

**IN THE COURT OF APPEALS OF TENNESSEE**  
**AT KNOXVILLE**

<b>FILED</b> January 27, 2000 Cecil Crowson, Jr. Appellate Court Clerk
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BARBARA BEATY,	E1999-00014-COA-R3-CV
Plaintiff-Appellant,	) C/A NO. 03A01-9907-CV-00236
	)
	) KNOX CIRCUIT
	)
vs.	) HON. DALE C. WORKMAN,
	) JUDGE
	)
L. GENE IRWIN, D.D.S.,	) AFFIRMED AND
Defendant-Appellee.	) REMANDED

LINDA G. WELCH and GARY T. DUPLER, Knoxville, for Plaintiff-Appellant.

DARRYL G. LOWE, LOWE, SHIRLEY & YEAGER, Knoxville, for Defendant-Appellee.

**OPINION**

Franks, J.

In plaintiff's action for malpractice against her dentist, the Trial Judge granted defendant summary judgment on the ground that plaintiff's expert was not familiar with the standard of care in Knoxville or a similar community, and his testimony thereby failed to meet the requirements of Tennessee Code Annotated §29-26-115.

The plaintiff has appealed the Trial Court's decision and the defendant has appealed the Trial Court's refusal to grant summary judgment on the basis that plaintiff's claim was barred by the statute of limitations, T.C.A. §29-26-116.

The dispositive issue on appeal is whether the opinion of plaintiff's expert that defendant's treatment of plaintiff did not meet the standard of professional care in the community is admissible in evidence.

Defendant's Motion for Summary Judgment was accompanied with

affidavits from himself and a Dr. Jaffrey which stated that the defendant had not deviated from the standard of care for treatment of plaintiff. Plaintiff offered as an expert, James W. Curtis, Jr., D.D.S., who testified through his deposition and an affidavit. In the deposition, Dr. Curtis testified that the standard of care is determined through the education provided by dental schools, and states statutory requirements, requirements of state licensing boards, and professional literature, etc. He stated that his knowledge of the standard of care for Knoxville was based upon the following:

dentists that practice dentistry in Knox County, Tennessee, would be graduates of dental schools that are accredited by the American Dental Association, which provides uniform standards of training.

Also, dentists that practice in Knox County, Tennessee, can receive a dental license by taking and passing the Southern Regional Testing Agency clinical examination. And that includes a variety of southern states. South Carolina, Georgia, Tennessee, Kentucky, Virginia, Arkansas, I think make up the basis of those.

And then the laws that govern the practice by the individual state boards uphold the standards that are set forth in the licensing examination.

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The journals that the dentists in Knoxville read are going to be the same ones that are read throughout the country, the same professional organizations: the American Dental Association, the Academy of General Dentistry, what have you. They're open to membership to individuals there.

And there are an extensive variety of continuing education courses that are available throughout the country that dentists can avail themselves on.

When questioned about whether he had done anything specific to determine the standard of care in Knox County for treating patients with a fixed partial bridge, Dr. Curtis replied that he had not. He testified that he believed Knox County and Augusta, Georgia, where he resided, were similar communities, but he had not done any research to determine if that was true. He testified that he had never been licensed in Tennessee, and had never been to Knox County except for just driving through. He also testified that he had never reviewed any Tennessee statutes regarding standard of care, did not know the population of Knox County or how many general dentists are there, nor had he ever spoken to a dentist from Knox County.

Dr. Curtis testified that he believed that dentists practice "pretty much the same from one area of the country to the other and that the standard should be

fairly universally applicable.” He also testified that the standard of care for this type of dentistry would be the same in Knoxville, Augusta, Atlanta, or San Francisco, and that it would not vary anywhere in the country, even from remote rural areas to major cities like New York.

Plaintiff sought to buttress Dr. Curtis’ opinion, by filing a supplementary affidavit of Dr. Curtis which stated that he was familiar with the standard of care of Knoxville and similar communities, because of basically the same reason outlined in his testimony, as well as the fact that he had taught and taken courses in Tennessee, though not in Knox County, and had written an article for the Journal of the Tennessee Dental Association. He also stated that he was then familiar with the number of dentists in the Knoxville area. He also stated that he had “conferred with dentists who practice in Tennessee who have confirmed that the standard of care in Knox County or similar communities is the same as that of Augusta, Georgia.” There was no identification of the individuals with whom he conferred or where in Tennessee they practice.

It is well-settled in this jurisdiction, that malpractice actions deal with matters not within the common knowledge of lay persons, and thus expert testimony is required. *Bowman v. Henard*, 547 S.W.2d 527 (Tenn. 1977.) Tenn. Code Ann. §29-26-115 requires that a plaintiff in a malpractice action prove that the defendant failed to comply with the standard of care in the community in which he practices or a similar community, which the Supreme Court has described as a “broadened definition of the geographic component.” *Sutphin v. Platt*, 720 S.W.2d 455 (Tenn. 1986). Thus, in order to prevail, the plaintiff must provide expert testimony that the defendant failed to comply with the standard of care in Knoxville or a similar community, which would require an expert who is familiar with that standard of care.

Several cases have addressed the “locality” issue. In the case of *Ayers v. Rutherford Hosp., Inc.*, 689 S.W.2d 155 (Tenn. Ct. App. 1984), the plaintiff presented a medical expert who stated that he was familiar with the standard of care “that would pertain to” the relevant community in which defendant practiced, but then admitted that he had never been to that community and did not know its size, how many hospitals were there, or anyone who practiced there. Plaintiff’s expert further testified

that all physicians in his field were trained using the same methods and that the standard of care did not vary throughout the country. The Trial Judge held that the plaintiff's expert was not familiar with the local standard of care and thus not a competent witness, and this Court upheld that ruling.

Similarly, in the case of *Mabon v. Jackson-Madison County General Hosp.*, 968 S.W.2d 826 (Tenn. Ct. App. 1997), the plaintiff presented an expert who stated in his affidavit that he was familiar with the standard of care for "an area such as Jackson, Tennessee and at a facility the size of" the defendant hospital. The proposed expert testified that he did not know the population of Jackson or how many doctors were there, had never been there, and did not know any doctors who practiced there. We held that plaintiff's expert was not qualified to testify regarding the standard of care, and explained the rationale thus:

To qualify as an expert, a physician is not required to be familiar with all of the medical statistics of a particular community. However, a complete lack of knowledge concerning a community's medical resources would be contrary to knowledge of the required standard of care. The plaintiff's tendered expert must be familiar with the standard of care in the community in which the defendant practices or in a similar community. Without this requisite threshold evidence of the standard of care in the locality, a plaintiff cannot demonstrate a breach of duty.

*Id.* at 831. See also *Osler v. Burnett*, 1993 WL 90381 (Tenn. Ct. App. March 30, 1993); *Bryant v. Bauguss*, 1996 WL 465539 (Tenn. Ct. App. August 16, 1996); *Swift v. Schoettle*, 1996 WL 730286 (Tenn. Ct. App. December 20, 1996); *Hopper v. Tabor*, 1998 WL 498211 (Tenn. Ct. App. August 19, 1998).

In *Mabon*, we also expressly found that an expert's testimony that the standard of care did not vary nationwide was not sufficient to set forth "specific facts" to prove the standard of care for a particular community, as plaintiffs in malpractice actions are required to do. *Id.* at 831. *Mabon* explained that "[a] plaintiff who chooses to prove the standard of care in a similar community necessarily must prove that community is similar to the one in which the defendant practices." *Id.*

In this case, Dr. Curtis claims to be familiar with the standard of care in Knoxville because he basically feels that the standard of care was the same throughout the Southeast region, possibly the country. He testified that he had not been to Knoxville, did not know the size of the community or how many dentists practiced there, nor had he conferred with any dentists from Knox County, and had never

reviewed any Tennessee statutes regarding the standard of care. Dr. Curtis testified that he thought Knoxville and Augusta were similar communities, but produced no facts that this was true.

A trial court has broad discretion in determining the qualifications for admissibility of testimony of expert witnesses, and we find no abuse of discretion in the refusal to admit Dr. Curtis' opinion in evidence. *Mabon*. Accordingly, we hold that since there is no expert testimony to refute the affidavits of the defendant and his expert, summary judgment was proper. *Bowman v. Henard*, 547 S.W.2d 527 (Tenn. Ct. App. 1984).

For the foregoing reasons, we affirm the judgment of the Trial Court and remand with the cost of the appeal assessed to plaintiff.

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Herschel P. Franks, J.

CONCUR:

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Houston M. Goddard, P.J.

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D. Michael Swiney, J.