

STATE OF MICHIGAN
COURT OF APPEALS

FOREST MANKE and KIMBERLY MANKE,

Plaintiffs-Appellants,

UNPUBLISHED
December 27, 2007

v

SAUNDRA BLANCHARD, M.D., GREAT
LAKES FAMILY CARE, and WEXFORD
MEDICAL GROUP,

No. 272694
Wexford Circuit Court
LC No. 03-017995-NH

Defendants-Appellees.

Before: Donofrio, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order of no cause of action, following a jury trial, in this medical malpractice action. We affirm.

Plaintiffs filed this action after plaintiff Forest Manke suffered respiratory depression while taking medications prescribed by defendant Sandra Blanchard, M.D.

Plaintiffs argue that the trial court erroneously granted defendants' motion for a directed verdict and thereby striking all of plaintiffs' theories of liability other than their failure to monitor claim. We disagree. In reviewing a trial court's decision on a motion for a directed verdict, we examine the evidence and all reasonable inferences that may be drawn from it in the light most favorable to the nonmoving party. *Clark v Kmart Corp*, 465 Mich 416, 418; 634 NW2d 347 (2001). Only if the evidence so viewed fails to establish a claim as a matter of law should the motion be granted. *Id.* at 419. A trial court's decision to strike counts of a pleading is reviewed for an abuse of discretion. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 469; 666 NW2d 271 (2003).

"In a medical malpractice case, the plaintiff bears the burden of proving: (1) the applicable standard of care, (2) breach of that standard by defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. Failure to prove any of these elements is fatal." *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 492; 668 NW2d 402 (2003). In order to establish causation, "a plaintiff cannot satisfy this burden by showing only that the defendant *may* have caused his injuries." *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004). The evidence need not negate all other possible causes, but "must exclude other reasonable hypotheses with a fair amount of certainty." *Id.*

In this case, the evidence did not exclude other reasonable hypotheses for Forest's injury with a fair amount of certainty. On the contrary, as the trial court observed, plaintiffs' expert witness agreed that the most likely cause of Forest's injury was that he took more than the prescribed dosage of Methadone, rather than the decision to prescribe the drug itself. The trial court also properly determined that plaintiffs' expert's opinion—that prescribing Methadone constituted a breach of the standard of care—was “nothing but speculation” and thus could not be considered by the jury. Accordingly, plaintiffs' theories that Dr. Blanchard breached the standard of care by prescribing Methadone, prescribing it along with antidepressants, and prescribing it in an eight-hour dosage were properly dismissed.

Plaintiffs also argue that the trial court abused its discretion by permitting defendants to question a witness about Forest's previous social security disability benefits. Plaintiffs argue that the admission of this evidence violated MCL 600.6303(1), which limits consideration of collateral source payments.

A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Jones*, 240 Mich App 704, 706; 613 NW2d 411 (2000). In this case, no evidence was admitted regarding any collateral payments. Rather, defendants were only allowed to ask plaintiffs' witness about the basis for his calculations of Forest's lost earning ability, and to challenge the extent of plaintiffs' damages. The question whether the witness considered that Forest was previously determined by the Social Security Administration to be disabled was relevant to defendants' inquiry. We find no abuse of discretion. In any event, because the jury found that Dr. Blanchard was not negligent, it did not reach the issue of damages. In light of our determination that the trial court did not err in granting a directed verdict with respect to plaintiffs' remaining claims, this issue is moot. *Michigan Nat'l Bank v St Paul Fire & Marine Ins Co*, 223 Mich App 19, 21; 566 NW2d 7 (1997).

Affirmed.

/s/ Pat M. Donofrio
/s/ David H. Sawyer
/s/ Mark J. Cavanagh