

STATE OF MICHIGAN
COURT OF APPEALS

REGINALD E. MOORE,

UNPUBLISHED
March 28, 1997

Plaintiff-Appellant,

v

No. 189379
Wayne Circuit Court
LC No. 94-411051-NH

GANDAM JAYAKAR, M.D., ERIC GLOSS, D.O.,
and ST. JOHN HOSPITAL & MEDICAL CENTER,

Defendants-Appellees.

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's grant of summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm in part and remand to the trial court for a determination of reasonable attorney fees.

On September 15, 1993, plaintiff, Reginald Moore, presented to the emergency room at St. John Hospital with a stab wound in the upper right chest. Plaintiff was admitted to St. John Hospital, was initially evaluated by Dr. Gloss, an emergency room physician, and was subsequently evaluated by the trauma team, of which Dr. Jayakar, a thoracic surgeon, was a member. A chest x-ray was taken, and plaintiff was ordered to be held for 23-hour observation. However, plaintiff was apparently discharged approximately eleven hours after his admission. In the days after his discharge from St. John Hospital, plaintiff continued to experience chest pain and was coughing up blood. As a result, on September 22, 1993, plaintiff visited the Detroit Community Health Connection, which referred him to Detroit Receiving Hospital. Plaintiff was admitted to Detroit Receiving Hospital, where he was diagnosed with a hemothorax, a collection of blood in the pleural cavity. Plaintiff remained hospitalized for sixteen days, during which he underwent the insertion of three chest tubes to treat the hemothorax.

* Circuit judge, sitting on the Court of Appeals by assignment.

Plaintiff filed suit in the Wayne Circuit Court on March 31, 1994, against defendants alleging a violation of the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 USC 1395dd, which requires treatment of patients in an emergency condition until they are stabilized. Defendants subsequently moved for summary disposition pursuant to MCR 2.116(C)(10), and moved for costs and fees pursuant to MCR 2.403(O) and MCL 600.2591; MSA 27A.2591. The trial court granted the motion for summary disposition and granted defendants costs and fees under the applicable statute and court rules.

On appeal, plaintiff first argues that the trial court erred by finding no genuine issue of material fact with regard to whether defendants violated the EMTALA.

The EMTALA imposes the following duties on hospitals:

1. To provide “an appropriate medical screening examination within the capability of the hospital’s emergency department” to “any individual [who] comes to the emergency department’ and seeks examination or treatment. 42 USC 1395dd(a).
2. If the “hospital determines that the individual has an emergency medical condition,” to stabilize the medical condition before transferring or discharging the patient. 42 USC 1395dd(b)(1) and (c)(1). [*Cleland v Bronson Health Care Group*, 917 F2d 266, 268 (CA 6, 1990).]

Plaintiff alleged that defendants violated the EMTALA by discharging him before his condition was stabilized. According to the EMTALA, a medical condition is “stabilized” when “no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer (or discharge) of the individual from a facility.” 42 USC 1395dd(c)(3)(B) and (4).

In the instant case, plaintiff’s expert, Dr. Lee, testified that, at the time of plaintiff’s discharge, his vital signs were stable and he was stable from a hemodynamic standpoint. Dr. Lee also testified that, based on the facts as they existed at the time of plaintiff’s discharge, it was “possible” that plaintiff’s condition would deteriorate. However, Dr. Lee did not testify that such a deterioration was “likely” or that such a deterioration would result from or occur during the discharge of plaintiff. Plaintiff presented no evidence that his condition was not stabilized, as that term is defined by the EMTALA, at the time of his discharge. Accordingly, the trial court properly granted summary disposition of plaintiff’s claim under the EMTALA.

Plaintiff next argues that the trial court erred in determining that no genuine issue of material fact existed with regard to the proximate cause of plaintiff’s injuries.

To establish a claim of medical malpractice, a plaintiff is required to prove that the alleged breach of the standard of care was the proximate cause of the plaintiff’s injury. MCL 600.2912a; MSA 27A.2912(1); *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). Proximate cause has been defined as “that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred.” *McMillan v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985).

Plaintiff alleged that defendants breached the applicable standard of care by failing to properly diagnose and treat his condition, and by discharging him before his condition was stabilized. Plaintiff argues that defendants' breach of the applicable standard of care was the proximate cause of his subsequent hospitalization for the insertion of multiple chest tubes to treat the hemothorax. However, Dr. Lee testified that, even if defendants had taken a CT scan on September 15, 1993, which plaintiff argues should have been done, plaintiff still may have required chest tubes at a later date. Dr. Lee also testified that a different course of treatment than the one followed by defendants "may" have eliminated the need for chest tubes at a later date. However, Dr. Lee gave no definitive testimony indicating that plaintiff would not have needed chest tubes on September 22, 1993, if he had been treated differently at St. John Hospital on September 15, 1993. A finding of causation must not be based on mere conjecture, but rather must be based on reasonable inferences from the evidence. *Nicholson v Children's Hospital of Michigan*, 139 Mich App 434, 438; 363 NW2d 1 (1984). Accordingly, we find that the trial court properly granted summary disposition with respect to plaintiff's negligence claim.

Plaintiff next argues that the trial court's finding that plaintiff's claim against Dr. Gloss was frivolous was clearly erroneous.

MCL 600.2591(1); MSA 27A.2591(1) provides that costs and fees shall be awarded to a prevailing party if the court finds that a civil action or defense was frivolous. Under MCL 600.2591(3)(a); MSA 27A.2591(3)(a), an action is frivolous when any one of the following conditions is met:

- (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- (ii) The party had no reasonable basis to believe that the facts underlying the party's legal position were in fact true.
- (iii) The party's legal position was devoid of arguable legal merit.

Pursuant to MCL 600.2912d; MSA 27A.2912(4), as it existed at the time this case was filed, a plaintiff in a medical malpractice case was required to file an affidavit attesting that he had obtained a written opinion from a licensed physician that the claim was meritorious. See Historical Note following MCL 600.2912d; MSA 27A.2912(4).

In the instant case, plaintiff filed an affidavit stating that he had obtained an expert opinion that the case was meritorious. However, plaintiff had no expert opinion that the case was meritorious specifically with respect to Dr. Gloss. Dr. Lee, the only expert consulted, testified that his opinions were limited to the actions of Dr. Jayakar and, furthermore, as a thoracic surgeon, he would not comment on the actions of Dr. Gloss, an emergency room physician. Plaintiff had no evidence on which to base its position that Dr. Gloss committed malpractice. Therefore, the trial court did not clearly err in finding plaintiff's claim against Dr. Gloss to be frivolous.

Finally, plaintiff argues that the court abused its discretion in determining the amount and costs of fees to be awarded.

Defendant, Dr. Gloss, was awarded \$6,641.52 for the filing of a frivolous action against him pursuant to MCL 600.2591; MSA 27A.2591 and defendants, Dr. Jayakar and St. John Hospital, were awarded \$7,521.64 as mediation sanctions pursuant to MCR 2.403(O).

Although there is no precise formula to be taken into account when computing the reasonableness of attorney fees, the factors to be taken into consideration include: 1) the professional standard and experience of the attorney, 2) the skill, time, and labor involved, 3) the amount in question and the results achieved, 4) the difficulty of the case, 5) the expenses incurred, and 6) the nature and length of the professional relationship with the client. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982). A trial court need not detail its findings relative to each specific factor considered. *Id.*

However, in the instant case, the trial court did not consider any of these factors on the record. A trial court may not find a bill of costs acceptable on its face without considering the issue of reasonableness. *Petterman v Haverhill Farms, Inc*, 125 Mich App 30, 33; 335 NW2d 710 (1983). Accordingly, we remand for a hearing regarding the reasonableness and appropriateness of the attorney fees. *JC Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 430; 552 NW2d 466 (1996).

The trial court's grant of summary disposition in favor of defendants is affirmed. We vacate the award of attorney fees and remand for a hearing on the appropriateness and reasonableness of the attorney fees to be awarded, if any. No further jurisdiction is retained.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz