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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2829-21**

**DIANE COLLETTI and  
ROBERT COLLETTI,**

**Plaintiffs-Appellants,**

**v.**

**ROBERT WOOD JOHNSON  
HOSPITAL and ANTHONY  
RICKETTI, M.D.,**

**Defendants,  
and**

**JESSE STAWICKI, D.O.,**

**Defendant-Respondent.**

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Submitted June 6, 2023 – Decided September 6, 2023.

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey, Law  
Division, Mercer County, Docket No. L-1385-18.

Nicholas R. Farnolo (Napoli Shkolnik, PLLC) and  
Shayna E. Sacks (Napoli Shkolnik, PLLC) attorneys for

appellants (Nicholas R. Farnolo and Shayna E. Sacks, on the brief).

Buckley Theroux Kline & Cooley, LLC, attorneys for respondent (William G. Theroux and Sean C. Garrett, on the brief).

## PER CURIAM

At issue in this medical-negligence case is whether the substituted expert witness of plaintiffs Diane Colletti and Robert Colletti met the kind-for-kind specialty requirement embodied in the New Jersey Medical Care Access and Responsibility and Patients First Act (PFA), N.J.S.A. 2A:53A-37 to -42.<sup>1</sup>

After plaintiffs' initial expert witness had died, the trial court granted plaintiffs' request to extend the deadline for submission of their expert report and adjourned the trial. When plaintiffs failed to submit an expert report by the new deadline, defendant Dr. Jesse Stawicki moved for summary judgment. In opposition to the motion, plaintiffs submitted the report of a dermatologist. Finding Stawicki had treated Diane in his capacity as an internal-medicine specialist and that plaintiffs' substitute expert witness did not meet the kind-for-

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<sup>1</sup> We hereafter use first names to refer to plaintiffs, who are spouses, given their shared last name.

kind specialty requirement of N.J.S.A. 2A:53A-41(a), the court granted the motion and dismissed the case with prejudice. We affirm.

I.

We discern the material facts from the summary-judgment record, viewing them in a light most favorable to plaintiffs, the non-moving parties. See Memudu v. Gonzalez, 475 N.J. Super. 15, 18-19 (App. Div. 2023).

On December 11, 2017, plaintiffs filed a complaint against Stawicki, Robert Wood Johnson Hospital, and Dr. Anthony Ricketti.<sup>2</sup> According to plaintiffs, on December 24, 2015, Diane came to the hospital with "a painful burning rash," and defendants "observed that [she] was suffering from Stephen-Johnson Syndrome." Plaintiffs alleged defendants had "failed to hold [Diane] for further treatment and testing, despite acknowledging that her Stephen-Johnson Syndrome had not resolved" and that Diane had returned home at the doctors' direction. Plaintiffs contended Diane's condition worsened over the next two days, resulting in a subsequent hospitalization, additional medical treatment, and surgery. Plaintiffs alleged, among other things, defendants were

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<sup>2</sup> Before granting Stawicki's summary-judgment motion, the court dismissed the claims against the hospital and Ricketti. The dismissal of those claims is not at issue in this appeal.

negligent in failing to render proper care to Diane and failing to hold her for further evaluation and treatment.

According to plaintiffs, Stawicki was Diane's attending physician in charge of her care during her December 2015 admission at the hospital. In his answer, Stawicki described himself as being "board certified in and practicing internal medicine." During his deposition, Stawicki testified he had been practicing internal medicine since 1984 and was board certified in internal medicine from 2007 until 2017. According to Stawicki, after Diane was seen by doctors in the emergency department, he admitted her and directed she be placed in the telemetry-service unit of the hospital, determined which other doctors would consult with her, communicated with those doctors about her condition and care, examined her, reviewed and prepared progress notes about her, and prepared her discharge summary.

In a December 27, 2021 letter, plaintiffs' counsel advised the court plaintiffs' expert witness had died on September 18, 2021; represented plaintiffs had retained a new expert, who was preparing a report; and requested an adjournment of the January 10, 2022 trial date. During a January 5, 2022 case management conference, the parties agreed to certain discovery deadlines and to an adjournment of the trial. In a February 14, 2022 case management order,

the court listed February 18, 2022, as the deadline for plaintiffs to serve their expert reports.

On February 21, 2022, Stawicki moved for summary judgment. Stawicki asserted plaintiffs had failed to submit a report from a new expert witness by the February 18, 2022 deadline and, thus, did not have an expert capable of testifying Stawicki had deviated from the applicable standard of care and had proximately caused Diane's injuries. He argued the court had to dismiss plaintiffs' case because plaintiffs did not have an expert witness to support their claim.

On March 31, 2022, plaintiffs opposed the motion and submitted a report and curriculum vitae (CV) prepared by Dr. Arash Mostaghimi. Mostaghimi represented in his report that he was "board certified in Internal Medicine, Dermatology, and Clinical Informatics" and "actively engaged in the practice of Dermatology." According to his CV, in 2015 Mostaghimi was an instructor at the Harvard Medical School department of dermatology; an associate physician in the Brigham and Women's Hospital's department of dermatology; an ambulatory clinic preceptor for internal medicine residents<sup>3</sup>; director of Harvard

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<sup>3</sup> Dr. Mostaghimi stated he spent four hours per week for twenty-six weeks per year in this role.

Medical School's advanced dermatology clerkship, dermatology inpatient consult service, and inpatient dermatology rotation for internal-medicine residents; and co-director of the complex medical dermatology fellowship program. In an attached "Narrative Report," Mostaghimi represented he spent "approximately [fifty percent] of [his] time in clinical activities with an emphasis on inpatient consultation and complex medical dermatology" and devoted the rest of his time "to research, clinical trials, education, and administrative responsibilities as director of the dermatology inpatient consult service." In his report, Mostaghimi described Stawicki as "Internist Jesse Stawicki, D.O. [who] attended and oversaw the patient's care."

Stawicki's counsel submitted his certification in further support of the summary-judgment motion and "to bar the report of Most[a]ghimi." He attached to his certification documents demonstrating Mostaghimi held himself out as a dermatologist on multiple platforms, including a blog, medical research websites, and hospital profile pages. According to counsel, none of those documents "support[ed] the position that the majority of Mostaghimi's professional time is spent on general internal medicine, the specialty of Dr. Stawicki." Counsel contended Mostaghimi was "not qualified to opine against Dr. Stawicki under New Jersey law" and asked the court to grant the motion.

In further opposition to the motion, plaintiffs' counsel submitted a certification in which he acknowledged Stawicki was "certified in internal medicine" but asserted Stawicki "primarily practices as a general practitioner, and at the time of the malpractice was the plaintiff's GP." Plaintiffs also asserted Mostaghimi possessed "the requisite skills, knowledge and experience mandated . . . for an Internal Medicine practitioner" and that he satisfied the requirements for testifying against a general practitioner and a specialist in internal medicine.

At argument, plaintiffs' counsel conceded Mostaghimi had not practiced in internal medicine within one year of the alleged malpractice, but argued applying the requirement would be "inequitable" because Mostaghimi had practiced in internal medicine in 2013, which was "so close in time" to the time required in the PFA. Defense counsel argued Stawicki was acting as an internal-medicine specialist, not as a general practitioner, at the time of the alleged malpractice and that Mostaghimi did not "come close to meeting the statute requirements."

On April 22, 2022, the trial court placed a decision on the record and issued an order granting the summary-judgment motion and dismissing plaintiffs' claims with prejudice. The court held that although Mostaghimi was board certified in internal medicine like Stawicki, he did not satisfy the

requirements of N.J.S.A. 2A:53A-41(a)(2) because he had "not devote[d] a majority of his time in the practice or instruction of internal medicine in 2014," the year immediately prior to the alleged malpractice. The court found Mostaghimi had admitted he spent fifty percent of his time "dealing with clinical activities with complex medical dermatology" and the rest of his time as the "director of the dermatology institution consult services." The court also found Stawicki "clear[ly] . . . was rendering treatment to [Diane] . . . in his capacity as an internal medicine specialist." The court concluded, due to the "dispositive nature" of the rules, statute, and cases, it had "really no alternative but to grant [Stawicki's] application."

On appeal, plaintiffs argue the trial court abused its discretion by barring plaintiffs' expert, finding their expert was not qualified to render an opinion in this case, and in granting Stawicki's summary-judgment motion when their case had merit. Plaintiff concedes "during the time of the malpractice, Dr. Mostaghimi was not engaged in practice as an Internal Medicine physician" but contends "Stawicki was practicing as a general practitioner" and Mostaghimi "satisfies the requirements . . . for experts testifying against general practitioners." Unpersuaded by those arguments, we affirm.

## II.



We review a grant of summary judgment de novo, applying the same standard as the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). That standard requires us to "determine whether 'the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law.'" Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021) (quoting R. 4:46-2(c)). "Summary judgment should be granted . . . 'against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'" Friedman v. Martinez, 242 N.J. 449, 472 (2020) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)). We do not defer to the trial court's legal analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018). We review de novo a trial court decision regarding "compliance with the same-specialty requirement of the PFA." Pfannenstein v. Surrey, 475 N.J. Super. 83, 95 (App. Div. 2023).

"To prove medical malpractice . . . 'a plaintiff must present expert testimony establishing (1) the applicable standard of care; (2) a deviation from that standard of care; and (3) that the deviation proximately caused the injury.'"

Haviland v. Lourdes Med. Ctr. of Burlington Cty., Inc., 250 N.J. 368, 384 (2022) (quoting Nicholas v. Mynster, 213 N.J. 463, 478 (2013)). The PFA sets forth the required qualifications for a medical-malpractice plaintiff's testifying expert. For cases involving a defendant doctor who practiced and rendered treatment within a recognized specialty, N.J.S.A. 2A:53A-41(a) provides:

If the party against whom or on whose behalf the testimony is offered is a specialist or subspecialist recognized by the American Board of Medical Specialties [(ABMS)] or the American Osteopathic Association and the care or treatment at issue involves that specialty or subspecialty recognized by the [ABMS] or the American Osteopathic Association, the person providing the testimony shall have specialized at the time of the occurrence that is the basis for the action in the same specialty or subspecialty . . . as the party against whom or on whose behalf the testimony is offered . . . .

In the seminal case Nicholas v. Mynster, our Supreme Court found "[t]he apparent objective of N.J.S.A. 2A:53A-41 is to ensure that, when a defendant physician is subject to a medical-malpractice action for treating a patient's condition falling within his ABMS specialty, a challenging plaintiff's expert, who is expounding on the standard of care, must practice in the same specialty." 213 N.J. at 468. Thus, the Court held, pursuant to N.J.S.A. 2A:53A-41(a), "[w]hen a physician is a specialist and the basis of the malpractice action 'involves' the physician's specialty, the challenging expert must practice in the

same specialty," id. at 481-82 (emphasis added), and a plaintiff "cannot establish the standard of care through an expert who does not practice in the same medical specialties as defendant physicians," id. at 468. See also Pfannenstein, 475 N.J. Super. at 102-103 (at the time of the alleged malpractice, defendant doctors practiced in internal medicine and plaintiffs' expert practiced in hematology, a subspecialty of internal medicine; the court held plaintiffs' expert "failed to satisfy the statute's kind-for-kind mandate"). The Court determined "there are no exceptions to that requirement other than the waiver provision of N.J.S.A. 2A:53-41(c)." Nicholas, 213 N.J. at 482. That waiver provision does not apply in this case.

The trial court found – and plaintiffs on appeal concede – Mostaghimi was not engaged in the practice of internal medicine at the time of the alleged malpractice. To evade the kind-for-kind specialty requirement of N.J.S.A. 2A:53-41(a), plaintiffs contend Stawicki was functioning as a general practitioner when he treated Diane.

"A 'general practitioner' is defined by what he [or she] is not - he [or she] is not a 'specialist or subspecialist.'" Pfannenstein, 475 N.J. Super. at 98 (quoting Buck v. Henry, 207 N.J. 377, 391 (2011)). "The ABMS recognizes internal medicine as a specialty," id. at 97, and defines an "internist" as:

a personal physician who provides long-term, comprehensive care in the office and in the hospital, managing both common and complex illnesses of adolescents, adults[,] and the elderly. Internists are trained in the diagnosis and treatment of cancer, infections and diseases affecting the heart, blood, kidneys, joint and the digestive, respiratory[,] and vascular systems. They are also trained in the essentials of primary care internal medicine, which incorporates an understanding of disease prevention, wellness, substance abuse, mental health[,] and effective treatment of common problems of the eyes, ears, skin, nervous system and reproductive organs.

[Ibid. (quoting Am. Bd. of Med. Specialties, ABMS Guide to Medical Specialties 25, 27 (2022), <https://www.abms.org/wpcontent/uploads/2021/12/ABMS-Guide-to-Medical-Specialties-2022.pdf>).]

The trial court found Stawicki had "render[ed] treatment to [Diane] . . . in his capacity as an internal medicine specialist" and that "[t]he care rendered by Dr. Stawicki to [Diane] that is at issue in this matter was in his specialty of internal medicine." Plaintiffs have not demonstrated the existence of a genuine issue as to those factual findings. Indeed, their substitute expert supports those findings. In his report, Mostaghimi does not identify Stawicki as a general practitioner, determine Stawicki was acting as a general practitioner when he treated Diane, or render his opinions based on the standard of care applicable to general practitioners. Instead, Mostaghimi described Stawicki as the "[i]nternist" who "attended and oversaw the patient's care." Asserting he was

qualified to do so, Mostaghimi rendered his report based on "the standard of care for Internal Medicine practitioners." The phrase "general practitioner" does not appear in his report.

Pursuant to the PFA, plaintiffs were required to support their claim through the testimony of an expert witness qualified to opine on the applicable standard of care. To be qualified under the PFA, plaintiffs' expert witness had to have practiced in the same specialty as Stawicki at the time of the alleged malpractice. Plaintiffs' substitute expert witness failed to meet that standard. Accordingly, because plaintiffs could not provide the essential expert testimony required to prove their medical-negligence claim, see Haviland, 250 N.J. at 384, the court correctly granted the summary-judgment motion.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION