

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STACEY EDNEY and MERLE EDNEY, :
 : C.A. No. K10C-10-045 WLW
Plaintiffs, :
 :
v. :
 :
 :
LAURA B. MOYLAN, M.D., :
DEDICATED TO WOMEN OB-GYN, :
P.A., SUSAN M. DONNELLY, M.D., :
LABORATORY CORPORATION OF :
AMERICA, :
 :
 :
Defendants. :

Submitted: October 12, 2012
Decided: November 8, 2012

ORDER

Upon Defendants Laboratory Corporation of America
and Susan M. Donnelly, M.D.'s
Motion for Summary Judgment.
Granted.

Robert J. Leoni, Esquire of Shelsby & Leoni, Stanton, Delaware; attorney for
Plaintiffs.

Joshua H. Meyeroff, Esquire and Andrew E. Vernick, Esquire of Wharton Levin
Ehrmantraut & Klein, P.A., Wilmington, Delaware; attorneys for Defendant Susan
M. Donnelly, M.D.

Matt Neiderman, Esquire and Benjamin A. Smyth, Esquire of Duane Morris LLP,
Wilmington, Delaware; attorneys for Defendant Laboratory Corporation of America.

WITHAM, R.J.

Before the Court is the issue as to whether the Court should grant the motions for summary judgment filed by Defendants Laboratory Corporation of America (hereinafter “LabCorp”) and Susan M. Donnelly, M.D., (hereinafter “Dr. Donnelly).

FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

This is a medical malpractice action arising from the alleged failure of Defendants to diagnose and treat Plaintiff Stacey Edney (hereinafter “Plaintiff”) for endometrial cancer. From October 2008 until August 2012, Plaintiff was a patient of Defendants Dr. Laura Moylan, M.D., an Obstetrician/Gynecologist, and her practice, Dedicated to Women OB-GYN, P.A. (hereinafter “Dedicated”). During this two-year period, two endometrial biopsies (“EMBs”) were performed on Plaintiff, one in October 2008, and one in April 2009.

LabCorp performed evaluations of both EMBs. LabCorp issued a report following each EMB. The first indicated that Plaintiff had focal complex hyperplasia without atypia; the second diagnosed her with simple hyperplasia without atypia.¹ Plaintiff’s experts allege that LabCorp and Dr. Donnelly were negligent in evaluating and reading the second EMB.²

¹Endometrial hyperplasia is an excess growth of tissue in the endometrium, or the inner lining of the uterus. Atypia hyperplasia is a precancerous condition. Approximately 8 percent of patients diagnosed with simple hyperplasia with atypia develop endometrial cancer, while a diagnosis of complex hyperplasia with atypia is more grim. Approximately 25 to 30 percent of hyperplasia in the latter category progresses to cancer.

²According to Plaintiff’s Identification of Experts, Dr. Kambour will opine that the April 2009 EMB should have been interpreted as complex hyperplasia with atypia. Def. M. for Summ. J.,

Plaintiff's experts opine that Dr. Moylan should have performed a dilation and curettage procedure (hereinafter a "D&C") following each EMB report. Her failure to do so constitutes a breach of the standard of care. Plaintiff's experts agree that had a D&C been performed at either time, Plaintiff's cancer would have been detected and she would have been diagnosed with Stage I cancer.

Plaintiff's cancer went undetected until August 23, 2010, when she visited Dr. Alan Trott. Dr. Trott immediately scheduled a D&C and later diagnosed Plaintiff with Stage III C endometrial cancer.

B. Relevant Procedural History

Plaintiff filed the instant action on October 29, 2010, alleging that Dr. Moylan and Dedicated breached the applicable standard of care in failing to perform a D&C after both EMBs reports detected atypia hyperplasia. Plaintiff later amended her complaint to add Dr. Donnelly, a pathologist, and LabCorp as defendants. On April 18, 2011, Dr. Moylan and Dedicated filed an answer to the Amended Complaint and asserted cross-claims against Dr. Donnelly and LabCorp for indemnification and contribution.

Fact discovery has concluded in this case and all parties have submitted expert disclosures. Plaintiffs have identified, Dr. Michael Kambour, Dr. Berto Lopez, Dr. S. Jason Kapnick, and Dr. Charles M. Jones, III, among others as experts in this case. Dr. Lopez, Dr. Kapnick, and Dr. Jones all testified that Dr. Moylan had a duty, at minimum, of performing a more thorough investigation of Plaintiff's hyperplasia

Ex. A, at 11.

following the diagnosis in October of 2008.³

LabCorp filed a motion for summary judgment on all claims on July 30, 2012. Dr. Donnelly joined in that motion on August 13, 2012.

Standard of Review

Summary judgment should be granted only if the record shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.⁴ The facts must be viewed in the light most favorable to the non-moving party.⁵ Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.⁶ However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.

Parties' Contentions

Defendants LabCorp and Dr. Donnelly argue that summary judgment is appropriate in this case because Plaintiff's evidence eliminates any causal link between LabCorp's interpretation of the April 2009 EMB and Plaintiff's delayed diagnosis. Defendants argue that had Dr. Moylan properly addressed the first EMB

³See Lopez Dep. at 20-21; Kapnick Dep. at 67, 70-71; Jones Dep. at 87.

⁴ Super. Ct. Civ. R. 56(c).

⁵ *Guy v. Judicial Nominating Comm'n*, 659 A.2d 777, 780 (Del. Super. Ct. 1995).

⁶ *Ebersole v. Lowengrub*, 180 A.2d 467, 468-69 (Del. 1962).

report, Plaintiff's cancer would have been detected earlier. Furthermore, Plaintiff's own experts opine that LabCorp's interpretation of the April 2009 created a new duty for Dr. Moylan to perform a D&C. Therefore, because there is no causal link between the misread EMB report and Plaintiff's injuries, Defendants argue that the claims against LabCorp and Dr. Donnelly should be dismissed.

Plaintiff responds by arguing that there may be more than one proximate cause to her injury, and an intervening act by one defendant does not break a causal chain unless it is unforeseeable to the original tortfeasor. Plaintiff contends that the question of whether an intervening act is unforeseeable is typically one for the trier of fact. Thus, Plaintiff requests that the Court deny Defendants' Motion for Summary Judgment.

DISCUSSION

Defendants contend that they are entitled to summary judgment because Plaintiff's own experts eliminate any causal link between Defendants' alleged negligence and Plaintiff's delayed diagnosis. Specifically, Plaintiff's experts opine that Dr. Moylan had an unequivocal duty to perform a D&C and hysteroscopy on Plaintiff after the October 2008 EMB, and thus, the results of the April 2009 EMB played no part in the delayed diagnosis and metastasis of Plaintiff's cancer. To state a claim for medical negligence under Delaware law, a plaintiff "must allege that a medical provider breached a duty owed to the plaintiff, and that the medical provider's act or omission was a proximate cause of the plaintiff's injury."⁷ A

⁷*Spicer v. Osunkoya*, 32 A.2d 347, 350 (Del. 2011) (internal citations omitted).

plaintiff must present expert medical testimony regarding the defendant's alleged deviation from the applicable standard of care and the cause of the alleged personal injury.⁸ Summary judgment is appropriate if the "record unambiguously reflects that the plaintiff's allegations are not and will not be supported by expert medical testimony."⁹ Here, the medical experts all agree that the delayed diagnosis and metastasis of Plaintiff's cancer were caused by Dr. Moylan's failure to perform a D&C after the October 2008 EMB showed complex hyperplasia with atypia.

Plaintiff argues that the misreading of Plaintiff's April 2009 EMB by LabCorp and Dr. Donnelly precipitated the chain of events that led to Plaintiff's delayed diagnosis. Her theory is that, if LabCorp had not misread the April 2009 EMB as showing simple hyperplasia with atypia, Dr. Moylan would have pursued a more aggressive course of treatment. Plaintiff appears to argue that this Court should apply the "substantial factor" definition of proximate cause. But Delaware courts follow the "but for" definition of proximate cause.¹⁰ "[A] proximate cause is one which in natural and continuous sequence, *unbroken by any efficient intervening cause*, produces the injury and without which the result would not have occurred."¹¹

⁸See 18 Del. C. § 6853; *Burkhart v. Davies*, 602 A.2d 56, 59 (1991), *cert. denied*, 504 U.S. 912 (1992).

⁹*Burkhart*, 602 A.2d at 60.

¹⁰See *Culver v. Bennett*, 588 A.2d 1041, 1097 (Del. 1991).

¹¹*Duphily v. Del. Elec. Coop Inc.*, 662 A.2d 821, 829 (Del. 1995) (internal citations omitted) (emphasis in original).

In *Spicer v. Osunkoya*,¹² the Delaware Supreme Court revisited the issue of proximate cause within the context of a medical negligence claim. In *Spicer*, the plaintiff-patient, who had suffered severe cognitive and physical defects after a tonsillectomy, brought suit against both her primary care physician and the specialist who had performed the surgery.¹³ The patient alleged that the primary care physician negligently diagnosed and referred her to the specialist.¹⁴ In affirming the trial court's grant of summary judgment in favor of the referring doctor, the Court found that the primary care physician's referral was legally inconsequential.¹⁵ The Court found it significant that the specialist did not rely upon the referring doctor's impressions of the patient.¹⁶ Further, the Court noted that the specialist made an independent determination that the patient needed to undergo surgery.¹⁷ Once the specialist made his own independent judgment regarding the patient's condition and plan of treatment, the referring doctor's duty to the patient "extinguished."¹⁸

Albeit the relationship between the Defendant-doctors in the present case was

¹²32 A.2d 347 (Del. 2011).

¹³*Id.* at 349.

¹⁴*Id.* at 349-50.

¹⁵*See id.* at 350-51.

¹⁶*See id.* at 349, 351.

¹⁷*Id.* at 351.

¹⁸*Id.*

more symbiotic than that of the doctors in *Spicer*, the result is no different here. Once Dr. Moylan received the results of the April 2009 EMB report, she chose not to perform follow-up diagnostic procedures. Any alleged negligence on the part of LabCorp and Dr. Donnelly is, at best, a remote cause of Plaintiff's injury. Rather, according to Plaintiff's own experts, it was Dr. Moylan's failure to perform a D&C and hysteroscopy after the October 2008 EMB that caused Plaintiff's delayed diagnosis.

Even after viewing the record in a light most favorable to Plaintiff, as the non-moving party, Plaintiff cannot meet their burden of proving a causal link between Defendants' alleged negligence and her injuries. In a medical negligence action, it is the plaintiff that bears the burden of establishing a causal link, through expert testimony, between a defendant's negligence and the plaintiff's injury.¹⁹ Plaintiff points to two items upon which they cannot rely to meet this burden: (1) Dr. Moylan's affidavit in which she testifies that had the April 2009 EMB shown atypia, she would "potentially" have presented performing a D&C "as an option" to Plaintiff,²⁰ and (2) Dr. Moylan's expert disclosures. But in reviewing a summary judgment motion, this Court must accept Plaintiff's evidence, not Dr. Moylan's evidence as true.²¹ Plaintiff's experts unequivocally refute the averments Dr. Moylan makes in her

¹⁹See *Timblin v. Kent Gen. Hosp.*, 640 A.2d 1021, 1023 (Del. 1994).

²⁰See *Moylan Dep.* at 89.

²¹See *Timblin*, 640 A.2d at 1023.

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affidavit. Accordingly, as Plaintiff has not borne her burden with respect to establishing a causal link between the negligence of LabCorp and Dr. Donnelly and her own injuries, summary judgment is appropriate in this case.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Summary Judgment is GRANTED. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh