

STATE OF MICHIGAN
COURT OF APPEALS

JAMES R. SHERWOOD,

Plaintiff-Appellant,

V

ALPENA GENERAL HOSPITAL and PETER
BENSON,

Defendants,

and

DR. MICHAEL HARTZLER,

Defendant-Appellee.

UNPUBLISHED

September 21, 2001

No. 223691

Alpena Circuit Court

LC No. 98-002761-NM

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

This is a medical malpractice action. Plaintiff appeals by right from an order granting defendant¹ Hartzler's motion in limine to preclude plaintiff's expert witnesses' testimony regarding the applicable standard of care and dismissing the case without prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff lacerated his hand on March 5, 1996 when a drill bit with which he was working blew apart. Defendant, a general surgeon, examined him nine days later. Defendant initially ordered physical therapy, but by April 12, 1996, the third finger remained stiff and defendant recommended surgery. When he performed exploratory surgery six days later, he discovered and repaired a partially lacerated tendon. Despite the repair, plaintiff still has a limited range of motion in the finger and, consequently, a partial loss of hand function.

Plaintiff's theory was that tendon injuries should be repaired within twenty-one days for optimal results, and that defendant's failure to properly evaluate the extent of tendon damage within that period was a breach of the applicable standard of care. In support, he planned to

¹ "Defendant" will refer to Dr. Hartzler only.

present the testimony of two expert witnesses, general surgeon James McDonnell, D.O., and orthopedic surgeon Ronald Clark, M.D. Following a hearing, the trial court concluded that neither doctor was qualified to offer expert testimony at trial.

On appeal, plaintiff first argues that the trial court erred in concluding that McDonnell was not qualified to testify under MRE 702. Under that rule, a person may be qualified to testify as an expert witness by virtue of his knowledge, skill, experience, training, or education in the subject matter of the testimony. The question whether a particular witness qualifies as an expert is left to the trial court's discretion. *Mulholland v DEC Int'l Corp*, 432 Mich 395, 402; 443 NW2d 340 (1989); *Grow v W A Thomas Co*, 236 Mich App 696, 713; 601 NW2d 426 (1999). We find no abuse of discretion on this record.

Plaintiff does not dispute that McDonnell was not qualified to testify about defendant's surgical competence. Instead, he contends that the doctor should have been allowed to testify that, in his opinion, defendant breached the standard of care by failing to assess plaintiff's tendon function during his initial examination. However, McDonnell's opinion was based on a faulty premise, that is, that defendant failed to evaluate plaintiff's tendon function. An expert's opinion is not competent evidence where it is based on assumptions that are not in accord with the facts. *Badalamenti v William Beaumont Hosp-Troy*, 237 Mich App 278, 286; 602 NW2d 854 (1999). The trial court did not abuse its discretion.

Plaintiff also disputes the trial court's conclusion that MCL 600.2169 precluded Clark from testifying as an expert. Under that statute, a witness in a medical malpractice case cannot give expert testimony against a board-certified specialist unless the expert is also board-certified in that specialty. Plaintiff concedes that Clark's specialty is not the same as defendant's, and that the trial court's ruling was correct under *McDougall v Schanz*, 461 Mich 15, 18; 597 NW2d 148 (1999), but submits that *McDougall* was wrongly decided. A decision of the Supreme Court is binding on this Court until the Supreme Court overrules itself, however. *O'Dess v Grand Trunk W R Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996). We must therefore reject plaintiff's argument.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper