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SC Court of Appeals

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY ) C/A No.: 2018-CP-26-05438

Tara Gurry, )

Plaintiff, )

v. )

Myrtle Beach Dermatology, LLC, )

Shannon Hussey, and Richard Hussey, )

M.D. )

Defendants. )

**ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This matter came before the Court upon a motion for summary judgment by the Defendants following the Court's granting of Defendants' Motion in Limine to Challenge, Limit, and/or Exclude the testimony of Plaintiff's sole expert Dr. Schield Wikas from trial. Present at the hearing were counsel for Defendants Marian Scalise, Esquire and Lydia Magee, Esquire, and Plaintiff Tara Gurry represented herself *pro se*<sup>1</sup>.

This case involves allegations of medical malpractice against the Defendants, specifically that Defendant Nurse Practitioner Shannon Hussey improperly injected Kenalog into a hypertrophic scar on Plaintiff's thigh (which was a sequela of a melanoma excision), resulting in atrophy and systemic effects.

Prior to the start of trial and selection of a jury, counsel for Defendants sought an Order to Challenge, Limit, and/or Exclude Plaintiff's dermatology expert Dr. Shield Wikas's testimony. This Court granted the Defendants' Motion in Limine to Exclude Dr. Wikas's testimony for trial

<sup>1</sup> This hearing was held just prior to the selection of a jury in this case, and Plaintiff intended to represent herself *pro se* throughout the course of the trial.

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on the basis that Dr. Wikas's opinions regarding the occurrence of atrophy was not supported by any research or medical literature and should be excluded by this Court under the Court's gatekeeping function, laws of South Carolina, and on the basis that his testimony amounted to *res ipsa loquitur* which is not recognized in South Carolina.

After ruling on the Defendant's Motion in Limine regarding Dr. Wikas, counsel for the Defendants then made a motion for summary judgment on the ground that because Dr. Wikas's testimony was excluded from trial that Plaintiff could not proceed without an expert to support her medical malpractice case. The Court recognizes that in South Carolina, with few exceptions, expert opinion is required in medical malpractice actions. See David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). Specifically, a Plaintiff must demonstrate and provide evidence of the following via an expert witness: (1) the generally recognized and accepted practices and procedures that would be followed by average, competent practitioners in the Defendant's field of medicine under the same or similar circumstances, and (2) the defendant departed from the recognized and generally accepted standards. Id. 367 S.C. at 247-248, 626 S.E.2d at 4 (citing Pederson v. Gould, 288 S.C. 141, 143-44, 341 S.E.2d 633, 634 (1986); Cox v. Lund, 286 S.C. 410, 414, 334 S.E.2d 116, 118 (1985)). The Plaintiff must also establish that the Defendants' departure from such generally recognized practices and procedures was the proximate cause of the Plaintiff's alleged injuries and damages. See id. 367 S.C. at 248, 626 S.E.2d at 4 (citing Green v. Lilliewood, 272 S.C. 186, 193, 249 S.E.2d 910, 913 (1978)). Failure to prove any one of these elements is fatal to recovery.

However, in light of the Plaintiff's *pro se* status and because the Court had only reviewed the testimony of one of Plaintiff's witnesses, her expert Dr. Schield Wikas, the Court felt inclined to allow the case to go forward and allow Plaintiff to present her case to the jury and denied the

Defendants' Motion for Summary Judgment. However, before this Court issued its final ruling, the Plaintiff then voiced her clear intention to the Court that she did "not want to waste anyone's time" in going forward in the case, she wanted to immediately appeal the Court's ruling excluding her expert Dr. Wikas's testimony, and she wanted to know who she should go to about filing an immediate appeal and how that needed to be done. Upon hearing the Plaintiff's request and demand that she be allowed to immediately appeal the case, and that she had no intention of going forward with the trial of the case and was abandoning prosecution of her case, the Court granted the Defendants' Motion for Summary Judgment so Plaintiff could immediately appeal this Court's ruling regarding the exclusion of her expert Dr. Wikas.

Accordingly, the Court hereby grants the Defendants' Motion for Summary Judgment with prejudice.

IT IS SO ORDERED.

*[Electronic Signature Page to follow.]*



## Horry Common Pleas

**Case Caption:** Tara Gurry VS Myrtle Beach Dermatology LLC , defendant, et al

**Case Number:** 2018CP2605438

**Type:** Order/Summary Judgment

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148