

No. 94190-4

Supreme Court of Washington

SURAJ PINTO,

Petitioner,

vs.

GREGORY VAUGHN and "JANE DOE" VAUGHN; PAOLA LEONE
AND "JANE DOE" LEONE; LEONE & VAUGHN, DDS, PS,
DBA LEONE & VAUGHN ORTHODONTICS;
L. DOUGLAS TRIMBLE AND "JANE DOE" TRIMBLE,

Respondents.

L. DOUGLAS TRIMBLE'S ANSWER TO PETITION FOR REVIEW

Patrick C. Sheldon, WSBA #11398
Jeffrey T. Kestle, WSBA #29648
FORSBERG & UMLAUF, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164
(206) 689-8500
(206) 689-8501 (fax)

Attorneys for Respondent
L. Douglas Trimble

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A. INTRODUCTION

Suraj Pinto sued his oral and maxillofacial surgeon (L. Douglas Trimble) and his orthodontists (Leone & Vaughn) for malpractice and lack of informed consent in connection with two procedures.

Dr. Trimble filed a motion for summary judgment, arguing that Pinto could not produce the required competent expert medical testimony establishing that Dr. Trimble (1) failed to meet the standard of care, or (2) failed to obtain Pinto's informed consent to perform the procedures. In response, Pinto submitted two expert declarations. One of the experts offered no opinions regarding standard of care or informed consent. The other, a general dentist, failed to offer any opinions regarding informed consent and failed to establish his qualifications to opine on the standard of care for oral surgeons. Consequently, the trial court properly dismissed the claims against Dr. Trimble on summary judgment and the Court of Appeals properly affirmed the dismissal.

This Court should deny review. RAP 13.4(b).

B. STATEMENT OF THE CASE

The Court of Appeals opinion sets out the facts in a fair, detailed fashion, Op. at 2-6.

At the beginning of its legal analysis section, Op. at 6-7, the Court of Appeals described the following rules governing its review:

- “We review a summary judgment order *de novo*, engaging in the same inquiry as the trial court.” *Lallas v. Skagit County*, 167 Wn.2d 861, 864, 225 P.3d 910 (2009). Op. at 6.
- “Generally, expert testimony is required to establish the standard of care and proximate cause in dental or medical negligence actions.” *Harris v. Groth*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983). Op. at 6.
- “The standard of care must be established by the testimony of experts who practice or have expertise in the relevant specialty.” *McKee v. American Home Products Corp.*, 113 Wn.2d 701, 706-07, 782 P.2d 1045 (1989); *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 770 P.2d 182 (1989). Op. at 6.
- ““The qualifications of an expert are to be judged by the trial court, and its determination will not be set aside in the absence of a showing of abuse of discretion.”” *McKee*, 113 Wn.2d at 706 (quoting *Bernal v. American Honda Motor Co.*, 87 Wn.2d 406, 413, 533 P.2d 107 (1976)). Op. at 6-7.

After setting forth these general rules governing its review, the Court of Appeals conducted a *de novo* review of the order dismissing

Pinto's claims against Dr. Trimble. It engaged in exactly the same inquiry as the trial court.

The Court of Appeals' *de novo* review began with an analysis of the evidence Pinto produced in support of his claim that Dr. Trimble violated the standard of care. It first noted that Dr. Rockwell, one of Pinto's experts, failed to offer any standard of care opinions. It then determined that Pinto's other expert, Dr. Grossman, a general dentist, failed to demonstrate his competency to offer standard of care opinions because he "failed to identify education, medical training, or supervisory experience that demonstrated his familiarity with the standard of care for an oral surgeon." Op. at 8. The Court of Appeals also determined that even if Dr. Grossman were competent to testify regarding the standard of care, his opinions were "vague and conclusory" and insufficient to create a genuine issue of material fact. Op. at 8.

The Court of Appeals then turned to Pinto's lack of informed consent claim, noting that neither of Pinto's experts expressed any opinions on the topic. Op. at 9.

The Court of Appeals concluded that dismissal was appropriate because the declarations of Pinto's experts "do not reveal any genuine issues of material fact." Op. at 8-9.

C. **ARGUMENT WHY REVIEW SHOULD BE DENIED**

Pinto argues in his Petition for Review that the Court of Appeals improperly applied an abuse of discretion standard to the trial court's rulings regarding Dr. Grossman's competence. However, a review of the Court of Appeals' opinion shows that it did not simply defer to the trial court's determination that Dr. Grossman failed to establish that he was competent to testify. Rather than apply the deferential abuse of discretion standard, the Court of Appeals engaged in the same inquiry as the trial court in evaluating whether Dr. Grossman's declaration was sufficient to defeat the motion for summary judgment. After performing this *de novo* inquiry, the Court of Appeals determined that the declaration did not reveal any genuine issue of material fact; that "Dr. Grossman failed to identify education, medical training, or supervisory experience that demonstrated his familiarity with the standard of care for an oral surgeon"; and that the standard of care opinions expressed by Dr. Grossman were inadequate in any event because they were "vague and conclusory."

The Court of Appeals properly determined that Pinto failed to produce the required competent expert medical testimony establishing that Dr. Trimble (1) failed to meet the standard of care, or (2) failed to obtain Pinto's informed consent to perform the procedures. Consequently, it

properly affirmed the trial court's summary judgment dismissal of the claims against Dr. Trimble.

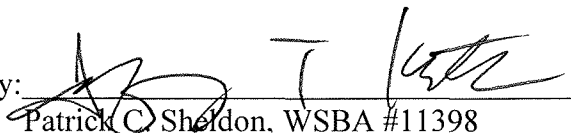
D. CONCLUSION

This is a simple case in which the Court of Appeals affirmed the trial court's order granting a summary judgment motion because the plaintiff failed to produce competent evidence demonstrating the existence of a genuine issue of material fact. There are no grounds for appeal under RAP 13.4(b), and Pinto's Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 24th day of March, 2017.

FORSBERG & UMLAUF, P.S.

By:


Patrick C. Sheldon, WSBA #11398
Jeffrey T. Kestle, WSBA #29648
Attorneys for Respondent L. Douglas Trimble

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the **RESPONDENT**
L. DOUGLAS TRIMBLE'S ANSWER TO PETITION FOR
REVIEW on the following individuals in the manner indicated:

Edward C. Chung
Chung, Malhas, & Mantel PLLC
600 – 1st Avenue, Suite 400
Seattle, WA 98104-2237
(X) Via Electronic Mail

Lisa Lackland
Betts Patterson & Mines PS
701 Pike Street, Suite 1400
Seattle, WA 98101-3927
(X) Via Electronic Mail

SIGNED this 24th day of March, 2017, at Seattle, Washington.



Lynda T. Ha