STATE OF MICHIGAN

COURT OF APPEALS

DARWIN DRAKE,

Plaintiff-Appellant,

v

WILLIAM BEAUMONT HOSPITAL doing business as BEAUMONT HOSPITAL–ROYAL OAK and as BEAUMONT HEALTH,

Defendant-Appellee.

UNPUBLISHED
December 14, 2023

No. 364281
Oakland Circuit Court
LC No. 2021-189559-NH

Before: LETICA, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

In this medical malpractice case, plaintiff appeals as of right the trial court's order granting summary disposition to defendant. We affirm.

I. BACKGROUND

This action arises from injuries plaintiff allegedly incurred as a result of falling out of a hospital bed at a hospital owned by defendant. On February 20, 2019, plaintiff had a seizure at his home. This was not plaintiff's first seizure; he had previously experienced a seizure and been prescribed anti-seizure medication. But, at some point before February 20, 2019, plaintiff stopped taking his anti-seizure medication. Plaintiff's seizure on February 20, 2019, occurred at night and caused him to fall out of his bed. Paramedics were called, and they transported plaintiff to McLaren Port Huron Hospital.

Plaintiff's medical records from McLaren described plaintiff as "alert" and "oriented." While at McLaren, plaintiff experienced another seizure, which necessitated his transfer to defendant's hospital. Plaintiff's medical records from when he arrived at defendant's facility state that plaintiff was alert and oriented, and exhibited "[n]o evidence of difficulty focusing, distractibility, or inability to follow topic."

Teanna Crudup, a nursing assistant working under Registered Nurse (RN) Steve Reinhart, was assigned to plaintiff's room. Crudup confirmed that fall precautions were put in place for

plaintiff because plaintiff was identified as a patient with a high risk of falling. These precautions included nonslip socks, a fall-risk wristband, a bed with four side rails placed in its lowest position, a bed alarm, and a nurse call light.

RN Reinhart similarly testified that fall precautions were put in place for plaintiff. RN Reinhart further testified that, when plaintiff was transferred to RN Reinhart's floor, RN Reinhart asked questions of plaintiff concerning his orientation. Based on plaintiff's answers, RN Reinhart determined that plaintiff was "fully cognitive." According to RN Reinhart, he then discussed the fall precautions with plaintiff—which included instructions to not get out of bed without assistance—and plaintiff indicated that he understood.

Crudup testified that, shortly after plaintiff was situated in his room, plaintiff's bed alarm was activated. When Crudup responded, she saw plaintiff beginning to get out of bed, so she stopped him and asked what he was trying to do. Plaintiff told Crudup that he was trying to use the bathroom. According to Crudup, the following ensued:

> I set him up and put my hand on his shoulder. I said, give me one second, because I don't know how you get up, so I'm going to call for help, so I called [RN Reinhart], but [RN Reinhart] was in another patient's room, and he was saying he couldn't hear me, so I told [plaintiff], I said, give me one second, and I stepped to the door for a second, and at that time [plaintiff] stood up, tried to take a step, and then that's when he had started stumbling and grabbed a hold to the curtain.

Crudup clarified that she told plaintiff to wait while she went to get help, and plaintiff confirmed that he understood. Crudup also clarified that she was standing by the door when plaintiff fell. According to Crudup, she went to the door to contact RN Reinhart, who was "a couple rooms down." Crudup said that plaintiff got up while Crudup's back was turned and she was "waving towards" RN Reinhart. She said that plaintiff's fall "happened so fast" that she was unable to get to him before he fell. Crudup explained that plaintiff grabbed the curtain to ease his fall. Crudup also confirmed that plaintiff's bed alarm was not going off when he fell; she said that she initially responded to plaintiff's room because his bed alarm was activated and then she turned it off, so it was not sounding at the time of plaintiff's fall.

Plaintiff testified that he had no memory of his fall at the hospital. He likewise testified that he could not remember anyone at the hospital telling him not to get out of his hospital bed without assistance, or to use the nurse call light for assistance using the bathroom.

Following his fall, plaintiff complained of pain in his left hip, but initial x-rays were negative. Plaintiff continued experiencing pain, however, and a subsequent MRI revealed a fracture to his left hip. Plaintiff was eventually discharged, and his discharge paper work noted that he had "a broken hip." He eventually underwent hip-replacement surgery.

On August 16, 2021, plaintiff filed a two-count complaint. In Count I, plaintiff alleged that defendant's nursing staff negligently cared for plaintiff while he was in their care by failing to take proper precautions to prevent plaintiff from falling, despite designating plaintiff as a patient with a high risk for falling. Plaintiff further alleged that, as a result of this negligence, he fell out

of his hospital bed and broke his hip. In Count II, plaintiff alleged that defendant was vicariously liable for its nursing staff's negligence.

Defendant eventually moved for summary disposition under MCR 2.116(C)(10). In its motion, defendant argued that plaintiff could not establish that defendant's staff's alleged negligence caused plaintiff's injuries. Defendant observed that only Crudup testified about the factual circumstances surrounding plaintiff's fall, and defendant contended that, based on Crudup's testimony, there was no question of fact that defendant's nurses did not breach a standard of care that caused plaintiff's injuries. Defendant further argued that plaintiff could not even establish a jury-triable issue that he was injured as a result of his fall at the hospital because it was just as likely that he was injured when he first fell out of his bed at home.

In response, plaintiff quoted his medical records at length and contended that, based on those records, there was a question of fact whether he was injured as a result of his fall at the hospital. Plaintiff emphasized that he had no complaints of hip pain when he was initially transported to the hospital, and that he began complaining of hip pain shortly after falling at the hospital. Plaintiff also noted that defendant's employees immediately suspected a hip injury because they ordered x-rays of plaintiff's hip shortly after he fell.

In reply, defendant emphasized that plaintiff had not rebutted defendant's contention that, based on Crudup's testimony, there was no question of fact that defendant's nurses did not breach a standard of care when treating plaintiff.

In a written opinion, the trial court granted defendant's motion for summary disposition. The court concluded that "Plaintiff failed to raise a genuine issue of fact for trial relative to whether any alleged negligence action and/or inaction of Defendant Hospital proximately caused Plaintiff to fall and/or otherwise sustain a hip injury while under Defendant Hospital's care and treatment." This appeal followed.

II. STANDARD OF REVIEW

A trial court's ruling on a motion for summary disposition is reviewed de novo. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10). A grant of summary disposition under MCR 2.116(C)(10) is appropriate when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." When reviewing a trial court's decision on a motion for summary disposition pursuant to MCR 2.116(C)(10), this Court must consider the evidence in the light most favorable to the nonmoving party. *Calhoun Co v Blue Cross Blue Shield*, 297 Mich App 1, 11-12; 824 NW2d 202 (2012). A genuine issue of material fact exists if reasonable minds could differ about the conclusion to be drawn from the evidence. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

The initial burden in a motion under MCR 2.116(C)(10) rests with the moving party, who can satisfy its burden by either (1) submitting "affirmative evidence that negates an essential element of the nonmoving party's claim" or (2) demonstrating "that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim." *Quinto*

v Cross & Peters Co, 451 Mich 358, 362; 547 NW2d 314 (1996) (quotation marks and citation omitted). In response to a properly supported motion under MCR 2.116(C)(10), the nonmoving party cannot "rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial." *Campbell v Kovich*, 273 Mich App 227, 229; 731 NW2d 112 (2006). See also MCR 2.116(G)(4).

III. ANALYSIS

To establish a claim for medical malpractice, a plaintiff must prove: (1) the applicable standard of care, (2) that the defendant breached that standard, (3) that the plaintiff suffered an injury, and (4) that defendant's breach caused the plaintiff's injury. *Wischmeyer v Schanz*, 449 Mich 469, 484; 536 NW2d 760 (1995). "Failure to prove any one of these elements is fatal." *Id*.

To establish causation, a plaintiff must prove that the defendant was both the factual cause and the proximate cause of the plaintiff's injury. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). Generally, cause-in-fact is established by showing that, but for the defendant's actions, the plaintiff's injury would not have occurred. *Id*. at 163. To do this, the plaintiff must "set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." *Id*. at 174. If, however, "the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to direct a verdict for the defendant." *Garabedian v William Beaumont Hosp*, 208 Mich App 473, 476; 528 NW2d 809 (1995).

It is uncontested that defendant designated plaintiff as a patient with a high risk of falling, and that defendant accordingly put in place certain fall precautions. Despite these precautions, plaintiff still fell out of his hospital bed. Because plaintiff had no memory of his fall, the only witness to plaintiff's fall was Crudup. She said that, before he fell, plaintiff activated his bed alarm, and Crudup responded to it. When Crudup entered plaintiff's room, she saw that he was trying to get out of his bed, so she went to plaintiff, turned off his bed alarm, and asked him what he was doing. According to Crudup, plaintiff told her that he was trying to use the bathroom, so Crudup sat plaintiff up and tried to contact RN Reinhart to assist her. She had trouble contacting RN Reinhart, however, so she instructed plaintiff—who was, by all accounts, "fully cognitive" at the time—to wait in his bed, and he indicated that he understood. Crudup then went to the doorway to flag down RN Reinhart, who was a couple rooms away attending to another patient. While Crudup was in the doorway with her back to plaintiff, he began getting out of bed, despite Crudup's instructions. When Crudup turned around, she saw plaintiff getting out of bed but was unable to reach him in time. As a result, plaintiff left his bed and fell to the floor, grabbing a curtain to help ease his fall.

Defendant presented this evidence to the trial court, thereby establishing that defendant had proper fall precautions in place, that defendant's employees properly responded when plaintiff's bed alarm alerted them that plaintiff was attempting to leave his bed, and that plaintiff's fall was the result of his ignoring Crudup's instructions to remain in bed while she got additional assistance, not the result of any negligence on behalf of defendant or its employees. This shifted the burden to plaintiff to submit evidence setting forth specific facts showing a genuine issue for trial. See *Campbell*, 273 Mich App at 229; MCR 2.116(G)(4).

In response to defendant's motion, plaintiff did not present any evidence that defendant or its employees were negligent and that this negligence caused plaintiff's injury. Rather, plaintiff focused exclusively on whether there was a question of fact that he sustained his hip injury as a result of the fall at the hospital. On appeal, however, plaintiff argues that defendant's employees breached a standard of care and caused plaintiff's injury by (1) failing to activate the bed alarm and (2) leaving a high-fall-risk patient like plaintiff unattended. In support of this argument, plaintiff relies solely on the testimony of his expert, RN Cassandra Beasley.

Problematically, plaintiff never submitted the deposition transcript of RN Beasley to the trial court. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Additionally, this Court's review of a trial court's ruling on a motion for summary disposition is limited to the evidence properly presented to or considered by the trial court when rendering its decision. See *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 380; 380 n 8; 775 NW2d 618 (2009).

In *Barnard Mfg Co*, the trial court granted the plaintiff's motion for summary disposition under MCR 2.116(C)(10), and on appeal, the defendants—Gates Performance Engineering, Inc. and Greg N. Gates (Gates)—argued that this was improper because there was evidence in the record that could have been used to create a question of fact. See *id*. at 375-376. This Court agreed that Gates' deposition testimony could have been used to create a genuine issue of material fact whether the plaintiff was entitled to summary disposition, and noted that Gates' deposition testimony was part of the lower court record because the plaintiff had attached that testimony to its motion for summary disposition. *Id*. at 380. But this Court still concluded that the trial court properly granted the plaintiff's motion for summary disposition because (1) the defendants "failed to cite or otherwise refer to Gates's deposition testimony in their brief in response to the motion for summary disposition," (2) the plaintiff "did not refer the trial court to the relevant testimony," and (3) "there is no indication that the trial court elected to consider those sections on its own initiative." *Id*. at 380-381.

Applying the reasoning from *Barnard Mfg Co* to this case, we conclude that the trial court properly granted defendant's motion for summary disposition. Similar to the defendants in *Barnard Mfg Co*, plaintiff here failed to properly present RN Beasley's deposition testimony to the trial court in response to defendant's motion for summary disposition. In fact, unlike in *Barnard Mfg Co*, it does not appear that RN Beasley's testimony was ever submitted to the trial court in any manner. Plainly, then, the trial court could not have independently considered RN Beasley's testimony when it ruled on defendant's motion for summary disposition. Because RN Beasley's deposition testimony was not provided to the trial court and the trial court therefore could not have independently considered RN Beasley's testimony when rendering its decision on defendant's motion for summary disposition, "we are not at liberty to consider this evidence." *Id*. at 381.

Without RN Beasley's testimony, there is no evidence to support plaintiff's contention that defendant violated a standard of care that caused plaintiff's injury. And without any evidence to support that defendant violated a standard of care that caused plaintiff's injury, we cannot conclude that the trial court erred when it granted defendant's motion for summary disposition. See MCR 2.116(G)(4) (stating that, in response to a properly supported motion under MCR 2.116(C)(10),

the nonmoving party has an obligation to "set forth specific facts showing that there is a genuine issue for trial," and if they fail to do so, then summary disposition for the moving party should be granted if appropriate).[1]

Affirmed.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron

[1] Plaintiff spends the majority of his brief arguing that he presented sufficient evidence establishing a question of fact that he was injured as a result of his fall at the hospital and not when he fell at home. Even if we agreed with plaintiff on this point, summary disposition in favor of defendant would still have been proper for the reasons explained in this opinion. Accordingly, it is unnecessary to address plaintiff's argument that he established a question of fact that he was injured as a result of his fall at the hospital and not his fall at his home.