

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0533

AURELIA LANDRY

VERSUS

ROY L. CANTRELLE, DDS AND
LOUISIANA DENTURE CENTER, INC.

Judgment rendered December 21, 2011.

Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2008-15192
Honorable Raymond S. Childress, Judge

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METAIRIE, LA

CRAIG R. WATSON
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ATTORNEY FOR
PLAINTIFF-APPELLANT
AURELIA LANDRY

ATTORNEYS FOR
DEFENDANT-APPELLEE
ROY L. CANTRELLE, DDS

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.



PETTIGREW, J.

Plaintiff appeals a summary judgment dismissing her dental malpractice action against defendant. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

In May 2006, plaintiff, Aurelia Landry, sought treatment from Dr. Roy L. Cantrelle at the Louisiana Denture Center, Inc. ("LDC") for fitting and placement of new lower and upper dentures. By the end of the month, the new dentures had been placed in Ms. Landry's mouth. She returned to Dr. Cantrelle's office on June 2, 2006, for some adjustments to the new dentures, but never complained of any problems with her jaw. On July 5, 2006, Ms. Landry saw Dr. Cantrelle again, reporting that he had broken her jaw when the lower denture was locked on. Ms. Landry was assured that her jaw was not broken, and a Panorex x-ray was taken to confirm same. She returned to Dr. Cantrelle's office on July 10, 2006, with some minor aesthetic concerns, but no complaints of pain. Ms. Landry's last visit to Dr. Cantrelle was on February 27, 2007, when she requested the Panorex x-ray to take to an oral surgeon.

Ms. Landry instituted this malpractice action on May 30, 2007, by requesting that a medical review panel be convened pursuant to La. R.S. 40:1299.41, *et seq.* The medical review panel was formed, with three dentists and an attorney chairman. The panel's opinion was issued on June 25, 2008. The unanimous opinion stated that "[t]he evidence does not support the conclusion that the defendants, DR. ROY L. CANTRELLE AND [LDC], failed to meet the applicable standard of care as charged in the complaint." In its supporting reasons, the panel concluded as follows:

Several months had elapsed between the patient's May 31, 2006 visit with Dr. Cantrelle until she sought treatment for her complaints; [w]hen the patient sought treatment from other specialists, none diagnosed either a broken jaw or TMJ. There is nothing in the record presented to the panel to review that indicates that [LDC] and/or its employees deviated from the standard of care.

Ms. Landry filed a petition for damages against Dr. Cantrelle and LDC on September 29, 2008.¹ Ms. Landry alleged that Dr. Cantrelle had breached the applicable standard of care, failed to properly diagnose and treat her condition, failed to advise her about her condition, and failed to provide her with adequate information in order to allow her to make an informed decision concerning treatment. Dr. Cantrelle answered the petition, generally denying the allegations of negligence on his part. Dr. Cantrelle subsequently filed a motion for summary judgment, seeking the dismissal of Ms. Landry's claims. Dr. Cantrelle asserted that because Ms. Landry had not retained an expert to establish an essential element of her cause of action, *i.e.*, that Dr. Cantrelle deviated from the standard of care, she could not carry her burden of proof at trial, thus warranting summary judgment. The motion was supported by the medical review panel opinion and reasons, Ms. Landry's answers to interrogatories, and Ms. Landry's responses to requests for production of documents.

Ms. Landry filed an opposition to the motion for summary judgment, alleging that the evidence submitted by her, *i.e.*, the deposition of Dr. Todd Canatella (one of the members of the medical review panel) and the medical review panel opinion, was enough to allow her to proceed without calling an independent expert witness. She further argued that the motion for summary judgment should be denied because discovery had not yet been completed.² In a supplemental opposition to the motion for summary judgment, Ms. Landry alleged that her status as a pauper should be considered and that she should be given the opportunity to argue her case without the unnecessary expense of hiring an expert witness. Ms. Landry continued, stating: "The facts of this case are such that a reasonable trier of fact could well conclude that, since the Medical Review Panel conclusion that there was no deviation from the standard of care was based

¹ By order signed July 9, 2010, Ms. Landry's claims against LDC were dismissed without prejudice.

² According to the record, when the motion for summary judgment first came for hearing, the matter was continued for ninety days to allow Ms. Landry to complete discovery.

upon erroneous facts, there must therefore have been a deviation from the standard of care."

The hearing on the motion for summary judgment was held on October 15, 2010. At the conclusion of the hearing, the trial court ruled in favor of Dr. Cantrelle, finding that expert testimony was necessary. The trial court granted the motion for summary judgment filed by Dr. Cantrelle and dismissed Ms. Landry's claims without prejudice. However, the trial court ordered that the judgment would not become executory until sixty (60) days from the signing of the same, in order that Ms. Landry would have time to produce an expert. The judgment was signed on November 9, 2010. It is from this judgment that Ms. Landry has appealed, assigning error to the trial court's determination that summary judgment was appropriate based upon the absence of expert testimony sufficient to demonstrate that she would be able to meet her burden of proof on the merits.

LAW AND ANALYSIS

Standard of Review and General Principles of Summary Judgment

Summary judgment is subject to *de novo* review on appeal, using the same standards applicable to the trial court's determination of the issues. **Berard v. L-3 Communications Vertex Aerospace, LLC**, 2009-1202, p. 5 (La. App. 1 Cir. 2/12/10), 35 So.3d 334, 339-340, writ denied, 2010-0715 (La. 6/4/10), 38 So.3d 302. The summary judgment procedure is expressly favored in the law and is designed to secure the just, speedy, and inexpensive determination of non-domestic civil actions. La. Code Civ. P. art. 966(A)(2). Its purpose is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. **Hines v. Garrett**, 2004-0806, p. 7 (La. 6/25/04), 876 So.2d 764, 769. Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, admissions, and affidavits in the record show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. Code Civ. P. art. 966(B).

On a motion for summary judgment, the burden of proof is on the mover. If, however, the mover will not bear the burden of proof at trial on the matter that is

before the court on the motion for summary judgment, the mover's burden on the motion does not require that all essential elements of the adverse party's claim, action, or defense be negated. Instead, the mover must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. Thereafter, the adverse party must produce factual evidence sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial. If the adverse party fails to meet this burden, there is no genuine issue of material fact, and the mover is entitled to summary judgment. La. Code Civ. P. art. 966(C)(2); **Janney v. Pearce**, 2009-2103, p. 5 (La. App. 1 Cir. 5/7/10), 40 So.3d 285, 288-289, writ denied, 2010-1356 (La. 9/24/10), 45 So.3d 1078.

In ruling on a motion for summary judgment, the judge's role is not to evaluate the weight of the evidence or to determine the truth of the matter, but instead to determine whether there is a genuine issue of triable fact. **Hines**, 2004-0806 at 1, 876 So.2d at 765. Despite the legislative mandate that summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Willis v. Medders**, 2000-2507, p. 2 (La. 12/8/00), 775 So.2d 1049, 1050.

Was Summary Judgment Appropriate Under the Applicable Law?

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, 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 that specialty. **Lieux v. Mitchell**, 2006-0382, p. 10 (La. App. 1 Cir. 12/28/06), 951 So.2d 307, 314, writ denied, 2007-0905 (La. 6/15/07), 958 So.2d 1199.

Expert testimony is generally required to establish the applicable standard of care and whether that standard was breached, except where the negligence is so obvious that a lay person can infer negligence without the guidance of expert testimony. **Pfiffner**, 94-0924, 9-10, 643 So.2d at 1234. This requirement of producing expert medical testimony is especially apt when the defendant has filed a motion for summary judgment and supported such motion with expert opinion evidence that the treatment met the applicable standard of care. **Lieux**, 2006-0382 at 11, 951 So.2d at 314. In **Pfiffner**, the supreme court observed that expert testimony is not always necessary to meet the burden of proof in a medical malpractice case, including "instances in which the medical and factual issues are such that a lay jury can perceive negligence in the charged physician's conduct as well as any expert can." **Pfiffner**, 94-0924 at 9, 643 So.2d at 1234. Other examples of such obvious negligence include "obvious unnecessary delays in treatment," "[f]ailure to attend a patient when the circumstances demonstrate the serious consequences of this failure," and "failure of an on-call physician to respond to an emergency when he knows or should know that his presence is necessary." **Pfiffner**, 94-0924 at 9-10, 643 So.2d at 1234.

After a 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. Specifically, there is no testimony or evidence in the record that sets forth the standard of care applicable to Dr. Cantrelle as a general dentist, that Dr. Cantrelle violated any standard of care applicable to a general dentist in his care and treatment of Ms. Landry, or that any negligent action or omission on his part caused or contributed to Ms. Landry's alleged injuries. To the contrary, the unrebutted opinion of the medical review panel was that there was no evidence that Dr. Cantrelle failed to meet the applicable standard of care and that when Ms. Landry did in fact seek treatment from other specialists after she was treated by Dr. Cantrelle, none of the

other specialists diagnosed her with either a broken jaw or TMJ. Dr. Cantrelle having established his burden of proof on the motion, it was incumbent upon Ms. Landry 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 on these issues. Ms. Landry failed to do so, and summary judgment was therefore appropriate.

CONCLUSION

For the above and foregoing reasons, we affirm the November 9, 2010 judgment of the trial court. All costs associated with this appeal are assessed against plaintiff, Aurelia Landry.

AFFIRMED.