

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002001-MR

WILLIAM H. WETHINGTON, AS
EXECUTOR OF THE ESTATE OF
BETTY H. WETHINGTON

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE DOUGLAS M. GEORGE, JUDGE
ACTION NO. 07-CI-00154

TAYLOR REGIONAL HOSPITAL

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,¹ SENIOR
JUDGE.

STUMBO, JUDGE: William H. Wethington, as Executor of the Estate of Betty H.

Wethington, appeals from a Judgment of the Taylor Circuit Court in his medical

¹ Senior Judge Ann O'Malley Shake, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

malpractice and wrongful death action. Appellant argues that he is entitled to a new trial based on the jury's illogical and inconsistent finding that though the Appellee Taylor Regional Hospital breached a standard of care, that breach was not a substantial factor in Mrs. Wethington's injuries. We find no basis for reversing the Judgment on appeal, and accordingly affirm.

On April 21, 2006, Betty Wethington (hereinafter "Mrs. Wethington") was admitted to Taylor Regional Hospital for treatment of a possible bowel obstruction. Mrs. Wethington is described in the record as a woman in her 50's who was morbidly obese, and who suffered from numerous medical issues including uncontrolled diabetes, compression fractures of the spine, heart problems and chronic obstructive pulmonary disease. Two days after being admitted, and pursuant to a physician's order, Mrs. Wethington was assisted by two nursing assistants, Megan Whitley and Doreda Price, from a prone position in bed to an upright position, and then into a standing position by the bed. Whitley and Price would later testify that prior to taking even one step toward a chair, it became apparent that Mrs. Wethington was unable to stand. Whitley and Price testified that they assisted Mrs. Wethington to the floor, and that she did not fall or strike the floor. Mrs. Wethington was then returned to bed.

The following day on April 24, 2006, nursing assistants Brenda Caldwell and Joanne Carter again attempted to move Mrs. Wethington from her bed to a bedside chair. As Mrs. Wethington was being assisted into a standing position, she exclaimed "Oh, my leg" and began to move toward the floor.

Caldwell and Carter would later testify that they assisted Mrs. Wethington to the floor, with one nursing assistant standing on each side of her supporting an arm.

Mrs. Wethington's left leg was positioned underneath her when she reached the floor. An x-ray determined that both bones in her lower left leg were broken, and she later underwent surgery at University of Louisville Hospital to effectuate a repair of the bones. Mrs. Wethington remained in the hospital for approximately three more weeks and returned home around May 12, 2006.

After returning home, Mrs. Wethington remained in very poor health. In addition to her other medical conditions, she had one or more open incisions on her left leg, which were stabilized with an external fixator bar. She required constant care, including assistance with a hoist to move her from her bed to a chair, as well as help with personal hygiene. Additionally, she was in constant pain. On September 16, 2006, Mrs. Wethington died from respiratory failure.

Thereafter, Appellant filed the instant action in Taylor Circuit Court alleging that the hospital was negligent in its care of Mrs. Wethington during her April, 2006 hospital stay. Specifically, Appellant alleged that the hospital negligently allowed Mrs. Wethington to fall, which resulted in her broken leg and eventual death. The action proceeded to a jury trial on July 27, 2009. Medical evidence was adduced that Mrs. Wethington was chronically ill and suffered from several serious medical issues prior to her admission to the hospital in April, 2006. Conflicting expert testimony was offered on the issue of whether Mrs. Wethington's pre-existing osteoporosis caused her leg to fracture before the fall, or

whether her leg was fractured as a result of the fall. The jury returned a verdict finding that the hospital was negligent in allowing Mrs. Wethington to fall, but that the negligence was not a substantial factor in the injuries Mrs. Wethington sustained on April 24, 2006. A Judgment reflecting the verdict was rendered on August 7, 2009. Appellant's motion for a new trial was overruled, and this appeal followed.

Appellant now argues that the circuit court erred in failing to grant a new trial. He maintains that the jury verdict was inconsistent and illogical, and cannot be based upon the evidence presented at trial. Specifically, Appellant contends that the evidence presented at trial could only support a reasonable inference that the hospital's breach of the requisite standard of care was the probable substantial factor giving rise to Mrs. Wethington's injuries. He maintains that given the testimony presented concerning the facts and circumstances surrounding Mrs. Wethington being allowed to fall on two consecutive days, with no modification of the equipment, methods or procedures used to assist her, there was no basis for the jury's negative answer on the question of whether the hospital's breach was a substantial factor leading to Mrs. Wethington's injuries. Though the Appellant acknowledges that two of the hospital's expert witnesses testified that Mrs. Wethington's pre-existing osteoporosis caused her leg to fracture before the fall, he notes that his own expert determined from an x-ray that the

fracture was caused by the impact with the floor. In sum, he contends that the inconsistent verdict entitles him to a new trial.²

We have closely examined the record and the law, and find no basis for concluding that the Taylor Circuit Court erred denying the Appellant's motion for a new trial. Because the jury returned a "Yes" answer to the question of whether the hospital was negligent, the dispositive question is whether the evidence supports the jury's determination that the hospital's negligence did not proximately cause Mrs. Wethington's injuries. It is uncontroverted that Mrs. Wethington was chronically ill and afflicted with numerous serious disease processes prior to her admission to the hospital in April, 2006. One of Mrs. Wethington's treating physicians, Dr. Stephen Hinton, testified by way of deposition that prior to her April, 2006 admission into the hospital, "Mrs. Wethington, on her best day, is still an extremely debilitated woman . . . with . . . a number of medical problems, any one of which would tip her boat, which set into play a series of ripple effects leading to further debilitating illnesses" He further noted that she "typically has complicated hospital stays with one problem arising and then several others falling out during the hospital stay." Evidence was adduced that Mrs. Wethington was morbidly obese and had broken her hip, and that she suffered from compression fractures of the spine, immobility syndrome, uncontrolled diabetes, COPD, depression and severe osteoporosis.

² The hospital contends that this issue was not properly preserved for appellate review. We believe that the Appellant's post-trial motion for a new trial preserved the issue, but in any event the issue is moot in light of our determination that the Judgment must be affirmed.

At trial, the hospital presented expert testimony that Mrs. Wethington's leg fractured just before she fell on April 24, 2006, and that the fracture was caused by the severe osteoporosis. Testimony was adduced that prior to falling, she said "Oh, my leg" and was then helped to the floor. Dr. Shively testified that the fracture was probably due to osteoporosis, which he opined was also the cause of a femur fracture which Mrs. Wethington suffered a few months prior to April, 2006. Additionally, he testified that Mrs. Wethington died from respiratory failure, and that her leg fracture was not a substantial factor leading to her death.

The question is not whether the jury could have reached a different result, but whether the evidence supports the result reached. *Commonwealth, Dept. of Highways v. Stocker*, 423 S.W.2d 510 (Ky. 1968). We must conclude that the evidence did support the verdict. In reviewing the denial of a motion for a new trial, the Court of Appeals' only function is to determine whether the trial judge abused his or her discretion. *Shortridge v. Rice*, 929 S.W.2d 19 (Ky. App. 1996). The trial judge is presumptively correct when ruling on a motion for a new trial, and the decision will not be overturned unless it is clearly erroneous. *Id.* In the matter at bar, the jury heard expert testimony that Mrs. Wethington was chronically ill with a variety of serious maladies, and that her advanced osteoporosis caused her leg to fracture as she was attempting to move from the bed to a chair. This testimony constitutes substantial evidence in support of the jury's determination that the hospital's negligence did not proximately result in Mrs.

Wethington's injury. As such, we cannot conclude that the circuit judge abused his discretion in denying Appellant's motion for a new trial. Accordingly, we find no error.

For the foregoing reasons, we affirm the Judgment of the Taylor Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Danny Butler
Greensburg, Kentucky

BRIEF FOR APPELLEE:

Thomas N. Kerrick
Bowling Green, Kentucky

Craig Cox
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