

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001972-MR

MARY TRAUTMAN AND  
WILLIAM EUGENE TRAUTMAN

APPELLANTS

v. APPEAL FROM HOPKINS CIRCUIT COURT  
HONORABLE CHARLES W. BOTELEER, JR., JUDGE  
ACTION NO. 01-CI-00803

HARRY O. DEBANDI, M.D.,  
AND TROVER CLINIC FOUNDATION, INC.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE:

The burden of proof in a malpractice case is, of course, on the party charging negligence or wrong. That must be established by medical or expert testimony unless the negligence and injurious results are so apparent that laymen with a general knowledge would have no difficulty in recognizing it.

Johnson v. Vaughn, 370 S.W.2d 595, 596 (Ky. 1963). In this case, the appellants, Mary and William Eugene Trautman, have failed to meet that burden. We therefore affirm the summary

judgment granted to the appellees, Harry O. DeBandi, M.D., and Trover Clinic Foundation, Inc., d/b/a Trover Clinic.

Mr. and Mrs. Trautman filed a *pro se* complaint (they later obtained counsel) against Dr. DeBandi and Trover Clinic, charging that Dr. DeBandi had "negligently provided medical services" to Mrs. Trautman. The specific complaint was that on April 6, 1992, Dr. DeBandi had implanted a ureteral stent in Mrs. Trautman's bladder in order to treat a kidney condition, and that he had failed to remove the stent until 2000. The Trautmans claimed that her kidney was damaged by the presence of the stent for such an unreasonably long time.

Dr. DeBandi and Trover Clinic defended by asserting and providing multiple affidavits that the stent had been removed on April 21, 1992, and that there was radiological evidence of the stent's absence beginning in May of 1992. Based upon this evidence, the appellees filed a motion for summary judgment, asserting that the Trautmans could not prove the allegations in their complaint.

In response to the motion, the Trautmans could only provide an unsworn report of a physician's reading of radiological studies of Mrs. Trautman, indicating that only one file "suggests possibly a tube or stent."

The long and short of this case is that the Trautmans, despite adequate time and opportunity, have produced no

affidavits or other sworn testimony that Dr. DeBandi's care of Mrs. Trautman fell below the standard of care required of a reasonable and prudent physician in the same or similar circumstances. This being so, the trial court had no alternative except granting the summary judgment motion. There is no genuine issue of material fact; the appellees are entitled to judgment as a matter of law.

The judgment of the Hopkins Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Wm. Clint Prow  
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BRIEF FOR APPELLEES:

Charles G. Franklin  
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