

RENDERED: MAY 3, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2012-CA-000492-MR

PATRICIA GOFF, EXECUTRIX  
OF THE ESTATE OF THOMAS SOUTH

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DAVID A. TAPP, JUDGE  
ACTION NO. 07-CI-00359

DR. ALBERTO GONZALEZ

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Patricia Goff, Executrix of the Estate of Thomas South, (referred to as Estate) brings this appeal from a November 18, 2011, order of the Pulaski Circuit Court directing a verdict in favor of Alberto Gonzalez, M.D. and dismissing the Estate's medical malpractice action. We affirm.

On April 10, 2005, Thomas South presented to the Emergency Room at Lake Cumberland Regional Hospital complaining of abdominal pain. Dr. Melanio Medroso evaluated Thomas and ordered a noncontrasted Cat Scan (CT) of the pelvis and abdomen. Gonzalez, a radiologist, interpreted the CT as negative for appendicitis. Thomas was released and went home. Two days later, Thomas again presented to the emergency room with abdominal pain. At this time, it was discovered that Thomas suffered a ruptured appendix. Despite surgery and other medical treatment, Thomas passed away on April 16, 2005.

The Estate initiated this medical malpractice action against, inter alios, Gonzalez. Therein, the Estate claimed that Gonzalez breached the applicable standard of care by misinterpreting Thomas's CT scan on April 10, 2005, and that such breach caused Thomas injury and his untimely death.

A jury trial ensued. At the conclusion of the Estate's proof, Gonzalez moved for a directed verdict. Gonzalez argued that the Estate failed to prove that his breach of the standard of care caused injury or death to Thomas. Specifically, Gonzalez pointed out that no medical expert witness testified for the Estate on the issue of causation.

By order entered November 18, 2011, the circuit court concluded that the Estate failed to prove causation by expert testimony and directed a verdict in favor of Gonzalez. This appeal follows.

To begin, a directed verdict is proper when reasonable jurors could only conclude that the moving party was entitled to judgment. Kentucky Rules of

Civil Procedure (CR) 50.01; *Lee v. Tucker*, 365 S.W.2d 849 (Ky. 1963). And, the evidence and reasonable inferences therefrom must be viewed in a light most favorable to the nonmoving party. *Id.*

To prevail upon a claim of medical negligence, plaintiff must demonstrate the standard of care, breach of the standard of care, and that such breach caused injury. *Andrew v. Begley*, 203 S.W.3d 165 (Ky. App. 2006). The negligence of a physician must generally be established by medical expert testimony. *Johnson v. Vaughn*, 370 S.W.2d 591 (Ky. 1963). Our case law has recognized two exceptions to the general rule that expert medical testimony is required to establish medical negligence. Under the first exception, it is generally accepted that expert medical testimony is not required where a layperson with general knowledge would have no difficulty recognizing the medical negligence. *Nalley v. Banis*, 240 S.W.3d 659 (Ky. App. 2007). With this exception, the medical negligence is within the knowledge and understanding of an individual with no specialized medical training. [Andrew, 203 S.W.3d 165](#). Under the second exception, medical testimony or other medical evidence “provide a sufficient foundation for *res ipsa loquitur*.” [Andrew, 203 S.W.3d at 170](#) (citation omitted). Under this exception, a physician may make an admission “of a technical character from which one could infer that he or she acted negligently.” [Id. at 171](#).<sup>1</sup>

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<sup>1</sup> We would also note that the Kentucky Supreme Court appears to have recently carved out a third exception where a nurse has been determined qualified as a medical expert to give an expert medical opinion in the interpretation of x-rays in a medical malpractice case. *Savage v. Three Rivers Medical Center*, 390 S.W.3d 104 (Ky. 2012).

The Estate contends that the circuit court erroneously rendered a directed verdict. The Estate argues that evidence existed demonstrating that Gonzalez's breach of the standard of care caused injury to Thomas. Specifically, the Estate points to portions of depositional testimony of its medical expert, Dr. Christopher Moore. Moore was scheduled to testify in person at trial but did not appear at his allotted time. The trial court then permitted the Estate to read Moore's deposition testimony to the jury. In particular, the Estate cites this Court to pages 85 and 86 of Moore's deposition to establish a sufficient casual relationship between Gonzalez's negligence and Thomas's death.<sup>2</sup>

As noted, the record reflects that the Estate, through its counsel, read most of Moore's deposition into the record at trial for the jury. However, counsel stopped reading on line 1 of page 84. Thus, pages 84 through 88 were not read into the trial record for the jury. As pages 85 and 86 of Dr. Moore's deposition were not presented below and are relied upon by the Estate to establish causation for the doctor's negligence, it is improper for this Court to consider such evidence, and we will not do so. *See Burberry v. Bridges*, 427 S.W.2d 583 (Ky. 1968).

The Estate further argues that expert testimony as to causation was unnecessary because Gonzalez's negligence was so apparent a layperson could readily recognize it. We disagree.

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<sup>2</sup> In its brief, Patricia Goff, Executrix of the Estate of Thomas South, (referred to as Estate) actually cited to pages 82, 85, and 86 of Dr. Christopher Moore's deposition. However, it appears that the Estate erroneously cited to page 82 as the quoted material is actually found on page 86 of the deposition. We view such as a clerical error by the Estate.

Here, there was evidence introduced that Gonzalez allegedly breached the standard of care by failing to recognize that Thomas's appendix was abnormal on the CT scan performed on April 10. However, as noted, no expert medical evidence was introduced as to whether this breach of the standard of care caused any injury or the death of Thomas. The record reveals that Thomas's medical course of treatment was complex and involved many physicians. It is simply not within a layperson's general knowledge that Gonzalez's failure to recognize Thomas's abnormal appendix on the CT scan caused injury or his untimely death. We cannot conceive any situation where a layperson would be qualified to read a CT scan or otherwise medically diagnose appendicitis.

Accordingly, we conclude that expert medical testimony was needed to establish causation which was a necessary element to a determination of negligence by Gonzalez in this case. The circuit court properly rendered a directed verdict in favor of Gonzalez at trial.

For the foregoing reasons, the order of the Pulaski Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT  
FOR APPELLANT:

Robert W. Riley  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Clayton L. Robinson  
David P. Kaiser  
Lexington, Kentucky

ORAL ARGUMENT FOR  
APPELLEE:

David P. Kaiser  
Lexington, Kentucky