

The Supreme Court of the State of Louisiana

S.P. DAVIS, SR.

No.2020-CC-01260

VS.

GHALI E. GHALI, M.D. AND RABIE M.
SHANTI, M.D.

IN RE: [ApplicantNameRole]; Applying For Supervisory Writ, Parish of Caddo, 1st
Judicial District Court Number(s) 606,543, Court of Appeal, Second Circuit,
Number(s) 53,782-CW;

February 09, 2021

Writ application granted. See per curiam.

JTG

JLW

JDH

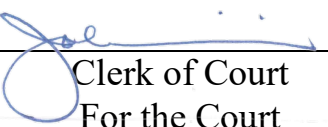
WJC

JBM

PDG

Crichton, J., recused.

Supreme Court of Louisiana
February 09, 2021



Clerk of Court
For the Court

02/09/21

SUPREME COURT OF LOUISIANA

No. 2020-CC-01260

S.P. DAVIS, SR.

VS.

GHALI E. GHALI, M.D. AND RABIE M. SHANTI, M.D.

On Supervisory Writ to the 1st Judicial District Court, Parish of Caddo

PER CURIAM

Writ granted. For the reasons that follow, we find that the trial court abused its discretion insofar as its grant of the defendants’ *Daubert* motion in this case unduly limited the plaintiff’s expert from testifying regarding the applicable standard of care.

In this medical malpractice case, the plaintiff alleges that the defendant, Dr. Ghali E. Ghali, failed to meet the applicable standard of care when performing a transoral robotic-assisted uvulopalatopharyngoplasty (“UPPP”), commonly known as sleep apnea tongue surgery. The plaintiff contends that Dr. Ghali removed too much of his soft palate, resulting in speech impairment and regurgitation. The plaintiff’s expert, Dr. Robert Carpenter, reviewed the relevant records and concluded that Dr. Ghali breached the applicable standard of care. Defendants filed a *Daubert* motion asserting that Dr. Carpenter was not qualified to testify in this case according to La. C.E. art. 702 for a number of reasons, including that he has never performed a robotic UPPP. We disagree.

The trial court granted the defendants’ *Daubert* motion in part, stating as follows:

The Plaintiff, S. P. Davis Sr.’s expert, Dr. Robert Carpenter[,] is permitted to testify in all areas in the field of Otolaryngology[,] but cannot testify as to the performance of [r]obotic surgery.

Plaintiff sought supervisory writs with the Second Circuit Court of Appeal, which were denied.

Reviewing this matter, we note that Dr. Carpenter is an otolaryngologist with numerous peer-reviewed publications who has been admitted as an expert witness in his field in several states. He attests that he has performed more than 15,000 otolaryngology surgeries in his career. Though he retired from practice several years ago and has not performed a robotic UPPP himself, it is undisputed that he currently is on the teaching staff of Lahey Clinical Medical Center, teaching both robotic and non-robotic otolaryngologic surgery.

We agree with the plaintiff's assertion that the tools used to perform this surgery do not dictate the standard of care leading up to and during the procedure, but are merely a choice made by the surgeon in consultation with the patient. We find that defendants have failed to provide any sound reasoning or evidence to show the standard of care for a robotic UPPP and a non-robotic UPPP are not the same; thus, Dr. Carpenter can testify as to the applicable standard of care with respect to the UPPP at issue in this case. Under these circumstances, we hold that it was an abuse of discretion for the trial court to limit Dr. Carpenter's testimony. Accordingly, we reverse the trial court's grant of the defendants' *Daubert* motion insofar as it disallows Dr. Carpenter from testifying as to the applicable standard of care in this case.

For the foregoing reasons, we grant the plaintiff's writ, thereby ordering that Dr. Carpenter be allowed to testify as to the applicable standard of care.

GRANTED; REMANDED.