

BONEZZI SWITZER POLITO & PERRY CO. LPA

BSPP congratulates Bret C. Perry and Christopher F. Mars on obtaining a defense verdict in favor of their clients, a board-certified Urologist, a board-certified Internal Medicine specialist, and a major medical health system, in a recent medical malpractice action in Cuyahoga County, Ohio. Plaintiff, a 52-year-old, married father of four, alleged that the Defendants were negligent in failing to properly screen for prostate cancer which resulted in a delayed diagnosis of prostate cancer. Plaintiff claimed that because of the delay in diagnosis an otherwise curable prostate cancer was not identified until it had progressed to Stage IV with metastasis throughout to his spine, pelvis, bladder, and kidneys. Specifically, Plaintiff claimed that in early 2021 he began to experience urinary symptoms, including urinary retention requiring catheterization, that were consistent with prostate cancer and Defendants failed to order a prostate specific antigen (PSA) test and perform a digital rectal examination (DRE), which if performed, would have led to the diagnosis of prostate cancer which would have been, more likely than not, localized and easily treated. Instead, Plaintiff alleged that his diagnosis was delayed until early 2023 because of the negligence of the Defendants and at the time of diagnosis, his prostate cancer was terminal, and any treatment was offered for the purpose of prolonging his life.

At trial, Plaintiff's experts claimed that the standard of care required Defendants to order a PSA and perform a DRE which would have, if performed, reflected abnormalities in the prostate gland. Further, if diagnosed at the time of symptom onset, the treatment would have eradicated the cancer, and Plaintiff would have a normal life expectancy. Rather than obtaining treatment with curative intent, the alleged delay proximately caused the prostate cancer to metastasize throughout Plaintiff's body leaving him with a terminal diagnosis that would ultimately cause his death.

Defendants countered that the standard of care did not require a PSA or DRE in early 2021. Defendants' expert witnesses explained that Plaintiff's symptoms were likely caused by benign prostate hypertrophy (BPH) and that medical therapy, including Tamsulosin, and lifestyle modifications, resulted in the acute symptoms of urinary retention to resolve. Further, Defendants' experts detailed that multiple research studies and professional guidelines recommended against PSA screening for individuals like Plaintiff and those guidelines continue to remain in effect at present. Finally, Defendants' Surgical-Oncology expert explained that Plaintiff's diagnosis was not terminal as alleged. Rather, the treatment provided to Plaintiff has resulted in an exceptional response including a resolution of all prostate cancer identified outside of the prostate gland, and that Plaintiff's current medical providers have offered targeted radiation therapy designed to eliminate the remaining cancer located in the prostate gland which Plaintiff has refused. Stated differently, despite the assertions from counsel for Plaintiff that the diagnosis was terminal, Defendants' expert clarified that the treatment offered at diagnosis was designed to provide Plaintiff with the best opportunity to live an otherwise healthy life which to date has proven successful and there is no evidence in the objective medical records that any treating provider has ever diagnosed Plaintiff with a terminal condition.

Following a five-day trial, the jury deliberated for approximately 2 hours before returning a verdict in favor of all Defendants finding that the standard of care was met. The jury did not reach the issue of proximate causation or damages.



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