RENDERED: FEBRUARY 29, 2008; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000567-MR

JAMES ALEXANDER — APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 01-CI-00796

CRAWFORD RADIOLOGY CLINIC;
GERSH LUNDBERG, M.D.; AND
RONALD M. KUPPER, M.D. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: TAYLOR AND THOMPSON, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

TAYLOR, JUDGE: James Alexander brings this appeal from March 12, 2007, summary judgments dismissing Alexander's medical malpractice action against Crawford Radiology Clinic, Gersh Lundberg, M.D., and Ronald M. Kupper, M.D. (collectively referred to as "appellees"). We affirm.

[1] Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Alexander instituted the instant medical malpractice action against appellees[2] alleging that a breach of the standard of care occurred when a dye was administered to Alexander during an intravenous pyelogram (IVP) test[3] while he was taking the medication metformin. Alexander claimed that administering the dye used during the IVP test to a patient on metformin is contraindicated and resulted in damage to his kidneys.

Eventually, appellees filed motions for summary judgment alleging that Alexander failed to offer proof upon the issue of causation and injury necessary to maintain a medical malpractice action. By summary judgments entered March 12, 2007, the circuit court dismissed the medical malpractice action against appellees. This appeal follows.

Alexander contends the circuit court erred by rendering summary judgment dismissing the medical malpractice action. Summary judgment is proper where there exist no material issues of fact and movant is entitled to judgment as a matter of law. Ky. R. Civ. P. 56; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476 (Ky. 1991).

It is well-established that the burden of proof is upon plaintiff in a medical malpractice or medical negligence action. *Morris v. Hoffman*, 551 S.W.2d 8 (Ky.App. 1977). To maintain a medical malpractice claim, plaintiff must prove duty, breach, causation, and injury. *Grubbs ex rel. Grubbs v. Barbourville Family Health Center, PSC*, 120 S.W.3d 682 (Ky. 2003).

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[2] Dr. Ronald M. Kupper was a urologist who treated James Alexander and who ordered the IVP test. The IVP test was performed by Dr. Gersh Lundberg at the Crawford Radiology Clinic.

[3] The intravenous pyelogram is an x-ray examination of the kidney.

In this appeal, Alexander specifically asserts that he presented sufficient proof upon the elements of causation and injury to create material issues of fact, thus precluding entry of summary judgment. We disagree.

In his brief, Alexander points to the expert testimony of his treating physician, Dr. Eric Scowden, as sufficient to create material issues of fact upon causation and injury. However, Dr. Scowden simply opined that the dye used to perform the IVP temporarily caused a worsening of Alexander's renal function. Most importantly, Dr. Scowden did not opine that the administration of the dye while Alexander was taking metformin caused any damage to the kidneys. As Alexander contends that appellees breached the standard of care by administering the IVP dye while he was simultaneously taking metformin, it was incumbent upon Alexander to offer some proof showing that such breach caused injury to his kidneys. To this end, Alexander attempts to create a material issue of fact by his own testimony:

> Plaintiff testified that Dr. Scowden told him that he had suffered a 75% loss of his kidney function. (Alexander depo. p. 33[.]) Dr. Scowden denied this statement. (Scowden depo. p. 23[.]) Whether Dr. Scowden made this statement or not, reflecting on the nature of plaintiff's permanent injury, is a genuine issue as to a material fact.

However, we do not view Alexander's testimony concerning purported statements of Dr. Scowden sufficient to create material issues of fact upon causation and injury. Simply put, it was incumbent upon Alexander to secure direct expert testimony upon the elements of causation and injury to survive summary judgment. *See Baptist Healthcare Sys., Inc. v. Miller*, 177 S.W.3d 676 (Ky. 2005). Considering the complex circumstances of this case, Alexander may not circumvent such requirement by attempting to contradict the expert testimony of a treating physician, Dr. Scowden, by his own testimony. This

looks to nothing more than a collateral attempt to create an issue of fact where Alexander is apparently unable to present direct expert testimony to support his position. As such, we are of the opinion that the circuit court properly entered summary judgment dismissing Alexander's medical malpractice action.

We deem Alexander's remaining arguments to be moot.

For the foregoing reasons, the summary judgments of the McCracken Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Tod D. Megibow
Paducah, Kentucky

BRIEF FOR APPELLEES CRAWFORD RADIOLOGY CLINIC AND GERSH LUNDBERG, M.D.:

David B. Gazak
Ashley J. Butler
Louisville, Kentucky

BRIEF FOR APPELLEE RONALD M. KUPPER, M.D.:

E. Frederick Straub, Jr.
J. Duncan Pitchford
Paducah, Kentucky