Dr. Kosinski's testimony. As defendant points out in its response, Dr. Feit testified that upon the presentation of a patient like Schoewe, he would also consider coronary disease, pulmonary embolism, or aortic dissection. Accordingly, plaintiff's first objection is **OVERRULED**.

{¶9} Plaintiff's second objection is to the finding that Schoewe's EKGs did not show any findings of low blood flow to the heart. Plaintiff argues that Dr. Kosinski testified that the EKG findings were consistent with ischemia, which is low blood flow to the heart. As with plaintiff's first objection, this objection is to the magistrate's summary of expert testimony. The magistrate summarized Dr. Cannon's opinion that Schoewe's EKGs did not show any findings of low blood flow to the heart. Again, the court finds that Dr. Cannon expressed this opinion in his testimony and that the magistrate accurately described it in her decision. Dr. Feit even testified that the abnormalities in the EKGs were not diagnostic of anything. Plaintiff argues that because Dr. Kosinski testified that downsloping ST depressions, which were present on Schoewe's EKGs, could suggest low blood flow to the heart, the magistrate's finding was in error. Upon review, plaintiff's second objection is **OVERRULED**.

{¶10} Plaintiff's third objection is to the magistrate's conclusion that plaintiff failed to show by a preponderance of the evidence that the standard of care required an inpatient stress test to be conducted on Schoewe rather than the outpatient test that Dr. Kosinski ordered. On a claim of medical negligence, a plaintiff must 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). The burden rests on plaintiff to prove by a preponderance of the evidence that the physician's actions fell below the standard of care. *Id.* Furthermore, it is well-settled that the magistrate, as the trier of fact, is free to believe or disbelieve all or any of the testimony presented. *State v. Hudson*, 10th Dist. Franklin No. 06AP-335, 2007-Ohio-3227. The magistrate found that Dr. Cannon was more persuasive than Dr. Feit. As stated above, Dr. Cannon testified that Dr. Kosinski met the standard of care when he assessed Schoewe's condition. He also testified that based on Schoewe's risk factors and her test results, Schoewe was at a low risk for coronary artery disease. He agreed with Dr. Kosinski's course of treatment of prescribing baby aspirin, instructing Schoewe to continue the use of her hypertension medication, and ordering an outpatient stress test. Based on the foregoing, the court agrees with the magistrate's determination, and plaintiff's third objection is **OVERRULED**.

{¶11} Upon review of the record, the magistrate's decision, and the objections, the court finds that the magistrate has properly determined the factual issues and appropriately applied the law. Therefore, the objections are **OVERRULED**, and the court adopts the magistrate's decision and recommendation as its own, including the findings of fact and conclusions of law contained therein. 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.

PATRICK M. MCGRATH
Judge

cc:

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Filed April 13, 2015
Sent to S.C. Reporter 12/8/15