

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TEMPERANCE ROBERTS, Personal  
Representative of the Estate of SANDRA LYNN  
ROBERTS, Deceased,

UNPUBLISHED  
September 18, 2014

Plaintiff-Appellant,

v

DANIEL GADZINSKI, M.D. and OAKWOOD  
HEALTHCARE, INC., d/b/a OAKWOOD  
HERITAGE HOSPITAL,

No. 316409  
Wayne Circuit Court  
LC No. 11-010725-NH

Defendants-Appellees.

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Before: OWENS, P.J., and JANSEN and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendants' motion for a directed verdict on the issue of proximate causation. We affirm.

Plaintiff contends that the trial court erred by granting defendants' motion for a directed verdict on the issue of proximate causation because there was sufficient testimony from which a reasonable jury could conclude that Dr. Daniel Gadzinski's failure to admit Sandra Roberts to the hospital was a proximate cause of her death. We disagree.

We review de novo the trial court's grant or denial of a directed verdict. "When evaluating a motion for directed verdict, the court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in the nonmoving party's favor." Conflicts in the evidence must be decided in the nonmoving party's favor to decide whether a question of fact existed. "A directed verdict is appropriately granted only when no factual questions exist on which reasonable jurors could differ." [*Aroma Wines & Equip, Inc v Columbia Dist Services, Inc*, 303 Mich App 441, 446; 844 NW2d 727 (2013) (citations omitted).]

"The plaintiff in a medical malpractice case must prove that the defendant's breach of the applicable standard of care proximately caused the plaintiff's injuries." *Lockridge v Oakwood Hosp*, 285 Mich App 678, 684; 777 NW2d 511 (2009). The trial court determined that there was sufficient testimony regarding a breach of the standard of care to reach the jury based on Dr.

Eugene Saltzberg’s testimony that Dr. Gadzinski breached the standard of care by failing to admit Roberts or failing to recommend to a primary care physician that Roberts be admitted. The trial court, however, concluded that Dr. Werner Spitz, plaintiff’s causation expert, did not testify that the failure to admit Roberts caused her death.

“Proximate cause is a question for the jury to decide unless reasonable minds could not differ regarding the issue. Proximate cause incorporates two separate elements: (1) cause in fact and (2) legal or proximate cause.” *Id.* at 684 (citation omitted). “Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without (or ‘but for’) that act or omission.” *Craig ex rel Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004).

Legal or proximate cause normally involves examining the foreseeability of consequences and whether a defendant should be held legally responsible for them. 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. [*Lockridge*, 285 Mich App at 684 (citations and quotation marks omitted).]

“[T]he plaintiff’s evidence is sufficient if it ‘establishes a logical sequence of cause and effect, notwithstanding the existence of other plausible theories, although other plausible theories may also have evidentiary support.’” *Skinner v Square D Co*, 445 Mich 153, 159-160; 516 NW2d 475 (1994) (citation omitted). “[I]t is well-established that there can be more than one proximate cause contributing to an injury.” *O’Neal v St John Hosp & Med Ctr*, 487 Mich 485, 496-497; 791 NW2d 853 (2010).

Dr. Saltzberg testified that the standard of care required Dr. Gadzinski to call a primary care doctor, discuss the case with the primary care doctor, and arrange for Roberts to be admitted and monitored. Dr. Saltzberg testified that Dr. Gadzinski breached the standard of care by sending Roberts home while the 4 milligrams of Morphine he gave her was within its half life (two to four hours) and after giving her a breathing treatment, which covered up her symptoms. He testified that the standard of care requires a patient to be monitored for one hour after an Albuterol treatment. He further testified that a patient who is on multiple opiate medications, is at risk for respiratory depression, and has a mental state possibly clouded by the opiate treatment should not be sent home.<sup>1</sup>

## I. CAUSE IN FACT

Reasonable jurors could differ regarding whether the failure to admit Roberts was the cause in fact of her death. See *Aroma Wines*, 303 Mich App at 446. Dr. Gadzinski testified that

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<sup>1</sup> Defendants also argue, and the trial court determined, that giving Roberts 4 milligrams of Morphine was not the proximate cause of Roberts’s death. There was no testimony that Dr. Gadzinski breached the standard of care by giving Roberts 4 milligrams of Morphine. Dr. Saltzberg testified that he did not take issue with the dose of Morphine given to Roberts. Plaintiff’s argument on appeal focuses on the failure to admit Roberts.

Roberts would not have died if she had been admitted because she would have been in the hospital. Dr. Saltzberg testified that if Roberts had been admitted, her respiratory status would have been monitored. This testimony suggests that if Roberts had been in the hospital at the time of her death, it is more likely than not that the doctors would have been monitoring her and could have saved her when she went into respiratory distress. Accordingly, a reasonable juror could find that but for the failure to admit, Roberts would not have died.

However, as the trial court observed, Dr. Saltzberg's testimony suggested that the standard of care actually required Dr. Gadzinski to recommend to a primary care physician that Roberts be admitted. Dr. Gadzinski testified that in order to admit Roberts he would have had to identify her physician and discuss it with the physician. Dr. Gadzinski testified that he did not have a strong case for admission and Roberts would not likely have been admitted. Dr. Sanford Vieder, defendants' expert, also testified that Roberts did not meet any of the criteria requiring admission and she would not likely have been admitted. On the other hand, Dr. Saltzberg testified that Roberts should not have been sent home in her condition. Moreover, Dr. Gadzinski testified that out of the thousands of times he has recommended admission, the admitting physician declined to admit only four or five times. Thus, a reasonable juror could conclude that if Dr. Gadzinski had recommended admission, Roberts would have been admitted.

Even if Roberts had been admitted to the hospital, Dr. Saltzberg's testimony suggested that Roberts had to be monitored for one hour after the Albuterol treatment and four hours after the Morphine. If Roberts received the Morphine at 9:00 a.m. or 9:09 a.m., the standard of care would only have required monitoring until 1:00 p.m. or 1:09 p.m. Thus, even if Roberts had been admitted, it is possible that she could have been released before the time of her death. However, it is also possible that her symptoms could have returned before that time, such that she would have been given additional medication and kept in the hospital until at least the time of her death. Roberts's daughter, Ardis Roberts, testified that Roberts took her medication at home at approximately 12:00 p.m. Roberts would have likely been given additional medicine in the hospital as well. Thus, a reasonable juror could find that if Dr. Gadzinski had recommended admission, Roberts would have been admitted, she would still have been in hospital at the time of death, and she would not have died but for the failure to admit.

## II. PROXIMATE CAUSE

Even if reasonable jurors could differ regarding the existence of cause in fact, reasonable jurors could not differ regarding the issue of legal or proximate causation. See *Aroma Wines*, 303 Mich App at 446. According to the autopsy report, Roberts died of multiple drug toxicity that led to respiratory failure. Dr. Vieder testified that Roberts had a very high level of Morphine in her system at the time of her death. Dr. Spitz testified that Roberts's death was caused by a combination of the high levels of Morphine, cirrhosis of the liver, and pneumonia; the manner of death was asphyxiation. According to plaintiff, the failure to admit Roberts was the proximate cause of her death because it was foreseeable that her condition would worsen and she would not receive proper monitoring and attention to save her life if not admitted.

Dr. Spitz did not specifically testify that the failure to admit caused Roberts's death. It was not foreseeable that the failure to admit Roberts would result in her death from high levels of Morphine leading to respiratory distress, cirrhosis of the liver, and pneumonia. See *Lockridge*,

285 Mich App at 684. There was no reason for Dr. Gadzinski to believe that Roberts was having difficulty metabolizing Morphine. Based on the tests that were completed, Roberts's liver was functioning "fine."<sup>2</sup> There was also no evidence of pneumonia on Roberts's chest x-ray.

With regard to the role of Morphine in Roberts's death, the trial court observed that Roberts had more than 4 milligrams of Morphine in her system at the time of her death. Dr. Gadzinski testified that Roberts could not have died without taking additional medications at home. Dr. Vieder also believed that Roberts took a large amount of her prescribed medication. It was not foreseeable that Roberts would take a large dose of Morphine at home.

Even if Roberts did not take more than her regular dosage at home, as both Dr. Saltzberg and Dr. Spitz believed, it was not foreseeable that Roberts would die from the 4 milligrams of Morphine given at Oakwood Heritage Hospital. There was testimony that 4 milligrams of Morphine was a small or reasonable dose and there was no reason to believe that it would have affected Roberts seven or eight hours later. Even if the originally administered 4 milligrams of Morphine remained in Roberts's system at the time of her death because of impaired liver functioning, as Dr. Spitz believed, there was simply no reason for Dr. Gadzinski to believe that Roberts was having difficulty metabolizing the Morphine. It was also not foreseeable that Roberts would die from taking her regular dosage at home. In sum, a reasonable juror could not conclude that the failure to admit Roberts was the proximate cause of her death. The trial court properly granted defendants' motion for a directed verdict on this ground.

Affirmed. Defendants, having prevailed on appeal, may tax their costs pursuant to MCR 7.219.

/s/ Donald S. Owens  
/s/ Kathleen Jansen  
/s/ Peter D. O'Connell

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<sup>2</sup> On the other hand, Dr. Spitz testified that tests done on Roberts when she was admitted to the hospital in December 2006, showed that Roberts had an "extensive liver condition." Dr. Gadzinski did not consult Roberts's records from that earlier admission. However, there was no testimony that the standard of care required Dr. Gadzinski to do so.