

**OHIO COURT OF APPEALS, SECOND APPELLATE DISTRICT,
MONTGOMERY COUNTY**

Gibson v. Soin

2022 Ohio 1113 (Ohio Ct. App. 2022) · No. Appellate Case No. 29154 · Decided April 1, 2022

SUMMARY

The Ohio Second District Court of Appeals affirmed judgments in favor of the defendants in a medical malpractice and wrongful death action. The court held that the plaintiffs' cardiology expert was not competent under Evid.R. 601(B)(5)(c) to testify about the standards of care applicable to a pain-management physician and an anesthesiologist. Because the expert's testimony was excluded, the trial court properly granted a directed verdict and denied the plaintiffs' motion for a new trial.

CASE DETAILS

COURT	Ohio Court of Appeals, Second Appellate District, Montgomery County
WRITING FOR THE COURT	Epley, J.; Tucker, P.J.; Lewis, J.
JURISDICTION	Ohio
DECIDED	April 1, 2022
DOCKET	Appellate Case No. 29154
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed judgments entered after the trial court excluded their proposed medical expert under Evid.R. 601(B)(5), granted defendants' motion for a directed verdict on medical-malpractice and wrongful-death claims, and denied plaintiffs' motion for a new trial.
STANDARD OF REVIEW	Abuse of discretion for the trial court's determination that a witness is competent to testify as an expert; an abuse of discretion occurs when the decision is unreasonable, arbitrary, or unconscionable.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Steven Wayne Gibson, Administrator of the Estate of Diane Marie Gibson, deceased, Roger Gibson v. Amol Soin, M.D., Ohio Pain Clinic, LLC, David J. Pappenfus, M.D.

TOPICS

medical malpractice

expert testimony

standard of review

wrongful death

appellate procedure

PRACTICE AREAS

medical malpractice

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion under Evid.R. 601(B)(5)(c) by finding cardiologist Dr. David Utlak incompetent to testify about the standards of care applicable to a pain-management specialist and anesthesiologist.
2. Whether the trial court erred in denying the Gibsons' motion for a new trial based on the exclusion of Dr. Utlak's testimony.
3. Whether the trial court's directed verdict for defendants should be affirmed after exclusion of the Gibsons' only proffered medical-standard-of-care expert.

HOLDINGS

1. The trial court did not abuse its discretion in excluding Dr. Utlak's testimony because he did not establish that he practiced in the same or a substantially similar specialty as defendants, or that the standards of care applicable to a cardiologist evaluating a referred patient were similar to those applicable to a pain-management physician and anesthesiologist reviewing presurgical cardiac testing.
2. The trial court did not err in denying the Gibsons' motion for a new trial because the exclusion of Dr. Utlak's testimony was proper.

KEY QUOTATIONS

“The court shall not permit an expert in one medical specialty to testify against a health care provider in another medical specialty unless the expert shows both that the standards of care and practice in the two specialties are similar and that the expert has substantial familiarity between the specialties.” (¶ 18)

“The trial court did not abuse its discretion in concluding, pursuant to Civ.R. 601, that Dr. Utlak was not competent to give expert testimony as to the Defendants’ standard of care in this particular case.” (¶ 35)

FACTUAL BACKGROUND

Diane Gibson, who had chronic back pain, underwent implantation of a spinal cord stimulator by pain-management specialist Amol Soin in December 2015, followed by procedures related to infection and exposed wires. Soin reimplanted the stimulator on April 21, 2016, after presurgical testing showed low potassium, abnormal T waves, and prolonged Q waves; neither Soin nor anesthesiologist David Pappenfus referred her to a cardiologist before proceeding. Gibson died at home two days later, and her estate and surviving spouse alleged that defendants negligently failed to evaluate or address the abnormal testing before surgery and anesthesia.

PROCEDURAL HISTORY

The Gibsons originally filed a medical-malpractice and wrongful-death action in 2017, voluntarily dismissed it in March 2019 after defendants sought to exclude their medical expert, and refiled the action on June 5, 2019. During the 2021 jury trial, the trial court excluded Dr. David Utlak's testimony because he was not competent under Evid.R. 601(B)(5)(c) to testify regarding the standards of care applicable to a pain-management physician and anesthesiologist. The court then granted defendants' directed-verdict motion, entered judgment for defendants, and denied the Gibsons' motion for a new trial. The appellate court remanded temporarily so the trial court could rule on the new-trial motion, then affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- Celmer v. Rodgers, 114 Ohio St.3d 221, 2007-Ohio-3697, 871 N.E.2d 557, ¶ 19
- Blakemore v. Blakemore, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983)
- Rose v. Tievsky, 2d Dist. Montgomery No. 29024, 2021-Ohio-3051, ¶ 94
- Couch v. Dayton Pain Ctr., LLC, 2d Dist. Montgomery No. 28891, 2021-Ohio-1428, ¶ 18
- Taulbee v. Dunskey, 12th Dist. Butler No. CA2003-03-059, 2003-Ohio-5988
- Schutte v. Mooney, 165 Ohio App.3d 56, 2006-Ohio-44, 844 N.E.2d 899

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