

IN THE COURT OF COMMON PLEAS OF MERCER
COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

No. 2002 - 192

SHARON L. CARROLL, as Guardian of
MATTHEW J. CARROLL, and in her own
right as an individual, Plaintiff

v.

SHARON REGIONAL HEALTH
SYSTEM, GULAMHUSAIN MOONDA,
M.D., RAVINDRA SACHDEVA, M.D.,
HERMITAGE SURGICAL
ASSOCIATES, INC., HERMITAGE
PEDIATRICS, LAWRENCE A.
SHAFFER, M.D. and CHERYL DUFFY,
M.D., Defendants

SYLLABUS

MCARE Act: Expert qualifications to testify -

A pediatric urologist is qualified under MCARE Act 40 P.S. § 1303.512 to offer an opinion as to the standard of care to be followed by a surgeon as to diagnosing undescended testicles when performing repair of an inguinal hernia on a minor.

APPEARANCES

For the Plaintiffs:

Daniel I. Herman, Esquire
GREER AND HERMAN, P.C.
2100 Wilmington Road
New Castle, PA 16105

For Defendant Ravindra
K. Sachdeva, M.D.:

Deborah A. Kane, Esquire
WEBER, GALLAGHER, SIMPSON,
STAPLETON, FIRES & NEWBY, LLP
2 Gateway Center, Suite 1450
Pittsburgh, PA 15222

OPINION

FORNELLI, P.J.

This matter comes before the Court on a Motion for Summary Judgment by defendant, Dr. Ravindra Sachdeva, alleging that plaintiffs' expert, a pediatric urologist, is not qualified to render an opinion as to defendant's professional negligence under the MCARE Act, 40 P.S. § 1303.512. Defendant asserts that if plaintiffs' expert is not qualified to testify, plaintiffs cannot make out a case of negligence against Dr. Sachdeva and summary judgment should be granted to him. Plaintiffs' allegation of professional negligence against defendant Sachdeva is that while performing the repair of an inguinal hernia, he failed to diagnosis the existence of undescended

testicles in the minor plaintiff.

In considering a summary judgment, the court must view the record in a light most favorable to the non-moving party and all doubts as to existence of a genuine issue of material fact must be resolved against the moving party. Toy v. Metropolitan Life Insurance Company, 928 A.2d 186, 195 (Pa. 2007). Summary judgment may only be granted in cases that are clear and free from doubt. The moving party has the burden of proving the non-existence of any genuine issue of material fact. Rieger v. Altoona Area School District, 768 A.2d 912, 914-15 (Pa. 2001).

Plaintiffs' expert doctor is a board certified pediatric urologist. All parties agree that urologists, as a matter of course, perform surgery and that plaintiffs' expert is, in fact, a surgeon.

An issue regarding medical expert's qualifications under the MCARE Act is, in essence, a question of statutory interpretation. Smith v. Paoli Memorial Hospital, 885 A.2d 1012, 1016-17 (Pa. Super. 2005). 40 P.S. §1303.512 sets forth the qualifications necessary under the Act to render an opinion as to professional negligence. To render such an opinion, the expert must possess sufficient education, training, knowledge and experience to provide credible, competent testimony. The expert further must possess an unrestricted physician license to practice medicine in any state and be engaged in or retired within the previous five years from active clinical practice or teaching. It is agreed that plaintiffs' expert meets these qualifications.

The Act further requires in §1303.512(c) that an expert testifying as to a physician's standard of care must also be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged negligences; and practice in the same subspecialty as a defendant or in a subspecialty which has a substantially similar standard of care for the specific care at issue. Moreover, plaintiff's expert must also be certified by the same or similar approved board as defendant if defendant is, in fact, so certified.

Subsection (e) of 40 P.S. §1303.512 further provides a court may waive the same speciality and board certification requirements for an expert testifying as to a standard of care if the court determines the expert possesses sufficient training, experience and knowledge to provide testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within five previous years.

Plaintiffs' expert is a pediatric urologist and is a surgeon. In fact, he is an expert in surgery involving inguinal hernias and undescended testicles. Plaintiffs' specialist is also a Fellow in the American College of Surgeons and belongs to the American College of Surgery. He is a Professor of Urology in pediatrics at Case Western Reserve University of Medicine and Vice-Chairman of the Department of Urology. He teaches at three hospitals and, in fact, teaches pediatric urology surgical procedures to residents. Plaintiffs' expert also specifically teaches and does surgeries with regard to undescended testicles. The Court further notes that urology is an acknowledged surgical subspecialty.

Plaintiffs' expert's training and experience as a pediatric physician, as a Fellow of the American College of Surgeons, his teaching experience in the field of pediatric urology and surgery, and his many publications all render him competent under the MCARE Act to render an opinion in this case. While it is true that plaintiffs' expert is not a board certified surgeon, it is clear that he would qualify under MCARE as a member of a similarly approved board as well as under the exception of subsection (e) of 40 P.S. 1303.512. (Otherwise adequate training, experience and knowledge.)

Accordingly, the Court concludes that plaintiffs' expert may testify as to the standard for diagnosis of undescended testicles during inguinal hernia repair.

Hence, the following Order:

ORDER

AND NOW, January 15, 2008, plaintiffs' Motion for Summary Judgment is DENIED.

BY THE COURT:

/s/ FRANCIS J. FORNELLI, PRESIDENT JUDGE