

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA09-568

JOHNNY MACK SHAFFER et al.
APPELLANTS

V.

LEO YANG, M.D.

APPELLEE

Opinion Delivered February 3, 2010

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-03-994-2]

HONORABLE JOHN S.
PATTERSON, SPECIAL JUDGE

AFFIRMED

JOHN MAUZY PITTMAN, Judge

This medical malpractice case requires us to decide whether a New York specialist physician’s expert testimony that all obstetrician/gynecologist physicians in the United States are held to the same standard was sufficient evidence of the local standard of care in Hot Springs, Arkansas, when the expert admittedly knew nothing about Hot Springs, its medical community, or the type of medical services available there. The trial judge ruled that it was not and granted a directed verdict in favor of appellee for failure to establish the local standard of care. Appellants argue that the trial court erred in so doing. We affirm.

Appellants’ decedent died from complications stemming from surgical removal of a pelvic mass by appellee, Dr. Leo Yang. During the surgery, decedent’s bladder was torn and her bowel was perforated four or five times, permitting the contents of the bowel to spill into her peritoneal cavity. Dr. Derek J. Tenhoopen, an obstetrician/gynecologist practicing in

Rochester, New York, opined that Dr. Yang should have performed more preoperative testing, obtained a more detailed medical history, considered options other than surgery before operating on the decedent, and should not have attempted to perform the procedure laparoscopically.

Arkansas Code Annotated § 16-114-206(a)(1) (Repl. 2006) provides that, in any action for medical injury, when the asserted negligence does not lie within the jury's comprehension as a matter of common knowledge, the plaintiff shall have the burden of proving, by means of expert testimony provided only by a medical care provider of the same specialty as the defendant, the degree of skill and learning ordinarily possessed and used by members of the profession of the medical care provider in good standing, engaged in the same type of practice or specialty in the locality in which he or she practices or in a similar locality. This proof was lacking in the present case.

The statute permits the local standard of care to be established by analogy through proof of the standard of care in similar localities. However, in order to describe the standard of care in similar localities, the expert must have sufficient relevant knowledge of the locality where the alleged negligence occurred to be able to identify localities that are similar. Dr. Tenhoopen clearly lacked such knowledge. He testified that he did not know how large a city Hot Springs was; that he was unfamiliar with the physicians, medical community, and services available in Hot Springs; that he did not know how many obstetrician/gynecologists

or general surgeons practiced in Hot Springs; and that he did not know how many hospitals were located in Hot Springs.

The Arkansas Supreme Court adheres to the locality rule and has held that the affidavit of an expert medical witness was insufficient to establish the standard of care where it was devoid of any mention of the standard of care in Baxter County, the site of the alleged medical malpractice. *Mitchell v. Lincoln*, 366 Ark. 592, 197 S.W.3d 449 (2006). Likewise, the supreme court has held that testimony regarding a national standard of care is insufficient where the expert fails to demonstrate a familiarity with the locality where the alleged malpractice occurred. *Wolford v. St. Paul Fire & Marine Insurance Company*, 331 Ark. 426, 961 S.W.2d 743 (1998). In light of these precedents, we hold that the trial court did not err in directing a verdict in favor of appellee.

Affirmed.

VAUGHT, C.J., and ROBBINS, J., agree.