

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-001291-MR

KATHERINE HALL

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE MARY M. SHAW, JUDGE  
ACTION NO. 13-CI-004017

KEVIN HARRELD, M.D.; JEWISH  
PHYSICIAN GROUP, INC.; and SOUTH  
LOUISVILLE ORTHOPAEDICS

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JONES, D. LAMBERT, AND MAZE; JUDGES.

D. LAMBERT, JUDGE: In this *pro se* medical malpractice appeal, Katherine Hall challenges the decision of the Jefferson Circuit Court to grant summary judgment in favor of Dr. Kevin Harreld and his physician group. The circuit court entered the summary judgment order after finding Katherine had failed to offer expert testimony to support her negligence action. After review, we affirm.

## **I. BACKGROUND**

In late July 2012, Katherine suffered a wrist fracture. She sought treatment from orthopedic surgeon Dr. Harreld days later. Dr. Harreld operated on Katherine's fractured wrist. He also treated her in the months following the surgery. Nevertheless, Katherine's wrist did not heal properly. She sustained an EPL rupture while on the mend that aggravated her wrist injury. Katherine subsequently sought treatment for this complication from Dr. Kutz,<sup>1</sup> a hand surgeon. Dr. Kutz performed surgery on Katherine's wrist. Katherine has not recovered full range of motion in her wrist.

Nearly one year after her first wrist surgery, Katherine sued Dr. Harreld and his affiliated surgical group. Katherine alleged that the EPL rupture was caused by Dr. Harreld's negligence. During discovery, Katherine indicated that she would support the allegations in her complaint with expert testimony. By June 2015, however, Katherine had not identified such an expert. Dr. Harreld consequently moved for summary judgment on the grounds that her failure to disclose an expert amounted to a lack of proof. Katherine defended by arguing that she intended to call Dr. Kutz as a witness at trial. Katherine also argued that she would establish her case through cross-examining Dr. Harreld's experts. After considering these arguments, the circuit court awarded summary judgment. This appeal followed.

## **II. STANDARD OF REVIEW**

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<sup>1</sup> The parties only refer to a "Dr. Kutz" without providing his given name.

Summary judgment is only appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR<sup>2</sup> 56.03.

### III. DISCUSSION

On appeal, Katherine maintains that she intended to prove her case at trial by calling Dr. Kutz as an expert witness and by cross-examining Dr. Harreld's experts. Katherine also presents an assortment of challenges that were never considered by the trial court. For the following reasons, all of Katherine's arguments are meritless.

In Kentucky, there are two categories of medical malpractice cases: those where the need for expert testimony is undisputed, and those where the plaintiff contends an expert is unnecessary. *Blankenship v. Collier*, 302 S.W.3d 665, 670 (Ky. 2010). The first category comprises the vast majority of medical malpractice claims, while the second consists of *res ipsa loquitur* cases and cases where the defendant physician makes certain admissions evincing his negligence. *Id.* When a plaintiff alleges a medical malpractice claim that falls into the first category, he must disclose a medical expert. *Perkins v. Hausladen*, 828 S.W.2d 652, 655. The failure to do so within a reasonable time entitles the defendant to summary judgment. *Green v. Owensboro Medical Health System, Inc.*, 231 S.W.3d 781, 784. This is because the failure to identify an expert capable of explaining the applicable medical standard of care to the jury is ultimately a failure

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<sup>2</sup> Kentucky Rules of Civil Procedure.

to offer even the most basic level of proof, and [a] jury trial without the requisite proof is a futile exercise. *Blankenship*, 302 S.W.3d at 675.

Here, the circuit court correctly concluded there were no genuine issues of material fact regarding Katherine's negligence suit. Katherine did not dispute the need for a medical expert, and she never disclosed such an expert. Accordingly, we must affirm the summary judgment order.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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