

App. 1

**FIFTH DIVISION
RICKMAN, C. J.,
MCFADDEN, P. J., and
SENIOR APPELLATE JUDGE PHIPPS**

**NOTICE: Motions for reconsideration
must be *physically received* in our clerk's
office within ten days of the date of deci-
sion to be deemed timely filed.**

<https://www.gaappeals.us/rules>

***DEADLINES ARE NO LONGER TOLLED
IN THIS COURT. ALL FILINGS MUST BE
SUBMITTED WITHIN THE TIMES SET
BY OUR COURT RULES.***

**NOT TO BE OFFICIALLY
REPORTED**

In the Court of Appeals of Georgia

(Filed Oct. 21, 2021)

A21A1033. CAVE v. SACHDEVA et al.

RICKMAN, Chief Judge.

This case involves professional malpractice and related claims brought by Norine Cave against Suvidha Sachdeva, D. D. S., and her employer, Coast Dental of Georgia, P. C. (collectively, "Sachdeva"). Proceeding pro se, Cave appeals the trial court's order denying her motion for new trial. She contends that the trial court abused its discretion and denied her due process by not allowing one of her expert witnesses to testify, not allowing a reasonable amount of time for another expert witness to appear at trial, and not excluding Sachdeva's expert witness. In addition, Cave contends

App. 2

that the trial court erred in determining that the issue of informed consent was moot. For reasons that follow, we affirm.

The record shows that Cave filed suit against Sachdeva¹ in January 2016 and asserted claims for professional malpractice, fraud, battery, and intentional infliction of emotional distress based on what Cave alleged was Sachdeva's negligent performance of a medically unnecessary procedure that involved placing crowns on two of Cave's teeth. Cave filed the affidavit of Dr. Wayne Suway, a licensed dentist, in support of her malpractice claims. After her counsel withdrew in June 2017, Cave sought to extend or reopen discovery to allow her to depose Sachdeva. The trial court granted her motion and extended discovery to allow for the scheduling of Sachdeva's deposition.

The case was initially placed on a jury trial calendar set to begin on March 11, 2019. Cave submitted her portion of the pretrial order, which provided that she may have an out-of-state expert witness, and on March 5, 2019 sought to amend her portion to include the expert testimony of Paul Andrews, D. D. S., in place of Dr. Suway. At the calendar call, the trial court continued the case to allow Sachdeva to complete discovery on Cave's newly identified expert.

In May 2019, Cave filed a motion to change the status of her expert witness in which she stated that

¹ Cave also filed suit against Coast Dental Services, LLC, but that party was dismissed by consent soon after the complaint was filed.

App. 3

she had been unable to reach an agreeable financial arrangement with Dr. Andrews and asked permission to submit the affidavits of Dr. Andrews and Dr. Suway as evidence at trial. Sachdeva opposed the motion, and the trial court denied it and set the case for trial on June 17, 2019. On June 11, 2019, Cave moved the court to allow an unidentified expert witness to testify at trial. After signing the consolidated pretrial order submitted by the parties, which did not include the name of any expert witness who would testify on Cave's behalf, the trial court continued the case to the next available trial calendar and reopened discovery to allow Cave to identify an expert witness and Sachdeva to conduct discovery on that witness.

Cave subsequently identified a new expert witness, Jack Levine, D. D. S. In addition, on July 1, 2019, Cave supplemented her discovery responses to include Dr. Levine's name and the subject matter of his testimony. In her supplemental responses, Cave also listed Dr. Suway, Dr. Andrews, Dr. Levine, and Dr. Harry Lehrer as experts who might have information about the case and stated that, "[i]t is unknown as of this date if any of the witnesses, with the exception of Dr. Jack M. Levine, [] is expected to be called as an expert witness upon the trial of this case."

On July 31, 2019, the case was placed on a jury trial calendar set to begin on August 26, 2019, and was later specially set to begin on the first day of the calendar. Three days prior to trial, Cave filed a motion to allow Dr. Lehrer to testify as an expert witness. Cave also filed a motion in limine to exclude Sachdeva's

App. 4

expert witness for failure to disclose the expert's opinions. The trial court denied both motions on the morning of trial.

At trial, Cave called two witnesses – her son and Dr. Sachdeva. Cave's son testified about his understanding of the pain and other problems he believed that Cave had experienced as a result of the crowns placed on her teeth and the impact of the experience on their family. After Dr. Sachdeva testified, Cave rested. Sachdeva immediately moved for a directed verdict on all claims asserted in Cave's complaint. In response, Cave explained that she was under the impression that she would have two days to put on her case and that she would have an opportunity to present testimony from her expert, Dr. Levine, who was coming from out of town and trying to get on a flight that day. After outlining the court's attempts to determine when Cave's expert might arrive, the trial court granted the motion for directed verdict.²

Cave filed a motion for new trial and challenged the directed verdict on several grounds – there were conflicts in the evidence, she was not allowed a reasonable amount of time to introduce Dr. Levine's expert testimony, she was not allowed to present testimony from Dr. Lehrer, and her motion in limine to exclude Sachdeva's expert witness should have been granted. The trial court denied the motion on the first three

² The trial court also asked that "the record reflect we have heard no information that the expert was on the way. We heard he was on [] standby, and I have yet to hear if he was on a flight."

App. 5

grounds and concluded that Cave's motion to exclude Sachdeva's expert was moot because the defense never presented any evidence.

1. Cave contends that the trial court abused its discretion in not allowing Dr. Lehrer to testify based solely on her late identification of him as an expert witness and that this abuse of discretion deprived her of due process. To support this contention, Cave relies on *Lee v. Smith*, 307 Ga. 815 (838 SE2d 870) (2020), in which the Supreme Court of Georgia held that the trial court abused its discretion when it excluded an expert witness based solely on the defense's identification of him outside a deadline set by a scheduling order. *Id.* at 822 (2). But that is not what happened here.

Although the trial court had discretion to disallow testimony from any expert witness whose name was not included in the pretrial order, see OCGA § 9-11-16 (b), that was not the basis of the trial court's decision. As outlined above, this case was filed in January 2016 and appeared on several trial calendars before it was finally tried in August 2019. During that three-year period, the trial court reopened discovery three times and continued the case twice to allow Cave to identify experts and the defense to conduct discovery of her newly identified experts. The second continuance was granted after the consolidated pretrial order had been entered. When Cave moved to add Dr. Lehrer as an additional testifying expert witness three days prior to trial (the Friday before the Monday of trial), the trial court denied the motion not because of any ordered deadline but because Cave had not provided sufficient

notice to allow the defense to conduct discovery of Dr. Lehrer. Under these circumstances, the trial court did not abuse its discretion. See *Ridley v. Turner*, 335 Ga. App. 108, 111 (1) (778 SE2d 844) (2015) (trial court did not abuse its discretion by excluding proposed expert witness's testimony when opposing party was unable to interview or depose proposed witness, who was first identified three weeks prior to trial); see also *Curry v. Conopco, Inc.*, 354 Ga. App. 692, 695 (1), n.9 (840 SE2d 151) (2020) (trial court did not clearly abuse its discretion by excluding plaintiff's expert witness based on plaintiff's failure to present expert for deposition and his failure to submit expert testimony within the court's discovery deadlines); Compare *City of Monroe v. Jordan*, 201 Ga. App. 332, 336 (4) (411 SE2d 511) (1991), overruled on other grounds, *Sheriff v. State*, 277 Ga. 182, 187-188 (2) (587 SE2d 27) (2003) (trial court did not abuse its discretion by refusing to exclude testimony of expert witnesses identified ten days prior to trial and deposed on the third and fourth day before trial).

With respect to Cave's due process claim, we note that "[t]he fundamental idea of due process is notice and an opportunity to be heard." *Nix v. Long Mountain Resources*, 262 Ga. 506, 509 (3) (422 SE2d 195) (1992). Cave had ample notice of the August trial date and that the defense would be entitled to discovery related to any newly identified expert witness. Cave's inability to present Dr. Lehrer's testimony was thus caused by Cave's inaction and not by any denial of her

opportunity to be heard. We find no due process violation in the trial court's action.

2. Cave contends that the trial court abused its discretion and deprived her of due process by not allowing a reasonable amount of time for Dr. Levine to appear at trial.

Although Cave argues that the trial court should have recessed the trial until the following day because Dr. Levine was in route, the record shows that Dr. Levine was flying standby, and there was no evidence that he ever boarded a flight. To the extent Cave contends that she sought a continuance, the general rule is that “[a] motion for continuance of a trial is properly addressed to the sound legal discretion of a trial judge, who is in control of the management of the case in court. The exercise of that discretion will not be disturbed by the appellate courts unless the discretion is manifestly abused.” (Citation and punctuation omitted.) *Capital Floors, LLC v. Furman*, 351 Ga. App. 589, 594 (3) (831 SE2d 522) (2019); see OCGA § 9-10-167 (a) (applications for continuances are addressed to the sound legal discretion of the court). Given Cave's inability to inform the court when or if Dr. Levine would arrive at trial, we discern no abuse of discretion by the trial court or any denial of due process. See generally *id.*

3. Cave contends that the trial court abused its discretion in denying her motion in limine to exclude Sachdeva's expert witness based on Sachdeva's failure to disclose the expert's opinion before trial. Because

the trial concluded before Sachdeva ever presented any evidence, this contention is moot.

4. Cave contends that the trial court erred in ruling that her arguments regarding informed consent were moot. We disagree.

Cave's argument on this issue at trial was that she signed an informed consent document presented by Dr. Sachdeva but that she did not sign it until after the procedure at issue and that this was how she "was lured into the treatment;" she was uninformed. Although Sachdeva sought to exclude any reference to issues of informed consent, the trial court allowed Cave to admit the informed consent document into evidence and ask Dr. Sachdeva about when it was signed. Cave's further questioning about the document resulted in a curative instruction to the jury that any suggestion or implication by Cave that signing an informed consent document as part of her care was required by law and was necessary under the circumstances should be disregarded.

In her motion for new trial, Cave argued that there was conflicting evidence on when the informed consent document was signed and that a directed verdict was therefore not proper. We agree with the trial court that Cave's arguments about informed consent were moot because informed consent was not required for the procedures at issue in this case.

"[T]he doctrine of informed consent for health procedures and treatment is defined in Georgia exclusively by statutes and regulations." *Blotner v. Doreika*,

App. 9

285 Ga. 481, 484 (2) (678 SE2d 80) (2009). Georgia's informed consent statute requires that "any person who undergoes any surgical procedure under general anesthesia, spinal anesthesia, or major regional anesthesia . . . must consent to such procedure and shall be informed" of the diagnosis, nature, and purpose of the surgical procedure, material risks of the procedure, likelihood of success, the practical alternatives to the procedure, and the prognosis if the procedure is rejected. OCGA § 31-9-6.1 (a).

Here, there is no evidence that Cave was under general anesthesia during the dental procedure Dr. Sachdeva performed. And we have previously held that anesthesia administered to the mouth or jaw is not considered "major regional anesthesia." See *Roberts v. Connell*, 312 Ga. App. 515, 519 (2) (718 SE2d 862) (2011); *Thompson v. Princell*, 304 Ga. App. 256, 259 (a) (696 SE2d 91) (2010). Accordingly, Dr. Sachdeva had no statutory duty to obtain Cave's informed consent. See *Roberts*, 312 Ga. App. at 519 (2). Thus, the trial court did not err in concluding that Cave's arguments related to the informed consent issue were moot.

Judgment affirmed. McFadden, P. J., and Senior Appellate Judge Herbert E. Phipps concur.

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

NORINE CAVE,

Plaintiff,

vs.

SUVIDHA SACHDEVA, D.D.S.
and COAST DENTAL
OF GEORGIA, P.C.,

Defendants.

Civil Action No.
16EV000350B

ORDER

(Filed Dec. 17, 2020)

The above-captioned case is presently before the Court on Plaintiff's Amended Motion for New Trial. Defendants opposed the motion and the Court held a hearing.

Having read and reviewed the entire record in the case, the Court finds that on January 26, 2016, Plaintiff filed a medical malpractice action alleging that, *inter alia*, she was injured when Defendant Dr. Suvida Sachdeva fraudulently diagnosed her condition. At the time of the complaint, Plaintiff was represented by counsel. On June 14, 2017, this Court entered an Order permitting Plaintiff's counsel to withdraw. Plaintiff has proceeded *pro se* since the withdrawal of her counsel. On March 1, 2018, this Court entered an Order granting Plaintiff's motion to reopen discovery to allow her to take Dr. Sachdeva's deposition. On February

App. 11

19, 2019, the Court noticed this matter for its two week trial calendar that started on March 11, 2019. The Court's February 19, 2019 notice also required the Parties to appear at the March 6, 2019 calendar call/pre-trial conference.

On March 1, 2019, Plaintiff filed her portion of a proposed consolidated pre-trial order. Notably Plaintiff's March 1, 2019 portion identified her potential witnesses for trial and also stated that Plaintiff may have a pending out of state expert witness. On March 5, 2019, Plaintiff filed a motion to admit expert witness Dr. Paul Andrews in place of expert witness Dr. Wayne Suway. At the March 6, 2019 pre-trial conference Defendants objected to the late identification of Plaintiff's new expert witness. This matter was not reached on the March 2019 trial calendar and was automatically placed on subsequent trial calendars.

On April 3, 2019 this matter was noticed and placed on the Court's three week trial calendar beginning on April 29, 2019. On April 9, 2019, Plaintiff filed a motion to move the trial date due to Dr. Paul Andrews' unavailability. On May 9, 2019 Plaintiff filed a motion to accept the affidavits of Dr. Paul Andrews and Dr. Wayne Suway in lieu of their appearance based on their unavailability for trial. This matter was not reached on the April 29, 2019 three week trial calendar and on May 9, 2019, the matter was noticed for the Court's two week trial calendar that began on June 10, 2019. On May 31, 2019, the Court specially set this matter for trial on June 17, 2019. On June 11, 2019

App. 12

Plaintiff filed a motion requesting the admission of a new unnamed expert witness.

On June 14, 2019, the Court entered an Order granting Plaintiff's June 11, 2019 motion requesting the admission of a new expert witness and Ordered that Plaintiff identify the new witness within ten days of the Order. On June 14, 2019, Plaintiff named Dr. Jack M. Levine as her new expert witness. On July 1, 2019, Plaintiff filed the following: "Correction to Plaintiff's Response to Defendants' Request for Supplementation of Discovery and Affidavit of Plaintiff's Expert Witness." Plaintiff's July 1, 2019 filing purported to add Dr. Vivian Hudson as an expert witness. On July 31, 2019, the Court noticed this matter and placed it on the Court's three week trial calendar that began on August 26, 2019. On August 20, 2019 the Court held a pre-trial conference and hearing and informed the Parties that the case would be set for August 26, 2019. On August 22, 2019, the Court specially set this case for August 26, 2019. On August 23, 2019 Plaintiff filed a motion requesting the admission of Dr. Harry M. Lehrer as an expert witness. The Court subsequently denied the request to add Dr. Lehrer.

On August 26, 2019 the Court called the case for trial and Plaintiff presented her case in chief. Plaintiff failed to have an expert witness present on August 26, 2019 and rested her case. At the conclusion of Plaintiff's case in chief, Defendants moved for Directed Verdict and this Court granted Defendants' motion from the bench. On August 29, 2019, the Court entered an Order for Directed Verdict for Defendants.

Plaintiff argues the Directed Verdict was in error because there were conflicts in the evidence and her due process rights were violated. Regarding her due process claims, Plaintiff argues that she was not allowed reasonable time to allow Dr. Levine to appear and testify. In addition, she argues the Court erred in not allowing Dr. Lehrer to appear as an expert witness. In support of Plaintiff's due process arguments, she offers the Georgia Supreme Court case of Lee v. Smith, 307 Ga. 815 (2020). The Georgia Supreme Court in Lee v. Smith, 307 Ga. 815, 822 (2020), held that a trial court abuses its discretion if it excludes a witness based solely on a party's late identification of that witness. The Court of Appeals in Curry v. Conopco, Inc., 354 Ga. App. 692, 694, 840 S.E.2d 151, 154 (2020), held that "[c]ourts consider the entire history of the proceeding in determining an appropriate discovery sanction." This Court notes that the Concopo Court also noted that a trial court does not violate the holding of Lee v. Smith where the trial court allowed multiple opportunities and discovery extensions to present a witness before imposing the sanction of excluding witnesses. See Curry v. Conopco, Inc., 354 Ga. App. 692, 694 (2020).

Here, the Court did not exclude Plaintiff's expert witnesses solely based on Plaintiff's late identification. On June 14, 2019, the Court notified both Parties that the matter would be continued to the next trial calendar. On July 31, 2019, the Court notified all Parties that the next trial calendar began on August 26, 2019. Plaintiff had over a month to secure the presence of

App. 14

her expert witnesses at trial. In addition, Plaintiff was provided multiple opportunities to have expert witnesses present at trial and therefore her reliance on Lee v. Smith is misplaced. Consequently, without testimony from an expert witness, Plaintiff did not provide sufficient evidence to establish that Dr. Sachdeva breached the standard of care in her diagnosis or treatment of Plaintiff. Nor did Plaintiff provide sufficient evidence to establish that Dr. Sachdeva's treatment proximately caused Plaintiff's alleged injuries. Consequently, there were no conflicts in the evidence for any of Plaintiff's claims. Accordingly, Plaintiff's Amended Motion for New Trial is **HEREBY DENIED**¹.

SO ORDERED, this 17 day of December, 2020.

/s/ Patsy Y. Porter
PATSY Y. PORTER, JUDGE
STATE COURT OF
FULTON COUNTY

¹ Plaintiff's argument concerning the Court's denial of Plaintiff's Motion to Exclude Defendant's expert is moot as the Court's Directed Verdict was entered in lieu of Defendants presenting their case. Therefore, whether Defendants' expert was excluded or included is irrelevant to the Court's Directed Verdict for Defendants. In addition, Plaintiff's arguments concerning informed consent are moot as informed consent was not required for the procedures at issue in this matter.

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

NORINE CAVE,

Plaintiff,

vs.

SUVIDHA J. SACHDEVA, D.D.S.
and COAST DENTAL
OF GEORGIA, P.C.,

Defendant.

**CIVIL ACTION
FILE NO.
16EV000350**

**ORDER FOR DIRECTED VERDICT
FOR DEFENDANTS**

(Filed Aug. 29, 2019)

The above matter came before the Court for trial on August 26, 2019, and the Court having heard and considered Plaintiff's presentation of her case, including witnesses and documentation admitted, and also having considered Defendants' Motion for Directed verdict the Court hereby Grants Defendants' Motion for Directed Verdict and enters its findings of fact and conclusions of law as follows:

1.

In considering Defendants' Motion for Directed Verdict the Court applies the standard set forth in O.C.G.A § 9-11-50(a) which provides: ".... If there is no conflict in the evidence as to any material issue and the evidence introduced, with all reasonable

deductions therefrom, shall demand a particular verdict, such verdict shall be directed." Directed verdict is proper if, when viewing the evidence introduced at trial in the light most favorable to the non-moving party, the record is devoid of any evidence supporting the non-movant's claims. St. Paul Mercury Insurance Company v. Meeks, 270 Ga. 136, 137 (1998).

Claim for Professional Negligence.

2.

In order to succeed on a claim for medical malpractice, Plaintiff must show three (3) essential elements: (1) the duty inherent in the dental-patient relationship; (2) breach of that duty by failing to exercise the requisite degree of skill and care; and, (3) that this failure was the proximate cause of the injury sustained. Bowling v. Foster, 254 Ga. App. 374, 562 S.E.2d 776 (2002). There is a presumption that, as a professional named in a malpractice action, a dentist exercises her care in the dental field in a skillful manner. Slack v. Moorhead, 152 Ga. App. 68, 262 S.E.2d 186 (1976). The issue is not whether a diagnosis was wrong but whether in making it the dentist used that reasonable degree of care and skill required by O.C.G.A. § 51-1-27. The burden is on the Plaintiff, who denies the presumption, to show a lack of due care, skill, and diligence. Id. at 71, 188.

The proof ordinarily required to overcome the presumption of use of reasonable degree of care and skill is the proof given by a dentist as an expert witness, and this standard should be that exercised by the dental community generally, not what a particular doctor would do in the circumstances. Id. See also Kent v. Henson, 174 Ga.App. 400, 330 S.E.2d 126 (1985) (A directed verdict was granted to a dental office in a malpractice action where there was no testimony that the dentist violated the applicable standard of care employed by dentists generally). "The requirement that expert testimony be adduced in a medical malpractice case is premised upon the existence in such a case of medical question which control its resolution. Medical questions may be defined as those concerning highly specialized expert knowledge with respect to which a layman can have no knowledge at all, and the court and jury must be dependent on expert evidence." Cherokee County Hospital Authority v. Beaver, 179 Ga. App. 200, 204, 345 S.E.2d 904, 907-08 (1983) (internal quotations and citations omitted.).

4.

Plaintiff was provided ample opportunity to secure live expert testimony at trial and also allowed sufficient opportunity during discovery to obtain an evidentiary witness deposition. Despite being provided such opportunities, Plaintiff did not call an expert witness at trial, nor did she tender any expert witness

treatment. The record is devoid of any contrary evidence. The record therefore is devoid of any evidence of fraud to establish that Dr. Sachdeva breached the standard of care in her diagnosis or treatment of Plaintiff or that Dr. Sachdeva's treatment proximately caused Plaintiff's goiter and early aortic burst caused Plaintiff's alleged injuries. *Kent*, 174 Ga. App. at 4. Although Plaintiff, who has no dental or medical training, may personally question the accuracy or motives of the subject representations, she presented no competent evidence establishing the representations were false when made. Notably, Plaintiff did not even present her own testimony regarding her claims. Moreover, even if Plaintiff had testified, the type of allegations here—that Dr. Sachdeva knew or should have known Plaintiff's teeth did not need a crown—are those types of facts that are outside a layman's understanding and experience—that is, only a trained dentist knows when a tooth requires a crown. A false representation of fact (or a deliberately omitted fact(s))

A layman commonly speculates regarding such expert professional conclusion and speculation is not evidence that should go to a jury. *Johnson*, 323 Ga. App. at 839-842, 747 S.E.2d 521-522. Plaintiff here failed to accompany her evidence and claims with expert medical testimony to explain that evidence and, thus, failed to support [her] theory that the elements of fraud, including scienter and intent, are present. *Id.* at 842, 747 S.E.2d at 522.

Therefore, expert dental knowledge was needed to establish that a fraudulent act or omission occurred or to elucidate a causal link between Dr. Sachdeva's conduct and Plaintiff's injury. Plaintiff presented neither expert dental knowledge nor even a layperson's

testimony substantiating her fraud claim. Accordingly, directed verdict is warranted as to this medical fraud claim¹.

Battery Claim.

9.

A medical touching without basic consent constitutes the intentional tort of battery. Bowling v. Foster, 254 Ga. App. 374, 379, 562 S.E.2d 776, 781 (2002). But there can be no tort where the patient consents to be touched for treatment. There is no question that the Plaintiff gave basic consent to her dentist, Dr. Sachdeva, to be treated. The uncontradicted testimony of Dr. Sachdeva substantiates that Plaintiff authorized the physical contact when she agreed to have crowns placed on two teeth. Harris v. Leader, 231 Ga. App. 709, 499 S.E.2d 374 (1998). Basic or general consent is shown by Plaintiff's actions, and conduct, and may be implied from her voluntary submission to treatment with conscious knowledge of what is going on. Pope, 261 Ga. App. at 310, 582 S.E.2d 462. See also Smith v. Luckett, 155 Ga. App. 640, 271 S.E.2d 891 (1980).

¹ Plaintiff's Fraud claim also fails because she presented insufficient evidence to establish Dr. Sachdeva knew her diagnosis was false or that Plaintiff justifiably relied on the false representations because no evidence was presented that Plaintiff was prevented from getting a second opinion. Based on the aforementioned analysis of the Fraud Claim, the Court does not need to elaborate on this additional ground to grant directed verdict on the Fraud claim

10.

The question then becomes whether the basic consent was valid. The law recognizes that general consent to treatment is not valid if it was obtained by fraudulent misrepresentations of material facts. Bowling, 254 Ga. App. at 379, 562 S.E.2d at 781. Thus, in order to show that she did not consent, Plaintiff must establish fraud. Plaintiff had the burden of proving that as a dentist, Dr. Sachdeva, was not authorized to touch her because the doctor fraudulently varied from the requisite standard of care, i.e., intentionally misdiagnosed Plaintiff Williams v. Lemon, 194 Ga. App. 249, 390 S.E.2d 89 (1990).

Again, Plaintiff was required to present expert testimony to support her fraud claim and establish the touching deviated from the professional standard of care or exceeded accepted dental techniques. Because Plaintiff presented no expert witness testimony she did not satisfy her burden of establishing unwarranted touching based on fraud and her consent cannot be invalidated. Like her malpractice and fraud claim, Plaintiff's battery claim turns on the necessity of medical expert testimony that she failed to present. Because her fraud claim fails as a matter of law, Plaintiff cannot demonstrate a lack of consent, and, it follows that, she cannot establish a battery claim. Accordingly, Defendants are entitled to a directed verdict as to Plaintiff's battery claim.

**Claim for Intentional Infliction
of Emotional Distress.**

11.

On June 13, 2019, a pretrial Order was entered upon consideration of the proposals of the Parties. Pursuant to O.C.G.A. § 9-11-16, the Court's Pretrial Order, once entered, superseded the pleadings in this case. Plaintiff did not list a claim for intentional infliction of emotional distress as a basis for relief. Therefore, this claim was abandoned. Even considering this claim, however, a directed verdict is warranted on the claim.

12.

To prevail on allegations of intentional infliction of emotional distress, Plaintiff must show: 1) Defendants' conduct was intentional or reckless; 2) The conduct was extreme and outrageous; 3) A causal connection existed between the wrongful conduct and the emotional distress; and, 4) The emotional harm was severe. Jefferson v. Houston Hospitals, Inc., 336 Ga. App. 478, 784 S.E.2d 837 (2016). See also Harris v. Leader, 231 Ga. App. 709, 499 S.E.2d 374 (1998).

13.

Whether a claim rises to the requisite level of outrageousness and egregiousness to sustain a claim for intentional infliction of emotional distress is a question of law for the Court to decide. Id.; Yarbray v. Southern Bell Tel. & Tel., 261 Ga. 703, 706 (1991). Further,

Plaintiff has the burden to prevail on such a cause of action and the “burden is a stringent one”. Bridges v. Winn-Dixie, 176 Ga. App. 227, 229 (1985).

14.

Liability may only be found against Defendants if “the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.” Phinazee v. Interstate Nationalease, 237 Ga. App. 39, 40 (1999).

It [is] not . . . enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. Liability has been found only where the conduct has been extreme and outrageous.

Jefferson, 336 Ga. App. at 483-86 quoting Abdul-Malik v. AirTran Airways, 297 Ga. App. 852, 855-856, 678 S.E.2d 555 (2009).

15.

Here, Plaintiff did not meet her burden as to her intentional infliction of emotional distress claim because the record is completely devoid of any evidence demonstrating improper much less outrageous conduct. Even assuming that Dr. Sachdeva recommended

an unnecessary procedure for crowning two teeth, such an action is not so outrageous that it goes beyond all possible bounds of decency. Defendants, therefore, are entitled to directed verdict based on Plaintiff's failure to present evidence of outrageous or egregious conduct.

16.

Directed verdict is also appropriate on Plaintiff's intentional infliction of emotional distress claim because Plaintiff failed to present evidence that she suffered an emotional injury. Houston Hospitals, Inc. v. Felder, 2019 Ga. App. LEXIS 319, 829 S.E.2d 182 (2019). To substantiate her claim, Plaintiff must present evidence that she sought medical treatment or counseling for her emotional distress. Jefferson, 336 Ga. App. 483-86. Plaintiff did not testify in this case and presented no reliable evidence that she required professional treatment for serious emotional needs. The testimony of her son regarding her weakened condition or change in mental state was insufficient to support her claim.

Physical manifestations such as sleeplessness, anxiety, irritability, and headaches are not so severe that no reasonable person could be expected to endure them. Id. See also Jones v. Warner, 301 Ga. App. 39, 43, 686 S.E.2d 835 (2009). In the absence of evidence of professional treatment for serious needs, Plaintiff presented insufficient evidence of emotional harm. Edmonds, 178 Ga. App. at 71-72. Defendants are entitled to a directed verdict on Plaintiff's claims for

intentional infliction of emotional distress on this basis as well.

WHEREFORE, for the above and foregoing reasons, it is **HEREBY ORDERED** that Defendants' Motion for Directed verdict is **GRANTED**. It is **FURTHER ORDERED** that all claims presented in this case against Dr. Suvidha J. Sachdeva, DDS and Coast Dental of Georgia, P.C. shall be **DISMISSED** and Judgment entered in favor of Defendants.

SO ORDERED, this 29 day of August, 2019

/s/ Patsy Y. Porter
PATSY Y. PORTER, JUDGE
STATE COURT OF
FULTON COUNTY

Proposed Order Prepared by:

Mr. M.B. Satcher, III
Georgia Bar No. 626888
Terry L. Long
Georgia Bar No. 457460

3475 Lenox Road, N.E.
Suite 400
Atlanta, Georgia 30326
Tel. (770) 698-9556
Fax. (770) 698-9729
burt.satcher@ColemanTalley.com
terry.long@ColemanTalley.com

App. 27

[SEAL] SUPREME COURT OF GEORGIA
Case No S22C0412

June 22, 2022

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NORINE CAVE v. SUVIDHA SACHDEVA et al.

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

Court of Appeals Case No. A21A1033

[SEAL] SUPREME COURT OF GEORGIA
Case No S22C0412

July 14, 2022

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

NORINE CAVE v. SUVIDHA SACHDEVA et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

All the Justices concur.

App. 29

No. S22C0412

**In The
Supreme Court of Georgia**

NORINE CAVE,

Petitioner,

v.

SUVIDHA J. SACHDEVA, D.D.S., et al.

Respondents.

Application for Certiorari from
the Georgia Court of Appeals
Case No. A21A1033

On Appeal from the Fulton County State Court
Case No. 16EV000350

**NOTICE OF INTENT TO FILE
PETITION FOR WRIT OF CERTIORARI
IN THE UNITED STATES SUPREME COURT**

(Filed Jul. 22, 2022)

App. 30

Norine Cave
278 Mossy Way N.W.
Kennesaw, GA., 30152
norinecave@att.net
Petitioner

Comes Now, Appellant Norine Cave and hereby notifies this Court of her intent to file a petition for writ of certiorari in the United States Supreme Court.

The denial of the writ of certiorari was decided on June 22nd, 2022. A motion of reconsideration was timely filed, and subsequently denied on July 14, 2022.

This notice is in compliance with the 10-day time period in which to file after final judgment of the case.

Respectfully submitted this, 22nd day of July 2022.,

/s/ Norine Cave
NORINE CAVE
Petitioner

App. 31

No. S22C0412

**In The
Supreme Court of Georgia**

NORINE CAVE,

Petitioner,

v.

SUVIDHA J. SACHDEVA, D.D.S., et al.

Respondents.

Application for Certiorari from
the Georgia Court of Appeals
Case No. A21A1033

On Appeal from the Fulton County State Court
Case No. 16EV000350

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have this date served the opposing party in the foregoing matter with a copy of the NOTICE OF INTENT TO FILE PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT, thereof by delivering a

App. 32

copy of same electronically, via e-mail, as both parties have previously agreed upon:

Milton B. Satcher, III
288 South Main Street Suite 100
Alpharetta, Georgia 30009
Office: (770) 765-0225
bsatcher@satchermcgoernlaw.com
SATCER & MCGOVERN LLC
TERRY L. LONG
288 South Main Street Suite 100
Alpharetta, Georgia 30009
Office: (770) 765-0225
tlong@satchermcgoernlaw.com
SATCER & MCGOVERN LLC
Attorneys for the Appellees

Respectfully submitted this 22nd day of July, 2022.

/s/ Norine Cave
NORINE CAVE
Petitioner

Norine Cave
278 Mossy Way N.W.
Kennesaw, GA., 30152
norinecve@att.net
Petitioner

App. 33

No. S22C0412

**In The
Supreme Court of Georgia**

NORINE CAVE,

Petitioner,

v.

SUVIDHA J. SACHDEVA, D.D.S., et al.

Respondents.

Application for Certiorari from
the Georgia Court of Appeals
Case No. A21A1033

On Appeal from the Fulton County State Court
Case No. 16EV000350

**MOTION TO RECONSIDER PETITIONER'S
PETITION FOR WRIT OF CERTIORARI**

(Filed Jul. 5, 2022)

Norine Cave, pro se

Norine Cave
278 Mossy Way N.W.
Kennesaw, GA., 30152
norinecave@att.net
Petitioner

CONTENTS

Introduction	1
Due Process.....	2
Basis for Granting	4
Background.....	4
Arguments	5
On Appeal, Petitioner Argued That The Appel- late Court's Affirmance Of The Trial Court's Ruling Was Improper Because	5
The Trial Court Deprived Petitioner of a Full And Fair Trial Process	6
Fraud Vitiates Consent/Public Importance.....	11
Matter of Public Concern	12
Trial Court's Exclusion of Petitioner's Expert Wit- nesses Was An Abuse of Discretion	14
Conclusion.....	16
CERTIFICATE OF COMPLIANCE.....	17
CERTIFICATE OF TIMELINESS.....	18
CERTIFICATE OF SERVICE.....	20
ORDER FROM WHICH MOTION TO RECON- SIDER IS TAKEN	21

TABLE OF AUTHORITIES

FEDERAL RULES OF CIVIL PROCEDURE

Federal Rules of Civil Procedure ("FRCP")	
26(a)(2)(A)	8
FRCP 26(a)(2)	7, 9
FRCP 26(a)(2)(B)	8
Rule 26	9
Rule 26(a)(2)	7

RULES GEORGIA COURT OF APPEALS

Rule 37(e)	1
------------------	---

RULES SUPREME COURT OF GEORGIA

Rule 27	1
---------------	---

UNITED STATES CONSTITUTION

14th Amendment	2
14th Amendment of the United States Constitu- tion	15
Fourteenth Amendment of the United States Constitution	2

U.S. DEPARTMENT OF JUSTICE

Kool Smiles of Georgia (2018)	12
-------------------------------------	----

UNITED STATES CODE

<i>Butler v. Union Carbide Corp.</i> , 310 Ga. App. 21, 32 (712 SE2d 537) (2011).....	10
Supreme Court Rule 11.1	18
Under 28 U.S.C. § 1654.....	15

O.C.G.A.

O.C.G.A. § 24-7-702.....	10
O.C.G.A. § 31-9-6(d)	12
O. C. G.A. § 31-9-6.1.....	13
O.C.G.A. § 31-9-6.1(a)	13
O.C.G.A. §24-7-702.....	7
O.C.G.A. §31-9-6(d)	13
O. C. G.A. §31-9-6.1.....	13
O.C.G.A. §9-11-26.....	7
OCGA § 24-7-702	10

FEDERAL RULES OF EVIDENCE

Fed. R. Evid. 702	10
Federal Rule of Evidence 702.....	7
FRE 702	7
<i>Rules 702, 703, or 705</i>	8

CASES – SUPREME COURT OF GEORGIA

<i>Albany Urology Clinic v. Cleveland</i> , 272 Ga., 296, 528 S.E. 2d 777 (2000).....	11
--	----

<i>Blotner</i>	11, 12, 13
<i>Blotner v. Doreika</i> , 285 Ga. 481, 678 S.E.2d 80 (2009).....	11
<i>Lee v. Smith</i> , 838 S.E.2d 870 (2020).....	14

SUPREME COURT OF THE UNITED STATES

<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i>	10
<i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i> , 509 U.S. 579 (113 SC 2786, [125 LE2d 469]) (1993).....	10
<i>General Electric Co. v. Joiner</i> , 522 U.S. 136 [(118 SCt 512, 139 LE2d 238)] (1997).....	10
<i>Kumho Tire Co. Ltd v. Carmichael</i> , 526 U.S. 137 [(119 SCt 1167, 143 LE2d 238)] (1999).....	10

[1] Introduction

Norine Cave (“Petitioner”) respectfully brings forth her **MOTION TO RECONSIDER PETITIONER’S PETITION FOR WRIT OF CERTIORI** to this Court’s ruling, denying said petition.

In the interest of fundamental fairness and justice, Petitioner implores this Court to reconsider its denial of the Writ of Certiorari, as it involves violations of constitutional rights. The petition was filed, and subsequently amended, on December 28th, 2021. This Court issued and filed its decision on June 22nd, 2022. This motion is timely filed on July 5, 2022, based upon the extension of holiday due date and this Court retains jurisdiction.

included four unchallenged affiants in support of Petitioner's claims, during pre-trial litigation).

A key issue in this case raises the question:

Whether there has ever been a medical malpractice case in the State of Georgia, where a designated defense expert witness has been admitted into trial without first releasing, or exchanging his/her opinion, affidavit or report?

[4] Basis for Granting

A reconsideration shall be granted on motion only when it appears that the Court overlooked a material fact in the record, a statute, or a decision which is controlling as authority and which would require a different judgment from that rendered, or has erroneously construed or misapplied a provision of law or a controlling authority.

Petitioner asserts that the appellate court may have overlooked the controlling statutes, rules, and genuine issues of material fact remaining in the trial court in its affirmance of the trial court's granting of directed verdict to Respondents.

Background

Petitioner filed her notice of appeal in the Georgia Court of Appeals case (A21A1033) on February 9, 2021, of the trial court's ruling granting a directed verdict in favor of Respondents on the first day of trial August 26,

2019 (16ev000350). Petitioner subsequently filed her opening brief in the appellate court on March 18, 2021. The directed verdict resulted from the exclusion of Petitioner's two expert witnesses, Dr. Jack Levine (pre-disclosed and unresolved pre-trial scheduling conflict) and Dr. Harry Lehrer (issue of late identification). The appellate court upheld the trial court's ruling of the directed verdict and denial of [5] Petitioner's motion for a new trial.

Arguments

1. On Appeal, Petitioner Argued That The Appellate Court's Affirmance Of The Trial Court's Ruling Was Improper Because:

1. The trial court erred in the allowance of Respondents' expert witness, Dr. Michael Hackman into trial without requiring him to release an opinion/ affidavit prior to trial, thus depriving Petitioner's right to discovery (disclosed deficiency/motion in limine). Procedural due process violation
2. A directed verdict was improper due to evidence entered at trial remaining as genuine issues of material facts (testimony of Dr. Sachdeva, in part, admitted and revealed that x-rays, taken by her office, showed no evidence to support treatment; it is illogical to reason that diagnostic imaging could not reveal any evidence to necessitate the surgical procedure, and her self-authenticating doctor's notes, in evidence, that falsely stated

31. Respondents did not provide a written report of the expert witness's opinions [8] in accordance with Federal Rules of Civil Procedure ("FRCP"), 26(a)(2)(A), so no rebuttal was possible.

(2) Disclosure of Expert Testimony

(A) In addition to the disclosures required by this paragraph (1), a party shall disclose to the other parties the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence.

As of April 20, 2016, the Federal Rules of Evidence, together with the Federal Rule of Civil Procedure 26(a)(1) ("FRCP") further stipulates:

Further FRCP 26(a)(2)(B) dictates, in part, if care was taken to make the witness available, "Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report, prepared and signed by the witness." If it has

of a Full And Fair Trial Person

O.C.G.A. § 9-11-26 a "permits" discovery of "facts" known and opinions held by experts to only be obtained as follows:

that follows, which also contains the name of the party that is to be interrogated, through an interrogatory that requires the other party to identify each expert into state the subject matter about which the expert is expected to testify along with the substance of his opinion concerning the same.

The facts and opinions and grounds for each - but this brings two legal issues and which is to sue men. Through a deposition and ended on August 16, 2019 (first day of trial), Petitioner submitted four individually challenged affidavits from four different entities in support of her claim. D. H. French

The trial court did not inquire whether or not interrogatories were requested by either party, before denying Petitioner's motion in limine.

[9] The absence of an opinion, bypasses the gate-keeping responsibilities of the court and removes the critical determination of whether the findings of a designated expert witness, are reliable or relative to the case. Moreover, with no notice, or access of Dr. Hackman's opinions, much less the subject matter on them, Petitioner could not have reasonably prepared to depose Dr. Hackman on those issues, notwithstanding, a trial process. Allowing a party to obviate the need to provide FRCP 26(a)(2) disclosures and reports by making their experts available to be deposed, would essentially render Rule 26, futile. Petitioner argued this issue prior to trial, without any relief from the trial court to cure the revealed deficiency. Instead, the trial court admonished Petitioner by averring that there was no rule that enforced the Respondent to provide an opinion, affidavit or report, and it was Petitioner's responsibility to depose Respondent's designated witness, Dr. Hackman, in order to obtain his opinion².

The appellate court held that Dr. Hackman's testimony was moot. Petitioner asserts that Dr. Hackman's duties of disclosure of an opinion (prior to trial) pre-empted the "mootness" of his expected testimony (at trial) due to the trial court's rulings against Petitioner.

² Petitioner disagrees with the trial court's **assertion**, noting that Rule 26 (O.C.G.A. §9-11-26) governs discovery rules and duties of disclosures as argued in Petitioner's motion in limine prior to trial.

App. 46

The ruling was made contrary to provisions [10] under O.C.G.A. § 24-7-702. Petitioner asserts that in order for a directed verdict to be sustained, it must have been ruled upon in compliance with the controlling statute pursuant to O.C.G.A. § 24-7-702.

“This statute is a codification of the Supreme Court holding in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (113 SC 2786, [125 LE2d 469]) (1993). See *Butler v. Union Carbide Corp.*, 310 Ga. App. 21, 32 (712 SE2d 537) (2011) (“Twelve years after Daubert, the Georgia Legislature in 2005 passed [the predecessor statute to O.C.G.A. § 24-7-702], which adopted the Daubert test for expert opinion testimony in civil actions in Georgia State courts”). And Georgia courts are to interpret and apply O.C.G.A. §24-7-702 by “drawing] from the opinions of the United states Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, [supra]; *General Electric Co. v. Joiner*, 522 U.S. 136 [(118 SCt 512, 139 LE2d 238)] (1997); *Kumho Tire Co. Ltd v. Carmichael*, 526 U.S. 137 [(119 SCt 1167, 143 LE2d 238)] (1999); and other cases in federal courts applying the standards announced by the United States Supreme Court in these cases”. The courts holding in *Daubert* was codified in 2000 by amending Fed. R. Evid. 702.

The Court of Appeals affirmed the trial court’s ruling on this issue, that is in plain error and reversible. Such ruling of the trial court and holding by the appellate court, clearly deprived Petitioner from a fair and full trial procedure and right to be reasonably heard, and right to discovery, contrary to due process of law.

[11] Fraud Vitiates Consent/Public Importance

There was also an issue of informed consent associated with fraud (misrepresentation of condition/false diagnosis), in which the appellate court upheld (trial court's ruling), See *Blotner v. Doreika*, 285 Ga. 481, 678 S.E.2d 80 (2009).

All fraud in healthcare undermines the public safety and patient right to autonomy.

Relying upon *Blotner*, the appellate court reasoned that Respondents had no duty to obtain consent based on the area of treatment and regarding issues of duties of disclosure of associated risk of treatment.

Although Georgia does not recognize a common law duty to inform patients of the material risks of a proposed treatment or procedure (See *Albany Urology Clinic v. Cleveland*, 272 Ga., 296, 528 S.E. 2d 777 (2000)); a physician does have a common law duty to truthfully convey information and answer truthfully, a patient's questions regarding procedural and or medical risks. The common law of this state does not designate the failure to reveal such risks, as fraud that vitiates consent to medical procedures.

The issue here, was not presented as such failures; instead, the fraud claim of this case was made through intentional misrepresentation of a diagnosis in order to induce unnecessary treatment, for unjust enrichment. The appellate court relied [12] upon the standings in *Blotner* to uphold the trial court's ruling. In this case, the fraud was repeatedly argued and associated

Trial Court's Exclusion of Petitioner's Expert Witnesses Was An Abuse of Discretion

Petitioner presented, and the record shows, that the trial court's rulings to exclude two of Petitioner's witnesses eliminated the legal and required support, to assist a trier of fact understand the evidence presented. In contrast, the trial court allowed Respondents', expert witness to enter trial without first complying with rules pertaining to exchange and submission of its expert witness's affidavit/opinion, before the start of trial.

The trial court's rulings to exclude both of Petitioner's expert witnesses were fatal to her case, too harsh of a sanction, and should be considered as abuses of discretion.

Contrary to this Court's recent ruling in *Lee v. Smith*, 838 S.E.2d 870 (2020), the trial court excluded Dr. Lehrer based solely on an alleged, late identification (discovery was re-opened approximately two months prior to trial).⁴

The crux of this case exhibited violations of Petitioner's right to Due Process of Law, protected under the Fourteenth Amendment of the United States [15] Constitution. This case, along with Petitioner's motion of reconsideration, are of paramount importance in association with procedural due processes of law and the stability of access to all, to include pro se litigants. It

⁴ Dr. Lehrer was identified as a potential expert witness on July 1, 2019, through supplemental discovery request.

also brings to light the significance of improvement of the safety of patients in the State of Georgia. Health care fraud schemes force everyone to share in its burden, both financially and in how it impacts our perception of the value, integrity and ethics of our healthcare system, that we all share in the responsibility of preservation, forging ahead.

Under 28 U.S.C. § 1654, civil litigants have a statutory right to proceed pro se, therefore meritorious claims should be recognized and reasonably evaluated by the courts before dismissal of cases. Please consider, the following from the trial transcript:

PROCEEDINGS

August 26, 2019

THE COURT: Good morning. You-all may be seated. If I can have criminal people to step back, civil people start up, we're starting with the civil case.

Ms. Rothman, when we finish with the civil case, we'll start with the criminal.

Bring in the jury, please.

The first four rows need to be clear, please. The first four rows need to be clear for the jurors.

Ready for the motion.

Good morning, Ms. cave.

MS. CAVE: Good morning, your Honor.

[16] (A21A1033, R.1. V3. T. p2 1. 1-13)

In the CPTO, the trial was estimated to last two to three days, yet the trial court instructed the litigants that were present for a separate case, to wait until Petitioner's case was "finished". It appears that the

App. 54.

Pursuant to Rule 11: When an expiration date falls on a Saturday, Sunday, an official State or federal holiday, or a day when the Clerk's office has been closed per order posted on the Court's website, the time for filing is extended to the next business day.

The resultant due date is therefore Tuesday July 5th, 2022.

Based on the foregoing, the reply was timely filed.

Respectfully submitted this 5th day of July, 2022.

norinecave/s/ Norine Cave

Norine Petitioner, pro se

Norine Petitioner

Petitioner, pro se, NORINE CAVE, ESQ.
278 Mossy Way N.W.

Kennesaw, GA., 30152

norinecave@att.net (404) 518-0902, (404) 518-0901, (404) 518-0903

or via email or by mail to the following address:

[20] CERTIFICATE OF SERVICE

I, the undersigned, certify that I have this date served the opposing party in the foregoing matter with a copy of the Plaintiff's **MOTION TO RECONSIDER PETITIONER'S PETITION FOR WRIT OF CERTIORI**, thereof by delivering a copy of same on July 5, 2022, via email by prior agreement and via U.S. Mail.

App. 55

Respectfully submitted this 5th day of July 2022.

288 South Main Street Suite 100
Alpharetta, Georgia 30009
Office: (770) 765-0225
Direct: (770) 378-9759
bsatcher@satchermcgovernlaw.com
SATCHER & MCGOVERN LLC

TERRY L. LONG
288 South Main Street Suite 100
Alpharetta, Georgia 30009
Office: (770) 765-0225
tlong@satchermcgovernlaw.com
SATCHER & MCGOVERN LLC

Attorneys for the Respondents

/s/ Norine Cave
Norine Cave
Petitioner, Pro Se

278 Mossy Way N.W.
Kennesaw, GA., 30152
404-518-0902

norinecave@att.net

Plaintiff/Appellant, Pro se

NORINE CAVES.

In *Long v. Natarajan*, 291 Ga. App. 814, 662 S.E.2d 876 (2008), a Plaintiff's expert witness' testimony was denied because the expert witness' affidavit did not provide 'sufficient information' for the court to determine whether the opinion applied reliable principles to the facts in a reliable manner. Defendants' witness has submitted no opinion, nor an affidavit that certifies he has reviewed the facts of the case, to render an opinion.

DEFENDANT'S EXPERT WITNESS FROM TES

As stated in the above captioned case Defendants, Dr. Suvidha Sachdeva and Coast Dental's Counsel presents no opinion to substantiate his qualifications to testify as an expert witness on merits of the Plaintiff's complaint. No relevant facts or theory have been presented. Expert witnesses must render an opinion of the case before the other party conducts a deposition for further discovery. Defendant's failed to comply with this standard which signifies a deficiency.

Defendants introduced Dr. Michael Flackman on October 19th, 2018 and provided curricula vitae which list the following qualifications and fields of expertise:
Q.C.G.A. 24-9-67.1 stipulates in part:
(b) If scientific, technical, or other specialized knowledge will assist the trier of fact in any cause of action to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education,

App. 61

may testify thereto in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data which are or will be admitted into evidence at the hearing or trial;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case. Defendant's expert witness fails this criteria.

Pursuant to GA Code § 24-7-702:

(a) Except as provided in Code Section 22-1-14 and in subsection (g) of this Code section, the provisions of this Code section shall apply in all civil proceedings. The opinion of a witness qualified as an expert under this Code section may be given on the facts as proved by other witnesses.

(b) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;

IN THE STATE COURT OF FULTON COUNTY	
STATE OF GEORGIA	
NORINE CAVE, Plaintiffs, v.	
	CIVIL ACTION FILE NO. 16EV000350
SUVIDHA SACHDEVA, D.D.S. and COAST DENTAL OF GEORGIA, PC, Defendants	

**DEFENDANT SUVIDHA SACHDEVA, D.D.S.'S
SUPPLEMENTAL RESPONSES TO
PLAINTIFF'S FIRST REQUEST TO PRODUCE**

(Filed Oct. 19, 2018)

COMES NOW SUVIDHA SACHDEVA, D.D.S., named as a Defendant in the above-styled suit, and by and through her counsel and pursuant to the provisions of O.C.G.A. § 9-11-34, hereby supplements her responses to Plaintiff's First Request for Production of Documents in accordance with the Georgia Civil Practice Act shows as follows:

1.

Request: State your full name, professional and residence address, and attach a current copy of your curriculum vitae (CV). In the event you do not have a CV, state in detail your professional qualifications, including your education by identifying schools from which you graduated and the degrees granted and dates thereof

your medical internships and residencies, fellowships and a bibliography of your professional writing(s).

RESPONSE: Michael P. Hackman, 6595 Roswell Road, Atlanta, Georgia 30328 may testify as an expert witness upon a trial of this case. Dr. Hackman has not prepared any written report concerning his investigation of this matter or the opinions formed.

13.

Request: Copies of all transcripts of testimony from Defendants experts for the last five years whether during a deposition, hearing, or trial.

RESPONSE: Dr. Hackman does not maintain any transcripts of testimony for the last five years whether by way of deposition, hearing or trial.

22.

Request: A copy of Defendant's experts' most recent c.v.

RESPONSE: The c.v. of Michael P. Hackman is attached hereto.

Respectfully submitted on the 19th day of October, 2018.

COLEMAN TALLEY LLP

/s/ Burt Satcher

M.B. SATCHER, III

Georgia Bar No. 626888

Attorney for Defendant

Suvidha Sachdeva, D.D.S.

App. 66

3475 Lenox Rd NE
Suite 400
Atlanta, GA 303026
770-698-9556
770-698-9729 facsimile
burt.satcher@colemantalley.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the
DEFENDANT SUVIDHA SACHDEVA, D.D.S.'S
SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST REQUEST TO PRODUCE via electronic delivery and U.S. Mail, in an envelope with sufficient postage affixed thereon, and addressed as follows:

Norine Cave
278 Mossy Way
Kennesaw, GA 30152
norinecave@att.net

This 19th day of October, 2018.

COLEMAN TALLEY LLP

/s/ Burt Satcher
M.B. SATCHER, III
Georgia Bar No. 626888
Attorney for Defendant
Suvidha Sachdeva, D.D.S.

3475 Lenox Rd NE
Suite 400
Atlanta, GA 303026
770-698-9556
770-698-9729 facsimile
burt.satcher@colemantalley.com

Michael Patrick Hackman
6595 Roswell Road Suite C
Atlanta, Georgia 30328
michael@hackmandentistry.com

Education

University of Georgia, Athens Georgia 1996-2000

Degree: Bachelor of Science

Major: Biology- Graduated Cum Laude

Medical College of Georgia School of Dentistry, Augusta Georgia 2000-2004

Degree: D.M.D- Graduated Top 10% of Class

Advanced Education in General Dentistry

Residency, Eglin AFB Florida 2004-2005

Degree: Certification in AEGD Residency

Professional Associations

Academy of General Dentistry, American Dental Association, Virginia Dental Association, Peninsula Dental Society, Historic Triangle Study Club, Georgia Dental Association, Hinman Dental Society

Certification

Basic Life Support 2000-Present
Advanced Cardiac Life Support 2004-2008
Orofacial Pain Course- Nov 2004
Dental Forensic Identification Workshop- April 2005
Oral and Maxillofacial Pathology Course- May 2005
Intravenous Sedation Certificate- August 2005
Clinical Operative Dentistry Course- March-April 2007
E4D CAD/CAM Course- Jan 2009
Invisalign Certification- June 2009

Professional Experience

- United States Air Force Dental Officer 2004-2008
- Private Practice Comprehensive Care Dentist in Virginia (2008-2010)
- Private Practice Comprehensive Care Dentist in Georgia (2010-present)
- Perform Sedation Dentistry, Fixed and Removable Prosthodontics, Pediatric Dentistry, Endodontics, Periodontal Surgeries, Orthodontics, Restorative Dentistry, and Oral Surgery

My interest in dentistry stems from a desire to meet not only the functional demands of patients, but also the gratification of their esthetic needs. I enjoy working with materials and techniques that require attention to detail. I feel the military and private practice have served me well in developing my clinical skills as a dental provider.
