

Circuit Court for Wicomico County
Case No. 22-C-16-000534

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1137

September Term, 2017

RONALD CECIL,

v.

MARK TREUTH, M.D., ET AL.

Nazarian,
Arthur,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: May 22, 2019

*This is an unreported opinion, and may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104

This appeal arises from a medical malpractice lawsuit filed in the Circuit Court for Wicomico County, Maryland. Appellant, Ronald Cecil, acting on his own behalf and as personal representative of the estate of his wife Elsie Cecil, filed a complaint¹ against appellees, Mark Treuth, M.D. and Delmarva Heart, LLC,² alleging appellees failed to timely suspect, investigate, and treat Elsie Cecil for mesenteric ischemia following surgery to repair an aortic insufficiency, and to perform artery bypass grafting. Appellant filed a Certificate of Qualified Expert from Carl W. Adams, M.D., who opined that appellees deviated from the standard of care by failing “to recognize postoperative intestinal ischemia, order appropriate studies, and to treat the presence of decreased cardiac function from a pericardial effusion, which resulted in further intestinal ischemia.” In response, appellees filed a Motion to Dismiss, alleging Dr. Adams did not meet the minimum requirements of Courts and Judicial Proceedings § 3-2A-02(c). Appellant answered, asserting that although Dr. Adams is not certified in the same specialty as appellees, he is certified in a related specialty as required by the statute. After a hearing on the motion, the court granted the Motion to Dismiss in a written opinion.

¹ The complaint named as defendants Ability Rehab Associates, P.A., Jeffrey Anderson, D.O., Christian Bounds, M.D., CV Surgical Associates, P.A., Delmarva Heart, LLC, Peninsula Regional Health Systems, Inc., Peninsula Regional Medical Center, Rehabilitation Hospital Corporation of America, LLC, James Todd, M.D., Mark Treuth, M.D. and Kurt Wehberg; M.D. The claims against all defendants except Mark Treuth, M.D., Delmarva Heart, LLC., Jeffery Anderson, D.O., and Ability Rehab Associates, LLC were dismissed throughout the course of litigation.

² It appears that Delmarva Heart, LLC was named as a party to this appeal as the alleged employer of Mark Treuth, M.D.

This timely appeal followed, and appellant presents the following question for our review:

1. Whether a cardiothoracic surgeon may testify about the standard of care required by a cardiologist with respect to general, postoperative medical care?

For reasons to follow, we affirm the judgment of the circuit court.

BACKGROUND

On August 24, 2011, Elsie Cecil underwent surgery to repair an ascending aortic aneurysm and to perform artery bypass of the right coronary artery. Following surgery, she was admitted to a rehabilitation facility until September 23, 2011, when she was discharged home. On October 12, 2011, Mrs. Cecil presented to Delmarva Heart, a cardiology practice, where she was seen and evaluated by Julie Sexton, certified nurse practitioner, for issues regarding her blood pressure management. Ms. Sexton determined that Mrs. Cecil's blood pressure was reasonably controlled during the visit and instructed her to follow up with Dr. Mark Treuth in approximately two weeks. During the office visit, Ms. Sexton did not note that Ms. Cecil was having complications with weight loss, nausea, or vomiting. On October 14, 2011, Mrs. Cecil was evaluated by Dr. Todd, the surgeon who performed her August 24th surgery. Dr. Todd indicated that Mrs. Cecil was recovering well from the surgery and did not note she was experiencing mesenteric ischemia, weight loss, or any significant complications from the surgery.

On October 24, 2011, Mrs. Cecil returned to Delmarva Heart for further evaluation by cardiologist Dr. Mark Treuth. During this visit, she complained of weight loss, nausea, and vomiting which she attributed to the medication she was taking. Dr. Treuth then

discontinued three of the medications she was taking and instructed her to follow-up in two weeks. On November 3, 2011, Mrs. Cecil presented to Atlantic General Hospital with shortness of breath. A CT scan discovered a large pericardial effusion. Mrs. Cecil was then transported from Atlantic General Hospital to Peninsula Regional Medical Center, where she remained hospitalized through November 5, 2011. On November 4, 2011, a pericardial window was performed on Mrs. Cecil to remove the pericardial effusion. The next day, Mrs. Cecil developed acute atrial fibrillation and became bradycardic. She was then intubated and transferred to the intensive care unit, where she was resuscitated.

On November 6, 2011, Mrs. Cecil was transported to Johns Hopkins Hospital, where she developed severe congestive heart failure and had abdominal surgery to determine if she was experiencing mesenteric ischemia. The surgery did not reveal evidence of mesenteric ischemia. Following surgery, Mrs. Cecil's health continued to decline, and she died that same day. An autopsy performed the following day determined that Mrs. Cecil died from sepsis syndrome of undetermined etiology and did not reveal evidence of mesenteric ischemia.

Appellant filed a medical malpractice claim with the Health Care Alternative Dispute Resolution Office, and a Certificate of Qualified Expert ("Certificate") from Carl W. Adams, M.D., a cardiothoracic surgeon. The Certificate states in pertinent part, that:

- Dr. Adams has been "the attending Consultant in Cardiovascular and Thoracic Surgery from St. Joseph Heart Institute. CHI System Hospital, Eureka, California since 2001."

- “the attending Cardiac, Vascular and Thoracic Surgeon, in Surgical Critical Care in Parkview and St. Mary Corwin Heart Institutes, Pueblo, Colorado from 2001-07.”
- “the Chief [of the] Department of Cardio thoracic and Vascular Surgery as well as the Chief and Surgical Director [of the] Surgical Intensive Care Unit at Tripler Army Medical Center, Honolulu Hawaii from 1989-93”;
and
- within the five years of Mrs. Cecil’s postoperative treatment, Dr. Adams had “clinical experience, [and] provided consultation relating to clinical practice, and/or taught medicine in the Defendants’ specialties or related fields of health care.”

The Certificate was accompanied by a report (“Report”) written by Dr. Adams, in which he attested appellees deviated from the standard of care by failing “to recognize postoperative intestinal ischemia, order appropriate studies, and to treat the presence of decreased cardiac function from a pericardial effusion, which resulted in further intestinal ischemia.” The parties elected to waive arbitration and appellant then filed a complaint in the Circuit Court for Wicomico County. During a deposition, Dr. Adams stated that Mrs. Cecil was experiencing mesenteric ischemia immediately after her August 24th surgery. Dr. Adams further attested that weight loss, nausea, and vomiting Ms. Cecil experienced were all symptoms of mesenteric ischemia and that her death was a result of the untimely diagnosis and treatment.

On May 10, 2017, appellees filed a Motion to Dismiss, alleging Dr. Adams did not meet the minimum requirements of Courts and Judicial Proceedings § 3-2A-02(c). In response, appellant asserted that although Dr. Adams is not certified in the same specialty as appellees, he is certified in a related specialty as required by CJP § 3-2A-02(c). After a hearing on the motion, the court granted the motion to dismiss in a written opinion, stating:

[t]he court finds that the [appellant's] certificate of qualified expert fails to meet the statutory qualifications to provide evidence of overlap of knowledge of treatment or procedures in the fields practiced by Dr. Carl Adams and the Defendants or the Defendants' agents, as they relate to the decedent.

This timely appeal followed.

DISCUSSION

I. The court did not err in determining appellant's Certificate of Qualified Expert failed to meet the statutory requirements of CJP § 3-2A-02(c), and thereby properly granted the Motion to Dismiss.

The appeal before us arises from appellant's medical malpractice claim governed by the Maryland Health Care Malpractice Act, CJP § 3-2A-01 et seq. Appellant contends appellees deviated from the standard of care by failing to timely suspect and treat Mrs. Cecil for mesenteric ischemia following heart surgery. Since appellant claims the care appellees' provided Mrs. Cecil was not in accordance with the standards of practice among members of the same health care profession with similar training and experience, appellant was required to file a Certificate of Qualified Expert within 90 days from the date of his claim. CJP § 3-2A-04(b)(1). The Certificate of Qualified Expert is proper if it meets the requirements set forth in CJP § 3-2A-02(c), specifically, subparagraph 3-2A-02(c)(2)(ii) provides:

1. In addition to any other qualifications, a health care provider who attests in a certificate of a qualified expert or testifies in relation to a proceeding before a panel or court concerning a defendant's compliance with or departure from standards of care:
 - A. Shall have had clinical experience, provided consultation relating to clinical practice, or taught medicine *in the defendant's specialty or a related field of health care*, or in the field of health care in which the defendant provided care or treatment to the plaintiff, within 5 years of the date of the alleged act or omission giving rise to the cause of action; and
 - B. Except as provided in subsubparagraph 2 of this subparagraph, if the defendant is board certified in a specialty, shall be board certified *in the same or a related specialty as the defendant*.
2. Subsubparagraph 1B of this subparagraph does not apply if:
 - A. The defendant was providing care or treatment to the plaintiff unrelated to the area in which the defendant is board certified; or
 - B. The health care provider taught medicine *in the defendant's specialty or a related field of health care*.

(emphasis added).

Whether a Certificate of Qualified Expert is satisfactory under CJP § 3-2A-02(c) “is a determination to be made as a matter of law.” *Carroll v. Konits*, 400 Md. 167, 180 n. 11 (2007). “[D]ismissal is only appropriate if, after assuming the truth of the assertions in the Certificate and report, and all permissible inferences emanating therefrom, the requirements set forth in the [statute] are not satisfied.” *Id.* Similarly, a question of statutory interpretation is an issue we review as a matter of law. *Univ. of Md. Med. Sys. Corp. v. Waldt*, 411 Md. 207, 222 (2009). “[W]here an order involves an interpretation and application of Maryland constitutional, statutory or case law, our Court must determine

whether the trial court's conclusions are 'legally correct' under a *de novo* standard of review. *Schisler v. State*, 394 Md. 519, 535 (2006).

Appellant asserts that the dispute before us is “whether Dr. Adams is board-certified in a related specialty, and whether he has clinical experience in a related specialty.” Conversely, appellees contend the record “contains no evidence that could support a conclusion that ‘an overlap of knowledge of treatment or procedure among those experienced’ in the fields of cardiovascular surgery and cardiology related to the care at issue in this case exists.”

It is well established “that it is not necessary for a certifying or testifying expert witness in a medical malpractice case to be the same kind of health care provider as the defendant.” *Hinebaugh v. Garrett County Memorial Hosp.*, 207 Md. App 1, 20 (2012). To submit a valid Certificate of Qualified Expert, “an expert need only satisfy certain professional qualifications in ‘*the same or a related specialty* [or field].” *Nance v. Gordon*, 210 Md. App. 26, 32 (2013) (quoting CJP § 3-2A-02(c)(2)(ii)) (emphasis in original).

In *Demuth v. Strong*, a patient presented to defendant, a board certified orthopedic surgeon, complaining of knee pains. 205 Md. App. 521, 525 (2012). On February 14, 2008, the defendant performed a total knee replacement surgery on the patient’s left knee. *Id.* at 526. Immediately after the surgery, the patient complained of tingling and numbness in his left foot. *Id.* After conducting a postoperative examination, the defendant diagnosed the patient's condition as neuropraxia. *Id.* The following day, the patient was examined, and it was discovered he was unable to move or bend the toes on his left foot. After a

review of the patient’s notes, the defendant again diagnosed the patient’s condition as neuropraxia. *Id.* at 526–27. The patient’s condition worsened, and his left leg was amputated above the knee. *Id.* at 529. The patient filed a suit against the defendant for medical malpractice. *DeMuth*, 205 Md. App. 521, 529. At trial, the patient called a vascular surgeon as an expert to testify that the defendant, as an orthopedic surgeon, breached the standard of care following the knee surgery. *Id.* at 529–31. The trial court allowed the vascular surgeon’s testimony, during which he explained how the specialties were related regarding the postoperative care for orthopedic patients. *Id.* at 532.

In affirming on appeal, this Court interpreted the meaning of the word “related” as intended under CJP § 3-2A-02(c)(2), stating:

the word “related” in the sense of associated or connected, as used to modify “field of health care” and board certification “specialty” in subparagraphs 1A and 1B, respectively, embraces fields of health care and board certification specialties that, in the context of the treatment or procedure in a given case, overlap.

Id. at 544. Based on this understanding of “related,” we determined that a board certified vascular surgeon was qualified to testify about the standard of care applicable to a board certified orthopedic surgeon since the treatment at issue—“the proper postoperative diagnosis and treatment of possible vascular complications of orthopedic surgery—implicated the ‘overlap’ between the specialties of vascular and orthopedic surgery.” *Id.* at 546.

Applying *DeMuth* in a subsequent opinion, *Hinebaugh v. Garrett County Memorial Hosp.*, we reiterated the meaning of “related specialty.” In *Hinebaugh*, the patient sustained injuries to his left cheek and jaw after being hit in the face while incarcerated.

207 Md. App 1, 6 (2012). The patient was examined by defendants, a family medicine physician, and radiologist. *Id.* After evaluating x-rays, defendants concluded there were no abnormalities of the patient’s facial bones. *Id.* The patient brought a medical malpractice suit against defendants, alleging defendants breached the standard of care by failing to perform a timely CT scan on his face. *Id.* at 7. The patient then filed a Certificate of Qualified Expert, identifying a dentist, who specialized in oral and maxillofacial surgery (OMS), as his expert witness. *Id.* at 7–8.

In deciding whether OMS was a related specialty to family medicine and radiology, this Court stated:

a “related specialty” for purposes of the board certification requirement in CJP section 3-2A-02(c)(2)(ii) 1B, is one in which, as pertinent to the treatment or procedure at issue, there is an overlap between the specialties in the rendering of treatment or the performance of procedures, such that there also is an overlap of knowledge of the treatments and procedures among those health care providers certified in either specialty.

Id. at 20. Applying *DeMuth*, we determined that OMS was not a related specialty with respect to the treatment at issue because “the areas of knowledge and experience of board certified family medicine and radiology doctors do not overlap the areas of knowledge and experience of board certified OMS dentist.” *Hinebaugh*, 207 Md. App 1, 26. Specifically, this Court noted that the expert’s Certificate and report, and affidavit failed to establish any such relatedness or overlap between the specialties. *Id.* at 25–29.

Demuth and *Hinebaugh* make clear that in addressing the issue of whether a doctor is board certified in a related specialty as another doctor, rendering him/her knowledgeable and competent to testify as to the prevailing standard of care, we must discern whether

there is an overlap between the specialties in the treatment provided or in the performance of procedures at issue. Thus, in the present case, to determine whether Dr. Adams is board certified in a “related specialty” as Dr. Treuth, we must determine if there is an overlap in the treatment provided by a cardiovascular surgeon and a cardiologist with respect to the postoperative care provided to patients who complain of weight loss, vomiting, and nausea several months after undergoing surgery to repair an ascending aortic aneurysm and a coronary artery bypass of the right coronary artery.

Dr. Adams opined that Dr. Treuth performed below the standard of care, but he failed to attest, in his Certificate and Report or deposition, that the standard of care for a cardiologist overlaps that of a cardiovascular surgeon. Nor did he attest to any experience in the field of cardiology at issue in this case or to any experience as a cardiologist postoperatively treating a patient presenting with Mrs. Cecil’s condition. Further, Dr. Adams failed to establish any overlap in the areas of knowledge of treatment or procedures among cardiologist and cardiovascular surgeons with regard to Mrs. Cecil’s postoperative condition.

Dr. Treuth attested in his affidavit that he is not a cardiovascular or thoracic surgeon, he does not practice surgery, nor is he trained in these specialized surgical fields. He stated that “the training for these surgical specialties is different from the training [he] received in cardiology and internal medicine.” He maintained that he did not participate in the surgery performed on Mrs. Cecil and that she did not present to the office of Delmarva Heart until more than a month and a half after her surgery for “issues regarding her blood

pressure management.” He further attested, that approximately two weeks later he saw Mrs. Cecil for a follow-up visit, where she reported having nausea, vomiting, and weight loss since her surgery, which she attributed to her medications. As a result, he discontinued several of her medications. Dr. Treuth maintained that “mesenteric ischemia following cardiovascular surgery is not a surgical complication or medical condition seen and treated by cardiologists.”

Here, the circuit court judge precisely addressed this issue asking appellant’s counsel, “where do we get the overlap, where do I get from this that that would have been within the training of a cardiologist?” The court noted further that it did not “remember Dr. Adams really going into why it would be within the overlapping area of a cardiologist, not a surgeon, to know of the surgical complications [to] then elevate his examination . . . to rule out the ischemia in the bowel.” Appellant’s counsel responded that Dr. Adams essentially stated in the Report that “this is not a complex, you know, cardiothoracic thing, this is not a complex cardiologist thing. This is simply, you know if, you’re a physician and you’ve been through medical school, these are the types of things that you should know about.” Appellant’s counsel stated, “Dr. Adams is saying . . . this is basically, you know, it’s a what I learned from medical school sort of thing, this wasn’t what I learned for my cardiothoracic specialty or what you learned in your cardiologist specialty, this is just basic medicine.”

Dr. Treuth’s counsel disagreed, stating Dr. Adams’ Certificate and Report did not support this position and that, even if it did, this perspective would undermine the purpose

of the related specialty provision. After considering argument by both counsel, the court found that the Certificate “fail[ed] to meet the statutory qualifications to provide evidence of overlap of knowledge of treatment or procedures in the fields practiced by Dr. Carl Adams” and Dr. Treuth as they related to Mrs. Cecil.

Based on this record, we cannot conclude that a cardiovascular surgeon and a cardiologist are in “related specialties” for purposes of the treatment at issue in this case. As the circuit court noted, appellant failed to point to any evidence to establish an overlap in knowledge of treatment or performance procedures. Given the absence of such evidence, we cannot reach the issue of whether the specialties are in fact related. The court properly determined appellant’s Certificate of Qualified Expert failed to meet the statutory requirements.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**