

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY J. DOOLEY and JUDY BARNES
DOOLEY,

UNPUBLISHED

Plaintiffs-Appellees,

v

No. 198024

Washtenaw Circuit Court

LC No. 94-001193-NH

ST. JOSEPH MERCY HOSPITAL, a division of
CATHERINE MCAULEY HEALTH SYSTEM, a
division of SISTERS OF MERCY HEALTH
CORPORATION,

Defendant-Appellant,

and

ASSOCIATES IN GENERAL AND VASCULAR
SURGERY, P.C., NON-INVASIVE VASCULAR
TESTING, and SETH W. WOLK, M.D.,

Defendants.

Before: Corrigan, C.J., and Jansen and Whitbeck, JJ.

JANSEN, J. (dissenting).

I respectfully dissent. I believe that expert testimony was presented that adequately established that defendant's¹ alleged negligence was a legal or proximate cause of plaintiff's² injury. I would affirm the jury's verdict in its entirety.

The proximate cause issue in this case is complicated because it does not turn on one single event. Rather, it was plaintiff's theory at trial that a chain of events led to an unnecessary hospitalization, and unnecessary use of Heparin, and the ultimate destruction of plaintiff's adrenal glands. However, I believe that the expert testimony, specifically of Dr. Blake Tyrrell, was sufficient to establish that the

change in the anticoagulant medication, from Coumadin to Heparin, caused (both factually and legally) the destruction of plaintiff's adrenal glands.

In November 1992, plaintiff was diagnosed with hypercoagulability, a genetic blood clotting disease. Because of this disease, plaintiff is required to take anticoagulants. There are two anticoagulant medications: Coumadin and Heparin. Coumadin is taken orally while Heparin is given by needle injection. A known risk of both of these anticoagulant agents is organ hemorrhage, including adrenal hemorrhage. In June 1993, plaintiff was taken off Coumadin because his doctors believed that his medical problem had been resolved. However, plaintiff was hospitalized on July 4, 1993, and it was determined during this hospitalization that plaintiff would have to remain on anticoagulants for the rest of his life. Plaintiff was discharged from this hospitalization on July 13, 1993.

The following day, plaintiff complained of leg pain, which became more severe over the next few days. On July 19, 1993, plaintiff was directed to go to defendant hospital, where a venous duplex study (ultrasound) was done. The vascular technician who performed the ultrasound test, Jeanne Page, telephoned plaintiff's pulmonologist concerning her findings and she generated a worksheet detailing her findings. Dr. Thomas Gravelyn, plaintiff's pulmonologist, ordered that plaintiff be hospitalized after the ultrasound study was done. Dr. Seth Wolk, a shareholder of Non-Invasive Vascular Testing, Inc., was charged with performing the interpretation of the ultrasound study done on July 19, 1993. Within twenty-four hours of the test, Dr. Wolk generated his report only by reviewing the vascular technician's worksheet. Dr. Wolk did not review the videotape of the July 19, 1993 study and did not compare the July 19, 1993 study with the previous study done on July 6, 1993. There was expert testimony to the effect that Dr. Wolk's failure to independently review the videotape and to compare the two studies was a breach of the standard of care.

Dr. Wolk's report led Dr. Gravelyn and Dr. William Patton, a pulmonologist who took over plaintiff's care on July 20, 1993, to mistakenly believe that plaintiff had a new blood clot in his leg. In fact, there was no extension or propagation of the blood clot, but this was not determined until July 28, 1998. Dr. Donald Dimcheff, who took over plaintiff's care on July 26, 1993, requested that a new ultrasound be done, and that the three studies be compared. This led to the finding that plaintiff did not have a new blood clot.

Beginning with his hospitalization on July 19, 1993, plaintiff was placed on the anticoagulant Heparin. There was conflicting testimony as to whether the doctors would have hospitalized plaintiff and treated him with Heparin had they known on July 19, 1993 that there was no new blood clot. Dr. Patton testified at his deposition that he would not have begun or continued plaintiff on Heparin had he known that the test results showed that there was no new clot. Dr. Patton changed this testimony at trial and other doctors testified that plaintiff required hospitalization on July 19, 1993 and that Heparin is an appropriate treatment. This, however, merely created a material factual dispute for the jury to resolve. Further, this question of whether the July 19, 1993 hospitalization and subsequent use of Heparin was necessary is critical because it was plaintiff's theory, based on Dr. Patton's deposition testimony, that the hospitalization was unnecessary and would not have occurred had Dr. Wolk initially reviewed the ultrasound videotape and properly found that plaintiff did not have any new blood clots.

Dr. Blake Tyrrell, I believe, established proximate cause in this case. Dr. Tyrrell testified that, in his opinion, plaintiff's adrenal gland insufficiency was caused by a bilateral hemorrhage into the adrenal glands. It was Dr. Tyrrell's opinion that the adrenal hemorrhage was secondary to the administration of Heparin which was begun during plaintiff's admission to the hospital. It was also Dr. Tyrrell's opinion that had plaintiff not been given any Heparin between July 19 to 29, 1993, then the adrenal glands would not have been destroyed. Dr. Tyrrell also did not believe that Coumadin caused the hemorrhage because its effect would have dissipated for a considerable period of time before the hemorrhage occurred. Dr. Tyrrell explained that Heparin has a short-lasting effect (only for a few hours) so that it has to be given continuously intravenously or two to three times a day by needle injection. Coumadin, on the other hand, lasts twenty-four to thirty-six hours and after forty-eight hours most of its effect is gone. Therefore, Coumadin had been removed from plaintiff's system for long enough such that it did not cause the hemorrhage.

Dr. Tyrrell specifically stated that the hemorrhage occurred on July 27, 1993 because the medical records indicated that plaintiff began to suffer severe stomach or abdominal pain on that day. Dr. Tyrrell explained that this severe stomach pain was a symptom of the hemorrhage into the adrenal glands. Therefore, Dr. Tyrrell's testimony establishes that the change from Coumadin to Heparin caused the hemorrhage and subsequent damage to plaintiff's adrenal glands.

I disagree with the conclusion that there was no evidence to establish that defendant could foresee that the change in plaintiff's medication would cause the adrenal hemorrhage. This issue really involves consideration of two separate events. First, plaintiff theorized, and proved through medical testimony, that Dr. Wolk breached the standard of care in failing to review the July 19, 1993 ultrasound videotape and in failing to compare the two studies. This failure led to an unnecessary hospitalization and medication with Heparin. Second, there was evidence that plaintiff would have been treated differently had the admitting doctors been fully aware that plaintiff did not have any new blood clots. Dr. Tyrrell also specifically testified that administration of Heparin caused the adrenal hemorrhage and that had plaintiff not been given the Heparin, then the adrenal glands would not have hemorrhaged. Further, organ hemorrhage is a known risk of the administration of Heparin. Thus, the unnecessary use of Heparin directly led to the ultimate destruction of plaintiff's adrenal glands.

Accordingly, in light of the expert testimony, and drawing all reasonable inferences from that testimony, the jury could properly conclude that the change in medication from Coumadin to Heparin proximately caused the destruction of plaintiff's adrenal glands. More specifically, the jury could reasonably conclude that the unnecessary administration of Heparin, which is medically known to cause organ hemorrhage, proximately caused the adrenal hemorrhage. See *Weymers v Khera*, 454 Mich 639, 648; 563 NW2d 647 (1997) (to establish legal cause, the plaintiff must show that it was foreseeable that the defendant's conduct may create a risk of harm to the victim and that the result of that conduct and intervening causes were foreseeable). Here, it was foreseeable that the unnecessary administration of Heparin could create a risk of harm to plaintiff and that the actual result of adrenal gland hemorrhage was foreseeable.

I do not find any of the other issues raised by defendant to require reversal, and I would affirm the jury's verdict in its entirety.

/s/ Kathleen Jansen

¹ In this opinion, “defendant” refers solely to St. Joseph Mercy Hospital, the only defendant involved in this appeal.

² “Plaintiff” refers solely to Timothy Dooley since his claim involves the alleged medical malpractice.