

IN THE SUPERIOR COURT OF WARREN COUNTY
STATE OF GEORGIA

FREDERIC CLAYTON WIGGINS,
INDIVIDUALLY AND
AS ADMINISTRATOR OF THE
ESTATE OF
MARJORIE ELISE CAREY WIGGINS,

Plaintiff

vs.

WARRENTON HEALTH &
REHABILITATION CENTER;
COASTAL HEALTH MANAGEMENT
ASSOCIATES; PEACH MEDICAL
MANAGEMENT, INC.; and
KELLI M. CARTER, M.D.,

Defendants

Civil Action No.: 2003CV-0159

Georgia, Warren County
Office of Clerk of Superior/Juvenile Court

I certify that the within papers were
filed in office at 12:30 O'clock P.M.
this 4th day of April, 2006.

By Stc Shirley T. Cheeley, Clerk

ORDER

Defendants Warrenton Health & Rehabilitation Center, Coastal Health Management Associates and Peach Medical Management, Inc.'s (collectively "Nursing Home Defendants") Motion for Reconsideration and Motion for Summary Judgment came on for a hearing on March 13, 2006. After careful review of the briefs filed by the parties, argument of counsel, and all matters of record, and after careful consideration, the Court hereby GRANTS both the Nursing Home Defendants' Motion for Reconsideration and Motion for Summary Judgment. I make the following findings of fact and conclusions of law.

3/29/06

BACKGROUND

This action was filed on August 5, 2003, well before the enactment of O.C.G.A. § 24-9-67.1. At the time the action was filed, Plaintiff sought to recover damages for alleged acts of professional malpractice committed by the Defendants. Specifically, Plaintiff alleged that his mother suffered from an undiagnosed infection for over a month prior to her death which went undiagnosed and untreated leading to her ultimate demise. He also alleged that Defendants failed to sufficiently provide for and monitor his mother's nutritional status during her stay at Warrenton Health and Rehabilitation Center ("WHRC") which resulted in her becoming malnourished. Due to the malnutrition, Plaintiff alleged his mother was unable to ward off the alleged ongoing infection and subsequently died as a result of pneumonia. The Defendants denied these material allegations and retained experts who testified that both Dr. Carter and the staff at WHRC met the applicable standard of care.

Discovery ensued and Plaintiff's expert, Dr. Dailey-Smith, was eventually deposed on April 27, 2005 with the conclusion of her deposition occurring on November 8, 2005. Her deposition was taken subsequent to the passage of O.C.G.A. § 24-9-67.1. After the conclusion of Dr. Dailey-Smith's deposition, all Defendants moved to exclude her testimony, contending that her testimony was unreliable and that she lacked sufficient professional experience to meet the requirements of O.C.G.A. § 24-9-67.1.

Judge Dunaway, on behalf of this Court, held a hearing on January 3, 2006, and considered the initial round of motions seeking to exclude Dr. Daily-Smith. At the

hearing Judge Dunaway limited the scope of Dr. Daily-Smith's testimony, but declined to exclude her. Judge Dunaway did not take up the Defendants' Motions for Summary Judgment that were then pending. Instead, this matter proceeded to trial where a mistrial was declared.

At the hearing on January 3, 2006, the Defendants suggested that Dr. Daily-Smith had more limited practice experience than she had represented in her deposition, but were unable to come forward with evidence to substantiate these claims. After the mistrial, the Nursing Home Defendants renewed their motion to exclude Dr. Daily-Smith and submitted licenses issued by the State of Georgia that reflected most of the "Nursing Homes" where Dr. Daily-Smith claimed to have provided care to residents were actually licensed as "Personal Care Homes" and did not provide medical care.

At the hearing on March 13, 2006, Plaintiff's counsel did not present evidence that the facilities identified by Dr. Daily-Smith in her deposition were licensed nursing homes or otherwise contest the Defendants' representation that the record before this Court demonstrated that Dr. Daily-Smith had treated residents in personal care homes as opposed to nursing homes.¹ Indeed, this Court finds that the record, at best, reflects that Dr. Daily-Smith cared for residents in a nursing home setting for several months while on active duty with the United States Air Force, but that this is the sum total of her experience caring for nursing home residents during the five years preceding the alleged professional malpractice.

¹ Personal care homes are not authorized to provide nursing services or otherwise provide medical care. Ga. Comp. R. & Regs. r. 290-5-35-24.

CONCLUSIONS OF LAW

The Nursing Home Defendants' Motion for Reconsideration seeks to revisit the issue of whether Dr. Daily-Smith is qualified to serve as an expert witness in this case. Plaintiff does not contest that Dr. Daily-Smith's work experience in a nursing home setting is limited, but nonetheless maintains that she is qualified to serve as an expert witness based on her experience caring for geriatric patients in other settings, such as personal care homes. Despite the Plaintiff's claim that Dr. Daily-Smith is qualified to serve as an expert witness, his counsel has advised this Court that Dr. Daily-Smith's testimony, if permitted, would be limited at trial to two issues: (1) the standard of care applicable to Dr. Carter; and, (2) causation issues. Thus, it seems the Plaintiff has unilaterally agreed to self-limit Dr. Daily-Smith's testimony to issues that do not concern the standard of care applicable to the staff at WHRC. This Court nonetheless undertakes to briefly analyze the qualifications of Dr. Daily-Smith.

Whether Dr. Daily-Smith is qualified to serve as an expert witness is controlled by O.C.G.A. § 24-9-67.1, although this Court notes that prior to the enactment of O.C.G.A. § 24-9-67.1 a trial court had the discretion to determine whether a medical expert witness had the experience necessary to testify as to what the standard of care required under a particular set of circumstances. Chambers v Gwinnett Community Hospital, Inc., 253 Ga.App. 25, 557 S.E.2d 412 (2001). O.C.G.A. § 24-9-67.1 contains both a "qualification" clause (§ 24-9-67.1(c)) and a "reliability" clause (§ 24-9-67.1(b)) that must be satisfied in order for a physician to serve as an expert witness in a professional malpractice case.

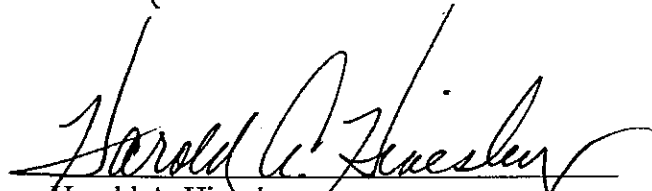
When a physician testifies against a healthcare facility staffed by healthcare professionals, such as registered nurses, licensed practical nurses, physical therapists and other medical support staff, O.C.G.A. § 24-9-67.1(c) requires that the physician have knowledge of the applicable standard of care by virtue of having supervised, taught or instructed those professionals during three of the last five years preceding the alleged incident. This Court concludes that Dr. Daily-Smith does not meet the “qualification” requirements of O.C.G.A. § 24-9-67.1(c) and, therefore, is not qualified to serve as an expert witness.

This Court also concludes that Dr. Daily-Smith’s testimony is unreliable. O.C.G.A. 24-9-67.1(b) requires that all expert testimony be the “product of reliable principles and methods” and Dr. Daily-Smith’s testimony falls well short of that standard. For all of these reasons, this Court concludes that Dr. Daily-Smith is not qualified to serve as an expert witness and GRANTS the Nursing Home Defendants’ Motion for Reconsideration.

The exclusion of Dr. Daily-Smith is fatal to the Plaintiff’s claim as it leaves the Plaintiff unable to point to expert testimony sufficient to withstand the Nursing Home Defendants’ Motion for Summary Judgment. Anthony v. Chambless, 231 Ga. App. 657 (1998). Without the testimony of a medical doctor Plaintiff cannot establish that any alleged negligence on the part of the nursing home Defendants was the proximate cause of the alleged injuries or death of Ms. Wiggins.

This Court therefore GRANTS the Nursing Home Defendants' Motion for
Summary Judgment.

SO ORDERED this 29th day of March, 2006.


Harold A. Hinesley,
Judge Superior Court of Warren County

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