

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97613-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTINE CONNER, an individual,

Petitioner/Appellant,

vs.

JEREMY MEADOWS, D.C.,

Respondent/Appellee.

ANSWER OF JEREMY MEADOWS, D.C. TO
CHRISTINE CONNER'S PETITION FOR REVIEW

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I. INTRODUCTION AND CITATION TO APPEALS DECISION

Appellant Christine Conner (“Conner”) sued her chiropractor, Respondent Jeremy Meadows, D.C. (“Dr. Meadows”), for medical malpractice, alleging that Dr. Meadows negligently injured her shoulder during a January 2013 chiropractic adjustment and failed to obtain her informed consent to perform the adjustment.

The trial court granted Dr. Meadows’ motion for summary judgment dismissal because (1) Conner failed to present required medical expert testimony supporting her claims, and (2) Conner’s *res ipsa loquitur* argument failed as a matter of law.

The Court of Appeals did not request oral argument.

On August 5, 2019, in an unpublished opinion, Division 1 of the Court of Appeals affirmed the trial court’s order granting Dr. Meadows’ motion for summary judgment. On September 4, 2019, Conner filed a Petition for Review. Dr. Meadows’ Answer to the Petition follows. The Court of Appeals’ decision was correct. Conner’s Petition should be denied.

II. STATEMENT OF THE CASE

A. Conner’s Claims

In her Complaint, Conner alleged that Dr. Meadows “administered chiropractic care,” the “care was negligent and without informed consent,”

and Conner “suffered general and special damages as will be proven at trial.” (CP 1-2)

In her responses to Dr. Meadows’ written discovery requests, Conner alleged that Dr. Meadows caused her to suffer a right shoulder rotator cuff tear “in the process of attempting to execute a manipulation.” (CP 55, 57)

B. The Trial Court Dismissed Conner’s Claims on Summary Judgment

Dr. Meadows filed a motion for summary judgment, arguing that Conner lacked the requisite expert medical testimony to establish that (1) Dr. Meadows breached the standard of care, (2) Dr. Meadows’ breach proximately caused Conner’s claimed injuries, and (3) Dr. Meadows failed to obtain Conner’s informed consent. (CP 14-31)

Conner did not produce expert medical testimony in support of her summary judgment opposition.

The trial court granted Dr. Meadows’ motion for summary judgment. (CP 202-205)

C. The Appeals Court Affirmed the Trial Court’s Dismissal

On August 5, 2019, the Appeals Court filed its unpublished opinion, which reads, in part, “Christine Conner appeals the summary judgment dismissal of her negligence claim against her chiropractor, Dr. Jeremy Meadows. Because Conner did not produce expert testimony

establishing that Dr. Meadows breached the standard of care, the trial court properly granted summary judgment. We affirm.” Opinion, p. 1. The opinion concludes as follows: “Here, Conner fails to establish that her shoulder pain could only have resulted from Dr. Meadow’s negligence. A chiropractic procedure followed by shoulder pain is not so palpably negligent that it may be inferred as a matter of law. Nor could a layperson’s general experience and observation show that it is negligent. Only expert testimony could have established that Dr. Meadows performed the adjustment in the wrong position or in an otherwise negligent manner. Conner presented no such testimony. The doctrine of *res ipsa loquitur* did not relieve Conner of her burden to present expert testimony.” Opinion, p. 8.

III. ARGUMENT

This Court should deny Conner’s Petition on the grounds that it (1) fails to conform to RAP 13.4; (2) improperly raises new issues which make them unsuitable for review under RAP 13.3 and (3) fails to demonstrate that the Trial Court or the Court of Appeals failed to apply the appropriate law when the Trial Court granted Dr. Meadows’ motion for summary judgment and the Court of Appeals affirmed that decision.

A. Conner Failed to Comply with the Rules of Appellate Procedure

This Court has set forth the requirements for obtaining review of a Court of Appeals decision in RAP 13.4. Subsection (b) of the rule enumerates standards when the Court may accept review, expressly stating such review will be granted “only” if one of the following is met: (1) the decision conflicts with a decision of the Supreme Court, (2) the decision conflicts with a published decision of the Court of Appeals, (3) the decision involves a significant question of constitutional law, or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

In order for this Court to evaluate whether any of these conditions exist, the petition must include “A direct and concise statement of the reasons why review should be accepted under one or more of the tests established in subsection (b), with argument.” RAP 13.4(c)(7).

Conner’s Petition fails to identify which, if any, of the considerations in RAP 13.4(b) warrant review. The rule is not cited anywhere in her Petition. Conner reiterates the merits of her appeal but she fails to address whether review is appropriate under RAP 13.4. Accordingly, the Court should deny review out of hand. *See State v.*

Korum, 157 Wn.2d 614, 624-25, 141 P.3d 13 (2006) (declining to review issue because of petitioner’s failure to comply with RAP 13.4).

Even a cursory review of the briefing in this matter demonstrates there are no conflicts with Supreme Court or Court of Appeals precedent. The requirement of expert testimony in medical negligence cases on the issues of breach of the standard of care, informed consent and proximate cause has been controlling law for decades. There are clearly no constitutional issues presented. Nothing raised in this appeal remotely rises to a level of “substantial public interest” as RAP 13.4(b) requires.

B. Conner’s Petition Improperly Raises Certain Issues for the First Time

Conner’s opening appellate brief raised the following three assignments of error:

- Issue 1: Can admissions from a Defendant constitute “expert testimony” in a medical negligence case?
- Issue 2: Was the sum of the evidence sufficient to support a finding that the Defendant was negligent?
- Issue 3: Was the sum of the evidence sufficient to support a finding that Defendant’s negligence was a proximate cause of injury to the Plaintiff?

Appellant’s Opening Brief, p. 3.

In her Petition, however, she raises the following four issues for review:

- 1) In medical malpractice cases must “proof that injury resulted from the failure of the healthcare provider to follow the accepted standard of care” be done in a particular “format” or “script?”
- 2) Must “proof” of a standard of care violation be entirely by expert testimony, or may lay testimony be considered as well?
- 3) Whether a health care provider’s own testimony, that shoulder injury is “not a recognized risk” of the chiropractic maneuver he performed upon his patient, supports a finding that such an injury was the result of a “breach of the standard of care”?
- 4) Whether such testimony – that shoulder injury is “not a recognized risk” of the maneuver – would support, for purposes of the application of *res ipsa loquitur*, a finding that such injury “does not ordinarily occur in the absence of negligence”?

Petition for Review, p 3.

For the first time Conner argues in her Petition that lay testimony should be considered evidence that a defendant *breached* the standard of care. She cites *Douglas v. Bussabarger*, 73 Wn.2d 476, 478, 438 P.2d 829 (1968) to establish that Dr. Meadows’ testimony serves as evidence of the standard of care; but she now argues that her own *lay* testimony should be sufficient to establish breach of that standard. This is a distinction without a difference because neither alleviates or meets Conner’s burden of proof on proximate cause. Conner’s failure to establish through expert testimony that the adjustment was the proximate cause of injury remains fatal. As the Court of Appeals properly concluded, “Conner fails to

establish that her shoulder pain could only have resulted from Dr. Meadow's (sic) negligence." Opinion, p. 8.

Conner also resurrects the issue of informed consent in her Petition, which she did not raise on appeal. As the Appeals Court noted, "Conner also alleged that Dr. Meadows failed to obtain her informed consent for the procedure. Conner does not challenge the summary judgment dismissal of this claim." Opinion, footnote 1. Notwithstanding her failure to address informed consent on appeal, Conner now improperly cites Dr. Meadows' testimony about the risks of chiropractic to argue her contention that Dr. Meadows breached the standard of care. But Dr. Meadows' testimony is relevant to that inquiry only if: (1) Conner presents expert testimony contradicting his assessment of the risks of treatment, or (2) she has established proximate cause through expert opinion testimony. As the Trial Court and the Appellate Court already concluded, she failed to proffer any expert testimony of any kind at any time during the pendency of her case. As the Court of Appeals correctly concluded, "A chiropractic procedure followed by shoulder pain is not so palpably negligent that it may be inferred as a matter of law." Opinion, p. 8.

This Court will not ordinarily consider an issue not raised or briefed in the Court of Appeals. *State v. Halstein*, 122 Wn.2d 109, 130,

857 P.2d 270 (1993); RAP 13.3(a) (allowing a party to seek review of a “decision” of the Court of Appeals). Conner failed to raise the admissibility of lay testimony on the issue of breach of duty and informed consent on appeal. As such, those issues are not subject to review by this Court.

C. Conner Fails to Address the Legal Issues Upon Which the Appeals Court Decision Is Based

Conner’s silence on the merits of the Court of Appeals’ decision is deafening. Conner has not cited any legal authority controverting that decision. Washington law is well-settled on this point. In all but the most extraordinary situations, a medical malpractice plaintiff must produce expert medical testimony to establish that (1) the defendant medical provider breached the standard of care, and (2) the breach proximately caused the plaintiff’s injuries. *Guile v. Ballard Community Hosp.*, 70 Wn. App. 18, 21, 851 P.2d 689 (1993) (citing *Harris v. Groth*, 99 Wn.2d 438, 449, 663 P.2d 113 (1983)). The Court of Appeals expressly held that Conner’s case does not fall within any of the very narrow and limited exceptions.

As noted above, the Court of Appeals swept aside these arguments reaffirming the requirement of expert testimony on the issues of the breach of the standard of care, informed consent and proximate cause. It firmly

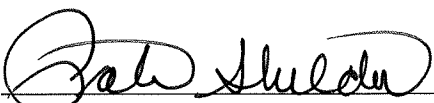
rejected the applicability of *res ipsa loquitur* to this case. Instead it held, “Only expert testimony could have established that Dr. Meadows performed the adjustment in the wrong position or in an otherwise negligent manner. Conner presented no such testimony. The doctrine of *res ipsa loquitur* did not relieve Conner of her burden to present expert testimony.” Opinion, p. 8.

IV. CONCLUSION

This Court should deny Conner’s Petition for Review. The Court of Appeals properly affirmed the Trial Court’s dismissal given the lack of any expert testimony supporting Conner’s medical negligence allegations. Conner fails to establish any enumerated standard by which the Court can accept her Petition pursuant to RAP 13.4(b). Without citing other controlling precedent, Conner asks this Court to deviate from well-settled Appeals Court and Supreme Court decisions. The Petition must be denied.

DATED this 4th day of October, 2019.

FORSBERG & UMLAUF, P.S.

By: 
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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 foregoing ANSWER OF JEREMY MEADOWS, D.C. TO CHRISTINE CONNER'S PETITION FOR REVIEW on the following individuals in the manner indicated:

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SIGNED this 4th day of October, 2019, at Seattle, Washington.


Elizabeth S. Sado

FORSBERG & UMLAUF, P.S.

October 04, 2019 - 3:52 PM

Transmittal Information

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Appellate Court Case Title: Christine Conner v. Jeremy Meadows, D.C.

The following documents have been uploaded:

- 976139_Answer_Reply_20191004154937SC580344_0054.pdf
This File Contains:
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