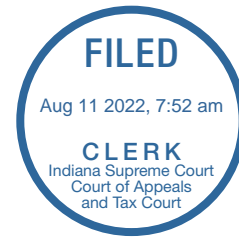


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jill W. Donaldson, M.D.,
Community Physicians of
Indiana, Inc., and Community
Health Network, Inc. d/b/a
Community Hospital North,
Appellants-Defendants,

v.

Myra Bishop, as personal
representative of the Estate of
Jacquelyn S. Grady, and on
behalf of Aaron Murray Stewart
and Javen Anthony Medaris,
minor children,
Appellees-Plaintiffs

August 11, 2022

Court of Appeals Case No.
22A-CT-368

Appeal from the Marion Superior
Court

The Honorable Jason G. Reyome,
Magistrate

Trial Court Cause No.
49D13-1806-CT-22264

Crone, Judge.

Statement of the Case

[1] Jill W. Donaldson, M.D., Community Physicians of Indiana, Inc., and Community Health Network, Inc. d/b/a Community Hospital North (collectively the Appellants) bring this interlocutory appeal from the trial court's denial of their motion for summary judgment on a medical malpractice claim filed by Myra Bishop, as personal representative of the estate of Jacquelyn S. Grady, and on behalf of Aaron Murray Stewart and Javen Anthony Medaris, minor children (collectively Bishop). We reverse.

Facts and Procedural History

[2] On June 23, 2016, forty-two-year-old Grady was admitted to Community Hospital North after a CT head scan performed in the emergency department revealed that Grady had a massive hydrocephalus. Upon admission, Grady's attending physician was Dr. Donaldson. Dr. Donaldson is a board-certified neurosurgeon who has been licensed to practice medicine in Indiana for more than twenty years. Dr. Donaldson discussed with Grady and her mother, Bishop, that Grady was going to require a ventriculoperitoneal shunt for treatment of her condition. Dr. Donaldson discussed the shunt procedure and

advised Grady and Bishop that the benefits of such procedure outweighed the risks. The procedure takes about one and one-half hours.

[3] On the morning of June 24, 2016, Grady felt quite a bit better and she wanted to go home. An MRI suggested that Grady had a Chiari 1 malformation, where the tonsils of her cerebellum extended below the foramen magnum, which is the opening of the skull. Grady advised that her symptoms had been present for three to six weeks and had been relatively stable. Dr. Donaldson suspected that Grady had hydrocephalus since birth or childhood. Dr. Donaldson was not comfortable sending Grady home and wanted her to stay in the hospital a few days for monitoring and then to return a week later for the shunt procedure. Dr. Donaldson did not believe that the surgery could wait a month or two, but she believed that waiting a week was reasonable in light of Grady's condition seeming "perfectly stable." Appellants' App. Vol. 2 at 163. Dr. Donaldson started Grady on the medication Diamox to slow the production of spinal fluid. On June 26, 2016, while still a patient at Community Hospital North, Grady died. The cause of her death was hydrocephalus.

[4] Bishop filed a proposed medical malpractice complaint with the Indiana Department of Insurance in May 2018, a complaint for damages in June 2018, and an amended complaint in September 2018. Specifically, Bishop alleged that Dr. Donaldson (individually) and the other Appellants (vicariously) failed to comply with the applicable standard of care and that such failure caused Grady's suffering and death. A medical review panel (the MRP) was formed, and on February 10, 2021, it unanimously found that the evidence did not

support a conclusion that the Appellants “failed to meet the applicable standard of care and the conduct complained of was not a factor of the resultant damages.” *Id.* at 66-68.

- [5] On April 16, 2021, the Appellants filed a motion for summary judgment and designation of evidence which included the opinion of the MRP. Following an extension of time and additional filings, Bishop filed a response to summary judgment and designation of evidence which included Dr. Donaldson’s own deposition testimony. A summary judgment hearing was held in August 2021. Following the hearing, on December 3, 2021, the trial court issued its order denying the Appellants’ motion for summary judgment. This interlocutory appeal ensued.

Discussion and Decision

- [6] The Appellants challenge the trial court’s denial of their motion for summary judgment. Our supreme court has explained,

When reviewing a summary judgment decision, our well-settled standard is the same as it is for the trial court: summary judgment is appropriate where the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. We construe all evidence in favor of and resolve all doubts as to the existence of a material issue in favor of the non-moving party.

Stafford v. Szymanowski, 31 N.E.3d 959, 961 (Ind. 2015) (citations and quotation marks omitted).

[7] Indiana’s “distinctive summary judgment standard imposes a heavy factual burden on the movant to demonstrate the absence of any genuine issue of material fact on at least one element of the claim.” *Siner v. Kindred Hosp. Ltd. P’ship*, 51 N.E.3d 1184, 1187 (Ind. 2016). “For a medical malpractice claim, those elements are ‘(1) that the physician owed a duty to the plaintiff; (2) that the physician breached that duty; and (3) that the breach proximately caused the plaintiff’s injuries.’” *Id.* (citation omitted). Generally, under our state’s summary judgment procedure, a nonmovant is not required to come forward with contrary evidence until the party seeking summary judgment demonstrates the absence of a genuine issue of material fact. *Stafford*, 31 N.E.3d at 961. However, in medical malpractice cases, a unanimous opinion of the medical review panel that the physician did not breach the applicable standard of care is ordinarily sufficient to establish prima facie evidence negating the existence of a genuine issue of material fact entitling the physician to summary judgment. *Id.* “Consequently, in such situations, the burden shifts to the plaintiff, who may rebut with expert medical testimony.” *Id.* Failure to provide expert testimony will usually subject the plaintiff’s medical malpractice claim to summary disposition. *Speaks v. Rao*, 117 N.E.3d 661, 667 (Ind. Ct. App. 2018).

[8] Here, by designating the unanimous opinion of the MRP that Dr. Donaldson did not breach the applicable standard of care, the Appellants met their initial burden of negating the existence of a genuine issue of material fact entitling them to summary judgment. Accordingly, the burden shifted to Bishop to

contravene the MRP's opinion with expert medical testimony.¹ In response, Bishop designated only Dr. Donaldson's own deposition testimony to create a genuine issue of material fact as to whether Dr. Donaldson's actions breached the appropriate standard of care.

[9] In her deposition, however, Dr. Donaldson offered no testimony which would indicate that she breached the applicable standard of care. Bishop baldly asserts that "Dr. Donaldson breached the standard of care by not performing the ventriculoperitoneal shunt procedure on [Grady] in a timely manner[.]" Appellees' Br. at 12. But without any expert testimony to support this assertion, Bishop has failed to meet her burden to rebut the MRP's opinion and create a genuine issue of material fact precluding summary judgment. Dr. Donaldson's deposition testimony makes no suggestion that her decision to schedule Grady's shunt procedure within one week was unreasonable under the circumstances or fell below the applicable standard of care for neurosurgeons. Consequently, the Appellants were entitled to summary judgment, and the trial court erred in denying their motion. *See Perry v. Driehorst*, 808 N.E.2d 765, 770 (Ind. Ct. App. 2004) (summary judgment for doctor was warranted where plaintiff designated portions of doctor's own deposition testimony which admitted that test done on

¹ Although a plaintiff is not required to present expert testimony in cases where deviation from the standard of care is a matter commonly known to lay persons, there is no allegation that the "common knowledge" exception would apply here. *See Speaks*, 117 N.E.3d at 670 (noting that common knowledge exception typically arises in instances where physicians leave foreign objects in patient's body and that exception has also been applied where physician used instrument near source of oxygen and fire occurred and where chiropractor broke patient's ribs during treatment for migraine headaches).

plaintiff was “suboptimal and flawed” but did not establish standard of care or that doctor’s conduct fell below standard of care), *trans. denied*.

[10] Therefore, we reverse the trial court’s denial of the Appellants’ summary judgment motion on Bishop’s medical malpractice claim.

[11] Reversed.

Vaidik, J., and Altice, J., concur.