

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 1440

ELLA MAE JOSEPH

VERSUS

DR. MARSHALL P. STAGG, II, DR. GEOFFREY ODOM,
& OUR LADY OF THE LAKE HOSPITAL, INC.
D/B/A OUR LADY OF THE LAKE REGIONAL MEDICAL CENTER

Judgment Rendered: May 4, 2007.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 521,418

Honorable Curtis A. Calloway, Judge Presiding

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BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

CARTER, C. J.

In this medical malpractice case, the trial court granted motions for summary judgment filed by the defendant doctors¹ and hospital on grounds that plaintiff failed to produce expert testimony raising issues of material fact. Plaintiff now appeals.

To prove her case of medical malpractice, plaintiff must establish the applicable standard of care, a breach of that standard of care, and that the substandard care caused an injury the plaintiff otherwise would not have suffered. As a matter of law, an expert witness is generally necessary to meet that burden of proof. Although there are exceptions in instances of obvious negligence, those exceptions are limited to 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. 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 v. Mitchell**, 06-0382 (La. App. 1 Cir. 12/28/06), ___ So.2d ___, ___ (2006 WL 3804473).

Plaintiff claims that Dr. Stagg and the Our Lady of the Lake (OLOL) staff failed to accurately and appropriately diagnose deficient circulation in her legs, leading to necrosis and resulting damage. In support of their motions for summary judgment, Dr. Stagg and OLOL relied on the medical review panel's opinion that the evidence does not support plaintiff's claims,

¹ The trial court granted summary judgment in favor of Doctors Marshall P. Stagg, II, and Geoffrey Odom. On appeal, plaintiff does not contest the judgment rendered in favor of Dr. Odom. Thus, our review here is only of the judgments in favor of Dr. Stagg and Our Lady of the Lake Regional Medical Center.

that the diagnoses made in the case were reasonable and timely, and that all services and care were reasonable and timely performed. Dr. Stagg and OLOL also offered depositions and affidavits of the medical professionals involved in plaintiff's treatment, which support the medical review panel's opinion.

After *de novo* review, we find that the evidence supporting the motions for summary judgment show an absence of support for an essential element of plaintiff's claim, i.e., that Dr. Stagg and OLOL staff members breached the applicable standard of care in treating and diagnosing plaintiff's condition. We further find that this is a medically complex case, complicated by plaintiff's medical history.² This is not a case in which a jury could perceive negligence as well as any expert. Rather, expert medical testimony is necessary to support plaintiff's claims.

In opposition to the motions for summary judgment, plaintiff submitted the deposition of Dr. Deborah Abernathy, who served on the medical review panel. Dr. Abernathy testified that she stood by the panel's opinion that neither Dr. Stagg, nor OLOL, committed malpractice. In her accompanying memorandum, plaintiff's counsel attempts to undermine Dr. Abernathy's opinion by pointing to "factual disputes." We are not persuaded by counsel's argument. Dr. Abernathy rendered an expert opinion based on the evidence before her. Further, plaintiff has not presented any evidence, i.e., expert testimony, to support her counsel's arguments.

² The alleged malpractice occurred when plaintiff, who had a history of heart disease, presented to the OLOL emergency room and was then admitted to the hospital. This occurred within a week of the plaintiff receiving chemotherapy treatment for cancer of the head and neck. Dr. Stagg was plaintiff's treating oncologist.

After *de novo* review, we find that Dr. Stagg and OLOL met their burdens on the motions for summary judgment by pointing out an absence of support for an essential element of plaintiff's claims. Plaintiff did not, then, produce factual evidence sufficient to establish that she would be able to satisfy her evidentiary burden at trial. Accordingly, the motions for summary judgment were properly granted.

Considering the foregoing, the trial court's judgment granting the motions for summary judgment is affirmed. Costs of this appeal are assessed to plaintiff, Ella Mae Joseph. This memorandum opinion is issued in compliance with URCA Rule 2-16.1B.

AFFIRMED.