

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2553-16T1

VERONICA CARTER,

Plaintiff-Appellant,

and

RONALD ARONDS,

Plaintiff,

v.

SANJAY LALLA, M.D. and  
JERSEY CITY MEDICAL CENTER,

Defendants-Respondents.

---

Submitted April 9, 2018 – Decided May 9, 2018

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey,  
Law Division, Hudson County, Docket No.  
L-2316-16.

Veronica Carter, appellant pro se.

Marshall Dennehey Warner Coleman & Goggin,  
attorneys for respondent Sanjay Lalla, M.D.  
(Ryan T. Gannon, on the brief).

Ruprecht Hart Weeks & Ricciardulli, LLP,  
attorneys for respondent Jersey City Medical

Center (Michael R. Ricciardulli, of counsel;  
Lindsay B. Beaumont, on the brief).

PER CURIAM

Plaintiff Veronica Carter appeals from a December 16, 2016 order dismissing her complaint with prejudice for failure to comply with the Affidavit of Merit statute, N.J.S.A. 2A:53A-26 to -29, in her medical malpractice action against defendants Sanjay Lalla, M.D. and Jersey City Medical Center. Because we agree with the motion judge that plaintiff's expert did not satisfy the like-qualified standard of the Patients First Act, N.J.S.A. 2A:53A-41, we affirm.

The essential facts are undisputed. Plaintiff filed a complaint against defendants on June 3, 2016, alleging that on June 4, 2014, she was admitted to the Medical Center as an outpatient for the purpose of "undergo[ing] various plastic surgery procedures to be performed by the defendant, Sanjay Lalla." Specifically, plaintiff alleged Lalla was to perform "liposuction on both of her thighs; fill in indentations on both of the plaintiff's hips using the excess fat removed by the liposuction of the plaintiff's thighs; perform surgery to narrow her nostrils; and fill in the creases on either side of the plaintiff Veronica Carter's nose," which she alleged he performed negligently or not at all. Plaintiff further alleged

the Medical Center "[b]y failing to properly investigate and supervise the work of defendant Sanjay Lalla, M.D.," caused her injury.

Defendant Lalla is a board certified plastic surgeon, specializing in plastic surgery. Judge Bariso noted that fact at the September 26, 2016 Ferreira<sup>1</sup> conference plaintiff attended by telephone, and the "requirement that an affidavit of merit be obtained in the same field of specialty as the defendant." The affidavit of merit plaintiff subsequently provided to defendants, however, was not authored by a plastic surgeon, board certified or otherwise. Instead, plaintiff's expert is board certified in general surgery and specializes in cosmetic surgery, not plastic surgery.

Plastic surgery is a recognized specialty by the American Board of Medical Specialties. The American Board does not recognize cosmetic surgery as a specialty practice area. See About Board Certification, <http://www.certificationmatters.org/about-board-certified-doctors/about-board-certification.aspx> (last visited May 1, 2018).

Upon receipt of the plaintiff's affidavit of merit two days before the deadline, as extended by Judge Bariso, defendants

---

<sup>1</sup> Ferreira v. Rancocas Orthopedic Assocs. 178 N.J. 144 (2003).

noted their objections to the credentials of plaintiff's expert. Shortly thereafter, both defendants filed motions to dismiss.

Judge Schultz heard argument on the motions. Although plaintiff was at that time representing herself, the judge permitted her husband, the lawyer who filed the complaint on her behalf but withdrew from the representation before the Ferreira conference, to argue her opposition to the motions. He contended Dr. Lalla performed cosmetic surgery, not plastic surgery, on plaintiff, and that plaintiff's expert "is a Diplomat in the field of cosmetic surgery" and "actually more qualified we contend, in the field of cosmetic surgery than Dr. Lalla."

After hearing argument, Judge Schultz granted the motions. In an opinion delivered from the bench, the judge explained in accordance with N.J.S.A. 2A:53A-41(a) and Nicholas v. Mynster, 213 N.J. 463, 481-82 (2013), that because Dr. Lalla practices within a specialty recognized by the American Board of Medical Specialties, plastic surgery, plaintiff's expert must also specialize in plastic surgery. Because plaintiff's expert admittedly does not specialize in plastic surgery, Judge Schultz concluded the affidavit of merit by plaintiff's expert was "insufficient as a matter of law," without further consideration of whether the expert possessed the additional credentials

mandated by N.J.S.A. 2A:53A-41(a)(1) or -41(a)(2), based on Dr. Lalla being board certified. See Nicholas, 213 N.J. at 482 ("only a specialist can testify against a specialist about the treatment of a condition that falls within the specialty area"). Because plaintiff did not present an affidavit of merit against the hospital, and any claim based on respondeat superior falls with the claim against Dr. Lalla, Judge Schultz dismissed the claims against the Medical Center as well.

Plaintiff's argument on appeal is limited to her assertion that "[t]he judge on this case made up his mind about how he was going to rule before oral argument was held." In the one page she dedicates to the argument on appeal, she contends "[t]he judge did not do any research on the difference between cosmetic surgery and plastic surgery, which was the key to appellant's argument. He just accepted the respondent's argument without researching the difference between the two types of surgery and without considering appellant's oral argument."

We disagree. Having read the transcript and reviewed the record, it is clear to us that the judge was well prepared for argument and receptive to the presentations made by counsel. The court's colloquy with counsel demonstrated the judge's familiarity with the file and the issues raised in the briefs as well as his knowledge of the substantive law.

Judge Schultz rejected plaintiff's argument that the surgery performed on her, "abdominoplasty, liposuction, fat grafting and resection of the nose," was not plastic surgery performed by a board certified plastic surgeon.<sup>2</sup> Acknowledging plaintiff's argument about the claimed distinction between plastic surgery and cosmetic surgery, the judge explained "[i]t makes no difference if in fact cosmetic surgery overlaps with the field of plastic surgery" under Nicholas. See 213 N.J. at 485 (noting "the logic of [the] plaintiffs' argument would lead back to the days before passage of the Patients First Act when, in medical-malpractice cases, physician experts of different medical specialties, but who treated similar maladies, could offer testimony even though not equivalently credentialed to defendant physicians").

Because N.J.S.A. 2A:53A-41 requires "that, when a defendant physician is subject to a medical-malpractice action for treating a patient's condition falling within his [American Board of Medical Specialties] specialty, a challenging


---

<sup>2</sup> The American Board of Plastic Surgery, a member board of the American Board of Medical Specialties, which oversees certification of plastic surgeons, states on its website that "[c]osmetic surgery is an essential component of plastic surgery." See ABMS Member Boards, American Board of Plastic Surgery, <http://www.certificationmatters.org/abms-member-boards/plastic-surgery.aspx> (last visited May 1, 2018).

plaintiff's expert, who is expounding on the standard of care, must practice in the same specialty," Nicholas, 213 N.J. at 486, we agree that plaintiff's affidavit of merit was insufficient as a matter of law and plaintiff's complaint properly dismissed with prejudice. Accordingly, we affirm, substantially for the reasons expressed by Judge Schultz in the cogent opinion he delivered from the bench on December 16, 2016.

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION