

STATE OF MICHIGAN
COURT OF APPEALS

MARIE HUDDLESTON,

Plaintiff-Appellant,

v

TRINITY HEALTH MICHIGAN d/b/a SISTERS
OF MERCY HEALTH CORPORATION and/or
ST. JOSEPH MERCY HOSPITAL – ANN
ARBOR, IHA OF ANN ARBOR, P.C., d/b/a
ASSOCIATES IN INTERNAL MEDICINE –
CHERRY HILL, ASSOCIATES IN INTERNAL
MEDICINE – CHERRY HILL, P.C., and DR.
JOYCE LEON,

Defendants-Appellees,

and

HURON VALLEY RADIOLOGY, P.C. and DR.
DAVID E. BAKER,

Defendants.

UNPUBLISHED
September 11, 2012

No. 303401
Washtenaw Circuit Court
LC No. 09-000657-NH

Before: Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

TALBOT, J (*concurring in part, dissenting in part*).

While I concur with the majority that summary disposition in favor of the Hospital was proper because Huddleston did not provide sufficient expert testimony in support of her medical malpractice claim, I write separately because I disagree with the majority’s determination that Huddleston suffered a “compensable injury” warranting reversal of the trial court’s grant of summary disposition in favor of Leon, IHA and the Hospital.

As the majority aptly notes, “[a] party asserting a claim has the burden of proving its damages with reasonable certainty”¹ and damages will not be found to be speculative “merely because they cannot be ascertained with mathematical precision.”² Recovery, however, is not permitted for “remote, contingent, or speculative damages.”³ Moreover, damages are insufficiently proven “if a reasonable basis for computation” fails to exist.⁴

Here, the testimony of Huddleston’s own urology expert, Steven Jensen, M.D., establishes that Huddleston’s damages are speculative, and thus she is not entitled to recovery. Jensen testified that he places some restrictions,⁵ which are “not significant,” on the activities of a patient with one kidney compared to a patient who has undergone a partial nephrectomy. Jensen advised that patients who have had a total nephrectomy “really . . . [do not] have any limitations to their activity unless they develop hyperfiltration.”⁶ Jensen explained that the risk of hyperfiltration is small and takes approximately 20 to 25 years to develop. He further indicated that hyperfiltration has been found mainly “in patients who donated kidneys for the purpose of kidney transplantation.”

Jensen confirmed that patients with one kidney are restricted from taking certain medications compared to those who only had a partial nephrectomy. In regard to Huddleston’s assertion that she suffered damages because she is unable to take prescribed medications for osteopenia,⁷ the evidence demonstrates that Huddleston is still able to take over the counter medications for the condition. Additionally, there is no evidence of any ailments that Huddleston is unable to treat because she only has one kidney. Moreover, while Huddleston testified that one of her concerns is being unable to be a kidney donor if needed for one of her children, Jensen explained that regardless of whether Huddleston had a partial or a total nephrectomy, she would be prohibited from kidney donation because of her history of cancer.

The evidence supports that after the total nephrectomy, Huddleston was cancer free and her remaining kidney was functioning within normal limits. Jensen testified that Huddleston’s risk of recurrence of cancer was approximately six to seven percent. There was no evidence presented that Huddleston’s risk of recurrence of cancer was higher because of the alleged delay in diagnosis. Jensen advised that Huddleston had not suffered any harm, but could suffer harm

¹ *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 525; 687 NW2d 143 (2004).

² *Id.*

³ *Theisen v Knake*, 236 Mich App 249, 258; 599 NW2d 777 (1999).

⁴ *Ensink*, 262 Mich App at 525.

⁵ Examples of restrictions provided by Jensen for patients who have undergone a total nephrectomy include not participating in extreme sports and avoiding a high protein diet.

⁶ Jensen defined hyperfiltration as a loss in kidney function as a result of the kidney being “strained to an extensive degree” and the “tubules . . . not reabsorb[ing] as well over time.”

⁷ Osteopenia is any decrease in bone mass below the normal. *The American Heritage Medical Dictionary* (2007).

in the future because she had one kidney. Jensen explained that potential future complications included the development of “poorly-controlled diabetes or hypertension [resulting] in significant sclerosis of the kidneys,” or complications if “she sustain[ed] a trauma, [or was in] an automobile accident,” all of which Jensen admitted were theoretical complications. Jensen testified that Huddleston’s risk was the same as any kidney donor and if she was prone to hypertension or diabetes, then she could suffer kidney failure even if she had two kidneys. Jensen concluded that “[s]o long as Mrs. Huddleston’s creatinine values continue[d] to remain within normal limits and there [was] no sign of renal dysfunction . . . there [was] no harm to Mrs. Huddleston by the fact that she underwent a radical nephrectomy in 2008 rather than a partial nephrectomy in 2003.”

Additionally, Huddleston’s argument that the alleged delay in diagnosis caused her to suffer mental anguish lacks merit. There was no evidence presented that the mental anguish Huddleston allegedly experienced was proximately caused by the negligence claimed in this case and not by the diagnosis of cancer itself.⁸ Therefore, I would find that the trial court properly granted summary disposition in favor of IHA, Leon and the Hospital because Huddleston did not suffer a “compensable injury.”

/s/ Michael J. Talbot

⁸ *Pennington v Longabaugh*, 271 Mich App 101, 104; 719 NW2d 616 (2006).