IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Gabriella Heredia,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19 L 5649
	)	
Vivek Mishra, M.D., Sudheer Paruchuri, M.D.,	)	
Affiliated Radiologists, S.C., a corporation, and	)	
Rush University Medical Center, a corporation,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

The admissibility of expert testimony is reserved for the discretion of the trial court. Here, the defendants have asked this court to strike and bar the plaintiff's expert witnesses' testimony and grant partial summary judgment. Such a request is premature as this court does not address issues of evidentiary admissibility; consequently, the defendants' motions are denied without prejudice to be brought before the trial judge.

Facts

On April 24, 2009, Rush University Medical Center admitted Gabriella Heredia for symptoms consistent with a stroke. On May 6, 2009, Dr. Vivek Mishra and Dr. Sudheer Paruchuri performed a transjugular renal biopsy on Heredia. Heredia alleges the defendants were negligent in the course of the biopsy procedure and in their follow-up care. In support her case, Heredia retained and disclosed four experts: (1) Dr. John Hewett, an interventional radiologist; (2) Rebecca Busch, R.N., a registered nurse and life care planner; (3) William Baldwin, Ph.D., an economist; and (4) Peter McMenamin, a physical therapist.

Hewett opined that the defendants' negligence caused Heredia's right retroperitoneal abscess, ischemic right kidney damage, kidney failure, and various subsequent infections. Busch intends to testify that Heredia has more than $6,468,822.26 in current and future medical care costs. Busch's calculations are based on a life care plan she created that includes costs related to permanent readmission to a skilled nursing facility, home nursing and skilled therapy care during weekend home visits, and future care costs associated with general health maintenance such as dental and optometry

care. Busch arrived at her opinion on physician orders from Heredia's long-term skilled nursing care facility and from discussions with Heredia and Heredia's attorneys.

For their part, the defendants retained and disclosed seven physician-expert witnesses. The defendants' experts will provide opinions regarding the applicable standard of care, the defendants' lack of negligence, and Gabriella's current and future medical and related needs.

The defendants filed a motion to strike and bar Heredia's expert testimony focusing on her claims for present and future medical expenses related to the defendants' alleged negligent care and treatment. Without such expert testimony, the defendants then seek to dismiss Heredia's claims with prejudice.

Analysis

The defendants bring their motion for partial summary judgment pursuant to the Code of Civil Procedure. 735 ILCS 5/2-1005. The Code authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff's case by showing the plaintiff lacks sufficient evidence to establish an element essential to a cause of action. This is the so-called "Celotex test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), followed *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court is to grant summary judgment on a Celotex-style motion only if the record indicates the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33. Yet if the defendant presents uncontradicted facts sufficient to support summary judgment as a matter of law, the nonmoving party may not rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No.* 1, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any

material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. Northern Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004). The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

To prevail in a medical malpractice action, a plaintiff must establish: (1) the proper standard of care by which to measure the defendant's conduct; (2) a negligent breach of the standard of care; and (3) the resulting injury was proximately caused by the defendant's lack of skill or care. *Saxton v. Toole*, 240 Ill. App. 3d 204, 210 (1st Dist. 1992) (citing cases). Since jurors are not skilled in the practice of medicine, a plaintiff must also present expert testimony to establish these elements. *Id.* (citing cases). Here, the defendants' central argument is that Heredia's experts fail to establish that her current and future medical needs are causally connected to the alleged deviations of the standard of care. The defendants emphasize, in contrast, that their expert testimony demonstrates there is no connection between the biopsy procedure and Heredia's current and future medical needs.

The defendants' argument is ultimately unconvincing at this time because a court addressing a summary judgment motion is not to judge the strength of the evidence or weigh the credentials, credibility, and testimony of one deponent against another. *Gatlin v. Ruder*, 137 Ill. 2d 284, 293-94 (1990). Here, Hewett has opined the defendants' negligence caused Heredia's injuries and Busch's testimony quantifies her current and future medical expenses. The defendants argue these experts are unqualified and seek, in particular, to have this court strike and bar Busch's testimony. From that initial position, the defendants argue that, without Busch's testimony, Heredia cannot establish that the defendants' alleged negligence proximately caused Heredia's damages; consequently, summary judgment must be granted.

The general principles governing the admission of expert testimony are well established. Illinois law requires an expert opinion if the subject matter is "beyond the ken" of the average trier of fact. *In re Estate of Sewart*, 236 Ill. App. 3d 1, 16 (1st Dist. 1991). Evidence is beyond the ken of the average trier of fact if it involves knowledge or experience a trier of fact generally lacks.

Kimble v. Earle M. Jorgenson Co., 358 Ill. App. 3d 400, 409 (1st Dist. 2005). The proponent of the expert testimony bears the burden of establishing the expert's qualifications to testify as an expert. *Lee v. Chicago Transit Auth.*, 152 Ill. 2d 432, 459 (1992). The determination of who may testify as an expert witness "is a matter generally reserved to the sound discretion of the trial judge." *Schaffner v. Chicago & N. W. Transp. Co.*, 129 Ill. 2d 1, 36 (1989).

The defendants' arguments may be valid, but they are presenting them to the wrong court. Whether a particular expert witness is qualified to testify is not up to a court that considers pre-trial discovery disputes. Rather, the issues for which the defendants seek resolution are properly raised before a trial judge through motions *in limine*. Since the defendants' requests are premature, this court must deny them at this point.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendants' motion to bar and strike is denied, without prejudice;
2. The defendants' motion for partial summary judgment is denied, without prejudice; and
3. The defendants are granted leave to re-file their motions before the trial court.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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