

***McAlpine v. Norman* (2020) 2020 DJDAR 7036**

To prevail on summary judgement, expert's declaration filed in support of motion must be supported by "factual detail and reasoned explanation" even if the declaration is admitted and unopposed.

FACTS: Christi McAlpine (P) filed a medical malpractice action against Dr. Daniel Norman (D) for injuries she sustained as a result of colonoscopies Defendant performed on her in 2015. Prior to trial, in 2018, Defendant moved for summary judgement, touting a declaration from a medical expert who reviewed Defendant's records. "Based upon [his] review of the records, [] knowledge, education, training and experience," the expert opined that Defendant ". . . was not negligent and did not fall below the standard of care in his care of Mr. McAlpine [*sic*] during the colonoscopies." Plaintiff opposed the motion but did not submit a competing expert opinion. While Defendant's summary judgement motion was pending, Plaintiff sought leave to amend her complaint.

PROCEDURAL POSTURE: The trial court denied Plaintiff leave to amend and granted Defendant's motion for summary judgment, finding that Plaintiff had not established a triable issue of fact.

- On appeal, Plaintiff argued that the trial court erred in denying her leave to amend, and erred in granting summary judgement because Defendant's declaration, even if unrebutted, was not legally sufficient to carry Defendant's burden for summary judgement.

HOLDING: The Third District Appellate Court reversed summary judgement in favor of Defendant and remanded for further proceedings.

DISCUSSION: The *McAlpine* court found no abuse of discretion in the order denying leave to amend but agreed the trial court improperly granted summary judgment based on an expert opinion unsupported by factual detail or reasoned explanation.

The *McAlpine* court began by observing that expert testimony is normally required in medical malpractice claims to prove or disprove that the defendant breached the standard of care. Here, the court explained that the expert's conclusory declaration was insufficient to establish that Defendant was in fact within the standard of care; therefore, Defendant did not meet the required evidentiary burden on motion for summary judgement. The *McAlpine* court relied on *Doe v. Good Samaritan Hospital* (2018), which held that the moving party's burden on motion for summary judgement "cannot be satisfied by an expert declaration consisting of ultimate facts and conclusions that are unsupported by factual detail and reasoned explanation, even if it is admitted and unopposed." In *Good Samaritan*, the court reasoned that that the probative value of an expert's opinion is proportional to the strength of the reasoning upon which the opinion is based.

The *McAlpine* court went a step further, bluntly stating that "*an expert opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value.*" (Italics added.) A motion for summary judgement reliant upon an expert's unsupported conclusions does not shift the burden to the plaintiff to show a triable issue of fact. To sustain a defendant's initial burden on motion for summary judgement, an expert's declaration must include a "meaningful explanation of the applicable standard of care and the conduct required to meet it."

Here, Defendant presented an expert's declaration that "amount[ed] to little more than a bare statement that McAlpine's treatment was within the standard of care," and failed to "elaborate or explain *why* Norman's treatment was within [that] standard of care." While a cursory explanation was included in Defendant's declaration, the *McAlpine* court dismissed the expert's token attempt to justify his conclusion as poorly reasoned.

Even if it had not been marred by flawed reasoning, the court also found that Defendant's declaration was deficient because it "[did] not even address" one of Plaintiff's "central theories" of liability: that Defendant negligently failed to check for injury caused by the procedure prior to completing it. Because the expert in Defendant's declaration did not address what the standard of care was regarding Plaintiff's theory of liability – let alone whether Defendant met that standard – the *McAlpine* court concluded Defendant was not entitled to judgement as a matter of law.