

**89-LW-2402 (10th)**

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Mary MIDDLETON, as the administrator of the Estate of Theodore M. Middleton, Plaintiff-Appellant,

v.

Dr. Wilburn H. WEDDINGTON, Individually, and Wilburn H. Weddington, M.D., Inc., Defendant-Appellee.

No. 89AP-208.  
10th District Court of Appeals of Ohio, Franklin County.  
Decided on July 27, 1989.

APPEAL from the Franklin County Common Pleas Court.

Richard F. Swope, for appellant.

Lane, Alton & Horst and John M. Alton, for appellee.

**OPINION**

STRAUSBAUGH, Judge.

This is an appeal by plaintiff from a judgment of the court of common pleas for which the trial court granted summary judgment in favor of defendant. Summary judgment was entered on plaintiff's claim for damages on the basis of alleged medical malpractice.

On April 29, 1985, decedent Theodore M. Middleton was seen by defendant, Wilburn H. Weddington, M.D., for an upper G.I. The upper G.I. was performed on May 2, 1985 at which time ulcerations on the esophagus were noted. Defendant stated in his affidavit that decedent had not complained of a swallowing problem until the summer of 1985. However, plaintiff, Mary Middleton, as administrator of her husband's estate, stated in her affidavit that decedent was experiencing difficulty in swallowing and digesting food, and that gas and discomfort were present and described to defendant from April 1984 through 1985.

On August 20, 1985, another physician performed an endoscopy which revealed a lesion in the esophagus. This lesion appeared to be an esophageal carcinoma which was confirmed by a biopsy on August 22, 1985. While efforts were made to effect successful treatment, they were to no avail and decedent died on December 12, 1985.

On February 11, 1987, plaintiff filed a complaint against defendant seeking damages for allegedly delaying in the diagnosis of decedent's esophageal carcinoma at an earlier date. On February 17, 1988, defendant filed a motion for summary judgment which was supported by his affidavit. On May 13, 1988, plaintiff filed a memorandum opposing defendant's motion which was supported by her own affidavit. On May 24, 1988, the trial court, prior to receiving defendant's reply memorandum in support of his motion for summary judgment, overruled defendant's motion. Subsequently, on June 1, 1988, accompanying his reply memorandum defendant filed a motion to vacate and requested the trial court to reconsider its previous decision overruling defendant's motion for summary judgment. On June 6, 1988, the trial court granted defendant's motion to vacate. Thereafter, on November 14, 1988, the trial court reversed its prior decision and sustained defendant's motion for summary judgment.

On appeal, plaintiff asserts but one assignment of error for this court's review:

"The Trial Court erred in sustaining Plaintiff's Motion For Summary Judgment since there was no basis upon which to grant the motion under Rule 56, Ohio Rules of Civil Procedure because the affidavits, records and evidence demonstrate there were genuine issues of fact which preclude the granting of a Motion For Summary Judgment."

Plaintiff insists that the trial court erred in granting summary judgment in defendant's favor since there exist genuine issues of fact. Specifically, plaintiff cites to her affidavit in which she states that decedent had difficulty swallowing. Plaintiff also claims that records in defendant's possession show an abnormality thus precluding summary judgment.

The granting of a motion for summary judgment is governed by Civ.R. 56(C) which provides in part:

" \* \* \* Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in his favor. \* \* \* "

In paragraph one of the syllabus in Bruni v. Tatsumi (1976), 46 Ohio St.2d 127, the Supreme Court of Ohio set forth the requisite burden of proof in a claim for medical malpractice:

"In order to establish medical malpractice, it must be shown by a preponderance of evidence that the injury complained of was caused by the doing of some particular thing or things that a physician or surgeon of ordinary skill, care and diligence would not have done under like or similar conditions or circumstances, or by the failure or omission to do some particular thing or things that such a physician or surgeon would have done under like or similar conditions and circumstances, and that the injury complained of was the direct and proximate result of such doing or failing to do some one or more of such particular things."

In the present case, the sole medical testimony before the trial court was that of defendant who filed an affidavit attesting to his qualifications and stating that, in his treatment of plaintiff, he had complied with the applicable standard of care and that his care and medical treatment of plaintiff was not the proximate cause of decedent's death. Defendant also stated in his affidavit that plaintiff had never demonstrated any symptoms consistent with carcinoma of the esophagus until shortly before the diagnosis revealing the carcinoma in 1985. Finally, defendant stated that, even if the carcinoma had been discovered in 1984, plaintiff's chances of recovery were less than a five percent five-year-cure rate. We note that as defendant is a physician, he is entitled to express an expert opinion. See Hoffman v. Davidson (1987), 31 Ohio St.3d 60. Plaintiff, however, has failed to offer any expert testimony with regard to decedent's condition, the detection of such condition or the causal connection between those acts of which plaintiff now complains and decedent's ensuing death. While plaintiff filed an affidavit stating that decedent had experienced various signs of illness in 1984, we find this to be inadequate to withstand defendant's motion for summary judgment. As the Supreme Court has recognized, expert testimony is normally required in order to establish the requisite standard of care and skill which a physician owes in the treatment of his patient. See Bruni v. Tatsumi, *supra*; Hoffman v. Davidson, *supra*. Once the issue of causation has been raised by expert testimony, a plaintiff must respond with proper expert evidence and may not rely simply upon her own affidavit. See Hartman v. McNeill (June 8, 1988), Hamilton App. No. C-870661, unreported.

Upon review of the record, we find no abuse of discretion in the trial court's decision granting summary judgment in favor of defendant. Accordingly, plaintiff's assignment of error is not well-taken and is overruled. The judgment of the trial court is hereby affirmed.

Judgment affirmed.

REILLY and BOWMAN, JJ., concur.