

STATE OF MICHIGAN
COURT OF APPEALS

ELSIE TAYLOR, Personal Representative of the
Estate of JAMES HOUSTON, Deceased,

UNPUBLISHED
July 23, 1999

Plaintiff-Appellant,

v

No. 210599
Kent Circuit Court
LC No. 95-003894 NH

BLODGETT MEMORIAL MEDICAL CENTER,
ALLAN GALARNEAU, D.O., EMERGENCY
SPECIALISTS OF GRAND RAPIDS, P.C.,
ROBERT RICHARD, M.D., and CHERRY STREET
HEALTH SERVICES, INC.,

Defendants-Appellees.

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

In this medical malpractice action, plaintiff appeals as of right from the trial court's order denying her motion to reinstate this case and granting defendants' motions for summary disposition under MCR 2.116(C)(10). We affirm.

The trial court determined that defendants were entitled to summary disposition because plaintiff failed to present evidence of the "cause in fact" of decedent's death to a reasonable degree of medical certainty and therefore could not establish a prima facie case of medical malpractice.

A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff's claim. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994). In order to establish a prima facie case of medical malpractice, a plaintiff must prove that the defendant's negligence proximately caused the plaintiff's injuries. *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). "To establish proximate cause, the plaintiff must prove the existence of both cause in fact and legal cause." *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997); *Skinner, supra* at 162-163. The "cause in fact" element generally requires showing that "but for" the defendant's actions, the plaintiff's injury

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

would not have occurred. “A plaintiff must adequately establish cause in fact in order for legal cause or ‘proximate cause’ to become a relevant issue.” *Skinner, supra* at 163.

Although a certified copy of a death certificate is “prima facie evidence of the facts stated in the original,” MCL 333.2886; MSA 14.15(2886), it does not necessarily follow that the certified copy is prima facie evidence of the cause of death in the context of a medical malpractice action. This is because a medical malpractice action requires proof affording a reasonable basis for the conclusion that the alleged cause of death is more likely than not *the* cause, i. e., a probability of more than fifty percent. *Weymers, supra* at 647 n 11. The causes of death listed in the death certificate were cardiac arrhythmia, acute myocardial infarction and hypertensive cardiovascular disease. Dr. Myrtle McLain, who completed the death certificate, testified that there are numerous possible causes of cardiac arrhythmia, cardiac arrest and myocardial infarction. Moreover, she stated that the cause of death listed in the death certificate was the most likely cause, but she could not say that it was *the* cause to a probability of more than fifty percent. Dr. Richard Shaffer’s affidavit, apart from being untimely, added nothing to the causes listed in the death certificate towards identifying a cause in fact of the decedent’s death to a reasonable degree of medical certainty.

Contrary to plaintiff’s assertion, we find no contradiction between Dr. McLain’s deposition testimony and her affidavit sufficient to create a question of fact for the jury regarding the cause of death. In both, she explained that she could only state the most likely cause of death, but could not state the cause of death within a reasonable degree of medical certainty. Nor do these statements conflict with the death certificate which, as Dr. McLain explained, merely listed the “most likely” cause of death.

Finally, plaintiff’s reliance on *Harrington v Interstate Business Men’s Accident Ass’n*, 232 Mich 101; 205 NW 116 (1925), is misplaced. In that case, the Court stated that a prima facie case was established by the official death certificate “and admissions of cause of death in the proofs of loss” that were not “met by any competent contradictory evidence under which a jury could legally ignore it.” *Id.* at 112. Here, for the reasons discussed above, the death certificate did not establish a prima facie case with regard to the cause of death, and no other competent evidence on this issue was presented. Accordingly, the trial court did not err in granting defendants’ motions for summary disposition.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof