NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WILLIAM HUNT, Jr., Plaintiff - Appellant, v. MEDTRONIC USA, INC., Defendant - Appellee.	No. 25-1350 D.C. No. 3:21-cv-05854-BHS MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Argued and Submitted March 4, 2026
Seattle, Washington

Before: McKEOWN, BEA, and BRESS, Circuit Judges.

Plaintiff-Appellant William Hunt ("Hunt") appeals the district court's order which granted Defendant-Appellee Medtronic USA, Inc.'s ("Medtronic") motion for summary judgment on Hunt's Washington Consumer Protection Act ("CPA"), RCW 19.86.010, *et seq.*, and negligence claims. Hunt's action seeks damages for harm caused by a Medtronic spinal cord stimulator ("SCS") implanted in his body

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

to alleviate his chronic back pain, which malfunctioned in March 2021. The Medtronic SCS at issue in this case is an "FDA Class III Premarket Approved [ ] prescription medical device." Hunt had the SCS surgically removed in June 2021.

The district court dismissed Hunt's CPA claim because it concluded that Hunt failed to provide any evidence which established that Medtronic's claimed misrepresentation—that he would receive the smart tablet with a software program downloaded onto it that controlled his SCS—had a public impact. The district court dismissed Hunt's negligence claim because it concluded that Hunt failed to present expert evidence needed to establish breach of duty and causation. The district court determined that expert evidence was required because whether Medtronic's failure to service Hunt's SCS caused his nerve damage and consequent pain is beyond an ordinary lay person's knowledge.

We have jurisdiction under 28 U.S.C. § 1291. We review a district court's grant of summary judgment de novo. *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). We affirm.

1. We do not strike Hunt's opening brief and dismiss his appeal because, contrary to Medtronic's contention that "Hunt's failure to include record citations throughout the argument section of his brief is inexcusable," we have considered the merits of a party's appeal, despite the party's failure to comply with Federal Rule of Appellate Procedure 28(a) and Ninth Circuit Rule 28-2.8. *See Quan v. Gonzales*,

428 F.3d 883, 886 (9th Cir. 2005) (considering the merits of a party's appeal despite its failure to comply with Federal Rule of Appellate Procedure 28(a)). Further, Hunt's opening brief provides numerous citations to the excerpts of record, either in the "Statement of Case and Facts" section or as footnotes in the "Argument" section. The citations permit us to find the information which Hunt argues supports his claims. *Contra Mitchel v. Gen. Elec. Co.*, 689 F.2d 877, 878 (9th Cir. 1982).

2. The district court did not err in granting Medtronic's motion for summary judgment as to Hunt's CPA claim. To prevail in a CPA action, Hunt must establish that Medtronic's misrepresentation to Hunt that he would receive his own tablet programmer once he had an SCS installed "(a) [i]njured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons." RCW 19.86.093(3). Hunt failed to present any evidence showing that Medtronic's alleged misrepresentations to him were anything more than an isolated incident and therefore failed to prove that "additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest." *Travis v. Washington Horse Breeders Ass'n, Inc.*, 759 P.2d 418, 423 (Wash. 1988) (quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d 531, 538 (Wash. 1986)). Hunt offered no evidence that Medtronic has promised any other patient a tablet programmer. *See Bavand v. OneWest Bank*, 385 P.3d 233, 249 (Wash. Ct. App. 2016) (dismissing plaintiff's

CPA claim because she "utterly fail[ed] to show that the facts underlying her . . . theory ha[d] been replicated elsewhere"). Further, Medtronic presented unrebutted evidence that it has never allowed patients to own a tablet programmer, and that FDA restrictions on Medtronic's SCS prevent it from doing so. Hunt also offered no evidence to support his claim that:

> Testimony from Medtronic representatives confirms that the company gives the same standardized speech/presentation to each patient undergoing a trial of the spinal cord stimulator, including Mr. Hunt. This was not a one-off communication, but part of a systemic script used to induce patient buy-in and physician recommendation, all orchestrated to drive adoption of its devices.

In fact, during her deposition, Stephanie Peterson, a former Medtronic clinical specialist, affirmed that Medtronic did not provide "standards for how [she] would interact with patients." Because Hunt's failure to demonstrate an impact on the public interest is fatal to his CPA claim, the district court correctly granted summary judgment to Medtronic. *See Hangman*, 719 P.2d at 539.

3. The district court did not err in granting Medtronic's motion for summary judgment as to Hunt's negligence claim because Hunt lacked the expert testimony necessary to establish whether Medtronic's failure to service his SCS breached its duties to Hunt or caused his injuries. *Harris v. Robert C. Groth, M.D., Inc., P.S.*, 663 P.2d 113, 118 (Wash. 1983) ("In general, expert testimony is required when an essential element in the case is best established by an opinion which is beyond the expertise of a layperson."). To prevail on a cause of action for negligence, a plaintiff

must establish "(1) the existence of a duty owed, (2) breach of that duty, (3) a resulting injury, and (4) a proximate cause between the breach and the injury." *Johnson v. Liquor & Cannabis Bd.*, 486 P.3d 125, 130 (Wash. 2021) (internal quotation marks and citation omitted). Hunt's disclosed experts were explicit that they had no opinion as to Medtronic's actions or inactions. Hunt's experts also did not attribute Hunt's injuries to Medtronic or the SCS. Indeed, one of Hunt's experts, Dr. David Badger, attributed Hunt's "significant radiating pain into his right lower extremity including muscle spasms and numbness" to Hunt's car accident in December 2019. Therefore, Hunt lacked the expert testimony needed to establish breach of duty and causation under Washington law.

AFFIRMED.