

STATE OF MICHIGAN
COURT OF APPEALS

JOYCE YURSCO, Personal Representative of the
Estate of PEARL BUNZOW, Deceased,

UNPUBLISHED
June 24, 2010

Plaintiff-Appellee,

V

K.K. RAVIDRAN, M.D., K.K. RAVIDRAN,
M.D., P.C., and VALLEY CARDIOLOGY,

No. 291187
Saginaw Circuit Court
LC No. 06-062602-NH

Defendants-Appellants.

Before: FORT HOOD, P.J., and BORRELLO and STEPHENS, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's denial of their motions for directed verdict and judgment notwithstanding the verdict (JNOV) during a medical malpractice jury trial. We affirm.

Defendant contends that the trial court should have granted the motion for directed verdict or the motion for JNOV because plaintiff failed to present the jury with adequate evidence that defendants caused decedent Pearl Bunzow's injury. We disagree.

A trial court's denial of a motion for directed verdict is subject to de novo review. *Roberts v Saffell*, 280 Mich App 397, 401; 760 NW2d 715 (2008). "[W]e view the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, granting that party every reasonable inference, and resolving any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Derbabian v S & C Snowplowing, Inc.*, 249 Mich App 695, 701; 644 N.W.2d 779 (2002). A directed verdict may be granted only when no factual question exists regarding which reasonable jurors could differ. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). Similarly, this Court reviews the denial of the motion for JNOV de novo. *Foreman v Foreman*, 266 Mich App 132, 135; 701 NW2d 167 (2005). "[T]he trial court should grant a JNOV motion only if, reviewing the evidence and all legitimate inferences in favor of the nonmoving party, 'the evidence fails to establish a claim as a matter of law.'" *Id.* at 136, quoting *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 492; 668 NW2d 402 (2003). Furthermore, "[w]hen the evidence presented could lead reasonable jurors to disagree, the trial court may not substitute its judgment for that of the jury." *Foreman*, 266 Mich App at 136.

The plaintiff in a medical malpractice cause of action has the burden of establishing that the defendant's negligent action proximately caused the plaintiff's injury. *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997). Proximate causation is composed of cause in fact and legal cause. *Id.* In the present case, defendants allege that plaintiff failed to establish factual causation and that the jury was not permitted to return a verdict in favor of plaintiff. To establish factual causation, a “plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred.” *Genna v Jackson*, 286 Mich App 413, 418; 781 NW2d 184 (2009). Furthermore, the “mere possibility of such causation is not sufficient; and when the matter remains one of pure speculation and conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict in favor of the defendant.” *Id.* While the question of causation is typically reserved for the jury, the trial court may decide the issue if there is no genuine issue of material fact. *Id.*

Defendants argue that plaintiff's causation theory was based purely on conjecture and speculation. Specifically, defendants allege that it was unlikely that Dr. K.K. Ravindran could have successfully utilized the balloon procedure because he did not have the time or ability to do so. We disagree with defendants' contention and will first address whether there was sufficient time to perform the procedure. The record, when viewed in the light most favorable to plaintiff, demonstrates that decedent's bleeding began at 10:55 a.m. According to Dr. A.J. Telmos, Dr. Ravindran had a four-minute window during which it was more likely than not that he could intervene and prevent decedent's death. Dr. Telmos opined that had defendant performed the balloon procedure to stop decedent's bleeding, there was a 95 percent chance that the procedure would have prevented decedent's death. While there was evidence that the balloons needed for the procedure were not in the laboratory there was also evidence that the balloons could have been retrieved within a couple of minutes. Once retrieved, it would take anywhere from 30 seconds to two minutes to insert the balloon, inflate it and cease the flow of blood. Dr. Ravindran did not need to know the exact location of the arterial perforation in order to successfully perform the procedure. Rather, he merely needed to know its general location and to insert the inflated balloon anywhere above the perforation. Dr. Ravindran had already taken x-rays in order to ascertain the general location of the perforation. Furthermore, it would have only taken seconds to take additional x-rays. Additionally, Dr. Ravindran was not in the laboratory by himself during the procedure. While he was locating the perforation, another hospital employee could have retrieved the balloons. Therefore, although Dr. Ravindran did not have significant time to spare, he could have retrieved the balloons, located the perforation and performed the balloon procedure during the available four-minute window.¹

¹ As described above, Dr. Ravindran had adequate time to perform the procedure at issue. However, even if we concluded that he did not have adequate time to perform the procedure, the jury would still have been permitted to determine causation. The only reason that time was arguably limited in this case was because the necessary balloons were not immediately available. Dr. Telmos testified that it is expected that all of the necessary equipment is in the room in which the surgery is performed. The jury was therefore permitted to conclude that defendants caused decedent's injury by failing to properly prepare for the surgical procedure.

Likewise, the record does not support defendants' argument that Dr. Ravindran did not have the ability to perform the procedure. The record demonstrates that Dr. Ravindran consciously chose not to utilize the balloon procedure because he did not feel that he was in an emergency situation and did not feel that the procedure was necessary. Dr. Ravindran specifically testified that he was aware of the existence of the procedure. He further stated that he was capable of performing the procedure if he needed to, saying that if he could utilize balloons in the coronary arteries he could also use them in the peripheral arteries. More importantly, he stated that he had an "interventional radiologist right there" and that the interventional radiologist was capable of performing the procedure. The record clearly demonstrates that Dr. Ravindran had the capabilities to perform the procedure and that he had immediate access to others who could perform the procedure.

Finally, defendants also imply that it would have been unwise for Dr. Ravindran to perform the procedure because if he performed it incorrectly, decedent could have instantly died. This Court is not persuaded by the argument. As stated above, there is no reason to believe that Dr. Ravindran would not have successfully performed the procedure. Furthermore, he could have easily obtained the assistance of someone who was capable of performing the procedure. Additionally, it is illogical to argue that Dr. Ravindran should not have performed the procedure because of the possibility that it would result in death. Without the procedure, the record demonstrates that decedent had essentially no chance of surviving her hemorrhage.

Plaintiff's evidence regarding causation was not based on mere speculation and conjecture. The evidence demonstrated that Dr. Ravindran had the time and the ability to perform a procedure that had a 95 percent chance of preventing decedent's death. He chose not to perform the procedure in order to pursue an alternative, and ultimately unsuccessful, method of treatment. While there was conflicting testimony regarding the location of the perforation and the wisdom of performing the balloon procedure, it is well established that issues of credibility are properly reserved for the jury. *Moore v Detroit Entertainment, LLC*, 279 Mich App 195, 202; 755 NW2d 686 (2008). A reasonable jury was certainly permitted to conclude that Dr. Ravindran's conduct was more likely than not the cause of decedent's injury. Had the trial court granted the motion for directed verdict or JNOV, it would have been improperly substituting its judgment for that of the jury. Consequently, we affirm the trial court's denial of those motions. Defendants are not entitled to relief.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello
/s/ Cynthia Diane Stephens