

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

TAWNYA L. REDOS, Administrator of the Estate : NO. 19-00528
of SHAWN LOVETT, :
Plaintiff, :
vs. :
UPMC SUSQUEHANNA, et al., : CIVIL ACTION
Defendants. :

OPINION AND ORDER

AND NOW, following argument on various *Motions in Limine* filed by both parties in the matter captioned above, the Court hereby issues the following OPINION and ORDER.

I. Background:

This matter was commenced by Complaint filed March 28, 2019. After a series of preliminary objections, eventually resolved by the Order of October 18, 2019, Plaintiff filed an Amended Complaint on November 22, 2019. Defendants responded by Answer and New Matter filed December 12, 2019. The gravamen of Plaintiff’s claim is her contention that the Defendants failed to exercise the required level of care for Shawn Lovett (hereinafter “Lovett”) to prevent his elopement from the Williamsport Hospital on April 4, 2017, leading to a fall and injuries sustained in that fall.

The parties have filed multiple *Motions in Limine*, as follows:

1. Defendants’ Motion to preclude testimony in support of Plaintiff’s claim of corporate negligence, filed January 25, 2024.
2. Plaintiff’s Motion to preclude certain testimony of Carl W. Dobson, M.D., regarding Shawn Lovett’s psychological state after the incident, filed January 29, 2024.
3. Plaintiff’s Motion to preclude certain testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett’s family, filed January 29, 2024.
4. Defendants’ Motion to preclude Plaintiff’s testimony regarding the effect upon her of the death of Shawn Lovett, filed February 26, 2024.

II. The Record Evidence:

The underlying facts are substantially undisputed. On April 1, 2017, Lovett sought treatment at the Bucktail Medical Center for the loss of sight, which Defendants attribute to his use of a mix of drugs the preceding day. An emergency room physician sought to secure an inpatient psychiatric admission for Lovett at Clarian Hospital. Clarian sought a medical clearance prior to his admission. Thus, Lovett was admitted to The Williamsport Hospital (hereinafter “Williamsport”) for medical evaluation and clearance.

Defendant Afzal admitted Lovett, and placed multiple consult requests. Lovett refused to participate in a neurological examination by neurologist Donald Dworek, D.O. On April 3, 2017, Lovett ran past a safety sitter to an empty hospital room, opened a window, and placed his head on the windowsill. He was returned to his room by hospital security. He was later evaluated by Rick Davies, PA-C, who assessed that Lovett was suffering from delirium. Later on, the same day, Lovett was evaluated by both Rick Davies, PA-C and psychiatrist Jeremy Bennett, M.D. Bennett diagnosed that Lovett suffered from delirium. On April 4, 2017, Lovett exhibited bizarre behavior in his room, exited his room through the window, ran across the adjacent hospital roof, and jumped from the roof. His fall from the roof resulted in multiple injuries, for which he was treated at The Williamsport Hospital Emergency Department.

Lovett was found dead from suicide at home on February 14, 2021. His death was unrelated to the events which are the subject of this litigation.

III. Questions Presented:

1. Whether Plaintiff should be precluded from introducing testimony in support of Plaintiff’s claim of corporate negligence.
2. Whether Defendants should be precluded from introducing certain testimony of Carl W. Dobson, M.D., regarding Shawn Lovett’s psychological state after the incident.
3. Whether Defendants should be precluded from introducing certain testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett’s family.
4. Whether Plaintiff should be precluded from introducing Plaintiff’s testimony regarding the effect upon her of the death of Shawn Lovett.

IV. Responses:

1. While Plaintiff will not be precluded from introducing testimony in support of Plaintiff's claim of corporate negligence, Defendants remain free to seek a directed verdict on that claim, if Plaintiff produces no expert testimony in support of that claim, and other evidence fails to establish that the basis for the claim is obvious.
2. While Defendants will not be precluded from introducing any testimony of Carl W. Dobson, M.D., regarding Shawn Lovett's care after the incident, that testimony will be narrowed to relevant matters.
3. While Defendants will not be precluded from introducing testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett's family, that testimony will be narrowed to relevant matters.
4. Plaintiff will be precluded from introducing Plaintiff's testimony regarding the effect upon her of the death of Shawn Lovett.

V. Discussion:

The Purpose of a Motion in Limine

In the matter of *Klein v. Aronchick*, 2014 Pa. Super. 3, 85 A.3d 487, 498 (Pa. Super. Ct. 2014), the Court described the trial court's role as the "gatekeeper" of relevant evidence:

the admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. Admissibility depends on relevance and probative value. Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact. Evidence, even if relevant, may be excluded if its probative value is outweighed by the potential prejudice.

Commonwealth v. Fransen, 42 A.3d 1100, 1106 (Pa.Super.2012) [(*en banc*), *appeal denied*, 618 Pa. 690, 76 A.3d 538 (2013)] (internal citations omitted). " 'Unfair prejudice' supporting exclusion of relevant evidence means a tendency to suggest decision on an improper basis or divert the jury's attention away from its duty of weighing the evidence impartially." *Commonwealth v. Wright*, 599 Pa. 270, 325, 961 A.2d 119, 151 (2008). "The function of the trial court is to balance the alleged

prejudicial effect of the evidence against its probative value and it is not for an appellate court to usurp that function.” *Commonwealth v. Parker*, 882 A.2d 488, 492 (Pa.Super.2005), *affirmed on other grounds*, 591 Pa. 526, 919 A.2d 943 (2007).

85 A.3d at 498, citing *Smith v. Morrison*, 47 A.3d 131, 137 (Pa. Super. Ct. 2012), *appeal denied*, 618 Pa. 690, 57 A.3d 71 (2012); *accord Smith v. Morrison*, 2012 Pa. Super. 105, 47 A.3d 131, 137 (Pa Super. Ct. 2012).

The Court observes that its decision on any *motion in limine* is often made in a vacuum. During trial, evidentiary objections can be resolved in the context of the witness’s entire testimony, and the probative value of the proposed evidence can be weighed against the testimony of others. When an evidentiary issue is raised through a *motion in limine*, the Court usually lacks context. Often, the non-moving party is uncertain whether the subject evidence will ever be offered. Where the Court concludes that the probative value of the evidence outweighs prejudice, the Court should ordinarily avoid “micromanaging” the method by which the evidence is presented. Those limitations notwithstanding, *motions in limine* serve the worthwhile purposes of both permitting the Court ample time to balance the value of the evidence against the potential for unfair prejudice, and permitting the parties to better plan their case. *Parr v. Ford Motor Company*, 2014 Pa.Super. 281, 109 A.3d 682 (2014), citing *Northeastern Fence and Iron Works, Inc. v. Murphy Quigley Company, Inc.*, 933 A.2d 664 (Pa. Super. Ct. 2007); *accord Commonwealth v. Reese*, 31 A.3d 708, 715 (Pa. Super. Ct. 2011).

While Plaintiff will not be precluded from introducing testimony in support of Plaintiff’s claim of corporate negligence, Defendants remain free to seek a directed verdict on that claim, if Plaintiff produces no expert testimony in support of that claim, and other evidence fails to establish that the basis for the claim is obvious.

In the matter of *Thompson v. Nason Hospital*, 527 Pa. 330, 591 A.2d 703 (Pa. 1991), our Supreme Court first adopted the theory that a hospital corporation could be directly liable for its negligence, as distinguished from long standing agency liability.

Corporate negligence is a doctrine under which the hospital is liable if it fails to uphold the proper standard of care owed the patient, which is to ensure the patient's safety and well-being while at the hospital. This theory

of liability creates a nondelegable duty which the hospital owes directly to a patient.

Thompson, 527 Pa. at 339, 591 A.2d at 707.

In the matter of *Welsh v. Bulger*, 548 Pa. 504, 698 A.2d 581 (Pa. 1997), the Court considered an appeal from a trial court's grant of summary judgement against plaintiff on her claim of corporate negligence, based upon the hospital's contention that the claim was not adequately supported within plaintiff's expert report. The Court reversed and remanded.

Because the duty to uphold the proper standard of care runs directly from the hospital to the patient, an injured party need not rely on the negligence of a third-party, such as a doctor or nurse, to establish a cause of action in corporate negligence." *Moser v. Heistand*, 545 Pa. 554, 558, 681 A.2d 1322, 1325 (1996). Instead, corporate negligence is based on the negligent acts of the institution. *Moser*. A cause of action for corporate negligence arises from the policies, actions or inaction of the institution itself rather than the specific acts of individual hospital employees. *Id.* Thus, under this theory, a corporation is held directly liable, as opposed to vicariously liable, for its own negligent acts.

To establish a claim for corporate negligence against a hospital, a plaintiff must show that the hospital had actual or constructive knowledge of the defect or procedures that created the harm. *Thompson*. The plaintiff also must establish that the hospital's negligence was a substantial factor in causing the harm to the injured party. *Id.*

Although we set forth the elements of a cause of action for corporate negligence against a hospital in *Thompson*, we did not address the type of evidence necessary to prove this cause of action. In a traditional medical malpractice action, where the defendant's negligence is not obvious, a plaintiff must present expert testimony to establish to a reasonable degree of medical certainty that the defendant's acts deviated from an accepted medical standard, and that such deviation was the proximate cause of the harm suffered. *Mitzelfelt v. Kamrin*, 526 Pa. 54, 584 A.2d 888 (1990); *Hamil v. Bashline*, 481 Pa. 256, 392 A.2d 1280 (1978). The Commonwealth Court has determined that this expert testimony requirement is equally applicable to claims of corporate negligence where the hospital's negligence is not obvious. *Walls v. Hazleton State Gen. Hosp.*, 157 Pa. Commw. 170, 629 A.2d 232 (1993). We believe the Commonwealth Court's determination is sound, and accordingly, we hold

that, unless a hospital's negligence is obvious, a plaintiff must produce expert testimony to establish that the hospital deviated from an accepted standard of care and that the deviation was a substantial factor in causing the harm to the plaintiff. We do not, however, require experts to use “magic words” when expressing their opinions.

Welsh v. Bulger, 548 Pa. 504, 513-514, 698 A.2d 581, 585-586 (Pa. 1997).

In essence, Defendants’ *Motion in Limine* is a motion for summary judgment, seeking dismissal of Plaintiff’s corporate liability claim for failure to secure expert testimony in support of that claim. Given the language of Section 7114(a) of the Mental Health Procedures Act, 50 P.S. §7114(a), summary judgment on that claim might be appropriate. The Court is not inclined however, to address the issue in the context of a *motion in limine*. Much of Plaintiff’s proposed evidence, including her proposed expert testimony, might arguably be relevant to both her agency claims and her corporate liability claims. Any effort by the Court to “parse” which evidence might be more relevant to which claim could be an exercise in futility. For that reason, Defendants’ *Motion in Limine* to exclude any evidence in support of Plaintiff’s corporate liability claim will not be granted. The Court is certainly conscious of the controlling authority of *Welsh v. Bulger*, 548 Pa. 504, 698 A.2d 581 (Pa. 1997), stating that “unless a hospital's negligence is obvious, a plaintiff must produce expert testimony to establish that the hospital deviated from an accepted standard of care and that the deviation was a substantial factor in causing the harm to the plaintiff.” Given that requirement, coupled with the gross negligence requirement of 50 P.S. § 7114(a), Defendants’ future motion for a directed verdict on Plaintiff corporate liability claim, is easily predictable.

In the course of oral argument, counsel for Defendants predicted that Plaintiff might attempt to bootstrap her claim of corporate liability by introducing expert testimony beyond the four (4) corners of the expert reports. The Court will fashion its Order to address that particular issue.

While Defendants will not be precluded from introducing any testimony of Carl W. Dobson, M.D., regarding Shawn Lovett's care after the incident, that testimony will be narrowed to relevant matters.

During the course of oral argument on the *Motions in Limine*, there was significant disagreement about the scope of the proposed testimony of Carl W. Dobson, M.D., regarding Shawn Lovett's care after the incident. In the view of the Court, proposed testimony suggesting that hospital security protocols put in place after the incident were similar to those put in place before the incident would be relevant to establish that Defendants provided the appropriate standard of care. Conversely, testimony solely on the issue of Shawn Lovett's psychological state after the incident would be of very limited value. The Court will enter an appropriate Order.

While Defendants will not be precluded from introducing testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett's family, that testimony will be narrowed to relevant matters.

During the course of oral argument on the *Motions in Limine*, there was significant disagreement about the scope of the proposed testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett's family. In the view of the Court, proposed testimony suggesting the extent to which Shawn Lovett's family interfered with his medical care would be relevant to establish that Defendants provided the appropriate standard of care, or that they made reasonable efforts to do so. Conversely, testimony which is merely in the nature of a "character assassination" of the Plaintiff or her family (family drug use, family distrust of physicians and their care, etc.) would be of very limited value. The Court will enter an appropriate Order.

Plaintiff will be precluded from introducing Plaintiff's testimony regarding the effect upon her of the death of Shawn Lovett.

By Order dated December 2, 2021, the Honorable Ryan M. Tira Ordered that Plaintiff may not introduce any testimony regarding the death of Shawn Lovett, since that event is completely unrelated to the subject matter of this litigation. It naturally follows that any testimony regarding its effect upon the Plaintiff is irrelevant. The Court will enter an appropriate Order.

ORDER

And now, this 29th day of February, 2024, for the foregoing reasons, it is hereby Ordered and directed as follows:

1. Defendants' Motion to preclude testimony in support of Plaintiff's claim of corporate liability is denied, without prejudice to Defendants' ability to seek a directed verdict on that issue, unless either the corporate gross negligence is obvious, or the claim is supported by expert testimony. The parties have served expert reports. Absent further Order of Court, Plaintiff is precluded from introducing any expert testimony in support of her corporate liability claim, or otherwise, unless fully consistent with her served reports
2. Plaintiff's Motion to preclude certain testimony of Carl W. Dobson, M.D., regarding Shawn Lovett's psychological state after the incident, filed January 29, 2024, is granted in part and denied in part. Carl W. Dobson, M.D. will be permitted to compare the hospital security protocols put in place after the incident to those put in place before the incident, but he should avoid testifying as to Shawn Lovett's psychological state after the incident, unless that issue is raised by Plaintiff.
3. Plaintiff's Motion to preclude certain testimony of Elena del Busto, M.D., regarding the behavior of Shawn Lovett's family, filed January 29, 2024, is granted in part and denied in part. Elena del Busto, M.D. will be permitted to testify to the extent to which Shawn Lovett's family assisted with or interfered with the medical care provided to Shawn Lovett, but she should avoid testifying as behavior of Shawn's

Lovett's family unrelated to his medical care (family drug use, family distrust of physicians and their care, etc.), unless that issue is raised by Plaintiff.

4. Defendants' Motion to preclude Plaintiff's testimony regarding the effect upon her of the death of Shawn Lovett, filed February 26, 2024, is granted. Plaintiff is precluded from testifying as to any effect upon her arising from any injury or death to Shawn Lovett, including, but not limited to, any effect upon her from the events which are the subject of this litigation.

By the Court,

William P. Carlucci, Judge

WPC/aml

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