STATE OF MICHIGAN

COURT OF APPEALS

GINGER L. PARKER,

Plaintiff-Appellant,

v

MERCY GENERAL HEALTH PARTNERS and ELIZABETH TINDALL,

Defendants-Appellees.

UNPUBLISHED
February 10, 2004

No. 243514
Muskegon Circuit Court
LC No. 01-040673-NH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff arrived at Mercy General Health Partners' emergency room complaining of a skin rash. A physician started an intravenous line (IV) in her right hand. Plaintiff complained of nausea and Elizabeth Tindall, a licensed practical nurse, administered an intravenous dose of Phenergan, an anti-nausea medication. Plaintiff felt a burning sensation in her hand. She developed a superficial phlebitis, which resulted in a sclerotic vein in her hand. Subsequently, plaintiff underwent surgery to remove the vein.

Plaintiff filed suit alleging that Tindall breached the applicable standard of care in administering the Phenergan. She submitted an affidavit of merit from a registered nurse who opined that Tindall breached the applicable standard of care when administering Phenergan to plaintiff, and that Tindall's negligent actions proximately caused the superficial phlebitis which resulted in a sclerotic vein in plaintiff's right hand.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no evidence showed that plaintiff's sclerotic vein and subsequent pain were proximately caused by the negligent administration of Phenergan. The trial court granted defendants' motion, finding that plaintiff presented no medical evidence that created an issue of fact regarding whether her injury was proximately caused by the administration of Phenergan.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

"In a medical malpractice case the plaintiff bears the burden of proving: (1) the applicable standard of care, (2) breach of that standard by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995). "Expert testimony is required in medical malpractice cases to establish the applicable standard of care and to demonstrate that the defendant somehow breached that standard." *Birmingham v Vance*, 204 Mich App 418, 421; 516 NW2d 95 (1994). "Proof of causation requires both cause in fact and legal, or proximate, cause." *Haliw v Sterling Heights*, 464 Mich 297, 310; 627 NW2d 581 (2001). Cause in fact requires that the injury would not have occurred but for the negligent conduct. *Id*. Cause in fact may be established by circumstantial evidence, but such proof must be subject to reasonable inferences and cannot consist of mere speculation. *Skinner v Square D Co*, 445 Mich 153, 163-164; 516 NW2d 475 (1994). An explanation that is consistent with known facts but not deducible from them constitutes impermissible conjecture. *Id*. at 164. Proximate cause is that which, in a natural and continuous sequence, unbroken by a new and independent cause, produces the injury. *McMillan v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree and affirm. Plaintiff's action depended on her ability to establish by medical testimony that her injury was more probably than not proximately caused by the errant administration of Phenergan. *Haliw, supra*; *Birmingham, supra*. Plaintiff's own expert witness acknowledged that her role was not to give an opinion regarding the nature or cause of plaintiff's injury. No physician who treated plaintiff opined that the administration of Phenergan proximately caused her injury. Her family physician stated that a sclerotic vein could result from the insertion of an IV needle itself and could be unrelated to the administration of medication. Her surgeon stated that a sclerotic vein could result from a number of things, including the insertion of an IV needle or the administration of medication. He could not opine that it was more probable than not that plaintiff's sclerotic vein resulted from the administration of Phenergan. Her pain management specialist acknowledged that it would be logical to question whether the administration of Phenergan resulted in the sclerotic vein, but he could not opine that it was more likely than not that plaintiff's injury resulted from the administration of Phenergan. No medical evidence showed that it was more probable than not that the administration of Phenergan resulted in plaintiff's sclerotic vein. That the administration of Phenergan resulted in plaintiff's sclerotic vein was an explanation consistent with the known facts; however, it was not deducible from those facts, and thus constituted only impermissible speculation. *Skinner, supra*. Plaintiff did not make out a prima facie case on each element of medical malpractice. MCL 600.2912a(2); *Wischmeyer, supra*. Therefore, summary disposition was correct.

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood