

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PATRICIA A. LUTHY, Individually and as Administrator of the Estate of Christopher M. Luthy,	:	APPEAL NO. C-150066 TRIAL NO. A-1209322
Plaintiff-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JOSE O. MARTINEZ, M.D.,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Patricia A. Luthy appeals the judgment of the Hamilton County Common Pleas Court in favor of Jose O. Martinez, M.D., on her medical-negligence claim. Her claim arose from the death of her husband, Christopher M. Luthy, from acute combined methadone, tramadol, and diazepam poisoning.

In her first assignment of error, Luthy argues that the trial court erred when it refused to give her proposed jury instruction with respect the standard of care for pain-management physicians. Specifically, she contends that the court should have given as an instruction the 1,457-word text of Ohio Adm.Code 4731-21-02, a rule promulgated by the state medical board.

We hold that the trial court did not abuse its discretion in declining to give the proposed instruction, because the jury was fully apprised of that standard through the testimony of the appellant's expert, and the trial court's general instructions on the standard of care adequately covered the subject. *See Meadows v. Vangilse*, 1st Dist. Hamilton No. C-960080, 1997 Ohio App. LEXIS 3454 (Aug. 1, 1997); *Cummins v. Broderick*, 1st Dist. Hamilton No. C-110399, 2012-Ohio-1508, ¶ 10. Accordingly, we overrule the first assignment of error.

In her second assignment of error, Luthy argues that the jury's finding that Dr. Martinez was not negligent was against the manifest weight of the evidence. She contends that the testimony of her pain-management expert had not been rebutted by a specialist in pain management. This argument is not persuasive. In a medical-malpractice case, an expert does not need to practice in the exact same specialty as the defendant. *Alexander v. Mt. Carmel Med. Ctr.*, 56 Ohio St.2d 155, 160, 383 N.E.2d 564 (1978). Differences in areas of specialization go to the weight the evidence is to be given by a fact finder. *See Berlinger v. Mt. Sinai Med. Ctr.*, 68 Ohio App.3d 830, 835, 589 N.E.2d 1378 (8th Dist.1990). Therefore, the trial court correctly permitted the defense expert, an internal-medicine physician, to render an opinion as to the standard of care for treating chronic pain with methadone. *See Guiliani v. Shehata*, 2015-Ohio-4240, 19 N.E.3d 971 (1st Dist.). The jury was entitled to believe the expert, and the verdict was not against the weight of the evidence. Accordingly, we overrule the second assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

HENDON, P.J., CUNNINGHAM and MOCK, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on October 28, 2015

per order of the court _____.

Presiding Judge