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STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINA NURNBERGER, Personal Representative of the ESTATE OF CHARLES NURNBERGER,

Plaintiff-Appellant,

v

ADITYA NERAVETLA, M.D., NADEZDA V. STELMASCHUK, M.D., SERGE P. BEBKO, M.D., WESLEY W. LYNCH, D.N.P., SOUND INPATIENT PHYSICIANS–MICHIGAN, PLLC, and HOSPITALIST MEDICINE PHYSICIANS OF MICHIGAN–GRAND BLANC, PLLC,

Defendants,

and

MUNSON HEALTHCARE GRAYLING, doing business as GRAYLING COMMUNITY HEALTH CENTER,

Defendant-Appellee.

UNPUBLISHED
October 13, 2026
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No. 374946
Crawford Circuit Court
LC No. 2022-011260-NH

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

PER CURIAM.

In this medical malpractice case, plaintiff appeals by right the trial court's orders striking an expert, denying a motion for substitution of the expert, and dismissing the case. We affirm.

I. FACTUAL BACKGROUND

In August 2020, Charles Nurnberger arrived at the Emergency Department of defendant-appellee Munson Healthcare Grayling experiencing shortness of breath. He later suffered a stroke

and died. Plaintiff, the personal representative of his estate, commenced this action, alleging that medical malpractice occurred when a nurse practitioner and doctor mistakenly placed a catheter in Nurnberger's artery instead of his jugular vein, causing the stroke.

Attached to the complaint were three affidavits of meritorious claim, from a doctor, a nurse practitioner, and a nurse. The nurse affidavit was from Erin Schepis, R.N., signed in 2022, which averred that "during the year immediately preceding the relevant events . . . more than 50% of [her] professional time was spent in either teaching and/or the practice of nursing." As the case progressed, there were several discovery deadline extensions, and, in response to defendants' motion, the trial court ordered plaintiff to set a date for depositions of her experts in March 2024.

The parties thereafter, however, stipulated to extend discovery until November 30, 2024, and defendant deposed Schepis on October 14, 2024. At the deposition, defendant's counsel inquired about her work as a nurse. She testified that during the year preceding the incident underlying this case, she had served Barnes Jewish Hospital in St. Louis as "the clinical nurse manager of a surgical trauma burn intensive care unit." She added that "[t]here were times that I would step in and assist with patient care, whether it was as covering for the bedside nurses and in that capacity, or as . . . the charge nurse," and that she "did still fulfill those roles . . . on occasion, depending on the staffing and what that looked like." She described her activities as follows:

> Within that time frame, I . . . assisted with education with our . . . Clinical Nurse Specialist, as well as our educator that was dedicated to our unit. The . . . interviewing, hiring, disciplinary thing, in a, kind of, typical manager mindset. Staffing, budget stuff, submitting if we needed new equipment, staffing engagement, retention, COVID.

When asked to estimate the percentage of time she spent "in actual patient care from May of 2019 through August of 2020," she answered, "Maybe ten percent overall. Maybe a little bit more . . . . " When asked to estimate the percentage of her time devoted to an "education component," she answered, "I'd say in that five to ten percent range." Schepis described the education she provided as "[t]hose initial stepping stones that ICU nurses need as they continue and progress . . . in their learning and their education."

The following exchange between defense counsel and Schepis then occurred:

> *Q*. So if we're talking, let's say, ten to twenty percent of your time is being spent . . . or 20 to 30 percent of your time is in patient care, and this, sort of, on-the-job education, what were you doing with the rest of the time? Was that the, sort of, administrative stuff? The hiring, and the staffing, and the budgeting?
>
> *A*. Correct.

Later, when asked by plaintiff's counsel if she "devote[d] a majority of [her] professional time to the active clinical practice of nursing either bedside, or teaching, or administrative duties," Schepis responded, "Right. Like, I mean, that was my 40-hour a week job, was the nursing world."

The case proceeded to facilitation in late October 2024, and plaintiff settled with or otherwise stipulated to dismiss its claims against all defendants except claims related to defendant-appellee's nursing staff.

Based on Schepis's deposition testimony, in December 2024, defendant-appellee moved to strike Schepis as an expert witness on the ground that she had not spent the majority of her professional year before the incident engaged in either patient care or teaching as required by MCL 600.2169(1)(b). Defendant-appellee also attached to its motion a 2020 deposition from Schepis in an unrelated case where Schepis had testified that 5% of her time was spent teaching, 20% caring for patients, and "the other 75 percent of the time it's the budgetary, hire/fire staff, setting up programs, quality control, et cetera." After full briefing and a hearing, on February 3, 2025, the trial court granted appellee's motion.

On February 11, 2025, plaintiff moved to substitute a new nursing expert to replace Schepis. Defendant-appellee followed with a motion to dismiss. After a hearing on the motions, the trial court denied plaintiff's motion and granted defendant-appellee's motion.

This appeal followed.

II. STANDARDS OF REVIEW

"A trial court's ruling regarding the qualification of a proposed expert witness is reviewed for an abuse of discretion." *Cox v Hartman*, 322 Mich App 292, 298; 911 NW2d 219 (2017) (citation omitted). We also review "for an abuse of discretion a trial court's decision whether to allow a party to add an expert witness." *Id*. at 312. "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes" and "necessarily abuses its discretion when it makes an error of law." *Danhoff v Fahim*, 513 Mich 427, 442; 15 NW3d 262 (2024) (quotation marks and citations omitted). We review issues of statutory interpretation de novo. *Cox*, 322 Mich App at 298.

III. EXPERT QUALIFICATION

Plaintiff argues that the circuit court misapplied MCL 600.2169(1)(b) and abused its discretion by striking her nursing expert. We disagree.

"A plaintiff in a medical malpractice action bears the burden of establishing (1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Danhoff*, 513 Mich at 442 (quotation marks and citations omitted). In general, plaintiffs "must produce expert testimony to support their position as to the standard of care in their case and that the standard was breached." *Id*. (citations omitted). The proponent of the expert evidence, therefore, "bears the burden of demonstrating the relevance and admissibility of the expert's opinions," which requires satisfaction to the trial court that the "expert is qualified under MRE 702, MCL 600.2955 and MCL 600.2169." *Id*. at 442-443 (quotation marks and citations omitted).

MCL 600.2169(1) provides, in pertinent part, as follows:

> In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person . . . meets the following criteria:
>
> * * *
>
> (b) Subject to subdivision (c),[1] during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:
>
> (*i*) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.
>
> (*ii*) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional or accredited residency or clinical research program in the same specialty.

The phrase "active clinical practice" is not defined in the statute, however, this Court held in *Gay v Select Specialty Hosp*, 295 Mich App 284, 295; 813 NW2d 354 (2012), that the phrase must be given its ordinary meaning. Accordingly, "the ordinary meaning of 'clinical practice' is the practice of one's profession in a clinical setting." *Id*. at 295 (citation omitted). *Gay* established this definition after applying dictionary definitions for the individual terms used in the statutory phrase "clinical practice." See *id*. (defining "clinical" to mean "pertaining to a clinic" or "concerned with or based on actual observation and treatment of disease in patients rather than experimentation or theory" and defining "practice" to mean "to pursue a profession, [especially] law or medicine").

Therefore, "in the case of a medical professional, in order to be engaged in an active clinical practice, the professional's practice must involve practice in a clinical setting, which usually means a setting where patients are treated." *Id*. at 295-296. However, this statement is "not the equivalent of stating that the professional must directly interact with patients" as "[a] medical professional can be involved in the treatment of patients in a variety of ways in a clinical setting without directly interacting with the patients." *Id*. The word "active" in the phrase "must be understood to mean that, as part of his or her normal professional practice at the relevant time, the professional was involved—directly or indirectly—in the care of patients in a clinical setting." *Id*. at 297. *Gay* then held that a trial court erred when it disqualified a nursing expert based on its determination that her work did not involve any amount of active clinical practice because that nurse had testified that she had spent 25% of her time orienting nurses who directly treated patients and 50% of her time teaching for an accredited residency program. *Id*. at 300-301. Thus, she met the statutory requirements to provide expert testimony under MCL 600.2169(1)(b). *Id*.

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[1] Subdivision (c) is not relevant to this case.

In this case, whether Schepis was qualified for plaintiff's purposes depends on whether, in the year before the subject incident, her active clinical practice and instruction of students combined to be more than half of her professional time. See MCL 600.2169(1)(b); *Kiefer v Markley*, 283 Mich App 555, 559; 769 NW2d 271 (2009) (holding that MCL 600.2169(1)(b) requires "a proposed expert physician to spend greater than 50 percent of his or her professional time practicing the relevant specialty the year before the alleged malpractice").

The trial court did not abuse its discretion in finding that Schepis did not meet this requirement. In her affidavit of merit, Schepis swore that "more than 50% of [her] professional time was spent in either teaching and/or the practice of nursing" during the year before the alleged malpractice occurred in August 2020. But at her deposition, Schepis testified she spent only about 30% of her time that year on the counted activities and that she spent the rest of her time as Clinical Nurse Manager on administrative activities such as hiring, discipline, staffing, budgeting, and other managerial duties. Applying *Gay*'s definitions of the terms in "active clinical practice," Schepis's administrative duties outlined in her deposition do not fit within the parameters of "active clinical practice." *Gay*, 295 Mich App at 295. Specifically, plaintiff has proffered no evidence to establish that Schepis's administrative duties of hiring, discipline, staffing, and budgeting, which Schepis agreed comprised about 70% of her time as Clinical Nurse Manager, involved the direct or indirect observation and treatment of patients.

At the deposition, plaintiff's attorney elicited an affirmative response from Schepis when she was asked, "[D]id you devote a majority of your professional time to the active clinical practice of nursing either bedside, or teaching, or administrative duties?" But vaguely including "administrative duties" in that question does not clarify whether Schepis spent most of her time directly or indirectly treating patients. Her more specific answer expressly indicated that she spent more than 50% of her time as Clinical Nurse Manager engaged in duties outside "active clinical practice" and teaching. *Kiefer*, 283 Mich App at 559. While it is true that "active clinical practice" does not necessarily mean "direct interaction with patients," *Gay*, 295 Mich App at 295-296, plaintiff's argument that "[e]verything she does[] impacts patient care" does not mean Schepis met the statutory standard, particularly given the record of what Schepis's administrative duties involved. The trial court specifically found that these duties were not responsibilities that included "active clinical practice." In this context, the trial court did not misapply MCL 600.2169(1)(b) and it did not abuse its discretion by striking Schepis as an expert witness in this case.

IV. EXPERT SUBSTITUTION

Plaintiff argues that the trial court abused its discretion by denying her February 2025 motion to substitute another expert for Schepis. We disagree.

"MCR 2.401(I) governs witness lists. Under MCR 2.401(I)(1), parties are required to file and serve witness lists '[n]o later than the time directed by the court' in its scheduling order." *Smith v Beaumont Health*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket Nos. 167716 and 167720); slip op at 13-14. "MCR 2.401(I)(2) states 'The court may order that any witness not listed in accordance with this rule will be prohibited from testifying at trial except upon good cause shown.' " *Id*. at ___; slip op at 14. "Good cause is a 'satisfactory, sound or valid reason.' " *Id*., quoting *People v Buie*, 491 Mich 294, 319; 817 NW2d 33 (2012). "A trial court has broad

discretion to determine what constitutes good cause." *Thomas M Cooley Law Sch v Doe 1*, 300 Mich App 245, 264; 833 NW2d 331 (2013).

In *Dean v Tucker*, 182 Mich App 27, 32; 451 NW2d 571 (1990), this Court set forth nonexclusive "factors that should be considered in determining the appropriate sanction" for a failure to timely file a witness list:

> (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of [the plaintiff] engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [*Id*. at 32-33 (citations omitted).]

In *Dean*, we held that "the imposition of some sanction would have been appropriate, such as the imposition of costs and an award of attorney fees to [the defendants] arising out of the motion to extend time," but that "the sanction of barring the testimony of the expert witness, with the necessary result of summary disposition against [the plaintiff], was inappropriate." *Id*. at 35.

However, in *Smith*, ___ Mich at ___; slip op at 20, our Supreme Court recently held that "these [*Dean*] factors are primarily concerned with a sanctioned party's conduct." After reviewing the cases cited in *Dean* as a basis for the above factors, the Court altered *Dean*, holding that

> a trial court's application of the *Dean* factors to a motion to amend a witness list does not focus on the most relevant considerations of that inquiry, such as whether the initial expert had been deposed, whether discovery had ended, whether a party filed a motion to amend a witness list before the opposing party filed a dispositive motion relating to the expert, whether a party chose to litigate their expert's qualifications, and whether either party would be prejudiced by granting or denying the motion. [*Id*. at ___; slip op at 22.]

As such, *Smith* reversed this Court's holding that a "trial court must consider the *Dean* factors when evaluating a party's motion to amend its witness list." *Id*. at ___; slip op at 23. It further held that, "[w]hile such factors *could* be relevant [to good cause], the primary considerations for a trial court in assessing such a motion are (1) the diligence of the moving party and (2) the prejudice that either side would incur from granting or denying the motion." *Id*.

Smith also outlined some "basic considerations that are significant to a 'good cause' analysis" regarding diligence in the context of amending a witness list. *Id*. at ___; slip op at 17. Such considerations include the timeliness of a party's motion to amend its witness list after discovering the unavailability of a witness; the absence of repeated previous delays; whether the discovery period has concluded; the effect on mediation (i.e., case evaluation); and whether the party was made aware of a need to obtain another witness. *Id*. at ___; slip op at 17-18. Regarding prejudice, "the lack of diligence itself may be prejudicial to the opposing party because of the increased costs of unnecessary litigation, for example, when the originally proposed expert witness

has already been deposed, or . . . when a substitute expert provides a different theory of the case, i.e., trial by surprise." *Id*. at ___; slip op at 19. "[W]hether the party making the request may be prejudiced by denial of the motion is also relevant in assessing whether there is 'good cause' to grant a motion to amend." *Id*.

Here, the trial court provided several reasons for finding that plaintiff failed to show the required good cause in her February 2025 motion. Regarding diligence, the court correctly noted that Schepis's apparent inability to meet the statutory requirement raised questions about why in 2022 plaintiff presented an affidavit of merit that suggested otherwise, offering a potentially false statement about her nursing work in the year before the alleged malpractice. In addition, the trial court reasonably found that plaintiff was on notice of the need for a new expert after the October 14, 2024 deposition, but that plaintiff did not file a motion to substitute until February 2025. The court found this delay particularly concerning given that delay had been a problem in this case, as the trial court had ordered plaintiff to schedule expert depositions in March 2024, but they had not occurred until October. Plaintiff's failure to realize in October 2024 that Schepis may not have been qualified as an expert, combined with other delays, supports the conclusion that the trial court did not err in finding a lack of diligence. *Smith*, ___ Mich at ___; slip op at 18.

The trial court also relied on the fact that Schepis had testified in a 2020 deposition in a different case that she spent more than half her professional time on administrative duties. Plaintiff takes issue with the trial court's reliance on the 2020 deposition as putting plaintiff on notice of Schepis's potential inability to testify. But the trial court reasonably found that Schepis's 2020 deposition testimony, which plaintiff learned about no later than December 2024, should have put plaintiff on notice that she did not satisfy MCL 600.2169(1)(b), which bears on the "diligence" inquiry. The fact that she specifically agreed in 2020 that she only spent 20% to 30% engaged in active clinical practice of nursing should have created "at least a question concerning [her] qualification to testify." *Cox*, 322 Mich App at 313. But plaintiff did nothing until February 2025.

Regarding prejudice, by the time plaintiff filed her motion Schepis had already been deposed, discovery had concluded, and facilitation had already been completed with plaintiff settling with or stipulating to dismiss her claims against all other defendants. Thus, defendant-appellee argues that allowing plaintiff to substitute in a new standard of care expert would require additional discovery expense.

Plaintiff, meanwhile, minimizes the relevance of the expense, arguing that no trial date had been set, that she offered to cover all costs of deposing a new expert, and that, without an expert who could testify about the standard of care, her claims would be dismissed, causing her prejudice. We are mindful that "where the sanction is the barring of an expert witness resulting in the dismissal of the plaintiff's action, the sanction should be exercised cautiously." *Dean*, 182 Mich App at 32. But *Smith* emphasized that "the lack of diligence itself may be prejudicial to the opposing party because of the increased costs of unnecessary litigation," *Smith*, ___ Mich at ___; slip op at 19, and the trial court explained why the risk of prejudice to defendant-appellee outweighed any prejudice claimed by plaintiff. That determination, combined with the court's reasoning regarding diligence, supports the conclusion that the trial court did not err when it found plaintiff had not established good cause for the relief she sought. Therefore, the trial court did not

abuse its discretion by denying plaintiff's motion to substitute another expert for Schepis and, since plaintiff lacked a medical expert, it did not err in granting defendant's motion to dismiss.

Affirmed.

/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi
/s/ Andrew J. Lievense