

Court of Claims of Ohio

The Ohio Judicial Center
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KRISTINE KISS

Plaintiff

v.

UNIVERSITY OF TOLEDO MEDICAL CENTER

Defendant

Case No. 2013-00469

Magistrate Anderson M. Renick

DECISION OF THE MAGISTRATE

{¶1} Plaintiff filed this action alleging medical negligence based upon treatment provided to her at the University of Toledo Medical Center (UTMC). The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} On August 4, 2012, plaintiff fell while walking on a trail, causing an injury to her right thumb. The next morning, plaintiff was examined at a local hospital, where she was treated for a sprain of her right wrist and thumb. Plaintiff testified that her family physician referred her to several orthopedic specialists, including Martin Skie, M.D., who first examined her on August 7, 2012. Dr. Skie determined that plaintiff sustained a tear of the radial collateral ligament, and that the metacarpophalangeal (MP) joint of her right thumb was dislocated (subluxed). On August 8, 2012, Dr. Skie performed surgery at UTMC, involving a closed reduction and pinning of the joint to hold the torn ligaments in place and keep the joint aligned while the ligaments healed. Plaintiff's right hand was placed in a cast to immobilize the MP joint. On August 21, 2012, plaintiff was examined by Dr. Skie and she reported that she had been doing well until a few days before the examination when she began to experience swelling, redness, and increased pain in her thumb. Dr. Skie prescribed Keflex, an antibiotic to

treat a pin tract infection that had developed at the surgical area. After X-rays showed that one of the surgical pins had migrated slightly, Dr. Skie pulled the pin back approximately one centimeter so that the pin would not cause pain.

{¶3} Plaintiff testified that she had an annual OBGyn examination the next day and her doctor asked about her hand, swabbed her hand for a bacteria culture and prescribed a different antibiotic, Bactrim. On August 28, 2012, plaintiff returned to defendant's orthopedic clinic and reported worsening symptoms including persisting swelling and pain. Plaintiff was prescribed pain medication and Dr. Skie scheduled surgery for the following day both to remove the metal pins that were holding the joint and to perform an incision and drainage (I and D) procedure to treat the infection. On September 11, 2012, during a post-operative examination, swelling was observed and plaintiff reported some numbness and tingling. On September 21, 2012, plaintiff returned to the clinic with continuing symptoms of swelling, numbness, tingling, and pain. X-rays showed that the MP joint was no longer aligned and that there was an area of "lucency" that can indicate a decrease in bone density or infection in the bone (osteomyelitis). Plaintiff was given prescriptions for double-strength Bactrim and pain medication.

{¶4} On Saturday, October 13, 2012, plaintiff sought treatment at the UTMH emergency room for increasing pain she had been experiencing for several days. Plaintiff testified that she had called Dr. Skie's office several times before deciding to go to the emergency room, but her calls were not returned. Plaintiff was diagnosed with acute osteomyelitis, and admitted to the hospital. The next day, plaintiff was examined by Dr. Skie's resident, Lindsay Viet, M.D., who noted that plaintiff was scheduled for a second I and D procedure on October 15, 2012, and that a fusion of the MP joint was being considered. (Joint Exhibit 1, p. 81.) During the October 15, 2012 procedure, Dr. Skie observed that the cartilage and bone in and around the joint looked normal; however, he took biopsies of soft tissue for culture. Dr. Skie testified that the tissue

cultures grew methicillin resistant staphylococcus aureus (MRSA). Following a consultation with an infectious disease specialist, Claudiu Georgescu, M.D., plaintiff was placed on IV antibiotics (Vancomycin) for approximately several weeks to treat her infection. Dr. Skie performed post-operative examinations on October 23, 2012 and November 14, 2012, and he determined that plaintiff's infection appeared to be improving. Dr. Skie directed plaintiff to schedule a follow-up appointment in two to three months; however, she did not return to the clinic.

{¶5} In December 2012, plaintiff began treating with Kagan Ozer, M.D., a board-certified hand surgeon. After waiting approximately six months to be certain the infection was gone, Dr. Ozer performed a surgical fusion of the MP joint and removed a neuroma which he believed had developed as a result of the prior surgeries. Dr. Ozer testified that the first fusion procedure was not successful and that he performed a second fusion surgery to remove the existing screw and utilize "a big plate and screw with bone graft to stimulate healing." (Deposition, page 41.)

{¶6} Plaintiff alleges that Dr. Skie deviated from the standard of care for orthopedic treatment both by performing the wrong surgery to repair her dislocated thumb joint and by mistreatment of her infection on September 21, 2012.

{¶7} "In order to establish medical malpractice, it must be shown by a preponderance of the evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct result of such doing or failing to do some one or more of such particular things." *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976), paragraph one of the syllabus. The appropriate standard of care must be proven by expert testimony. *Id.* at 130. "[E]xpert opinion regarding a causative event, including

alternative causes, must be expressed in terms of probability irrespective of whether the proponent of the evidence bears the burden of persuasion with respect to the issue.” *Stinson v. England*, 69 Ohio St.3d 451 (1994), paragraph one of the syllabus.

{¶8} Plaintiff’s medical expert, Jack Casini, M.D., is an orthopedic surgeon who has performed both open hand surgery and closed reduction surgery involving percutaneous pinning without any incisions. Dr. Casini testified that he was familiar with the standard of care for orthopedic treatment of plaintiff’s injury and that the appropriate treatment to repair torn ligaments in her thumb was an open procedure to reattach those ligaments. Dr. Casini explained that plaintiff had an injury to the radial collateral ligament (outer side) of her right thumb, whereas the ulnar collateral ligament is on the side next to the index finger. Dr. Casini testified that the injury plaintiff sustained, a tear of the radial collateral ligament, is less common than an injury to the ulnar collateral ligament. Dr. Casini opined that the closed reduction and percutaneous pinning of plaintiff’s MP joint performed by Dr. Skie on August 8, 2012, was the wrong procedure for her injury. Dr. Casini testified that his review of the medical literature for the past ten years, including hand surgery journals, revealed that there were no references to performing a closed repair for the injury that plaintiff sustained.

{¶9} According to Dr. Casini, performing the wrong procedure ultimately led to the infection that developed in plaintiff’s thumb, and Dr. Skie’s subsequent alleged mistreatment of that infection. Specifically, Dr. Casini testified that on September 21, 2012, X-rays confirmed both that plaintiff’s MP joint had subluxed and that osteomyelitis was present as indicated by a black spot where infection had destroyed cells which produce bone. Dr. Casini opined that Dr. Skie deviated from the standard of care on September 21, 2012, both by not placing plaintiff on IV antibiotics and by failing to perform debridement surgery to “clean out” the infected bone. Dr. Casini was also critical of Dr. Skie’s failure to surgically remove bone for cultures during the October 15, 2012 procedure after Dr. Georgescu had recommended doing so. Dr. Casini opined

that the arthritis and deteriorated cartilage in the MP joint that was observed by Dr. Ozer on April 30, 2013, was caused by the infection. Dr. Casini further opined that had Dr. Skie performed debridement surgery on or about October 15, 2012, plaintiff's MP joint most likely would have been "spared" and fusion surgery would not have been required. The court notes that Dr. Ozer testified that he did not have sufficient information to form an opinion regarding the quality of the care that Dr. Skie provided to plaintiff.

{¶10} During cross examination, Dr. Casini testified that the initial development of plaintiff's infection was a known complication of any orthopedic surgery and was not due to any deviation from the standard of care by Dr. Skie. Dr. Casini further testified that he did not have any criticism of Dr. Skie's treatment of plaintiff's infection prior to September 21, 2012. Dr. Casini agreed that plaintiff's neuroma was not caused by any breach of the standard of care committed by Dr. Skie.

{¶11} Defendant's expert, Robert Goitz, M.D., is a professor of orthopedic surgery and is board certified in both orthopedic surgery as well as hand and upper extremity surgery. Dr. Goitz estimated that between 50 and 70 percent of his practice is related to wrist or hand issues and that he sees two to five problems related to the MP joint each day. Dr. Goitz testified that plaintiff dislocated her right thumb MP joint and injured the radial collateral ligament and that there are a variety of treatment options for that type of injury, depending on the particular circumstances. Dr. Goitz stated that a closed reduction and percutaneous pinning of the MP joint is a very common procedure for injuries such as plaintiff's; a procedure that he has performed himself. Dr. Goitz testified that the radial collateral ligament can heal without open surgery when the joint is immobilized and held in alignment. If the joint is in alignment, immobilization with a cast while the ligaments heal is sufficient. If the joint is subluxed, as plaintiff experienced, the joint must be realigned either by placing small percutaneous pins through the joint, or the surgeon can perform an open procedure by

making a small incision so that the ligaments can be anchored before the joint is pinned to hold it in alignment during healing. According to Dr. Goitz, the vast majority of radial collateral ligament injuries do not require open surgery. Dr. Goitz testified and that it was not surprising that Dr. Casini had not found recent literature published regarding the pinning procedure that Dr. Skie had performed on plaintiff inasmuch as that “old” procedure has been a standard treatment for that particular injury for decades. Dr. Goitz opined that once plaintiff’s infection developed, there was no alternative except to remove the pins and that the ligaments had not had sufficient time to heal such that there was nothing to prevent the joint from falling back into a malaligned position (re-subluxated).

{¶12} Based upon the evidence, the court finds that the testimony of Drs. Goitz and Skie was much more credible and persuasive than that of Dr. Casini with regard to both the closed reduction and percutaneous pinning surgery and the subsequent treatment of plaintiff’s infection. Both Drs. Goitz and Skie specialize in hand and upper extremity orthopedic surgery and have extensive experience in hand surgery while Dr. Casini admitted that he does not keep current with hand surgery literature and that only a small percentage of his practice involves surgery to the MP joint of the thumb. Although Dr. Casini testified that the August 8, 2012 surgery was the wrong surgery for plaintiff’s injury and that he could not find any medical literature about that procedure being performed for a radial collateral ligament injury, Dr. Goitz explained that the procedure had been a standard treatment for that injury for decades and was frequently performed by hand surgeons, including himself. Dr. Goitz testified that approximately 90 percent of MP joint injuries involve the ulnar collateral ligament, often referred to as “gamekeepers thumb,” and that injuries to the radial collateral ligament are so uncommon that a general orthopedic surgeon, such as Dr. Casini, would not see many of those injuries.

{¶13} Upon review of the evidence presented at trial, the court finds that the surgeries performed by Dr. Skie complied with the relevant standard of care. Even if Dr. Skie had performed the open surgery that Dr. Casini believes was appropriate, the court is convinced that plaintiff's ultimate outcome would have been the same. Dr. Casini opined that plaintiff's infection was not caused by any deviation from the standard of care, but rather was a known risk of any orthopedic surgery. Dr. Casini did not criticize Dr. Skie's decision to remove the surgical pins after the infection developed and he agreed that no new ligament repair could be made until the infection was completely eradicated. Dr. Goitz explained that the surgical pins had to be removed before the ligaments had healed, making it likely that the joint would become chronically subluxed, causing damage to the cartilage in the joint.

{¶14} Regarding plaintiff's infection, as stated above, Dr. Casini opined that Dr. Skie's initial treatment of the infection was appropriate. Specifically, Dr. Casini agreed that oral antibiotics, Keflex and Bactrim, were appropriately prescribed prior to plaintiff's September 21, 2012 clinic visit. Dr. Casini's opinion that Dr. Skie failed to properly treat plaintiff's infection is based upon the x-ray that showed "lucency" in the bone near the joint which Dr. Casini believed was caused by an active infection in the bone. However, during the October 15, 2012 surgery, Dr. Skie found no clinical evidence of infection inside the joint and he noted that the joint cartilage was completely intact. Dr. Goitz testified credibly that the lack of purulence within the joint on October 15, 2012, shows that infection was not the cause of either the loss of cartilage surface or the arthritis that subsequently developed. Furthermore, the evidence showed that Dr. Skie treated plaintiff as if she actually had osteomyelitis and Dr. Casini admitted that on October 15, 2012, plaintiff's MP joint had no evidence of arthritis. Indeed, there is no question that the infection was eradicated without plaintiff having to undergo a procedure to debride the bone near the joint.

{¶15} The court finds that the greater weight of the evidence supports Dr. Goitz's opinion that the destruction of the cartilage which resulted in the need for fusion surgery was not the infection, but rather the chronic misalignment of the joint, which deteriorated the cartilage between September 21, 2012 and April 30, 2013, when the infection had cleared and the thumb joint was fused. Based upon the foregoing, the court finds that plaintiff has failed to prove by a preponderance of the evidence that Dr. Skie committed a breach of the standard of care either in performing the closed reduction and percutaneous pinning surgery or in treating the infection that developed as a result of the surgery. Accordingly, judgment is recommended in favor of defendant.

{¶16} *A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

ANDERSON M. RENICK
Magistrate

Case No. 2013-00469

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DECISION

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Filed July 9, 2015
Sent to S.C. Reporter 2/3/16