

FILED

AUG 12 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 314936

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

CAMILLE L. MARTIN,

Plaintiff / Appellant

v.

M. SHANE MCNEVIN, M.D. and JANE doe MCNEVIN, husband and
wife; and SURGICAL SPECIALISTS OF SPOKANE, P.S., a Washington
State corporation;

Defendants / Respondents

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF CASES.....i

ISSUES PERTINENT TO APPEAL.....pg. 1

APPELLANT’S REPLY.....pg. 1-4

CONCLUSION.....pg. 5

MOTION FOR FEES AND COSTS.....pg. 5

TABLE OF CASES & RULES

RULES OF THE APPELLATE COURT

18.1..... 5

RULES OF THE SUPERIOR COURT

CR 56(e)..... 1

CASES

Turner v. Kohler,
54 Wn.App. 688, 693, 775 P.2d 474 (1989)..... 3

Salas v. Hi-Tech Erectors,
168 Wn.2d 664, 668-69, 230 P.3d 583 (2010)..... 3

State v. Stenson,
132 Wn.2d 668, 701, 940 P.2d 1239 (1997)..... 3

Butler v. Joy,
116 Wn.App. 291, 299 65 P.3d 671 (2007)..... 3

Appellant's Reply to Brief of Respondents

A. Issues Pertinent to Appeal:

1. Does Dr. Scoma's written opinion satisfy the requirements of CR 56 as adequate expert testimony?
2. Did Appellant present a prima facie case of medical negligence sufficient to withstand a motion for summary judgment?

B. Appellant's Reply:

1. ***Does Dr. Scoma's written opinion satisfy the requirements of CR 56 as adequate expert testimony?***

CR 56(e) states, in part; "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein."

The Appellant's medical expert (Joseph Scoma, M.D.) is a Board Certified General Surgeon and Rectal Surgeon (CP 44-48). The opinions expressed by Dr. Scoma in his written opinion are made based on his personal review of the Appellant's medical records and

forth his opinions and facts that would be admissible in evidence should this matter proceed to trial.

Respondents have never challenged his credentials or qualifications to testify as a medical expert in this type of medical malpractice case.

What the Respondents are challenging is the format in which Dr. Scoma presented his medical opinion. There was never a challenge to Dr. Scoma's opinion when it was originally received by Appellant and forwarded to opposing counsel, nor was there any effort made on Respondent's part to question, clarify or inquire into Dr. Scoma's opinions through further discovery. The only challenge arose at the time of summary judgment.

To summarily dismiss Dr. Scoma's written opinions as non-evidence is highly prejudicial to Appellant's case, in essence, gutting a valid medical malpractice claim with prejudice. Have we reached a new low point in jurisprudence where the "spirit of the law" is sacrificed to the "letter of the law"?

For the trial court to deny Appellant's request for a continuance flies in the face of fairness. "A trial court's decision on a motion for a continuance will not be disturbed on appeal absent an abuse of discretion." *Turner v. Kohler*, 54 Wn.App. 688,693, 775 P.2d 474 (1989). "An abuse of discretion results when the trial court's decision is manifestly unreasonable or based on untenable grounds or for untenable reasons." *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664,668-69, 230 P.3d 583(2010) (*State v. Stenson*, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)). "If the party who requests the continuance can make such a showing, the trial court's duty is to allow the party a reasonable opportunity to complete the record before deciding on the summary judgment motion." *Id.* "Justice is the primary concern of the trial court in a motion for a continuance. *Butler v. Joy*, 116 Wn.App. 291, 299,65 P.3d 671 (2007).

Dr. Scoma's written opinion does satisfy the informational requirements of CR 56 as adequate medical testimony. If the trial court was unhappy with the format of Dr. Scoma's opinions the court

should have granted the Appellant's motion for a continuance to re-format his written opinion. The trial court did err by failing to acknowledge Dr. Scoma's written opinion and by failing to grant a continuance to re-format that written opinion.

2. Did Appellant present a prima facie case of medical negligence sufficient to withstand a motion for summary judgment?

The acceptance or rejection of Dr. Scoma's written opinion is the "make it or break it" of whether or not a prima facie case of medical negligence was met by the Appellant at summary judgment. The opinions from Dr. Scoma, a Board Certified Rectal Surgeon that, "... I believe that there is reason to believe that the accepted standard of care in the management of Camille Martin [Appellant] was not followed." (CP 42-53) does meet the level of proof for a prima facie case.

If the trial court truly wanted justice to prevail in this matter the case should go to trial.

Therefore, the trial court erred by granting summary judgment.

C. Conclusion:

A prima facie case of medical malpractice was presented to the trial court by way of the Appellant's submission of a valid written opinion of a qualified expert in the field of Colo-Rectal Surgery (Dr. Joseph Scoma). This raises a material issue of fact currently in dispute between the parties.

The trial court should have allowed the record to be completed either by allowing the expert's written opinion as evidence or continued summary judgment to allow the expert's written opinion to be re-formatted to the satisfaction of the trial court.

Appellant prays for this court to reverse the trial court's granting of summary judgment and allow Appellant to re-format their medical expert's written opinions to the satisfaction of the trial court.

D. Fees and Costs:

Pursuant to Rule 18.1 of the Rules of Appellate Procedure, Appellant (Camille Martin) respectfully moves this Court for an order granting Appellant recovery of her attorney fees and costs incurred herein.

RESPECTFULLY SUBMITTED this 12th day of August, 2013.

A handwritten signature in cursive script that reads "George R. Guinn". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

On the 12th day of August, 2013, I served (by hand delivery) a true and correct copy of the APPELLANT'S REPLY BRIEF on all interested parties to this action as follows:

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A handwritten signature in black ink, appearing to read "George R. Guinn", written over a horizontal line.

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