Rel: June 30, 2021

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2020-2021

1190706

Yshekia Vernice Fletcher

v.

Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital

Appeal from Madison Circuit Court
(CV-18-901686)

STEWART, Justice.

Yshekia Vernice Fletcher appeals from a summary judgment entered by the Madison Circuit Court ("the trial court") in favor of the Health Care Authority of the City of Huntsville d/b/a Huntsville Hospital ("the

Authority") on Fletcher's claims asserted in her medical-malpractice action. For the reasons discussed below, we affirm the judgment.

Facts and Procedural History

The facts are largely undisputed. On September 7, 2016, Fletcher was admitted to Huntsville Hospital ("the hospital") to undergo a laparoscopic tubal-ligation surgery. Before the surgery, Fletcher's doctor, Dr. Leon Lewis, explained to Fletcher that he might have issues performing the surgery because of her obesity. Dr. Lewis testified to the following:

> "Once in the operating room, Ms. Fletcher was positioned on the operating table by nursing staff. During the procedure, [Fletcher] was placed in a Trendelenburg position which refers to the position that lowers the head of the patient by manipulating the angle of the operating table. While in Trendelenburg, Ms. Fletcher began to slip downward off the operating table. Nursing staff caught Ms. Fletcher's body and gently placed her on the operating room floor, where I removed the trocars and closed the incisions. After I completed the procedure, Ms. Fletcher underwent a CT scan of her head, neck, and hip, which were normal. She was admitted overnight and discharged the following day."

Fletcher complained of hip pain after the incident. She was evaluated by an orthopedic surgeon, who noted that she had a contusion and that she

had had right-hip surgery as a child. Fletcher was admitted to the hospital overnight and discharged the following day with a walker.

Fletcher commenced an action against the Authority[1] under the Alabama Medical Liability Act of 1987 ("the 1987 AMLA"), § 6-5-540 et seq., Ala. Code 1975.[2] The Authority filed a motion for a summary judgment, to which it attached the affidavit and deposition of testimony of Robin Martin, the "circulator nurse" for the surgery, and Melissa Wendell, the certified registered nurse anesthetist ("CRNA") for the surgery. The Authority argued that Fletcher had failed to present expert medical testimony proving the standard of care, a breach of that standard, or proximate causation.

---

[1]Fletcher also named as defendants Dr. Lewis; Michael W. Hoger, the anesthesiologist for her surgery; Comprehensive Anesthesia Services, P.C.; and Melissa Wendell, the certified registered nurse anesthetist for her surgery, and she asserted causes of actions against fictitiously named defendants. The trial court entered separate summary judgments in favor of each of the defendants, but Fletcher appeals only the summary judgment entered in favor of the Authority.

[2]The 1987 AMLA is "intended to supplement" the original Alabama Medical Liability Act, which was enacted in 1975 and is codified at § 6-5-480 et seq., Ala. Code 1975. § 6-5-541, Ala. Code 1975.

Fletcher filed a response in opposition to the Authority's summary-judgment motion to which she attached, among other evidence, Dr. Lewis's operative notes and excerpts from the deposition testimony of Martin and Wendell. In her response, Fletcher argued that she was not required to present expert medical testimony because, she said, the incident was foreseeable, the equipment was under control of hospital staff, and the equipment was misused.

The following is a summary of the evidence submitted in support of and in opposition to the summary-judgment. Martin testified, among other things, that she had been employed at the hospital as a circulator nurse since 1998 and that she was the circulator nurse for Fletcher's surgery. Martin testified that, as a circulator nurse, she prepares and positions the patient for surgery and monitors the safety of the patient but is not involved in the surgery. Martin acknowledged that each surgeon determines the specific patient position and equipment needed for the procedure. Martin testified that a document called a "pick ticket" accompanies each surgery and contains a plethora of information,

including how the surgeon wants the patient to be positioned and what equipment should be used.

Martin testified as follows regarding the incident. Fletcher was brought to the operating room while conscious, and she moved, with assistance, to the operating table. That table was padded and covered with a sheet. An additional sheet, called a draw sheet, was placed under Fletcher to help the nursing staff move her after she was under anesthesia. Wendell, the CRNA, administered the anesthesia medications. After Fletcher became unconscious, the nursing staff slid Fletcher to the foot of the operating table, and her legs were placed in stirrups so that she was in a lithotomy position. The stirrups are actually boots that have Velcro straps that go over the foot and the lower leg and attach to the boot. Fletcher's arms were secured to arm boards with Velcro straps. According to Martin, Dr. Lewis was having difficulty visualizing organs during the surgery, and, as the circulator nurse, she left the operating room three or four times to obtain additional equipment requested by Dr. Lewis. Martin was not in the operating room when Fletcher began her descent to the floor. When Martin reentered the room, Fletcher had

already begun sliding down the operating table, and Martin was asked to summon additional staff to assist.

Martin testified that the Trendelenburg position is often used in laparoscopic tubal-ligation surgeries and that there are different degrees of tilt that are used within Trendelenburg positioning. According to Martin, the CRNA is responsible for increasing and decreasing the angle according to the surgeon's preference. In addition, Martin said, the surgeon often has to lean against the patient's body during the surgery. Martin acknowledged that if a patient is in a "deep" Trendelenburg position, the staff watches to make sure the patient does not slide. Martin testified that patients of Fletcher's size often undergo surgery and experience no difficulties. Martin testified that she was not aware of any other situation in which a patient had slid down an operating table.

Wendell testified as follows in her affidavit:

> "On September 7,2016, I provided services as a CRNA on patient Yshekia Fletcher's laparoscopic tubal ligation at Huntsville Hospital. Dr. Leon Lewis was the surgeon who performed this surgery. Prior to the beginning of the procedure, the nursing staff placed Ms. Fletcher in the lithotomy position pursuant to Dr. Lewis's preference. [Fletcher] was secured to the operating room table with leg

> stirrups that contained Velcro straps. After the procedure began, Dr. Lewis called for the table to be placed in Trendelenburg position, and I utilized the operating room table's remote control to place [Fletcher] in Trendelenburg. As surgery progressed, Dr. Lewis called for steeper Trendelenburg. When [Fletcher] was in steep Trendelenburg with her head a few inches off the floor, her head began to slide down the table. Nursing staff and myself reacted to stabilize [Fletcher's] head while I made sure [Fletcher] remained intubated. Ms. Fletcher was then gently placed on the floor by the staff in the room and Dr. Lewis removed trocars from the surgical site and closed the incision."

Wendell testified in her deposition that Fletcher's head was approximately four inches from the floor while Fletcher was positioned in deep, or steep, Trendelenburg position. Wendell testified that Fletcher's legs came out of the stirrups and that she "assume[d] the Velcro straps gave way" because Fletcher's legs were out of the stirrups, but Wendell did not see the Velcro straps or how far Fletcher's legs were out of the stirrups. Wendell testified that she had never seen a patient come out of the stirrups.

On April 25, 2020, the trial court entered a summary judgment in favor of the Authority, apparently determining that Fletcher had failed to present the requisite evidence from a qualified medical expert, see Lyons v. Walker Regional Medical Center, 791 So. 2d 937, 942 (Ala. 2000), and

that her case did not fall within the limited "common-knowledge" exception to that requirement. See Jones v. Bradford, 623 So. 2d 1112, 1114-15 (Ala. 1993). Fletcher filed a notice of appeal on June 4, 2020.

Standard of Review

> "This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899 So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12. '[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved.' West v. Founders Life Assur. Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

Fletcher brought her action under the 1987 AMLA. Section 6-5-548(a), Ala. Code 1975, a part of the 1987 AMLA, requires a plaintiff in a medical-malpractice case to prove "by substantial evidence that the health care provider failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case." This Court has explained that, in satisfying the substantial-evidence burden, a plaintiff

> "ordinarily must present expert testimony from a 'similarly situated health-care provider' as to (1) 'the appropriate standard of care,' (2) a 'deviation from that standard [of care],' and (3) 'a proximate causal connection between the [defendant's] act or omission constituting the breach and the injury sustained by the plaintiff.' Pruitt v. Zeiger, 590 So. 2d 236, 238 (Ala. 1991) (quoting Bradford v. McGee, 534 So. 2d 1076, 1079 (Ala. 1988)). The reason for the rule that proximate causation must be established through expert testimony is that the issue of causation in a medical-malpractice case is ordinarily 'beyond "the ken of the average layman." ' Golden v. Stein, 670 So. 2d 904, 907 (Ala. 1995), quoting Charles W. Gamble, McElroy's Alabama Evidence, § 127.01(5)(c), p. 333 (4th ed. 1991). The plaintiff must prove through expert testimony 'that the alleged negligence "probably caused the injury." ' McAfee v. Baptist Med. Ctr., 641 So. 2d 265, 267 (Ala. 1994)."

Lyons, 791 So. 2d at 942. "An exception to [the expert-medical-testimony] rule exists where the lack of care is so apparent as to be within the ken of the average layman." Jones, 623 So. 2d at 1114-15.

Fletcher's sole argument on appeal is that the trial court erred in determining that she was required to present expert medical testimony to demonstrate a violation of the standard of care to support her action against the Authority. Fletcher relies on Ex parte HealthSouth Corp., 851 So. 2d 33 (Ala. 2002),[3] in arguing that her situation falls within the

---

[3]Fletcher also relies on cases from other states in arguing that those states have codified the application of the doctrine of res ipsa loquitor in medical negligence cases. See Sisson ex rel. Allen v. Elkins, 801 P.2d 722 (Okla. 1990); Thomas v. New York Univ. Med. Ctr., 283 A.D.2d 316, 317, 725 N.Y.S.2d 35, 36 (2001). Fletcher does not explain why this Court should adopt the reasoning from those cases, nor does she explain why the law as it stands in Alabama is insufficient. Instead, Fletcher argues that her situation falls under an exception already recognized in Alabama law. In addition, this Court has explained that

> "whether a plaintiff in a malpractice suit be relieved of presenting expert medical testimony after producing evidence demonstrating lack of due care apparent as a matter of common knowledge, the result is the same whether it be reached by application of res ipsa loquitur, or by casting the burden upon the physician of going forward with his defense. We see no need to falter over phraseology."

Parrish v. Spink, 284 Ala. 263, 267, 224 So. 2d 621, 624 (1969).

common-knowledge exception. In HealthSouth, a patient who had returned to a room following back surgery and was under orders to not get out of the bed called nursing staff for assistance but was ignored for 30 minutes to an hour. The patient got out of bed to use the restroom and fell and broke her hip. This Court held that the patient was not required to present expert medical testimony. In so holding, this Court reformulated the exceptions to the expert-medical-testimony rule

> "to recognize first, a class of cases ' " where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it," ' [Tuscaloosa Orthopedic Appliance Co. v.] Wyatt, 460 So. 2d [156] at 161 [(Ala. 1984)](quoting Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)), such as when a sponge is left in, where, for example, the wrong leg is operated on, or, as here, where a call for assistance is completely ignored for an unreasonable period of time. A second exception to the rule requiring expert testimony applies when a plaintiff relies on ' " ' a recognized standard or authoritative medical text or treatise,' " ' Anderson [v. Alabama Reference Lab'ys, 778 So. 2d [806] at 811 [(Ala. 2000)], or is himself or herself a qualified medical expert."

Id. at 39. The HealthSouth reformulation was later clarified in Collins v. Herring Chiropractic Center, LLC, 237 So. 3d 867, 871 (Ala. 2017):

> "The Court's reformulation of categories in HealthSouth essentially clarifies the exceptions to the general rule

> requiring expert testimony in medical-malpractice actions by emphasizing in the first exception as reformulated that there are situations where the lack of skill is so apparent as to be understood by a layperson, thereby requiring only common knowledge and experience to understand it, and that further the list of examples of such situations was not exhaustive but merely set out examples of possible situations. In the second exception as reformulated, the Court simply combines the use of an authoritative treatise and the plaintiff's own testimony as a medical expert as the second exception to the general rule."

The Authority argues that the standard of care for restraining a surgical patient who may be placed in the deep Trendelenburg position during the surgery is not a matter of common knowledge and that this is not a case in which a lack of skill or care is so apparent that expert testimony is unnecessary. The Authority relies, in part, on Tuck v. Health Care Authority of Huntsville, 851 So. 2d 498, 506 (Ala. 2002), an opinion that was released the same day as HealthSouth and in which this Court determined that the exceptions outlined in HealthSouth did not apply. In Tuck, we explained that whether nurses breached the standard of care regarding the use of belt restraints to keep a patient in a hospital bed was not an issue within the knowledge of a layperson.

Fletcher did not present evidence regarding the standard of care required for restraining patients with the use of Velcro straps, or otherwise, in the particular circumstances of this case. Moreover, Fletcher did not present any evidence, let alone substantial evidence, indicating that the standard of care had been breached or that any such breach had proximately caused her injuries. See Lyons, 791 So. 2d at 942.

Fletcher asserts that the general public has knowledge regarding the use of Velcro straps. Fletcher, however, did not present any evidence indicating that the straps were not properly fastened. Fletcher merely argues that "[t]he evidence strongly suggests the stirrups could not have been adequately strapped" and that "the only logical and physically sensible explanation for Ms. Fletcher's movement on the operating table in such an unexpected fashion is that the boot stirrups were not properly strapped." Fletcher's brief at pp. 36 & 38. In this case, there are numerous possible explanations for how the incident occurred, and, therefore, this case is precisely the type of case in which expert medical testimony from a similarly situated health-care provider is necessary to establish the applicable standard of care, a deviation from that standard, and

proximate causation linking the defendant's actions to the plaintiff's injury. Lyons, 791 So. 2d at 942. Accordingly, the trial court correctly entered a summary judgment in favor of the Authority based on Fletcher's failure to present expert medical testimony.

Conclusion

The trial court's summary judgment is affirmed.

AFFIRMED.

Parker, C.J., and Bolin, Wise, and Sellers, JJ., concur.