

STATE OF MICHIGAN
COURT OF APPEALS

COREY SMITH,

Plaintiff-Appellant,

v

RYAN MURPHY, D.P.M., THOMAS HOSEY,
D.P.M. AND ASSOCIATES PC, doing business as,
HOSEY AND MURPHY FOOT AND ANKLE
CENTERS, and MCLAREN MACOMB, doing
business as MOUNT CLEMENS REGIONAL
MEDICAL CENTER,

Defendants-Appellees.

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October 22, 2026

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No. 373832

Macomb Circuit Court

LC No. 2022-002336-NH

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

Plaintiff, Corey Smith, appeals as of right from the order entering the judgment of no cause of action following a jury trial in favor of defendants, Ryan Murphy, D.P.M. (Dr. Murphy), Thomas Hosey, D.P.M. and Associates PC, doing business as Hosey and Murphy Foot and Ankle Centers, and McLaren Macomb, doing business as Mount Clemens Regional Medical Center (McLaren). For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

Smith first met Dr. Murphy in September 2019 because an existing pain in his right foot worsened after he turned 19 years old and began working. Smith described the pain as severe enough that he could not work. Following an examination of Smith’s feet, Dr. Murphy identified him as having severe pes planus of his right foot. He further observed that Smith’s subtalar joint had severe limitations in range of motion and that it caused him pain when moved. X-rays of Smith’s foot showed a narrowing of the joint space in the subtalar joint. A subsequent computerized tomography (CT) scan showed bone spurs that were caused by Smith’s pes planus and subtalar joint.

Smith advised Dr. Murphy that he had previously tried orthotics without improvement. Dr. Murphy recommended that Smith wrap his foot in low dye tape. After a week of using the tape without improvement, Smith reported back to Dr. Murphy. At that time, Dr. Murphy discussed surgical options. Smith agreed to a triple arthrodesis surgery, which would result in the fusion of the bones in Smith's subtalar joint to prevent movement. Thereafter, Dr. Murphy performed the surgery, which involved placing hardware in Smith's right foot to fuse the joint.

Smith reported improvement after the surgery, and Dr. Murphy was satisfied with Smith's healing. After Dr. Murphy observed sufficient bridging of the joint, he transitioned Smith to a plastic cast and then to appropriate shoes. Smith reported pain in the foot but was unable to identify its location. Upon examination, Dr. Murphy's colleague, Dr. Kristen Patterson, identified osteoarthritis in both of Smith's feet after reviewing new x-rays. Smith was prescribed physical therapy but never completed it.

After his last visit with Dr. Murphy, Smith saw a doctor from the University of Michigan because he continued to feel pain in his right foot. The doctor apparently informed him that his right foot was misaligned and only had partial fusion of the subtalar joint. Smith then met with Dr. Eric Kessel, who determined Smith's pain was caused by a partial union of the joint. Dr. Kessel removed the hardware from Smith's foot but informed him that the triple arthrodesis could not be reversed.

Subsequently, Smith filed a complaint against defendants, alleging that the triple arthrodesis surgery was performed prematurely and that it had been negligently performed. At trial, Smith called Dr. Steven Boc, a podiatrist working in Philadelphia, Pennsylvania, as an expert. Dr. Boc opined that Dr. Murphy breached the standard of care by ordering surgery on Smith and by improperly placing the screws during the surgery. However, during the trial, Dr. Boc referenced an x-ray of Smith's left foot, not his right foot when delivering his opinion. When presented with an x-ray of Smith's right foot, Dr. Boc reiterated his opinion, opining the x-ray of Smith's right foot presented the same evidence that he had described when referencing the x-ray of Smith's left foot. After the trial court allowed Smith to reopen the proofs, Dr. Boc presented testimony on the local standard of care.

Dr. Murphy then testified. He described his treatment of Smith and the steps he took during the surgery, explaining that he thought he had adhered to the local standard of care. Critically, Dr. Murphy maintained the x-rays of Smith's foot established a union of the joint and showed good healing. Likewise, Dr. Michelle Marie Gillette, who was qualified as an expert, opined that Dr. Murphy conducted a successful triple arthrodesis on Smith. In doing so, she directed the jury to the improved structure and angle of Smith's foot. Although Smith still experienced pain, Dr. Gillette explained that the pain could be originating from the remaining 30 joints in his right foot. She also agreed that Smith suffered from severe pes planus.

Following the presentation of the proofs, the jury returned a verdict of no cause of action. Smith moved for a new trial, contending that the verdict was against the great weight of the evidence. The trial court, however, denied the motion. This appeal follows.

II. MOTION FOR A NEW TRIAL

A. STANDARD OF REVIEW

Smith argues that the trial court abused its discretion by denying his motion for a new trial because the jury's verdict was against the great weight of the evidence. Challenges to a court's decision on a motion for new trial are reviewed for an abuse of discretion. *Guerrero v Smith*, 280 Mich App 647, 666; 761 NW2d 723 (2008). "[A]n abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007). "We give substantial deference to the trial court's conclusion that a verdict was not against the great weight of the evidence." *Guerrero*, 280 Mich App at 666.

B. ANALYSIS

A plaintiff may receive a new trial if a jury verdict is "against the great weight of the evidence or contrary to law." MCR 2.611(A)(1)(e). "With respect to a motion for a new trial, the trial court's function is to determine whether the overwhelming weight of the evidence favors the losing party." *Guerrero*, 280 Mich App at 666 (quotation marks and citation omitted). "Determining whether a verdict is against the great weight of the evidence requires review of the whole body of proofs." *Dawe v Dr Reuven Bar-Levav & Assocs, PC (On Remand)*, 289 Mich App 380, 401; 808 NW2d 240 (2010). "The issue usually involves matters of credibility or circumstantial evidence, but if there is conflicting evidence, the question of credibility ordinarily should be left for the fact-finder." *Id.* (footnotes omitted). "The trial court cannot substitute its judgment for that of the factfinder, and the jury's verdict should not be set aside if there is competent evidence to support it." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999). "This Court gives deference to the trial court's unique ability to judge the weight and credibility of the testimony and should not substitute its judgment for that of the jury unless the record reveals a miscarriage of justice." *Id.* "A new trial may not be granted if an interpretation of the evidence logically explains the jury's findings." *Kelly v Builders Square, Inc.*, 465 Mich 29, 41; 632 NW2d 912 (2001).

"A plaintiff in a medical malpractice action must establish (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." *Elher v Misra*, 499 Mich 11, 21; 878 NW2d 790 (2016) (quotation marks and citation omitted). "Generally, expert testimony is required in a malpractice case in order to establish the applicable standard of care and to demonstrate that the professional breached that standard." *Id.* (quotation marks and citation omitted). As relevant to this appeal, Dr. Boc opined that Dr. Murphy fell below the standard of care by improperly placing the hardware in Smith's ankle during the triple arthrodesis surgery. Specifically, Dr. Boc opined that the placement of one of the screws invaded the sinus tarsi rather than the tarsal bone, which caused the nonunion and the pain Smith experienced. Dr. Boc also opined that the screws Dr. Murphy used to fuse the bones were either not long enough to establish a union or did not adequately compress the joint.

Smith contends that Dr. Boc's testimony was un rebutted. However, our review of the record reveals that Dr. Gillette directly discussed the screws and opined that a joint with two screws in it cannot move, even with a partial union. Additionally, Dr. Murphy testified about his decisions in the surgery, stating that he had "complied with the standard of care with the treatment options, with the care, with the surgery, with the result of the surgery, everything that I could control did well." Dr. Murphy explained how he had used a bone graft during his surgery to aid in the healing process, which Dr. Gillette noted was an additional step that not all doctors performed. Dr. Gillette opined that the surgery was successful. She formed her opinion after reviewing the postoperative x-ray scans of Smith's foot, noting the improved alignment and angle of his foot. She further explained her disagreement with Dr. Kessel's records, again noting the improved angle and structure of the foot, which indicated a successful arthrodesis. She specifically noted that Dr. Kessel wanted to revise Smith's foot but had failed to explain why it was that he would revise.

Although Smith eventually had surgery to remove the hardware, Dr. Boc agreed that it was common to do so even if there was a union in cases where the patient was experiencing pain or discomfort. He stated that the removal was insufficient to establish medical malpractice. Dr. Murphy and Dr. Gillette agreed that Smith's scans indicated he was healing well and that he was completely healed by 2022. They stated that his pain was from a different joint, which is supported by the fact that Smith was unable to localize his pain. Smith further reported pain in his hip, Achilles tendon, and leg. Dr. Boc never explained the reason why that pain could be caused by the triple arthrodesis.

Dr. Boc's testimony had significant credibility issues. Dr. Boc referenced the x-ray scans of Smith's left foot during his testimony and admitted he was looking at the wrong foot. When confronted with his error on cross-examination, Dr. Boc blamed Dr. Murphy for potentially mislabeling the x-rays. Dr. Boc also admitted that he did not review the CT reports from the University of Michigan Hospital or Dr. Kessel. Finally, he never examined Smith.

In sum, although Smith asserts that there was no evidence rebutting Dr. Boc's testimony concerning the placement of the screws, Dr. Murphy and Dr. Gillette testified about the success of the surgery, and Dr. Boc conceded removal of the hardware was a common practice. While the experts disagreed on the ultimate issue of breach, the jury heard all the testimony and decided to credit defendants' experts. On this record, the trial court did not abuse its discretion when it determined that there was evidence to support the verdict and denied the motion for a new trial.¹

Affirmed.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett

¹ In light of our resolution, we need not address defendants' alternative argument in favor of affirmance.