

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT SEPT 9, 2008 THOMAS K. KAHN CLERK

No. 08-11335
Non-Argument Calendar

D. C. Docket No. 06-01297-CV-JOF-1

DAWN BERTSCH PORTER,
individually and as Administratrix of the
Estate of Leland Langston Porter, Deceased,

Plaintiff-Appellant,

versus

ELI LILLY AND COMPANY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

(September 9, 2008)

Before DUBINA, HULL and PRYOR, Circuit Judges.

PER CURIAM:

This is an appeal from the district court's grant of summary judgment in favor of defendant Eli Lilly and Company ("Eli Lilly"). Plaintiff Dawn Bertsch Porter ("Porter") brought an action against Eli Lilly contending that it was responsible for the suicide of her husband, Leland "Lee" Porter, because Eli Lilly failed to adequately warn of the potential risks between the drug Prozac and suicide. We review a district court's grant of summary judgment *de novo*. *Eley v. Baptist Hosp. Worth County, Inc.*, 199 Fed. Appx. 757, 758 (11th Cir. 2006).

After reviewing the record and reading the parties' briefs, we conclude that the district court correctly granted Eli Lilly's motion for summary judgment based on Porter's failure to produce evidence of proximate cause. *See Powell v. Harsco Corp.*, 433 S. E. 2d 608, 610 (Ga. Ct. App. 1993). Under Georgia law, Porter was required to prove that, but for the alleged inadequate warning, Dr. Wolfberg, decedent's physician, would not have prescribed Prozac to decedent. *See Wheat v. Sofamor, S.N.C.*, 46 F. Supp.2d 1351, 1363 (N.D. Ga. 1999). Dr. Wolfberg unequivocally testified that even if he had read the warning that Porter asserts should have been given, he still would have prescribed Prozac to the decedent. Thus, we agree with the district court that Porter cannot prove that Prozac was the proximate cause of decedent's death.

Because there is no merit to any of the arguments Porter makes in this appeal, we affirm the district court's grant of summary judgment in favor of Eli Lilly.

AFFIRMED.