FILED
08/09/2016
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: DA 16-0101

DA 16-0101

IN THE SUPREME COURT OF THE STATE OF MONTANA

2016 MT 192N

BRIAN D. SMITH,

Plaintiff and Appellant,

v.

REBECCA S. ANDERSON, M.D., and
RODNEY G. HEATON, M.D.,

Defendants and Appellees.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Missoula, Cause No. DV-15-271
Honorable John W. Larson, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Brian D. Smith (Self-Represented), Shelby, Montana

For Appellees:

J. Daniel Hoven, Evan M.T. Thompson, Browning, Kaleczyc, Berry & Hoven, P.C., Helena, Montana

Submitted on Briefs: July 20, 2016

Decided: August 9, 2016

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Brian D. Smith appeals from the District Court's order filed September 23, 2015, granting defendants' motion for summary judgment, granting defendants' motion for protective order, and denying plaintiff's motion for appointment of counsel. We affirm.

¶3 Smith brought this medical negligence case against the defendant doctors, who treated him at Community Medical Center in Missoula on April 2, 2011. Defendant Anderson is certified in internal medicine and defendant Heaton is certified in family practice. Both work as hospitalists at Community Medical Center. Smith alleged that the doctors administered inappropriate medications to him, that they did not obtain informed consent from him, and that they negligently released him from the hospital.

¶4 Montana law has long required that the elements of a medical negligence claim be supported by expert testimony. *Montana Deaconess Hosp. v. Gratton*, 169 Mont. 185, 189, 545 P.2d 670, 672 (1976). In response to a deadline set by the District Court, Smith identified forensic psychiatrist Dr. William Stratford as his medical expert. Defendant doctors moved for summary judgment when they learned that Dr. Stratford had not evaluated Smith's claims and had not agreed to appear as an expert. They also contended

that Stratford was not an expert in the medical specialties that they practice. Smith opposed the motion, contending that his claims were easily understood by ordinary persons and therefore required no expert testimony.

¶5 The District Court determined that Smith's allegations of medical negligence, including allegations of inappropriate medication and unwarranted discharge, were not topics readily understood by lay persons. Therefore, the District Court determined that expert medical testimony by a practitioner in the appropriate medical field was necessary to support Smith's case. *Estate of Wilson*, 2011 MT 179, ¶ 17, 361 Mont. 269, 258 P.3d 410. Since Dr. Stratford knew nothing about Smith's case and had not agreed to testify for him, the District Court concluded that Smith did not have the necessary expert to support his claims and that his complaint should be dismissed as a matter of law. We agree with the District Court.

¶6 Based upon this disposition of the case, the District Court properly granted the protective order sought by the defendant doctors and properly denied Smith's motion for appointment of counsel.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, this case presents a question controlled by settled law.

¶8 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ BETH BAKER
/S/ JIM RICE