

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 5, 2026 Session

FILED

08/17/2026

Clerk of the
Appellate Courts

JON ENGLE v. AARON PAYNE, DDS

**Appeal from the Circuit Court for Rutherford County
No. 81587 B. Jo Atwood, Judge**

No. M2024-01325-COA-R3-CV

The plaintiff brought suit against his dentist, asserting that the dentist was negligent in failing to diagnose and treat a cavity which the plaintiff contends was apparent from an x-ray and from his complaints of discomfort, ultimately resulting in loss of the plaintiff's tooth. The action was dismissed because the plaintiff never filed a certificate of good faith. On appeal, the plaintiff argues that his claim falls within the common knowledge exception to the certificate of good faith requirement. We conclude that the allegations do not fall within the common knowledge exception, and we affirm the dismissal.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JEFFREY USMAN, J., delivered the opinion of the Court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

Jon Engle, Murfreesboro, Tennessee, pro se.

Chris J. Tardio and Alice Essary, Nashville, Tennessee, for the appellee, Aaron Payne.

OPINION

I.

Jon Engle initially filed this suit on September 13, 2023, in general sessions court against Dr. Aaron Payne, DDS, seeking \$25,000 for “personal injury — medical malpractice, loss of enjoyment, emotional distress, pain and suffering, current and future costs of recovery.” The general sessions court dismissed the claim.

Mr. Engle, who has proceeded pro se throughout, timely appealed to the circuit

court. The circuit court case was initiated with the general sessions warrant, which did not include a certificate of good faith. Mr. Engle subsequently filed an amended complaint, which likewise did not include a certificate of good faith, seeking \$100,000 in damages.

In his amended complaint, Mr. Engle asserted that he “sought medical dental care” from Dr. Payne between 2020 and 2022. According to the complaint, Mr. Engle complained to Dr. Payne in 2020 that a bridge on his lower left jaw was feeling loose. Dr. Payne took x-rays at that time. Mr. Engle returned for a checkup twice in 2021. The first visit was uneventful. At the December 2021 visit, Mr. Engle complained about pain in his left jaw, as well as heat and cold sensitivity. He told Dr. Payne that he had suffered “occasional pain and throbbing” in the area for a year. The complaint alleged that x-rays were taken but that Dr. Payne did not report any concerns with the area to Mr. Engle. Due to pain and pressure in the problem area, Mr. Engle sought medical care from a health clinic on two occasions after the December 2021 visit, and he was diagnosed with an infection from a head cold and given antibiotics. Mr. Engle alleged he began to suffer from pain that interfered with his everyday activities, began to suffer high blood pressure, and ultimately experienced anxiety and depression, in part due to the fact that other providers, including the health clinic, an ENT, a hospital emergency room, a cardiologist, a neurologist, and a chiropractor, could not address his discomfort. In August 2022, Mr. Engle went to a new dentist due to a change in insurance. The new dentist took x-rays and informed Mr. Engle that his tooth was entirely decayed under the bridge and required extraction.

The removal of the tooth resulted in an improvement in Mr. Engle’s symptoms, although he continued to suffer from high blood pressure and gastrointestinal issues developed as the result of long-term use of over-the-counter analgesics. He was forced to have bone grafts and implants to replace the tooth. He alleged that he continued to have “spikes of pain” in the area.

Mr. Engle obtained x-rays from Dr. Payne’s files in September 2022, after the diagnosis by the new dentist. He alleged that he was personally able to observe a cavity in the December 2021 x-ray. He asserted Dr. Payne was negligent in failing “to perform his duty of care,” that Dr. Payne was “negligent in reviewing [Mr. Engle’s] records,” and that Dr. Payne was “negligent by failing to identify a compromised tooth that is clearly visible in a December 2021 x-ray of Plaintiff’s teeth.” The complaint asserted that Dr. Payne “has committed Medical Malpractice.”

Dr. Payne filed a motion to dismiss in the circuit court. Therein, he asserted that the action was brought under the Tennessee Health Care Liability Act (HCLA), that it had been dismissed in general sessions court for failure to include a certificate of good faith, and that the action warranted dismissal in the circuit court on that same basis. Mr. Engle responded that he was not required to file a certificate of good faith because,

pursuant to the common knowledge exception, his action was not one in which expert testimony was required under Tennessee Code Annotated section 29-26-122(a).

The circuit court dismissed the case with prejudice. The circuit court concluded that Mr. Engle was bringing a health care liability action in which expert testimony was required and that the failure to attach a certificate of good faith was fatal to the complaint.

II.

A defendant may challenge a plaintiff's failure to file a certificate of good faith by filing a motion to dismiss under Tennessee Rule of Civil Procedure 12.02(6). *Ellithorpe v. Weismark*, 479 S.W.3d 818, 823 (Tenn. 2015). In evaluating a Rule 12.02(6) motion for failure to state a claim upon which relief can be granted, this court construes the complaint liberally, presumes that the factual allegations of the complaint are true, and draws reasonable inferences in favor of the plaintiff. *Cooper v. Mandy*, 639 S.W.3d 29, 33 (Tenn. 2022). "A motion to dismiss should be granted only if it appears that 'the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.'" *Ellithorpe*, 479 S.W.3d at 824 (quoting *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011)). This court reviews the trial court's decision on a motion to dismiss de novo. *Id.* The application of the common knowledge exception is a question of law reviewed de novo with no presumption of correctness. *Jackson v. Burrell*, 602 S.W.3d 340, 344 (Tenn. 2020).

III.

Mr. Engle is proceeding pro se in this appeal. Pro se litigants "are entitled to fair and equal treatment by the courts." *Vandergriff v. ParkRidge E. Hosp.*, 482 S.W.3d 545, 551 (Tenn. Ct. App. 2015). Courts should be mindful that pro se litigants often lack legal training and may be unfamiliar with the justice system. *State v. Sprunger*, 458 S.W.3d 482, 491 (Tenn. 2015). Accordingly, courts should afford some degree of leeway in considering the briefing from a pro se litigant, *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003), and should consider the substance of the pro se litigant's filing. *Poursaied v. Tenn. Bd. of Nursing*, 643 S.W.3d 157, 165 (Tenn. Ct. App. 2021).

Pro se litigants may not, however, "shift the burden of litigating their case to the courts." *Whitaker v. Whirlpool Corp.*, 32 S.W.3d 222, 227 (Tenn. Ct. App. 2000). Additionally, "[i]t is not the role of the courts, trial or appellate, to research or construct a litigant's case or arguments for him or her." *Sneed v. Bd. of Pro. Resp. of Sup. Ct.*, 301 S.W.3d 603, 615 (Tenn. 2010). In considering appeals from pro se litigants, the court cannot write the litigants' briefs for them, create arguments, or "dig through the record in an attempt to discover arguments or issues that [they] may have made had they been represented by counsel." *Murray v. Miracle*, 457 S.W.3d 399, 402 (Tenn. Ct. App. 2014). It is imperative that courts remain "mindful of the boundary between fairness to a

pro se litigant and unfairness to the pro se litigant's adversary." *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003).

IV.

On appeal, Mr. Engle argues that the court erred in deeming his action a health care liability claim, erred in failing to apply the common knowledge exception to the requirement of a certificate of good faith, and erred in failing to apply the doctrine of res ipsa loquitur. Mr. Engle never filed a certificate of good faith at any stage of the proceedings in this case. Mr. Engle argues no certificate was necessary because the allegedly tortious nature of Dr. Payne's actions comes within the common knowledge of laypersons and accordingly requires no expert testimony. We conclude that the circuit court properly determined that the action is a health care liability action and that the common knowledge exception, whether under the doctrine of res ipsa loquitur or ordinary negligence, does not dispense with the requirement of a certificate of good faith in this case.

A.

Mr. Engle challenges the applicability of the HCLA, arguing that a certificate of good faith was not required because his claims are not health care liability claims. We conclude Mr. Engle waived this argument by failing to raise it below and that Mr. Engle would not in any event be entitled to relief under this theory.

The HCLA governs "any civil action . . . alleging that a health care provider or providers have caused an injury related to the provision of, or failure to provide, health care services to a person, regardless of the theory of liability on which the action is based," and "[a]ny such civil action or claim is subject to this part regardless of any other claims, causes of action, or theories of liability alleged in the complaint." Tenn. Code Ann. § 29-26-101(a)(1), (c). A health care provider includes "[a] health care practitioner licensed, authorized, certified, registered, or regulated under any chapter of title 63 or title 68." Tenn. Code Ann. § 29-26-101(a)(2)(A). Dentists are licensed and regulated under title 63. *See* Tenn. Code Ann. § 63-5-101 et seq. Health care services are defined broadly in the HCLA, to include "care by health care providers, which includes care by physicians, nurses, licensed practical nurses, pharmacists, pharmacy interns or pharmacy technicians under the supervision of a pharmacist, orderlies, certified nursing assistants, advance practice nurses, physician assistants, nursing technicians and other agents, employees and representatives of the provider, and also includes staffing, custodial or basic care, positioning, hydration and similar patient services." Tenn. Code Ann. § 29-26-101(b). The certificate of good faith requirement is not triggered unless the action is a health care liability action. Tenn. Code Ann. § 29-26-122(a); *see Ellithorpe*, 479 S.W.3d at 827.

Mr. Engle contends the trial court should have employed a “nuanced” approach to distinguish claims which sound in ordinary negligence as opposed to those which fall under the HCLA and require a certificate of good faith. In advancing this argument, Mr. Engle relies on decisions by this court and the Tennessee Supreme Court interpreting a prior version of the statute. *See Est. of French v. Stratford House*, 333 S.W.3d 546, 560 n.14 (Tenn. 2011), *abrogated by statute as stated in Cooper*, 639 S.W.3d at 35; *Brister v. HCA Health Servs.*, No. M2010-01996-COA-R3-CV, 2011 WL 2395218, at *5 (Tenn. Ct. App. June 8, 2011) (relying on *Est. of French*, 333 S.W.3d at 558-59); *Gunter v. Lab’y Corp. of Am.*, 121 S.W.3d 636, 640 (Tenn. 2003) (analyzing a prior version of the statute).¹

On appeal, Mr. Engle asserts for the first time that he is excused from the certificate of good faith requirement because his cause of action does not fall under the umbrella of the HCLA. Parties may not raise issues for the first time on appeal, and this argument is waived. *Martin v. Rolling Hills Hosp., LLC*, 600 S.W.3d 322, 336 (Tenn. 2020) (“[I]ssues raised for the first time on appeal are waived.” (quoting *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017))); *Cooper v. Cooper*, 704 S.W.3d 784, 799 (Tenn. Ct. App. 2024), *perm. app. denied* (Tenn. Nov. 14, 2024) (“It is axiomatic that parties will not be permitted to raise issues on appeal that they did not first raise in the trial court.” (citation omitted)).

In any event, the cases on which Mr. Engle relies are no longer the governing law. The Tennessee Supreme Court has explained “that the ‘nuanced’ approach for distinguishing ordinary negligence and health care liability claims as outlined in *Estate of French* has been statutorily abrogated.” *Ellithorpe*, 479 S.W.3d at 827. By amending the statute after the Tennessee Supreme Court’s decision in *Estate of French*, “the Legislature expressed ‘a clear legislative intent’ to broaden the scope of the Act to include every lawsuit against a health care provider that alleged an injury related to the provision of health care without regard to the theory of liability.” *Cooper*, 639 S.W.3d at 34. Accordingly, the Legislature has “cast[] a wide net over civil claims that arise within a medical setting.” *Id.* (quoting *Cordell v. Cleveland Tenn. Hosp., LLC*, 544 S.W.3d 331, 336 (Tenn. Ct. App. 2017)). The breadth of the language of the health care liability act means that “most claims arising in a medical setting will be health care liability claims.” *Id.* at 35. The cases on which Mr. Engle relies in advocating for a “nuanced” approach are no longer good law. Furthermore, Mr. Engle’s complaint alleged “Medical Malpractice” rather than ordinary negligence. Simply stated, the HCLA, with its requirement of a certificate of good faith, applies.

B.

However, not all claims that fall within the expansive ambit of the HCLA require

¹ A fourth case relied on by Mr. Engle does not appear to exist.

the filing of a certificate of good faith. Mr. Engle contends that he was not required to file a certificate of good faith under the common knowledge exception to the requirement. We conclude that the allegations of the complaint do not fall within the common knowledge exception.

The Tennessee General Assembly limited the requirement to file a certificate of good faith to health care liability actions “in which expert testimony is required by [Tennessee Code Annotated] § 29-26-115.” Tenn. Code Ann. § 29-26-122(a).² Section 115 sets out the elements required in actions brought under the HCLA:

(a) In a health care liability action, the claimant shall have the burden of proving by evidence as provided by subsection (b):

(1) The recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which the defendant practices or in a similar community at the time the alleged injury or wrongful action occurred;

(2) That the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard; and

(3) As a proximate result of the defendant’s negligent act or omission, the plaintiff suffered injuries which would not otherwise have occurred.

Tenn. Code Ann. § 29-26-115(a). Failure to file a required certificate of good faith when expert testimony is required results in dismissal with prejudice. *Ellithorpe*, 479 S.W.3d at 829.

On the other hand, those claims that do not require expert testimony are not subject to dismissal on this basis. In health care liability actions, the Tennessee Supreme Court has observed that the common knowledge exception can excuse a plaintiff from having to rely upon expert testimony “to establish the recognized standard of acceptable

² Tennessee Code Annotated section 29-26-122(a) provides as follows:

In any health care liability action *in which expert testimony is required by § 29-26-115*, the plaintiff or plaintiff’s counsel shall file a certificate of good faith with the complaint. If the certificate is not filed with the complaint, the complaint shall be dismissed, as provided in subsection (c), absent a showing that the failure was due to the failure of the provider to timely provide copies of the claimant’s records requested as provided in § 29-26-121 or demonstrated extraordinary cause.

(Emphasis added).

professional practice in the profession.” *Id.* Expounding further upon the impact of the common knowledge exception, the Tennessee Supreme Court has explained as follows:

The practical effect of applying the common knowledge exception is that the plaintiff need not produce expert testimony to prove the elements set forth in section 29-26-115(a) of the Act—the standard of care applicable to the defendant, a deviation from that standard of care, and a resulting injury that would not have otherwise occurred. It follows that if the plaintiff does not have to present expert testimony at trial to prove her case, then she need not file a certificate of good faith confirming that the negligence claim is supported by a competent expert witness and that there is a good faith basis for the claim.

Jackson, 602 S.W.3d at 346.

The common knowledge exception “comes into play when the subject matter of the alleged misconduct is ‘within the understanding of lay members of the public.’” *Id.* (quoting Joseph H. King, *The Common Knowledge Exception to the Expert Testimony Requirement for Establishing the Standard of Care in Medical Malpractice*, 59 Ala. L. Rev. 51, 62-63 (2007)). In general, “expert testimony is not required where the act of alleged wrongful conduct lies within the common knowledge of a layperson.” *Id.* at 348 (quoting *Osunde v. Delta Medical Center*, 505 S.W.3d 875, 886-87 (Tenn. Ct. App. 2016)).

Drawing upon this, Mr. Engle asserts that he was excused from the certificate of good faith requirement both because he is alleging ordinary negligence and because the negligence alleged may be established under the doctrine of *res ipsa loquitur*.

This court has indicated that the common knowledge exception has been analyzed in two “veins.” *Mears v. Nashville Ctr. for Rehab. & Healing, LLC*, No. M2022-00490-COA-R3-CV, 2023 WL 2681898, at *3 (Tenn. Ct. App. Mar. 29, 2023). The exception has been applied to cases under the aegis of *res ipsa loquitur*, in which negligence is within common knowledge because it is as obvious as a “fly floating in a bowl of buttermilk,”³ and it has additionally been applied to cases where the trier of fact can determine the existence of negligence based on common knowledge because of the nature of the negligence. *Osunde*, 505 S.W.3d at 886.

Cases involving a common knowledge exception that fall under the aegis of *res ipsa loquitur*, “allow[] an inference of negligence where the jury has a common knowledge or understanding that events which resulted in the plaintiff’s injury do not ordinarily occur unless someone was negligent.” *Id.* (quoting *Seavers v. Methodist Med.*

³ *Murphy v. Schwartz*, 739 S.W.2d 777, 778 (Tenn. Ct. App. 1986).

Ctr. of Oak Ridge, 9 S.W.3d 86, 91 (Tenn. 1999)). These cases “typically involve unusual injuries such as a sponge or needle being left in the patient’s abdomen following surgery or where the patient’s eye is cut during the performance of an appendectomy.” *Seavers*, 9 S.W.3d at 92. It “is a form of circumstantial evidence that permits, but does not compel, a jury to infer negligence from the circumstances of an injury” when “direct evidence of a defendant’s negligence is either inaccessible to or unknown by the plaintiff.” *Id.* at 91. The elements are: “(1) that the instrumentality causing injury was in the defendant’s (or defendants’) exclusive control . . .; and (2) that the accident or injury was one which ordinarily doesn’t occur in the absence of negligence.” *Anderson v. Ming Wang*, No. M2018-00184-COA-R3-CV, 2018 WL 4847114, at *5 (Tenn. Ct. App. Oct. 5, 2018) (internal quotation omitted). The Legislature has statutorily determined “that there shall be a rebuttable presumption that the defendant was negligent where it is shown by the proof that the instrumentality causing injury was in the defendant’s (or defendants’) exclusive control and that the accident or injury was one which ordinarily doesn’t occur in the absence of negligence.” Tenn. Code Ann. § 29-26-115(c). This court has described this statutory provision as codifying the doctrine of *res ipsa loquitur*. *Osunde*, 505 S.W.3d at 886.

The second vein of cases applying the common knowledge exception is composed of matters alleging negligence within the common knowledge of laypersons. These may be claims of ordinary negligence that, chancing to occur in a health care setting, are swept up within the ambit of the HCLA. In these cases, “expert proof may be dispensed with when the trier of fact can determine, based on common knowledge, that the direct allegations against a defendant constitute negligence.” *Id.* The cases in this category do not fit into a *res ipsa loquitur* analysis but instead allege negligent acts not tied to the exercise of expertise. *See id.*; *Mears*, 2023 WL 2681898, at *3 (such claims “may sound in ordinary negligence and not require expert medical testimony”). Accordingly, this second category includes “ordinary negligence claims which arise in a health care setting and fall under the [HCLA] but which do not require expert testimony.” *Mears*, 2023 WL 2681898, at *3.

The ultimate inquiry in applying the common knowledge exception is “whether the conduct at issue involved the exercise of medical judgment or skill.” *Jackson*, 602 S.W.3d at 350. To determine whether the common knowledge exception applies, we consider the following:

whether the alleged negligent conduct involved technical or specialized knowledge of a medical procedure or a patient’s medical condition or whether the alleged negligent conduct involved medical decision-making—such as determining the type of treatment or procedure to perform or the type of equipment or medicine to use. If so, then expert proof would be necessary. As Professor King has suggested, this inquiry might be phrased as whether “[t]he specific decision making by the health care provider . . .

involve[d] the exercise of uniquely professional medical skills, a deliberate balancing of medical risks and benefits, or the exercise of therapeutic judgment.” *The Common Knowledge Exception*, supra, at 56.

Id.

Accordingly, Tennessee courts have applied the common knowledge exception to ordinary tort claims brought under the HCLA, where the allegedly tortious conduct did not involve the exercise of medical judgment or skill. For instance, expert proof was not required for determining whether an employer was negligent in the training, supervision, and retention of an employee who was accused of assault;⁴ for determining whether providing a defective piece of furniture was negligent;⁵ for determining whether an act of assault was tortious;⁶ or for determining whether failure to comply with highly specific internal protocols was negligent.⁷ See also *Mullin v. Rolling Hills Hosp.*, No. 3:16-CV-02609, 2017 WL 6523482, at *7-8 (M.D. Tenn. Apr. 17, 2017) (no expert medical proof was required for claims of false imprisonment, failure to follow statutory procedures, intentional and negligent infliction of emotional distress, conversion, assault, and failure to comply with statute); *Morrow v. Metro. Gov’t of Nashville & Davidson Cnty., Tenn.*, No. 3:19-CV-00351, 2020 WL 5106763, at *8 (M.D. Tenn. Aug. 31, 2020) (dismissal was inappropriate when it was not clear whether the negligence alleged — noncompliance with a statutory requirement of conducting a hearing prior to restraint in excess of 24 hours — required the exercise of medical judgment or skill). For example, addressing a defective locking mechanism on a shower chair and torn netting that

⁴ See *Jackson*, 602 S.W.3d at 340, 342 (holding that the plaintiff’s claim against a salon for the negligent training, supervision, and retention of a massage therapist who assaulted her was within the common knowledge of laypersons and did not require expert testimony about the standard of care in the massage industry); *C.D. v. Keystone Continuum, LLC*, No. E2016-02528-COA-R3-CV, 2018 WL 503536, at *6-7 (Tenn. Ct. App. Jan. 22, 2018) (concluding that negligent supervision and training claims against a residential treatment facility fell within the common knowledge exception when the facility’s employee allegedly assaulted a minor resident).

⁵ *Mears*, 2023 WL 2681898, at *5 (“Like the wobbly stool of *Osunde*, the determination of whether providing an allegedly defective shower chair is negligent presents a question not of medical expertise but instead is within the knowledge and experience of an ordinary layperson.”); *Osunde*, 505 S.W.3d at 889 (“It is within the common knowledge of a layperson to determine whether the provision of an unstable stool is negligent.”).

⁶ *Zink v. Rural/Metro of Tenn., L.P.*, 531 S.W.3d 698, 707 (Tenn. Ct. App. 2017) (“[I]t would be within the common knowledge of a layperson whether an EMT’s alleged negligent, reckless, or intentional striking of a patient’s face while the patient is strapped to a gurney would fall below the standard of care.”).

⁷ *Redick v. Saint Thomas Midtown Hosp.*, 515 S.W.3d 853, 859 (Tenn. Ct. App. 2016) (no expert proof was required to establish the standard of care when the plaintiff alleged that she was placed under fall precautions but the hospital failed to comply with the precautions by placing the portable commode out of reach and failed to assist her in moving from the commode to the bed).

resulted in the fall of a patient, this court observed in *Mears* that “[t]here is no specialized knowledge that health care experts possess regarding chair locking mechanisms and torn chair netting that the average layperson likely would not have.” *Mears*, 2023 WL 2681898, at *5.

However, when the alleged negligence involved medical judgment outside the knowledge of the layperson, this court has dismissed for failure to include a certificate of good faith. For instance, medical judgment was involved in determining the level of assistance required by a patient;⁸ the treatment of a complex eye condition;⁹ the level of restraint or monitoring required for mental health patients;¹⁰ the maintenance of medical records;¹¹ the cause of a blood infection;¹² and whether an inmate needed medical treatment.¹³

The requirement of the certificate of good faith in cases involving *res ipsa loquitur* may also turn on whether medical knowledge is a requisite for determining liability. See *Smith v. Testerman*, No. E2014-00956-COA-R9-CV, 2015 WL 1118009, at *5 (Tenn. Ct.

⁸ *Dickerson v. United Med. Transp. LLC*, 714 S.W.3d 492, 503 (Tenn. Ct. App. 2024) (“While no medical knowledge may be required to understand the importance of communicating a patient’s ambulation needs to the entity in charge of transporting the patient, the determination of the level of assistance a patient requires is not so obvious as to be within the knowledge of the average layperson.”).

⁹ *Ruff v. Vanderbilt Univ. Med. Ctr.*, No. M2022-01414-COA-R3-CV, 2024 WL 3159506, at *3 (Tenn. Ct. App. June 25, 2024), *perm. app. denied* (Tenn. Nov. 14, 2024) (“The complex details of Mr. Ruff’s eye surgery and medical condition are beyond the common understanding of a layperson.”).

¹⁰ *Forsythe v. Jackson Madison Cnty. Gen. Hosp. Dist.*, No. W2021-01228-COA-R3-CV, 2022 WL 17247615, at *9 (Tenn. Ct. App. Nov. 28, 2022) (holding that “the question of whether and to what extent a mental health patient should be monitored is a question involving medical expertise”); *Weakley v. Franklin Woods Cmty. Hosp.*, No. E2020-00591-COA-R3-CV, 2020 WL 7861248, at *5 (Tenn. Ct. App. Dec. 22, 2020) (“While a typical claim for false imprisonment may be decided without the introduction of expert testimony, the same is not always true for claims arising from acts performed when exercising medical judgment or skill. In the instant case, the decision to place a hold on the Appellant required some exercise of medical judgment.”); *Newman v. Guardian Healthcare Providers, Inc.*, No. M2015-01315-COA-R3-CV, 2016 WL 4069052, at *7 (Tenn. Ct. App. July 27, 2016) (how and when to restrain or supervise a potentially dangerous patient with mental health challenges required expert testimony).

¹¹ *Cathey v. Beyer*, No. W2019-01603-COA-R3-CV, 2020 WL 1970722, at *6 (Tenn. Ct. App. Apr. 24, 2020) (holding that “the creation and maintenance of counseling records is not within the scope of a layman’s knowledge”).

¹² *Akers v. Heritage Med. Associates, P.C.*, No. M2017-02470-COA-R3-CV, 2019 WL 104130, at *6 n.6 (Tenn. Ct. App. Jan. 4, 2019) (stating as an aside, “we do not find that a layperson would know whether a blood infection is something that ordinarily does not occur in the absence of negligence when performing a punch biopsy or instead is a complication that may occur even without negligence”).

¹³ *Est. of Bradley v. Hamilton Cnty.*, No. E2014-02215-COA-R3-CV, 2015 WL 9946266, at *6 (Tenn. Ct. App. Aug. 21, 2015) (rejecting the claim that a jail’s breach of duty was “ordinary negligence” which would be subject to the common knowledge exception and concluding that the claim involved the diagnosis and treatment of an inmate, not the denial of access to medical care).

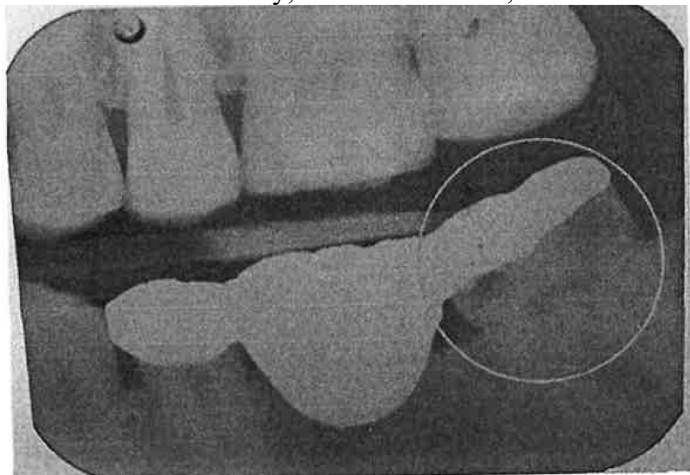
App. Mar. 10, 2015) (liability for failure to remove sponge required expert testimony when the sponge was intended to remain for some period of time and two separate entities were charged with post-operative care); *see also Seavers*, 9 S.W.3d at 94-95 (holding that expert testimony is permissible in *res ipsa loquitur* cases).

Mr. Engle claims that a cavity was visible as a dark spot on the December 2021 x-ray taken by Dr. Payne. He asserts that Dr. Payne was negligent in reviewing the records in which Mr. Engle complained of pain and negligent in “failing to identify a compromised tooth that is clearly visible in a December 2021 x-ray.” He argues on appeal that he “reported cold sensitivity and a throbbing ache, and that the X-ray revealed decay,” and he asserts that “[a] jury does not need expert assistance to understand what these X-rays and clinical notes show.”

However, interpreting an x-ray and diagnosing and prescribing treatment related to a tooth defect only visible by x-ray are precisely the types of actions which require medical expertise. By statute, a person practices dentistry when the person “[d]iagnoses, prescribes for or treats any disease, pain, deformity, deficiency, injury, disorder and condition of the oral cavity” or “[g]ives interpretations of dental radiographs.” Tenn. Code Ann. § 63-5-108 (b)(1), (11). It is exactly Dr. Payne’s diagnosis, failure to treat, and interpretation of the x-ray which Mr. Engle alleges constituted negligence. Mr. Engle does not premise liability on the equivalent of a wobbly stool, a defective chair, an intentional assault, or failure to follow highly specific protocol, which a layperson can evaluate as negligent based on common knowledge. Furthermore, the x-ray itself, with ambiguous dark spots throughout,¹⁴ is a far cry from the proverbial fly in the buttermilk, and there was no showing that the loss of a tooth does not normally occur absent negligence.

Simply put, the common knowledge of a layperson does not extend to determining whether Dr. Payne was negligent in misreading the radiograph or failing to treat the

¹⁴ The x-ray, in this case, as edited by Mr. Engle, is reproduced below:



cavity with sufficient promptness. *See Champluvier v. Simpson*, No. 21-CV-2072-JPM-TMP, 2021 WL 1555098, at *6 (W.D. Tenn. Mar. 30, 2021) (determining whether a tooth was abscessed from an x-ray and determining the course of treatment required specialized knowledge), *report and recommendation adopted*, No. 221-CV-02072-JPM-TMP, 2021 WL 1554078 (W.D. Tenn. Apr. 20, 2021).

Mr. Engle alleges facts which may certainly have supported a theory of health care liability at trial, but the facts alleged do not fall within a layperson's common knowledge regarding diagnosis and treatment of defects to teeth so as to dispense with the requirement of expert testimony to establish the standard of care, a breach of that standard, and proximate causation. *See* Tenn. Code Ann. § 29-26-115(a). Accordingly, Mr. Engle was required by statute to file a certificate of good faith, and the HCLA required the trial court to dismiss the action for failure to file one. *See Ellithorpe*, 479 S.W.3d at 829; Tenn. Code Ann. § 29-26-122(a) ("If the certificate is not filed with the complaint, the complaint shall be dismissed. . . .").

Mr. Engle filed a thoughtful brief arguing in support of his reasoned contentions. The Tennessee General Assembly, however, set policy regarding these matters under the HCLA, and the trial court and this court are bound by the statutory language thereof. Accordingly, the trial court did not err in concluding that a certificate of good faith is required under the facts of this case.

V.

For the foregoing reasons, we affirm the trial court's judgment. Costs of this appeal are taxed to the appellant, Jon Engle, for which execution may issue if necessary.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE