

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 0269

AMBER KNIGHT INDIVIDUALLY, AND AS NATURAL TUTRIX OF
ANGELA KNIGHT

VERSUS

JOHNNY SWIGER, M.D.

Judgment Rendered: SEP 14 2011

APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 2009-11608

THE HONORABLE WILLIAM J. CRAIN, JUDGE

Robert L. Marrero
New Orleans, Louisiana

Attorney for Plaintiff/Appellant
Amber Knight Individually, and
As Natural Tutrix of Angela Knight

Stephen M. Pizzo
Kelly A. Dugas
Metairie, Louisiana

Attorneys for Defendant/Appellee
Johnny Swiger, M.D.

BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

McDONALD, J.

This is an appeal of a summary judgment dismissing a medical malpractice suit. The plaintiff, Amber Knight, became a patient of Dr. Johnny Swiger, an obstetrician-gynecologist during her pregnancy in late 2005. Ms. Knight had an extensive and complicated medical history and had suffered three miscarriages prior to this pregnancy.

On June 11, 2006, Dr. Swiger performed a Caesarean section on Ms. Knight and delivered a baby girl (Angela Knight). It was later determined that Angela Knight suffered from non-immune hydrops fetalis, a severe medical condition characterized by birth defects, chromosomal abnormalities, and liver disease.

On May 8, 2007, Ms. Knight filed a request for a medical review panel, asserting that Dr. Swiger and Lakeview Regional Medical Center provided substandard care to her that caused or significantly contributed to her daughter's medical condition. A medical review panel was appointed, and on January 22, 2009, the medical review panel issued its opinion, finding that "[t]he evidence does not support the conclusion that the defendants, DR. JOHNNY SWIGER AND LAKEVIEW REGIONAL MEDICAL CENTER, failed to meet the applicable standard of care as charged in the complaint."

Ms. Knight filed a medical malpractice petition against Dr. Swiger on March 20, 2009, which was amended on June 17, 2009. Dr. Swiger filed an answer on July 13, 2009. Dr. Swiger filed a motion for summary judgment on April 23, 2010, asserting that Ms. Knight had not retained an expert to establish an essential element of her cause of action, i.e., that Dr. Swiger's care and treatment of Ms. Knight fell below the applicable standard of care, and thus she could not carry her burden of proof at trial, warranting summary judgment.

Ms. Knight filed an opposition to the motion for summary judgment, asserting that while expert testimony is generally required to establish the

applicable standard of care and the breach thereof, this was a case of clear negligence that did not require an expert witness. Ms. Knight further argued that the motion for summary judgment should be denied because discovery had not been completed. After a hearing, the district court granted the motion for summary judgment, dismissing the suit with prejudice. Ms. Knight appealed that judgment.

Summary judgments are reviewed on appeal *de novo*. An appellate court thus asks the same questions as does the trial court in determining whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512, p.6 (La. 7/5/94), 639 So.2d 730, 750.

Louisiana Revised Statutes 9:2794 sets forth the elements that a plaintiff must prove to succeed in a medical malpractice claim against a physician. In summary, the plaintiff must prove, by a preponderance of the evidence: (1) the standard of care applicable to the physician; (2) a violation of that standard of care by the physician; and (3) a causal connection between the physician's alleged negligence and the claimed injuries. See Pfiffner v. Correa, 94-0924, 94-0963, 94-0992, p. 8 (La. 10/17/94), 643 So.2d 1228, 1233. Where the defendant physician practices in a particular specialty and the alleged acts of medical negligence raise issues peculiar to the particular medical specialty involved, then the plaintiff has the burden of proving the degree of care ordinarily practiced by physicians within the involved medical specialty. **Lieux v. Mitchell**, 06-0382, p. 10 (La. App. 1st Cir. 12/28/06), 951 So.2d 307, 314, writ denied, 07-0905 (La. 6/15/07), 958 So.2d 1199.

An expert witness is generally necessary as a matter of law to meet the burden of proof in a medical malpractice action. This general requirement is especially apt when the defendant has filed a motion for summary judgment supported by expert opinion evidence that the treatment met the applicable standard of care. **Lieux**, at p. 11, 951 So.2d at 314-315.

Ms. Knight asserts that it is patently obvious that this is a case where an unnecessary delay in treatment constituted medical malpractice. After thorough review of the record, we conclude that the circumstances of this case do not fall within the category of exceptions to the general rule requiring expert medical testimony to establish the particular medical standard of care and breach of that standard of care. There is no evidence in the record that Dr. Swiger violated any standard of care applicable to obstetrician-gynecologists, or that any negligent act or omission on his part caused or contributed to Angela Knight's medical condition. To the contrary, the unanimous opinion of the medical review panel found that the evidence did not support the conclusion that Dr. Swiger failed to meet the applicable standard of care; that Dr. Swiger appropriately monitored the child's growth and well-being as evidenced by the numerous ultrasound studies performed on her mother; that Dr. Swiger's pre-natal evaluation and ordering of diagnostic tests throughout the mother's pregnancy was timely and appropriate; that Dr. Swiger responded to an abrupt change in the fetal status by delivering the baby promptly; and that there was no indication for intrauterine medical intervention.

After Dr. Swiger established his burden of proof on his motion for summary judgment, it was incumbent upon Ms. Knight to produce factual support in the form of expert testimony sufficient to establish that she would be able to satisfy her evidentiary burden of proof at trial of these issues. See La. C.C.P. art. 966(C)(2) and 967(B). Ms. Knight failed to do so, and therefore summary judgment was appropriate. Regarding Ms. Knight's argument that she had not been given adequate time for discovery, as noted by the district court at the hearing, Ms. Knight had three years from the date of filing the original medical malpractice complaint to obtain a medical expert.

Thus, the judgment of the district court, granting summary judgment and dismissing the case, is affirmed. All costs of this appeal are assessed to Ms. Knight.

AFFIRMED.