



## **CSA revives suit over teen's kidney failure**

by Beth Moszkowicz

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A young man whose kidneys failed at age 17 can sue an emergency room physician who oversaw his treatment two years earlier, when he arrived complaining of blood in his urine.

The Court of Special Appeals reinstated a lawsuit filed by Donnell Nance against Dr. David A. Gordon. A lower court threw out the suit because Nance offered expert testimony from a nephrologist, while the doctor he is suing is a urologist.

The appellate court's decision follows two others it decided last year involving disputes over which experts can testify in medical malpractice cases.

In *Demuth v. Strong*, filed in June, the court allowed a board-certified vascular surgeon to testify about the standard of care applicable to a board-certified orthopedic surgeon. And in *Hinebaugh v. Garrett County Memorial Hospital*, filed in August, the court said it is "not necessary for a certifying expert or testifying expert witness in a medical malpractice case to be the same kind of health care provider as the defendant."

Jeff Peek, a medical malpractice attorney at Cardaro & Peek LLC in Baltimore who was not involved in Nance's case, said Wednesday this case highlights an issue plaintiffs' lawyers who do malpractice work have been dealing with for a number of years.

"Defense attorneys are challenging the certificate of qualified experts for reasons that do not serve the intent of the [Health Care Malpractice Claims Act]," Peek said. "They are challenging it for form over substance."

In addition to Gordon, Nance sued Chesapeake Urology Associates and Larry Waskow, a urology physician's assistant, in May 2009. He alleged that Gordon and Waskow failed to include nephritis on a differential diagnosis when he arrived at Baltimore's Sinai Hospital with blood in his urine in 2005. (Sinai is not a defendant in the suit.)

Nephritis is acute or chronic inflammations of the kidneys. Making a differential diagnosis involves distinguishing one disease from others that have similar signs or symptoms.

Jordan submitted a Certificate of Qualified Expert in which he attested that the doctor and physician assistant deviated from the standard of care. In response, the defense filed a motion to dismiss, or, in the alternative, for summary judgment and argued that Jordan was not a "qualified expert" under the Health Care Malpractice Claims Act because the doctor was a nephrologist instead of a urologist.

Baltimore City Circuit Court Judge Evelyn O. Cannon agreed, and granted summary judgment in favor of the doctor and physician assistant. Nance appealed.

In reversing the lower court's decision last Friday, the Court of Special Appeals said an expert "need only satisfy certain professional qualifications in 'the same or a related specialty [or field]' to submit a valid certificate under the Health Care Malpractice Claims Act. It also agreed that nephrology and urology share a "common focus" on the kidneys, and said they are related in this case because "'the treatment rendered' (a differential diagnosis) ... is 'performed by both specialists'."

Nance's expert witness, Jordan, has "experience with consults for emergency room patients who present both with medical issues of the kidney and with urinary tract obstructions and surgical kidney diseases," the Court of Special Appeals said in the opinion. "In other words, Dr. Jordan is familiar with

the medical conditions and diseases normally treated by nephrologists and urologists that may be presented.”

Gregory L. VanGeison, an attorney at Anderson, Coe & King in Baltimore, was one of the attorneys who represented the defendants. VanGeison did not return a call or email Wednesday requesting comment.

Andrew H. Baida, an attorney at Rosenberg|Martin|Greenberg LLP in Baltimore, represented Nance. Now in his 20s, Nance has had a kidney transplant and must take anti-rejection drugs for the rest of his life, the lawyer said.

“This is a very good outcome for my client whose claim has been reinstated,” Baida said Wednesday. “It’s a significant victory from his standpoint and it was the right decision by the Court of Special Appeals.”

### **WHAT THE COURT HELD**

#### Case:

Donnell Nance v. David A. Gordon, et al., No. 1574, September Term 2011. Opinion by Woodward, J. Argued Jan. 2, 2013. Decided March 1, 2013.

#### Issue:

Did the circuit court err when it concluded that the expert offered by a plaintiff in a medical malpractice case was not qualified to testify under the Health Care Malpractice Claims Act?

#### Holding:

Yes. The Court of Special Appeals said a nephrologist could testify as an expert witness against a urologist because the nephrologist share a “common focus” on the kidneys.

#### Counsel:

Andrew H. Baida, an attorney at Rosenberg, Martin, Greenberg LLP in Baltimore for appellant; Gregory L. VanGeison, an attorney at Anderson, Coe & King in Baltimore, for appellees.

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