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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JIAN LI,

Plaintiff and Appellant,

v.

HAROON M. MOJADDIDI,

Defendant and Respondent.

A142118

(Alameda County
Super. Ct. No. HG13665828)

Respondent Haroon M. Mojaddidi, a physician, treated appellant Jian Li at a hospital after Li was involved in a rollover car accident. Li later sued Mojaddidi for medical malpractice because Mojaddidi failed to locate and remove a tiny glass fragment that was embedded in Li's scalp after the accident. The trial court granted summary judgment in Mojaddidi's favor, and we affirm because the uncontradicted evidence demonstrated that Mojaddidi acted within the standard and did not cause Li harm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

Li was injured in a rollover car accident in November 2011. He suffered several cuts on the left side of his body, his face, and his scalp. Paramedics took him to the emergency room at Eden Medical Center in Castro Valley, where Mojaddidi, a doctor specializing in general and trauma surgery, was among the medical staff who treated him. A CT scan of Li's brain was taken. A preliminary report stated the scan revealed a laceration to Li's scalp with an "embedded small foreign body." Although apparently no

one realized it at the time, the object was a glass fragment measuring about three millimeters.

During Mojaddidi's examination of Li, he explored the area where the foreign body was shown on the CT scan. According to Mojaddidi, he could not find the foreign body and concluded that further efforts to extract it "would cause more harm than good" to Li. According to Li, his medical records revealed Mojaddidi was unaware of the foreign body when he conducted his examination.

In any event, the lacerations on Li's head were cleaned and stapled. When Li was discharged, he was told to follow up with his primary-care doctor in a week to 10 days and to have his staples removed in that same time period. The parties disputed whether Mojaddidi told Li, who is not fluent in English, about the foreign body before he was discharged. A final radiology report was prepared indicating Li suffered a scalp laceration "with an associated radiopaque foreign body imbedded in the scalp."

Li went to a Fremont hospital in early December to have the staples removed, and he appeared to be healing well. Again, apparently no one noticed the glass embedded in his scalp.

While cutting Li's hair about two months later, a hair stylist noticed the fragment coming out of Li's head. The next day, Li went to a hospital in Union City and had the glass fragment removed with no reported difficulty or complications. When Li was discharged that same day, the wound appeared clean and dry.

Li sued Mojaddidi for medical malpractice,¹ and Mojaddidi filed a motion for summary judgment. In his motion for summary judgment, Mojaddidi argued that there was no triable issue of material fact about whether he (1) breached the applicable standard of care or (2) proximately caused any injury Li suffered.

In support of his arguments, Mojaddidi submitted two expert declarations. Hugh H. West, M.D., a physician who is board certified in emergency medicine and who has practiced emergency medicine at the University of California San Francisco, opined

¹ Li also sued Eden Medical Center for negligence, but Eden was dismissed with prejudice after a request for dismissal was filed in October 2013.

that Mojaddidi met the applicable standard of care in treating Li even though Mojaddidi had been unable to locate and remove the small glass fragment seen on the initial CT scan taken the day of Li's accident. Based on his training and experience, Dr. West opined that a glass fragment measuring three millimeters "is transparent and therefore virtually invisible in the wound and could be difficult, if not impossible to find, despite all reasonable efforts to locate the fragment. . . . [E]ven the most highly trained physicians caring for a patient in this setting, as Dr. Mojaddidi did in this case, can fail to locate a 3 mm glass fragment in a scalp wound and still practice completely within the applicable standard of care."

Barry N. Gardiner, M.D., a physician and surgeon who has treated patients following traumatic injuries, also opined that Mojaddidi had acted well within the applicable standard of care. As for whether Mojaddidi's treatment proximately caused any injury to Li, Dr. Gardiner opined to a reasonable degree of medical probability that the retention of the glass fragment in Li's scalp did not cause the headaches Li apparently complained about. Instead, Li's headaches "almost surely" were caused by the head injury Li suffered in the initial rollover accident.

Li opposed the motion and filed objections to some of Mojaddidi's evidence. He did not, however, offer any declarations from medical experts. He acknowledged that expert testimony is usually required regarding the applicable standard of care in a medical-malpractice action, but he argued that such testimony was unnecessary in this case because the alleged negligence would be obvious even to a layperson.

The trial court granted Mojaddidi's motion. It sustained Li's evidentiary objections to Mojaddidi's expert declarations to the extent the declarations were being used to establish the underlying facts (i.e., whether Li was told about the foreign body lodged in his scalp), but it overruled them to the extent they reported information that the experts relied on in forming the basis of their opinions. (Evid. Code, § 801, subd. (b) [expert may rely on information of a type reasonably relied on, even if inadmissible].) It then concluded that the experts sufficiently established that Mojaddidi satisfied the applicable standard of care and did not cause or contribute to Li's alleged injuries. The

court found that there was no triable issue of material fact on these points because Li failed to submit contrary expert opinion, and it then entered a judgment of dismissal.

II. DISCUSSION

A. *Summary Judgment Standards in Medical-malpractice Actions.*

“The elements of a cause of action in tort for professional negligence are: (1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional’s negligence.’ ” (*Turpin v. Sortini* (1982) 31 Cal.3d 220, 229-230.) In negligence cases arising out of the rendering of medical care, the standard of care by which a physician’s acts are to be measured is a matter particularly within the knowledge of experts and can only be proven with their testimony unless the particular conduct is within the common knowledge of a layperson.

(*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

“A trial court properly grants summary judgment where no triable issues of material fact exists and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review the trial court’s decision de novo, considering all of the evidence the parties offered in connection with the motion (except that which the court properly excluded) and the uncontradicted inferences the evidence reasonably supports.” (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.)

“ ‘California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, *he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.*’ ” (*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, italics added.)

B. Sufficient Evidence Supported the Declarations of Mojaddidi's Experts.

Before we analyze the effect of Li's failure to offer expert evidence in his opposition to Mojaddidi's summary judgment motion, we first address Li's objections to Mojaddidi's expert declarations. Li argues the trial court "erred in admitting expert opinions unsupported by facts and in overruling [*sic*] evidential objections." He provides a summary of general legal principles applicable to expert witnesses and argues that "the trial court erred in failing to adequately address the evidentiary basis of the expert testimony before determining its relevancy, and especially when the basis is unsupported by facts and even contrary to the undisputed medical records." The record does not support these contentions. Li apparently claims there was a dispute over whether Mojaddidi was aware of the foreign body in Li's scalp during his examination. In granting the motion for summary judgment, the trial court pointed to uncontroverted evidence, independent of the experts' declarations, that Mojaddidi had reviewed the preliminary radiology report that mentioned an embedded foreign object in Li's scalp and then explored that area. Thus, Li is mistaken in contending on appeal that the trial court failed to determine whether there was a genuine factual dispute about Mojaddidi's awareness of the foreign body in Li's scalp during the initial examination.

On appeal, Li likewise does not point to any contrary medical records or evidence. He repeats verbatim the evidence he relied on in his separate statement of disputed facts in the trial court, evidence that tended to show Mojaddidi had access only to the preliminary, and not the final, radiology report when he examined Li. But, as the trial court noted in its order granting summary judgment, uncontroverted evidence showed that the preliminary report identified the foreign object and that Mojaddidi explored the wound. We reject Li's argument that he established a genuine issue of material fact on this issue, or that the experts' declarations were somehow improper.

C. There Was No Triable Issue of Fact Regarding the Duty of Care Because Li Failed to Offer Rebuttal Expert Testimony.

We also reject Li's argument that it was unnecessary to offer expert testimony in opposition to Mojaddidi's motion for summary judgment because the conduct at issue

was within the common knowledge of a layperson. (*Flowers v. Torrance Memorial Hospital Medical Center*, *supra*, 8 Cal.4th at p. 1001; *Cobbs v. Grant* (1972) 8 Cal.3d 229, 236 [expert testimony required in medical-malpractice action unless layperson is “capable of appreciating and evaluating the significance” of facts presented].) Such an exception to the general rule requiring expert evidence in medical-malpractice cases is available only “in the *rare circumstances* in which ‘negligence on the part of a doctor is demonstrated by facts which can be evaluated by resort to common knowledge.’ ” (*Ewing v. Northridge Hospital Medical Center* (2004) 120 Cal.App.4th 1289, 1302, italics added.) “The ‘common knowledge’ exception is typically employed in medical malpractice cases in which the misfeasance is sufficiently obvious as to fall within the common knowledge of laypersons. Examples include cases in which a foreign object is left in a patient’s body following surgery [citation], an injury occurs to a body part not slated for medical treatment [citation], or the amputation of a wrong limb. . . . In short, the common knowledge exception applies in cases in which no scientific enlightenment is necessary because *the topic is familiar to a layperson.*” (*Id.* at pp. 1302-1303, italics added.)

Both of Mojaddidi’s experts stated that a glass fragment of the size that was embedded in Li’s scalp would have been virtually invisible in the wound and could have been difficult, if not impossible, to locate despite the best efforts to do so. The parties direct us to no cases addressing whether this is a topic familiar to a layperson, and our independent research has revealed none. But we do not hesitate to conclude that a physician’s ability to locate a small glass fragment in a patient’s scalp following a motor-vehicle accident is sufficiently outside the common knowledge of a layperson to require expert testimony on the topic.

Li’s reliance on *Baldwin v. Knight* (Tenn. 1978) 569 S.W.2d 450 is misplaced. In *Baldwin*, the alleged negligent act was a doctor’s failure to determine that a patient’s puncture wound following a lawnmower accident was caused by a flying object (a wire) that had become lodged in the patient’s leg before closing the wound. (*Id.* at pp. 451, 456.) The Supreme Court of Tennessee concluded that this subject was within the

common knowledge of a layperson. (*Id.* at p. 456.) Although both *Baldwin* and this case involve foreign objects embedded in a patient following an accident, such superficial similarities do not convince us that it was unnecessary here to introduce expert opinion on whether it was negligent to fail to discover a tiny glass fragment in Li's post-accident wound.

D. Li Failed to Establish a Triable Issue of Material Fact on Causation.

As an independent reason to affirm summary judgment, we agree with Mojaddidi that the trial court correctly concluded that there was no triable issue of material fact on the element of causation. In a medical-malpractice action, a plaintiff must show that a defendant's "breach of the standard of care was the cause, within a reasonable medical probability, of his injury." (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 509.) "[M]edical causation can only be determined by expert medical testimony." (*Salasguevara v. Wyeth Laboratories, Inc.* (1990) 222 Cal.App.3d 379, 385.) One of Mojaddidi's experts opined that, to a reasonable degree of medical probability, no act or omission by Mojaddidi caused or contributed to any of Li's claimed injuries. After Li failed to offer any contrary evidence, the trial court concluded that Li had failed to create a triable issue of fact on the issue.

On appeal, Li mistakenly contends that the trial court did not address causation and proceeds to devote his entire opening brief to the issue of Mojaddidi's alleged breach of the standard of care. After Mojaddidi noted Li's failure to address the causation issue in his respondent's brief, Li did not file a reply brief. (*Curtis v. Santa Clara Valley Medical Center* (2003) 110 Cal.App.4th 796, 803, fn. 4 [issue waived where appellant did not raise it in opening brief and failed to file a reply brief].) In any event, it is unclear what injury Li claims to have suffered, let alone why Mojaddidi's failure to immediately remove a small fragment of glass from his scalp caused it. Li alleged generally in his complaint that he (1) suffered "conscious pain" and will continue to do so in the future, (2) incurred lost wages, (3) suffered lost earning capacity, (4) incurred medical expenses, (5) suffered "mental anguish," and (6) was forced to undergo additional medical procedures. But in response to Mojaddidi's motion for summary judgment, Li did not

address any of these supposed injuries or provide any evidence that contradicted medical records showing the glass fragment was ultimately removed from his scalp with *no complications*. And, more importantly for purposes of this appeal, Li submitted no evidence to refute the expert opinion that any headaches Li suffered after the accident “almost surely” were caused by the head injury Li suffered in the initial rollover accident.

Because there was no triable issue of material fact over whether Mojaddidi acted within the applicable standard of care or whether his actions caused any injury suffered by Li, we affirm the trial court’s grant of summary judgment.

III.
DISPOSITION

The judgment is affirmed. Mojaddidi shall recover his costs on appeal.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.