

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
CIVIL TRIAL DIVISION

YI YAN HONG, M.D.

v.

TEMPLE UNIVERSITY HOSPITAL, INC.,  
STEPHEN W. WONG, M.D.,  
OPHTHAMOLOGY ASSOCIATES PPP  
and COHERENT LASER CO.

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NOVEMBER TERM, 1997

NO. 1337

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Myrna Field, J.

March 30 , 2001  
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**OPINION OF THE COURT**

Plaintiff, Yi Yan Hong, M.D., appeals from this court's order dated December 7, 2000, denying his motion for post trial relief. In his motion, plaintiff sought the removal of the nonsuit entered at the close of plaintiff's case-in-chief. For the reasons which follow, the motion was properly denied, and judgment in favor of the defendants should be affirmed.

This matter arises from laser eye surgery performed on Dr. Hong on November 17, 1995. Following the surgery, Dr. Hong suffered from chronic eye pain. He brought the instant action alleging negligence in the performance of the surgery. His second claim was based on a lack of informed consent. A jury trial commenced on February 28, 2000.

At trial, plaintiff presented his expert Philip Shelton, M.D., who testified that the cause of plaintiff's pain was nerve injury which occurred during the surgery. He also testified that there were discrepancies between the two preoperative surgical opinions received by the plaintiff, and

that, consequently a third opinion should have been obtained. At the close of plaintiff's case-in-chief the defendants moved for the entry of a compulsory non-suit because despite his testimony as to causation, Dr. Shelton never testified as to whether the surgeon's actions fell below the applicable standard of care, nor did he testify as to a causal connection between the alleged lack of informed consent and the actual harm suffered by the plaintiff. The nonsuit motion was granted.

Plaintiff timely filed his post-trial motion seeking the removal of the nonsuit. On December 7, 2000, after briefs and oral argument thereon, this court denied the plaintiff's motion for post-trial relief. This appeal followed.

The nonsuit was properly entered. In order to prevail in a medical malpractice action, a plaintiff must provide expert testimony which sets forth the standard of care for the treating physician, how that standard of care was breached and causation. Joyce v. Boulevard Physical Therapy and Rehabilitation Center, 694 A. 2d 648 (Pa. Super. Ct. 1997), *appeal denied* 559 Pa. 719, 740 A.2d 1148 (1999) . Expert testimony is required except in those cases where the matter is so simple and the lack of care is so obvious as to be within the comprehension of an ordinary layman. Gregorio v. Zeluck, 451 Pa. Super. 154, 678 A.2d 810 (1995), *appeal denied* 546 Pa. 681, 686 A.2d 1311 (1996). Where, as here, a medical procedure has been performed, it is incumbent upon the plaintiff to establish through expert testimony both the inherent risks of the procedure and the standard of care. Although plaintiff's expert stated that the pain was a result of nerve injury which occurred during surgery, there was no evidence of whether such an injury is an inherent risk of the surgery or whether it indicates a deviation from the standard of care. Thus, plaintiff has failed to meet his burden.

Similarly, in an action premised on the lack of informed consent, a plaintiff must produce a medical expert to show a causal connection between the lack of informed consent and the actual harm suffered by the plaintiff. Maliszewski v. Rendon, 374 Pa. Super. 109, 542 A.2d 170 (1988), appeal denied, 520 Pa. 617, 554 A.2d 510 (1989). Without such testimony, a jury would have to speculate as to any link between the plaintiff's harm and the defendant's actions. The alleged discrepancy in the two opinions had to do with the exact location of plaintiff's retinal tear, not whether or not he had one. Both surgeons had recommended surgery. The mere fact that a medical procedure has a bad result, without more, is not a sufficient basis upon which to maintain an action for damages.

For all of the above reasons, the nonsuit was properly entered. Judgment as entered on December 11, 2000, in favor of defendants, should be affirmed.

By the Court:

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Myrna Field, J.