RENDERED: July 18, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-1190-MR

FANNIE FRANCES SPARKS, an Incompetent Person, by and through ETHEL TAYLOR, her Guardian — APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 92-CI-808

PATTIE A. CLAY INFIRMARY, a Kentucky Corporation, also known as Pattie A. Clay Hospital, and PAULETTE OSBORNE — APPELLEES

OPINION

AFFIRMING IN PART, VACATING IN PART, AND REMANDING

*** *** *** ***

BEFORE: EMBERTON, HUDDLESTON, and MILLER, Judges.

MILLER, JUDGE: Fannie Frances Sparks, an incompetent person, by and through Ethel Taylor, her guardian, brings this appeal from a March 28, 1996, Order of the Madison Circuit Court. We affirm in part, vacate in part, and remand.

On December 20, 1992, appellant filed a complaint in the Madison Circuit Court against appellees Pattie A. Clay Infirmary, a Kentucky corporation, also known as Pattie A. Clay Hospital (the hospital), and Paulette Osborne. Therein, it was alleged that one Fannie Frances Sparks, while a patient at the hospital, fell from her bed and received injuries. Appellant alleged that the hospital staff negligently failed to restrain Sparks, negligently failed to care for Sparks, and negligently maintained a wet hospital room floor.

The matter went to trial on March 28, 1996. The circuit court granted appellees' motion for directed verdict and dismissed the action with prejudice. This appeal followed.

Appellant contends that the circuit court committed reversible error by "striking" the testimony of her expert, one Ben T. Shipp. Shipp opined that the hospital staff was negligent in the care of Sparks for a variety of reasons. In striking Shipp's testimony, the circuit court concluded as follows:

> At trial, Plaintiff [appellant] called Ben T. Shipp to testify as to testify as a proposed expert on the standard of care applicable to the nursing staff on a general medicine floor at Pattie A. Clay Infirmary. As to his qualifications, training and experience, the Court considered his testimony which was given both during direct and cross-examinations. Mr. Shipp testified that he became a licensed registered nurse in July of 1989, and worked approximately one full year in the Medical Intensive Care Unit at the University of Kentucky Medical Center. Thereafter, he attended the University of Kentucky College of Law and continued to work part-time in an intensive care unit nursing pool. Mr. Shipp testified that he had worked possibly four to

> five days as a nurse on a general medicine floor.
>
> The Court further found that Mr. Shipp . . . had not done any special or independent investigation regarding the standard of care on a general medicine floor, had reviewed no other cases regarding the care and treatment provided by nursing professionals and had never served in a supervisory capacity. The Court finds that Mr. Shipp's experience is solely related to the intensive care unit where a limited number of patients are presented, and that such experience is not sufficiently related to the practice of nursing on a general medicine floor, in conjunction with the overall lack of knowledge, training and experience identified herein, to allow him to testify as an expert witness on the standard of care provided by the nursing staff on the general medicine floor at Pattie A. Clay Infirmary.

Kentucky Rule of Evidence (KRE) 702 states as follows:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion and otherwise.

KRE 702 clearly requires an expert to be qualified as such before testifying as to his opinion. The rule is well-settled in this Commonwealth that qualification of the expert is within the sound discretion of the circuit court and will not disturbed absent abuse. See Ford v. Commonwealth, Ky., 665 S.W.2d 304 (1983). Upon the whole we are unable to perceive as clearly erroneous the court's finding that Shipp was not qualified to testify regarding the practice of nursing on a general medicine floor. Thus, we are of the opinion that the circuit court did not abuse its discretion by failing to qualify Shipp as an expert.

Appellant next asserts that the circuit court committed reversible error by granting a directed verdict. A directed verdict is proper only when drawing all inferences in favor of the nonmoving party, reasonable minds could conclude only that the moving party is entitled to judgment. Lee v. Tucker, Ky., 365 S.W.2d 849 (1963); and CR 50.01. We think appellant's claim of hospital staff negligence in Sparks's care should have been submitted to the jury for determination. Flora Runyon, a patient who shared a hospital room with Sparks on the night she fell, incident, testified that she twice rang for assistance and both time nurses came to check Sparks, who was acting erratically. Runyon further testified, however, that she rang a third time for Sparks's assistance, but the nurses did not respond. Shortly thereafter, Sparks fell from her bed and sustained injuries. We believe this testimony alone created a submissible issue of negligence. We think that whether the staff's failure to respond to a call of help constituted negligence is a matter laymen with general knowledge could answer without aid of expert testimony. Cf. Walden v. Jones, Ky., 439 S.W.2d 571 (1968). As such, we are of the opinion that the circuit court committed reversible error by entering a directed verdict.

Appellant last argues that the circuit court committed reversible error by excluding certain testimony of one Dr. James T. Coy. The court excluded certain portions of Dr. Coy's testimony relating to the permanency of Sparks's injury on the grounds that

his opinions were not couched in terms of reasonable medical certainty or probability. The testimony at issue is as follows:

> Q. Okay. Doctor, let me ask you, obviously you can't give a first hand opinion as it pertains to Mrs. Sparks, but the type of injuries that she sustained in December of '91, are these typically the type of injuries that patients will recover one hundred percent from?
>
> A. No.
>
> . . .
>
> Q. And again, Doctor, based on your experience and examination of Ms. Sparks, you would characterize the surgery performed in December of '91 as a success?
>
> A. I would have to expand on that more than a yes or no answer in lieu of other questions you have asked. Whenever a person gets a comminuted fracture of the distal radius, and the same statement can be made for a bimalleolar fracture of the ankle, after explaining to the patient what kind of fractures they have, one of the first statements out of my mouth is your ankle and your wrist will not be normal. What we're going to do is get it as close to normal as possible. From my exposure with her during her post-operative course, I felt that she would certainly have the chance of heading toward what I would call an excellent result for these fractures. That should answer your question.

We believe the circuit committed error by excluding this testimony. We think a medical opinion is not fatally flawed and, thus, inadmissible because the recitation of "reasonable medical certainty" is lacking. In Baylis v. Lourdes Hospital, Inc., Ky., 805 S.W.2d 122, 124 (1991), the Court concluded as follows:

> While evidence of causation must be in terms of probability rather than mere

> possibility, we have held that **substance** should prevail over form and that the total meaning, rather than a word-by-word construction, should be the focus of the inquiry. [Emphasis added.]

We believe Dr. Coy's testimony reflected his firm medical opinion that Sparks would suffer some type of permanent disfigurement or injury. We do not believe, as appellees contend, that "Dr. Coy's testimony suggested only a **possibility** of permanent injury." He specifically states that "one of the first statements out of my mouth is your ankle and your wrist will not be normal. What we're going to do is get it as close to normal as possible." Thus, we are of the opinion that the above testimony of Dr. Coy should have been admitted and that the circuit court committed error by failing to do so.

For the foregoing reasons, the order and judgment of the circuit court is affirmed in part, vacated in part, and remanded for proceedings consistent with this opinion.

EMBERTON, JUDGE, CONCURS.

HUDDLESTON, JUDGE, CONCURS IN RESULT ONLY.

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