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STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE SWAIN, Personal Representative of the ESTATE OF JOAN MILLS,

Plaintiff-Appellant,

v

EVERGREEN HEALTH AND REHABILITATION CENTER, LLC,

Defendant-Appellee.

UNPUBLISHED
October 26, 2026
11:52 AM

No. 373747
Oakland Circuit Court
LC No. 2022-197855-NH

Before: PATEL, P.J., and M. J. KELLY and GARRETT, JJ.

PER CURIAM.

In this medical-malpractice action, plaintiff appeals by right the trial court's order granting a directed verdict in defendant's favor. We affirm.

I. BACKGROUND

This case arises from a fall suffered by plaintiff's decedent, Joan Mills, while a resident at defendant's nursing home for short-term rehabilitation following a fall at home. When Mills was admitted to the facility on April 30, 2021, it was documented that she had impaired cognitive function and balance. She required assistance for most of her activities of daily living, including going to the bathroom. On May 20, 2021, Mills fell and hit her head while attempting to use the bathroom unassisted. Initial physical and neurological assessments after the fall were unconcerning, but her condition worsened significantly that evening. Mills was transported to a hospital, where she died shortly thereafter.

At trial, plaintiff sought to qualify Kelly Martin, R.N., as an expert witness to testify about the relevant standard of care and defendant's alleged breach of that standard. Martin is licensed in Indiana. She has worked primarily in pediatrics at Indiana hospitals during her 27-year career as a nurse and has never worked in a nursing home. To prepare for this case, Martin familiarized herself with the basic standards for an extended-care nursing home facility by researching the standard of care for fall-risk patients, including how they should be monitored, and reviewing information about defendant's facility and similar facilities. Martin acknowledged that there was a difference

between nursing home facilities and hospitals. She admitted that she had little familiarity with nursing practices in nursing home facilities and no knowledge of nursing home practices in Michigan.

Defendant objected to Martin's qualification as an expert, and the trial court agreed, stating that the standard of care in a nursing home was different from that in a hospital and concluding that Martin's testimony was not reliable under MRE 702. The court denied plaintiff's request to qualify Martin as an expert witness. Ultimately, the court granted defendant's motion for a directed verdict because plaintiff had no expert witness to testify about the standard of care. This appeal followed.

II. STANDARDS OF REVIEW

A trial court's decision about whether proposed expert testimony is qualified and reliable is reviewed for an abuse of discretion. *Danhoff v Fahim*, 513 Mich 427, 441; 15 NW3d 262 (2024); *Albro v Drayer*, 303 Mich App 758, 760; 846 NW2d 70 (2014). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes" or when the court makes an error of law. *Danhoff*, 513 Mich at 442. A trial court's decision on a motion for a directed verdict is reviewed de novo to determine whether "the evidence, when viewed in the light most favorable to the nonmoving party, fails to establish a claim as a matter of law." *Aroma Wines & Equip, Inc v Columbian Distrib Servs, Inc*, 497 Mich 337, 345; 871 NW2d 136 (2015). "[Q]uestions concerning the proper interpretation and application of statutes, court rules, and rules of evidence" are also reviewed de novo. *Donkers v Kovach*, 277 Mich App 366, 369; 745 NW2d 154 (2007).

III. ANALYSIS

Plaintiff argues that the trial court erred by differentiating between the standard of care for nurses in a hospital and those in a nursing home, concluding that Martin was not qualified to testify regarding the applicable standard of care, and granting a directed verdict in favor of defendant. We disagree.

"A plaintiff in a medical malpractice action must establish (1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Danhoff*, 513 Mich at 432 (cleaned up). Unless a breach was so obvious that it is within the common knowledge and experience of an ordinary layperson, *Elher v Misra*, 499 Mich 11, 21-22; 878 NW2d 790 (2016), a plaintiff must introduce expert testimony establishing the relevant standard of care and its breach, and bears the burden of proving that the expert is qualified to testify under Michigan law. *Danhoff*, 513 Mich at 442-443.

Because nurses "do not engage in the practice of medicine," MCL 600.2912a, which establishes the standards of care for general practitioners and specialists, does not apply to nurses. *Cox v Bd of Hosp Managers for City of Flint*, 467 Mich 1, 20; 651 NW2d 356 (2002). Instead, the common-law standard of care applies to malpractice claims against nurses. *Id*. at 21. The common-law standard of care for a nonphysician such as a nurse "is the skill and care ordinarily possessed and exercised by practitioners of the profession in the same or similar localities." *Id*. at 21-22. "A party offering the testimony of an expert witness must demonstrate the witness' knowledge of the

applicable standard of care." *Bahr v Harper–Grace Hosps*, 448 Mich 135, 141; 528 NW2d 170 (1995). "A nonlocal expert may be qualified to testify if he or she demonstrates a familiarity with the standard of care in an area similar to the community in which the defendant practiced." *Decker v Rochowiak*, 287 Mich App 666, 686; 791 NW2d 507 (2010).

Relevant to this action, plaintiff was also required to establish that Martin was qualified to testify under MRE 702 and MCL 600.2169.[1] *Danhoff*, 513 Mich at 442-443. MRE 702 provides:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

MRE 702 requires the trial court to " 'ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.' " *Edry v Adelman*, 486 Mich 634, 640; 786 NW2d 567 (2010), quoting *Daubert v Merrell Dow Pharm, Inc*, 509 US 579, 589; 113 S Ct 2786; 125 L Ed 2d 469 (1993). See also *Gilbert v DaimlerChrysler Corp*, 470 Mich 749, 781; 685 NW2d 391 (2004) (stating that a court's "fundamental duty" when assessing proposed expert testimony is to determine whether the testimony is reliable). "Under MRE 702, it is generally not sufficient to simply point to an expert's experience and background to argue that the expert's opinion is reliable and, therefore, admissible." *Edry*, 486 Mich at 642.

Additionally, MCL 600.2169(2) specifies that the trial court must consider all of the following when qualifying a proposed expert in a medical-malpractice action:

> (a) The educational and professional training of the expert witness.
>
> (b) The area of specialization of the expert witness.
>
> (c) The length of time the expert witness has been engaged in the active clinical practice or instruction of the health profession or the specialty.
>
> (d) The relevancy of the expert witness's testimony.

[1] The parties do not dispute that MCL 600.2169(1)(a) and (c) do not apply to nurses, and MCL 600.2169(1)(b) is not at issue on appeal.

At the outset, we reject plaintiff's contention that some of her factual theories regarding the breach of the standard of care are so obvious to a layperson that no expert testimony is required. "The standard of care required of a nurse must be established by expert testimony . . . because the ordinary layperson is not equipped by common knowledge and experience to judge the skill and competence of the service and determine whether it meets the standard of practice in the community." *Id*. (cleaned up). Moreover, plaintiff waived this argument by failing to raise it before the trial court and we see no reason to exercise our discretion to review it. See *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289-290; 14 NW3d 472 (2023). Plaintiff also argues that that a national standard of care should be applied instead of a local standard. Plaintiff waived this argument by asserting the opposite at trial. See *Braverman v Granger*, 303 Mich App 587, 608, 844 NW2d 485 (2014) ("A party who expressly agrees with an issue in the trial court cannot then take a contrary position on appeal," nor may a party "assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute.").

Although Martin's professional experience in skilled nursing care was primarily in hospitals, that alone did not disqualify her to testify as an expert about the skilled nursing standard of care in a nursing home facility. To the extent that the trial court made a distinction regarding Martin's work experience in hospitals versus nursing home facilities, that was error. The applicable standard of care is based on the locality in which the alleged malpractice occurred, not the type of facility. See *Cox*, 467 Mich at 21-22. An expert must demonstrate that they are familiar with the local standard of care. See *Decker*, 287 Mich App at 687-688 (holding that an expert was sufficiently familiar with the local standard of care because she testified about how the staffing and resources of the hospital and size of the community in question compared to the hospital and size of the community in her city); *Turbin v Graesser (On Remand)*, 214 Mich App 215, 218; 542 NW2d 607 (1995) (concluding that an out-of-state expert established that he was familiar with the relevant local standard of care by comparing materials about the healthcare facilities and professionals in the defendant's city to those in his home city).

However, Martin failed to demonstrate any knowledge with the applicable standard of care, *Bahr*, 448 Mich at 141, or familiarity with the standard of care in an area similar to the community in which the nurses at defendant's facility practiced, *Decker*, 287 Mich App at 686. Martin testified that she reviewed information about defendant's facility, Mills' hospital records prior to her admission to defendant's facility, Mills' records from defendant's facility, Mills' records from the facility she was transferred to after her fall, and deposition transcripts. She stated that she was "vaguely" familiar with the policies and procedures applicable to nursing homes. She maintained that she familiarized herself with the basic standards for an extended-care facility nursing home by researching the standard of care for fall-risk patients, including how they should be monitored, and reviewing information about defendant's facility and similar facilities. When Martin was asked to elaborate on the research that she performed, she stated that she "looked at different websites" and "looked up" defendant's facility. Through her research, she learned that defendant's facility was a 172-bed unit that offers short-term care for rehabilitation purposes. But she conceded that she had "done virtually nothing to familiarize [herself] with the standard and ordinary practices in nursing homes anywhere[.]" Martin acknowledged that there was a difference between nursing homes and hospitals. She admitted that she had "virtually no familiarity with nursing practices in nursing homes," no knowledge of nursing home practices in Michigan, and no knowledge of any

policies and procedures at any nursing home.[2] She stated that she had not reviewed any state's operation manuals for surveyors of nursing homes or the Medicare regulations for nursing homes. And she was unable to state whether the Medicare regulations for hospitals are the same for nursing homes. Additionally, Martin did not provide any testimony comparing the localities in Indiana where she had worked to Southfield, Michigan, where defendant's facility is located.

The trial court concluded that Martin's testimony was not reliable under MRE 702 because she conceded that she had virtually no familiarity with nursing practices in nursing homes and did not consult with anyone regarding the standard procedures of nursing homes in Michigan. Although the trial court made an incorrect distinction between the standard of care for nurses working in a hospital and a nursing home, the trial court's decision to disqualify Martin as an expert witness did not fall outside the range of reasonable and principled outcomes. An expert must establish a basis for how he or she is familiar with the local standard of care about which the expert is called upon to testify. Martin could not establish any familiarity with the local standard of care and thus could not reliably testify about the standard of care applicable to this case. Without an expert witness, plaintiff's case could not proceed, and a directed verdict in defendant's favor was appropriate. *Danhoff*, 513 Mich at 442-443; *Aroma Wines*, 497 Mich at 345.

Plaintiff argues that the trial court should have considered each of plaintiff's claims individually to decide whether Martin's testimony would have assisted the jury under MRE 702. Plaintiff waived this argument by failing to raise it before the trial court and we see no reason to exercise our discretion to review it. See *Tolas Oil & Gas*, 347 Mich App at 289-290.[3]

Affirmed.

/s/ Sima G. Patel
/s/ Michael J. Kelly
/s/ Kristina Robinson Garrett

[2] For example, Martin testified that hospitals use "[f]ederal alarms" but defendant maintained that the standard of care for nursing home facilities does not include the use of bed alarms.

[3] Notwithstanding plaintiff's waiver, we find no merit in her argument.