

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 )

Plaintiffs, )

v. )

CIVIL ACTION FILE )  
NO. 2003-CV-0159 )

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

Defendants. )

**ORDER GRANTING DEFENDANT DR. KELLI M. CARTER'S MOTIONS FOR RECONSIDERATION TO EXCLUDE THE TESTIMONY OF MARY DAILEY-SMITH, M.D. AND FOR SUMMARY JUDGMENT**

Defendant Carter's Motion for Reconsideration and Motion for Summary Judgment came on for 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 makes the following findings of fact and conclusions of law.

**Background**

This is a medical malpractice case involving several defendants, including Dr. Kelli Carter. Suit was filed on August 5, 2003. In his Complaint, Plaintiff alleges that Dr. Carter caused his 81 year-old mother's death due to medical negligence while she resided at Warrenton Health and Rehabilitation Center (hereinafter "Warrenton"). Warrenton is a nursing home, also

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known as a long term care facility. Specifically, plaintiff contends that his mother suffered from an undiagnosed infection for over a month leading to her ultimate demise. He also alleges that defendants failed to sufficiently provide for and monitor his mother's nutritional status during her stay at Warrenton. Allegedly due to the malnutrition, plaintiff's decedent was unable to ward off the alleged ongoing infection and subsequently died as a result of pneumonia.

In the present case, plaintiff relies upon the testimony of Dr. Mary Dailey-Smith to establish the standard of care required of a family physician admitting and treating patients in the nursing home setting. Defendant Carter filed the present motions arguing that Dr. Dailey-Smith is not qualified to render an expert opinion critical of Dr. Carter. In support of her motion, Dr. Carter submitted evidence that Dailey-Smith had not practiced medicine in a skilled nursing long term care facility during the requisite period. At the hearing, Plaintiff's counsel did not present evidence that the facilities identified by Dr. Dailey-Smith, in her deposition, were licensed nursing homes or contest the record evidence demonstrating that Dr. Dailey-Smith had treated residents in personal care homes as opposed to nursing homes.<sup>1</sup>

#### **Conclusions of Law**

Dr. Dailey-Smith is plaintiff's sole medical expert in this case. Because this is a professional negligence claim, Plaintiff is required to offer the testimony of expert witnesses. Cannon v. Jeffries, 250 Ga. App. 371 (2001). Whether a witness has the experience necessary to testify as to what the standard of care requires under a particular set of circumstances is a matter within the sound discretion of the trial court. Chambers v Gwinnett Community Hospital, Inc., 253 Ga.App. 25, 28, 557 S.E.2d 412 (2001); McDonald v Glynn-Brunswick Mem. Hosp. 204

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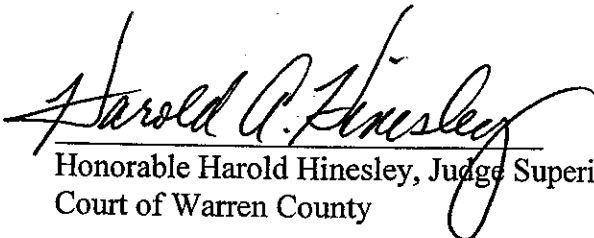
<sup>1</sup> Personal care homes are not authorized to provide nursing services or otherwise provide medical care. Ga. Comp. R. & Regs. r. 290-5-35-.24.

Ga.App. 7, 418 S.E.2d 393 (1992).

In this particular case, the medical issues are unique to the process by which a family practice physician admits to and cares for a patient in a nursing home. O.C.G.A. § 24-9-67.1(c). Here, Dr. Dailey-Smith admits she has never taught in a medical school environment. [Dailey-Smith Depo. pg. 83] O.C.G.A. § 24-9-67.1(c)(2)(B). Therefore, in order to qualify as an expert as to the standard of care required of a physician under those circumstances, Dr. Dailey-Smith must have had sufficient experience in that setting. O.C.G.A. § 24-9-67.1(c)(2)(A). However, this court finds that because Dailey-Smith does not possess sufficient knowledge of the subject matter she is not qualified to offer an expert opinion in this case. Burton v. Danek Medical, Inc., 1999 WL 118020, at \*3 (E.D. Pa. Mar. 1, 1990). Therefore, those opinions must be excluded and defendant Carter's Motion for Reconsideration is hereby GRANTED.

Additionally, because this court finds that Dr. Dailey-Smith does not possess the requisite experience in the subject to render opinions as a expert, plaintiff cannot prove all of the essential elements of his claim. Grantham v. Amin, 221 Ga. App. 458, 459 (1996). Therefore, defendant Carter is entitled to judgment as a matter of law and her Motion for Summary Judgment is hereby GRANTED.

It is so ORDERED this 29<sup>th</sup> day of March, 2006.

  
Honorable Harold Hinesley, Judge Superior  
Court of Warren County



Prepared by:

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**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that I have this day served a copy of the foregoing upon the following:

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by depositing said copies in the United States Mail with adequate postage affixed thereto to ensure proper delivery.

This 31<sup>st</sup> day of March, 2006.

  
SUSAN CARTER MULHERIN