Rel: October 26, 2018

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170513

Sue Shadrick, personal representative of the Estate of William Harold Shadrick, deceased

v.

Wilfredo Grana, M.D.

Appeal from Calhoun Circuit Court
(CV-12-900400)

SELLERS, Justice.

In this medical-malpractice action, Sue Shadrick ("Shadrick"), as personal representative of the estate of William Harold Shadrick, deceased ("William"), appeals from a

summary judgment entered by the Calhoun Circuit Court in favor of Wilfredo Grana, M.D. We affirm.

Introduction

On October 29, 2010, William presented to the emergency room of the Northeast Alabama Regional Medical Center ("the hospital"), reporting that he had been experiencing shortness of breath and chest pain. An emergency-room physician, Dr. Gary Moore, concluded that William had suffered a heart attack. Dr. Moore placed separate telephone calls to Osita Onyekwere, M.D., who was the cardiologist on call at the time, and to Dr. Grana, who is a board-certified internist and a hospitalist for the hospital.[1] Dr. Moore discussed William's condition with Dr. Onyekwere and Dr. Grana. Thereafter, Dr. Grana admitted William to the hospital.

According to Dr. Grana's deposition testimony, when William was admitted to the hospital, his blood pressure was low, his troponin levels were elevated, his heart rate was elevated, he had fluid in his lungs, and he had "crackles in the bases" of his lungs (which may be indicative of pneumonia). An electrocardiogram and other tests, including

[1]Nothing in the appellate record indicates that Dr. Grana is board-certified as a hospitalist.

an echocardiogram, indicated that William had experienced a "non-ST elevation" heart attack. According to the testimony in this case, a non-ST elevation heart attack requires close monitoring but not necessarily immediate invasive care. In contrast, an ST elevation heart attack is more serious and requires immediate treatment.

Dr. Grana testified that, based on the echocardiogram, he believed that William was in cardiogenic shock, which means that his heart was unable to pump enough blood to meet his body's needs. Dr. Grana testified that he believed an emergency heart catheterization was necessary, which would have revealed the reason for the cardiogenic shock, such as a blocked blood vessel. As an internist, however, Dr. Grana could not perform that invasive procedure.

Dr. Grana telephoned Dr. Onyekwere at approximately 6:00 p.m. the evening William was admitted to the hospital. Dr. Grana testified at deposition that, during his consultation with Dr. Onyekwere, he relayed to Dr. Onyekwere that William had low blood pressure, an elevated heart rate, elevated troponin levels, and fluid in his lungs. He also testified that he told Dr. Onyekwere that he believed William was in

cardiogenic shock and that Dr. Onyekwere should see William before Dr. Onyekwere went home for the night. When asked if he relayed to Dr. Onyekwere his opinion that William needed an emergency heart catheterization, Dr. Grana answered: "I told [Dr. Onyekwere] that it would be a good idea to transfer [William] to the [intensive-care unit]." In her appellant's brief, Shadrick states that Dr. Grana testified that he did indeed inform Dr. Onyekwere of his specific opinion that William needed a heart catheterization.

After his telephone conversation with Dr. Grana, Dr. Onyekwere went home for the night without personally seeing William. He did, however, have a "nurse extender" monitor William at the hospital.[2] The next morning, Dr. Grana learned that William's condition had worsened and that Dr. Onyekwere had not yet seen William. Dr. Onyekwere's nurse extender told Dr. Grana that William was being transferred to the hospital's intensive-care unit and that Dr. Onyekwere was en route to the hospital. At approximately 12:50 p.m., an emergency code was relayed over the hospital's public-address system indicating

[2]The record suggests that Dr. Onyekwere's "nurse extender" was a registered nurse who monitored Dr. Onyekwere's patients and relayed information to Dr. Onyekwere regarding those patients.

that a patient had suffered cardiac arrest; that patient was William. Dr. Onyekwere still had not personally seen William at that point. William later died from insufficient oxygen to his brain. A heart catheterization performed after William had suffered cardiac arrest indicated that he had heart blockages that might have been bypassed through surgery had they been discovered earlier.

Shadrick sued Dr. Onyekwere and Dr. Grana. She settled her claims against Dr. Onyekwere, and Dr. Grana filed a motion for a summary judgment.[3]

In support of his summary-judgment motion, Dr. Grana submitted an affidavit averring that his care of William met or exceeded the applicable standard of care. He also moved the trial court to strike the standard-of-care testimony of Shadrick's designated expert witness, Dr. James Bower, and to preclude Dr. Bower from providing such testimony in support of Shadrick's claims. Dr. Grana argued that Dr. Bower is not a similarly situated health-care provider in relation to Dr. Grana because Dr. Bower is a board-certified cardiologist, not

[3]Shadrick also sued the Northeast Alabama Regional Medical Center Board, which operates the hospital. The trial court, however, entered a summary judgment in favor of that defendant without opposition from Shadrick.

a board-certified internist or a hospitalist as is Dr. Grana. See generally Holcomb v. Carraway, 945 So. 2d 1009, 1012 (Ala. 2006) (indicating that a plaintiff in a medical-malpractice case ordinarily must present the testimony of a "similarly situated health-care provider" in order to demonstrate that the defendant's care fell below the applicable standard of care). The trial court granted Dr. Grana's motion to strike Dr. Bower's testimony and his motion for a summary judgment. Shadrick appealed.

Discussion

According to Shadrick, Dr. Grana testified at deposition that, during his telephone consultation with Dr. Onyekwere on the evening William was admitted to the hospital, Dr. Grana relayed his specific opinions that Dr. Onyekwere needed to see William that night, that William was in cardiogenic shock, and that William needed an emergency heart catheterization. Dr. Onyekwere, however, denied during his deposition that Dr. Grana had expressed those opinions to him. According to Dr. Onyekwere, his consultations with Dr. Grana and Dr. Moore were "routine" and left him with the impression that William's condition did not constitute a cardiac emergency necessitating

the immediate hands-on attention of a cardiologist. Rather, he believed that William's most serious problems were pneumonia and sepsis, which is a blood infection, and were not cardiac in nature. Thus, based on what she asserts is conflicting testimony, Shadrick argues that there is a factual dispute that should be resolved by a jury. Shadrick asserts that, if a jury believes Dr. Onyekwere's version of events, then Shadrick has established that Dr. Grana breached the applicable standard of care.

"As a general rule, in a medical-malpractice action, the plaintiff is required to produce expert medical testimony to establish the applicable standard of care and a breach of that standard of care, in order to satisfy the plaintiff's burden of proof." Anderson v. Alabama Reference Labs., 778 So. 2d 806, 811 (Ala. 2000). As noted, the trial court refused to allow Shadrick's expert witness, Dr. Bower, to testify that Dr. Grana's alleged acts and omissions fell below the applicable standard of care. Thus Dr. Grana argued, and the trial court agreed, Shadrick was unable to present the necessary expert testimony and her claims therefore fail.

Shadrick concedes that expert testimony is typically required in medical-malpractice cases. In the present case, however, she relies on an exception to the general rule, which applies in medical situations "'"where want of skill or lack of care is so apparent ... as to be understood by a layman, and requires only common knowledge and experience to understand it."'" Anderson, 778 So. 2d at 811 (quoting Tuscaloosa Orthopedic Appliance Co. v. Wyatt, 460 So. 2d 156, 161 (Ala. 1984), quoting in turn Dimoff v. Maitre, 432 So. 2d 1225, 1226-27 (Ala. 1983)). Shadrick asserts that Dr. Grana simply failed to inform Dr. Onyekwere that an emergency existed and that a layperson is capable, without the aid of expert testimony, of concluding that that failure constitutes a breach of the applicable standard of care.

Although there is a dispute as to whether Dr. Grana, in consulting with Dr. Onyekwere, used the term "emergency" in describing William's condition or conveyed the specific opinions he had formed regarding William's diagnosis and the best course of treatment, it has not been disputed that Dr. Grana informed Dr. Onyekwere that William was experiencing low blood pressure, an elevated heart rate, elevated troponin

levels, and fluid in his lungs. Dr. Onyekwere also did not deny during deposition that he was made aware of William's electrocardiogram, and he specifically confirmed that he was alerted to the fact that William had experienced a non-ST elevation heart attack. Moreover, although Dr. Onyekwere denied that Dr. Grana conveyed his specific opinion that William was in cardiogenic shock, Dr. Onyekwere's testimony indicates that Dr. Grana did indeed inform Dr. Onyekwere that William's echocardiogram indicated a "low ejection fraction," which the record suggests means that William's heart was not pumping enough blood to meet his bodily needs:

> "Q. [By Shadrick's counsel:] Did you know on Saturday morning [the day after William was admitted to the hospital] when you spoke with [the nurse extender] about her visit with Mr. Shadrick that an echo had already been done and you knew the results?
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> "A. [By Dr. Onyekwere:] It must have slipped my mind somehow when I was talking with her. I said get an echo if it hasn't been done. But obviously going through the records, yes, the echo had been done, and I believe it was part of my discussion with Dr.--Dr. Grana that the patient had a low EF and so--
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> "Q. Low EF is ejection fraction?
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> "A. Yes.
>
> "Q. Significantly low, wasn't it?

"A. Yes.

"Q. Does that have anything to do with septic shock [or] pneumonia?

"A. They are independent.

"Q. I know. Ejection fraction has to do with the ventricular pumping of the heart, doesn't it?

"A. It does.

"Q. The contractility?

"A. Yes.

"Q. So, you knew that [William] had a low ejection fraction before [the nurse extender] even saw him on that Saturday morning by echocardiogram?

"A. Most likely, yes."

As noted, Dr. Onyekwere denied that Dr. Grana had conveyed his opinion that William needed an emergency heart catheterization. Dr. Onyekwere's testimony, however, indicates that, based on information gleaned from diagnostic testing, Dr. Onyekwere concluded that William was not a good candidate for a heart catheterization because he was experiencing other problems, such as sepsis, that needed to be stabilized before proceeding with a catheterization. In fact, Dr. Onyekwere maintained in hindsight that, based on his understanding of "the totality of [William's] condition," he

would not have performed a heart catheterization had he personally examined William before William went into cardiac arrest. Finally, when asked if Dr. Grana had conveyed his opinion that William should be transferred to the intensive-care unit, Dr. Onyekwere admitted that "we must have discussed something like that." Dr. Onyekwere, however, testified that he decided on a different plan of action after what he described as "a discussion [with Dr. Grana] of different approaches to take care of the patient."

Assuming that Dr. Grana did not expressly state to Dr. Onyekwere that William was "in cardiogenic shock," did not expressly ask Dr. Onyekwere to see William before going home for the night, and did not expressly convey his opinion that William needed an emergency heart catheterization, the testimony establishes that Dr. Grana provided Dr. Onyekwere with substantial diagnostic information regarding William's condition. Given the technical nature of the dialogue between the physicians, we disagree with Shadrick's argument that Dr. Grana so clearly breached the applicable standard of care that expert testimony was unnecessary.

Examples of cases falling within the exception to the general rule that a medical-malpractice plaintiff must present expert testimony on the applicable standard of care include where a foreign object is left in a patient's body after surgery, where the injury the plaintiff sustained is unrelated to the condition for which the plaintiff sought treatment, and where a medical provider completely ignores an incapacitated patient's repeated requests for assistance. Ex parte Healthsouth Corp., 851 So. 2d 33, 38 (Ala. 2002). This list is not exhaustive. See Morgan v. Publix Super Markets, Inc., 138 So. 3d 982, 988 (Ala. 2013) (noting that the Court in Healthsouth acknowledged that the referenced list of circumstances fitting within the exception is not exhaustive and adding to that list a pharmacist's filling a prescription with the wrong medication).

In the present case, it would be difficult, if not impossible, for a layperson, in considering the roles, responsibilities, relationship, and communications of and between Dr. Grana, a board-certified internist and hospitalist, and Dr. Onyekwere, a board-certified cardiologist, to determine the applicable standard of care,

much less whether that standard was breached. Thus, Alabama law justifiably requires a similarly situated health-care provider to identify the applicable standard of care and to specify if and, if so, how that standard was breached. Here, only such an expert could explain to a jury whether Dr. Grana failed to convey information necessary to allow Dr. Onyekwere to make an informed judgment regarding William's condition and to formulate a proper plan of treatment. Given the complexities of the information being communicated between the physicians and the possible diagnostic interpretations of that information, the exception to the general rule that a medical-malpractice plaintiff must present expert testimony on the standard of care does not apply here. Thus, the trial court did not err in concluding that Shadrick was required to present expert testimony showing that Dr. Grana's alleged failures in consulting with Dr. Onyekwere the evening William was admitted to the hospital fell below the applicable standard of care.[4]

[4]Mobile Infirmary Association v. Tyler, 981 So. 2d 1077 (Ala. 2007), upon which Shadrick relies, does not call for a different result. Shadrick asserts that, pursuant to Tyler, "the failure of a nurse to adequately and accurately communicate the nature and severity of a patient's condition to his physician by failing to portray it as an emergency was

As an additional theory, Shadrick criticizes Dr. Grana for not taking further steps to ensure that Dr. Onyekwere or a different cardiologist evaluated William once Dr. Grana learned that Dr. Onyekwere had not personally seen him. As she argues regarding Dr. Grana's initial consultation with Dr. Onyekwere, Shadrick asserts that whether Dr. Grana's alleged acts and omissions the next day fell below the applicable standard of care is an issue within the understanding of a layperson and that expert testimony is therefore not required.

According to Dr. Grana, he normally arrives at the hospital around 8:00 a.m. and begins making rounds. "Around that time" on the day after William had been admitted to the hospital, Dr. Grana discovered that Dr. Onyekwere had not personally seen William. At 10:00 a.m., Dr. Grana created a notation in William's medical records indicating that William's blood pressure was significantly low and that his

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negligence where it prevented timely diagnosis." Tyler, however, did not involve the issue whether expert testimony was necessary to establish the applicable standard of care and any breach thereof. In fact, the plaintiff in Tyler presented an expert nurse to testify as to the standard of care, and this Court confirmed that the plaintiff, in order to satisfy his burden of proof, was required "to offer testimony from 'a "similarly situated health care provider."'" 981 So. 2d at 1085.

troponin levels had increased substantially since the prior evening. Dr. Grana made the following further notation:

> "Acute non-ST segment elevation [heart attack] -- hypotension -- increased heart rate -- increased troponins; on dopamine drip. Will need transfer to [intensive-care unit] for [Neo-Synephrine] and will need cath today."[5]

Dr. Grana testified that he did not personally enter an order transferring William to the intensive-care unit because Dr. Onyekwere's nurse extender, who was present in William's hospital room when Dr. Grana evaluated him, told Dr. Grana that William was being transferred to the intensive-care unit and that Dr. Onyekwere was on his way to the hospital. Medical records indicate that an order transferring William to the intensive-care unit had been entered at 9:42 a.m.

After William was transferred to the intensive-care unit, Dr. Grana continued seeing other patients. At around 12:50 p.m., Dr. Grana learned from the emergency code over the public-address system that William had suffered cardiac arrest. He testified that, at that time, he asked Dr. Onyekwere's nurse extender where Dr. Onyekwere was and she again responded that he was on his way. Dr. Grana reported to

[5]According to Dr. Grana, Neo-Synephrine is used to increase blood pressure and decrease heart rate.

the intensive-care unit to assist with William. At some point around 1:40 p.m., Dr. Grana summoned another cardiologist for assistance. Dr. Onyekwere arrived at approximately 2:10 p.m. and assumed William's care. Dr. Onyekwere performed a heart catheterization and determined that William needed surgery. By that time, however, William had lost brain function, and the decision was made to forgo surgery.

As is the case with the sufficiency of Dr. Grana's initial consultation with Dr. Onyekwere, whether his actions the next day fell below the standard of care simply is not an issue within the understanding of a layperson. Accordingly, the trial court correctly concluded that Shadrick was required to present the testimony of a similarly situated medical provider.[6]

Alternatively, Shadrick argues that the trial court should have allowed Dr. Bower to testify regarding the applicable

[6]Shadrick points to Ex parte HealthSouth Corp., 851 So. 2d 33 (Ala. 2002), in which this Court held that expert testimony was unnecessary to prove that nurses had breached the applicable standard of care by "completely ignoring" repeated requests by an incapacitated patient for assistance getting out of bed and using the restroom. Unlike Healthsouth, the present case does not involve a health-care provider completely ignoring a patient.

standard of care and any breach thereof. In Holcomb v. Carraway, 945 So. 2d 1009 (Ala. 2006), this Court said:

> "The plaintiff in a medical-malpractice action must prove by substantial evidence that the defendant health-care provider 'failed to exercise such reasonable care, skill, and diligence as other similarly situated health care providers in the same general line of practice ordinarily have and exercise in a like case.' § 6-5-548(a), Ala. Code 1975. To meet this burden, a plaintiff ordinarily must present expert medical testimony; however[,] such expert testimony is allowed only from a 'similarly situated health care provider.' See § 6-5-548(e), Ala. Code 1975; Leonard v. Providence Hosp., 590 So. 2d 906 (Ala. 1991).
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> "Section 6-5-548, a provision of the Alabama Medical Liability Act, § 6-5-504 et seq., Ala. Code 1975 ('the AMLA'), provides two definitions of a 'similarly situated health care provider,' depending upon whether the defendant health-care provider is a 'specialist' or a 'nonspecialist.' See § 6-5-548(b) and (c), Ala. Code 1975. If the defendant is a nonspecialist, § 6-5-548(b) defines a 'similarly situated health care provider' as one who meets all of the following qualifications:
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> > "'(1) Is licensed by the appropriate regulatory board or agency of this or some other state.
> >
> > "'(2) Is trained and experienced in the same discipline or school of practice.
> >
> > "'(3) Has practiced in the same discipline or school of practice during the year preceding the date that the alleged breach of the standard of care occurred.'

> "If the defendant is a specialist, subsection (c) defines a 'similarly situated health care provider' as one who meets all of the following qualifications:
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> > "'(1) Is licensed by the appropriate regulatory board or agency of this or some other state.
> >
> > "'(2) Is trained and experienced in the same specialty.
> >
> > "'(3) Is certified by an appropriate American board in the same specialty.
> >
> > "'(4) Has practiced in this specialty during the year preceding the date that the alleged breach of the standard of care occurred.'
>
> "§ 6-5-548, Ala. Code 1975.
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> "....
>
> "In order to determine whether the defendant health-care provider qualifies as a specialist, we must first determine the field of medical practice in which the negligence is alleged to have occurred. If the defendant health-care provider is a specialist in the field of practice in which the alleged negligence occurred, then the proffered expert witness must also be a specialist in that field, under § 6-5-548(c), Ala. Code 1975. See also Medlin v. Crosby, 583 So. 2d 1290, 1293 (Ala. 1991)."

945 So. 2d at 1012-13.

"[T]he trial court enjoys discretion when determining whether a witness is qualified to testify as an expert in a

medical-malpractice action under § 6-5-548, Ala. Code 1975." Smith v. Fisher, 143 So. 3d 110, 120 (Ala. 2013). Shadrick has not demonstrated that the trial court erred if it determined that Dr. Grana was practicing as an internist the entire time he provided medical care to William. Because it is uncontested that Dr. Grana is a board-certified specialist in internal medicine, only a board-certified internist would be considered a similarly situated health-care provider in relation to Dr. Grana for purposes of this case. While Dr. Bower, as a board-certified cardiologist, would clearly be qualified to testify regarding the standard of care Dr. Onyekwere was required to meet, under Holcomb he cannot testify as to the standard applicable to Dr. Grana. Accordingly, the trial court did not err in striking Dr. Bower's testimony regarding Dr. Grana.[7]

[7]Shadrick points to Hauseman v. University of Alabama Health Services Foundation, 793 So. 2d 730 (Ala. 2000), for the proposition that "'when a physician has undertaken the treatment of a patient whose condition, known to the physician, is such that without continuous or frequent expert attention, he is likely to suffer injurious consequences, he must either render such attention himself or see that some other competent person does so.'" 793 So. 2d at 733 (quoting the trial court's order under review in Hauseman, which cited Jackson v. Burton, 226 Ala. 483, 147 So. 414 (1933)). Nothing in Hauseman supports the suggestion that Dr. Bower should be considered a similarly situated health-care provider in

The Court notes that, although Shadrick has not attempted to draw a clear distinction between Dr. Grana's role as an internist and his role as a hospitalist, Dr. Bower testified that he has never practiced as a hospitalist and that his role as a cardiologist is different from Dr. Grana's role as a hospitalist. Thus, Dr. Bower would not be considered a similarly situated health-care provider in relation to Dr. Grana to the extent he was practicing as a hospitalist when caring for William. § 6-5-548(b), Ala. Code 1975.

Conclusion

Shadrick was required to support her claims against Dr. Grana with the expert testimony of a similarly situated health-care provider. The trial court did not err in determining that Dr. Bower does not qualify as such. Accordingly, the trial court did not err in entering a summary judgment in favor of Dr. Grana. The trial court's judgment is, therefore, affirmed.

AFFIRMED.

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relation to Dr. Grana or that expert testimony was unnecessary to prove that Dr. Grana violated the applicable standard of care.

Stuart, C.J., and Bolin, Parker, Main, Wise, Bryan, and Mendheim, JJ., concur.

Shaw, J., concurs in the result.