

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-2022

KEVIN LYONS,

Appellant

v.

HAHNEMANN UNIVERSITY HOSPITAL

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 02-cv-00778)
District Court Judge: The Honorable Robert F. Kelly

Submitted Under Third Circuit L.A.R. 34.1(a)
March 22, 2004

Before: FUENTES, SMITH and GIBSON*, Circuit Judges.

(Opinion Filed: April 9, 2004)

* The Honorable John R. Gibson, Senior Circuit Judge for the United States Court of Appeals for the Eighth Circuit, sitting by designation.

OPINION OF THE COURT

FUENTES, Circuit Judge:

In this malpractice action, Kevin Lyons appeals the District Court's dismissal of his claim against Nurse Decker and Hahnemann University Hospital ("Hahnemann") for a wrist injury he allegedly suffered while in their care.

On December 1, 2000, Kevin Lyons was admitted to Hahnemann Hospital after a workplace accident. Lyons alleged, and Nurse Amelia Decker admitted at trial, that on December 13th, she applied wrist restraints to Lyons in a fashion "inconsistent with or not sanctioned or approved" by hospital policy, and briefly left the room. When she returned, Lyons had fallen off the bed and his arms were hanging from the restraints. Lyons' mother testified that after his fall, his right wrist appeared to her to be swollen, and he grimaced in pain when she touched it. On December 22nd, Lyons complained of wrist pain and on December 23rd, an x-ray was performed which showed a chip fracture to a bone in Lyons' right wrist.

On February 14, 2002, Lyons filed a complaint against Nurse Decker, as an employee of Hahnemann, alleging that his wrist was injured by the restraints. At trial, Lyons presented the testimony of his mother, Nurse Varen O'Keefe-Domalleski and Dr. Mark Lazarus, his treating physician. After the close of Lyons' case, the District Court Judge denied

Hahnemann's motion for judgment as a matter of law, but when that motion was renewed at the close of all the evidence, the motion was granted. In his oral opinion, the District Court Judge stated that "there is a lack of expert medical testimony to establish causation." Lyons appeals from the accompanying Order granting Hahnemann judgment as a matter of law. We exercise plenary review over that Order.

As Pennsylvania Courts have often reiterated, the plaintiff in a medical malpractice action must establish that (1) the physician owed a duty to the patient; (2) the physician breached that duty; (3) the breach of the duty was the proximate cause of, or a substantial factor in, bringing about the harm suffered by the patient; and (4) the damages suffered by the patient were a direct result of that harm. Rachlin v. Edmison, 816 A.2d 862, 868 (Pa. Super. 2002) (citing Corrado v. Thomas Jefferson University Hospital, 790 A.2d 1022, 1030 (Pa. Super. 2001)); Eaddy v. Hamaty, 694 A.2d 639, 642 (Pa. Super. 1997). Because the negligence in a medical malpractice action encompasses matters not within the ordinary knowledge and experience of laypersons, Pennsylvania law generally requires that a medical expert testify with a reasonable degree of medical certainty that the acts in question deviated from acceptable medical standards, and that such deviation caused the harm suffered. Corrado, 790 A.2d at 1030; Toogood v. Owen J. Rogal, D.D.S., P.C., 824 A.2d 1140 (Pa. Super. 2003) (citing Hightower-Warren v. Silk, 698 A.2d 52, 54 (Pa. Super. 1995))

In deciding there was insufficient evidence of a causal connection between Nurse Decker's breach of duty and Lyons' injury, the District Court examined the testimony of

Lyons' expert, Dr. Lazarus. Dr. Lazarus' testimony was the only evidence of causation presented, and he testified only that the absence of swelling on Lyons' wrist during his examination on December 23, 2000 was "consistent" with the fracture occurring, as alleged, on December 13th. On cross-examination, Dr. Lazarus stated that his observations were also consistent with the injury occurring on December 14th, 15th, 16th, 17th, 18th, 19th or 20th. Dr. Lazarus also testified that the type of injury Lyons sustained was consistent with a fall like the one he suffered.

To make out a *prima facie* case, the expert testifying as to causation must state his opinion with a reasonable degree of medical certainty. Certainly, the expert is not required to testify "in precisely the language used to enunciate the legal standard." Eaddy, 694 A.2d at 642. Pennsylvania courts have made clear, however, that an expert fails the required standard of certainty if he testifies that the cause "possibly" or "could have" led to the injury, that it "could very probably account" for the result, or even that it was "very highly probable" that it caused the result. Corrado, 790 A.2d at 1031, Montgomery v. South Philadelphia Medical Group, Inc., 656 A.2d 1385, 1390 (Pa.Super. 1995), (citing Albert v. Alter, 381 A.2d 459 (Pa Super 1977)); Reilly v. Tiergarten, Inc., 633 A.2d 208, 210 (Pa.Super. 1993). Dr. Lazarus did not express, with the requisite degree of medical certainty, that Nurse Becker's improper restraint caused Lyons' injury. He stated only that Lyons' injury was "consistent" with his fall from bed on December 13th. After reviewing his testimony in its entirety, we conclude that the District Court did not err in finding that the evidence presented

by Lyons was less than what is required to establish causation. Accordingly, we affirm the District Court's grant of judgment as a matter of law.
