

STATE OF VERMONT
WINDSOR COUNTY, SS.

JAMES NAGLE,
Plaintiff

WINDSOR SUPERIOR COURT

v.

DOCKET NO. 392-8-01 Wrcv

C. FREDERICK LORD, M.D.,
MT. ASCUTNEY HOSPITAL, and
MCN EAST MEDICAL CONSULTANT
NETWORK,
Defendants

DECISION RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Plaintiff James Nagle claims that he was injured by negligence on the part of defendant C. Frederick Lord, M.D., in the course of an independent medical examination (IME). On February 10, 2003, Defendants Dr. Lord and Mt. Ascutney Hospital filed a motion entitled "Defendants' Motion to Compel, or, In the Alternative, To Preclude Plaintiff's Expert Testimony, or, In the Alternative, Motion for Summary Judgment in Defendants' Favor." Defendants sought disclosure of any expert witnesses that would satisfy plaintiff's burden of proof under 12 V.S.A. § 1908, and at the same time they requested summary judgment in the event plaintiff failed to disclose such experts.

The Court issued an Entry Order on April 3, 2003, granting defendants' motion to compel, with the following explanation:

The court agrees with defendants that plaintiff has not demonstrated sufficient evidence to meet the statutory burden of proof under 12 V.S.A. § 1908. Plaintiff bears the burden of proving that Dr. Lord breached his duty of care, and that [plaintiff] suffered injuries as a proximate result of the breach. This burden of proof requires expert testimony. If plaintiff fails to present sufficient expert testimony, the court may grant summary judgment to the defendants. See Rosa v. Dartmouth Hitchcock Hospital, S131-3-00 Wrcv, 5 Vt.Tr.Ct.Rep. 315 (Cheever, J., 12/5/00); Mello v. Cohen, S243-5-96 WrC, 2 Vt.Tr.Ct.Rep. 135 (Cheever, J., 11/3/97), aff'd 168 Vt. 639 (1998).

Defendants are entitled to discovery of plaintiffs' expert opinions under V.R.C.P. 26(b)(4). If plaintiff fails to submit evidence showing that he can meet his burden of proof, defendants are entitled to summary judgment under V.R.C.P. 56(c)(3).

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The April 3 Entry Order gave plaintiff 30 days to comply with defendants' request for summaries of any expert opinions that would be offered at trial. It also stated that, if defendants were not satisfied with plaintiff's responses, they could renew their motions for sanctions or for summary judgment.

To date plaintiff still has not come forward with expert opinions in support of his case. On April 18, 2003, the Court granted plaintiff's attorney Thomas Bixby's motion to withdraw. On May 15, 2003, plaintiff requested approval to represent himself. At a status conference on July 2, 2003, the court gave plaintiff an additional 45 days to submit expert opinions under 12 V.S.A. § 1908. That order effectively gave plaintiff until August 18, 2003, to show that he can produce the necessary expert testimony to support his claims.

On September 10, 2003, the Court received a fax transmission from plaintiff, dated September 11, 2003, entitled "A Motion to Withdraw." The faxed letter stated that plaintiff sought to withdraw his case from state court and file a claim in federal court. It also stated that the notice would be followed with a motion by certified mail. However, the Court has never received any follow-up motion, nor has it received the original of the "Motion to Withdraw."

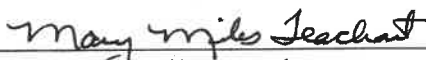
The court held a status conference on September 15, 2003, to address "Compliance with Court's order issued on the record at the 7/2/03 hearing." Plaintiff did not appear at that status conference. Defendants asked that summary judgment be granted, and that the case be dismissed.

Defendants are entitled to summary judgment. The Court ruled on April 3, 2003, that plaintiff would need expert testimony to meet his burden of proof under 12 V.S.A. § 1908. Plaintiff has been warned repeatedly that a failure to produce expert opinions would result in summary judgment against him. Plaintiff has not produced expert testimony, nor did he appear at the most recent status conference. Under these circumstances, defendants are entitled to a judgment as a matter of law.

ORDER

Summary Judgment is GRANTED in favor of Defendants C. Frederick Lord, M.D., and Mt. Ascutney Hospital.

Dated at Woodstock, Vermont, this 6th day of November, 2003.



Hon. Mary Miles Teachout
Presiding Judge

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