

Rel: August 25, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2023-0009

**Dottie L. Hughes, as personal representative of the Estate of
Willie Hughes, Sr., deceased**

v.

Marjahn Andreise Marley

**Appeal from Tuscaloosa Circuit Court
(CV-20-900233)**

COOK, Justice.

Willie Hughes, Sr. ("Willie"), and Marjahn Andreise Marley were

involved in an automobile accident. Approximately six months later, Willie died from enterococcal sepsis. Dottie L. Hughes ("Hughes"), as the personal representative of Willie's estate, commenced a wrongful-death action against Marley in the Tuscaloosa Circuit Court, asserting that Marley's negligence and wantonness had caused the accident and that the accident had led to Willie's eventual death from sepsis. The trial court entered a summary judgment in favor of Marley, which Hughes now appeals. Because Hughes failed to establish the existence of a genuine issue of material fact as to whether Marley's conduct proximately caused Willie's sepsis and subsequent death, we affirm.

Facts and Procedural History

On September 11, 2017, Willie was stopped at a red light at the intersection of Bear Creek Road and Highway 69 in Tuscaloosa when his vehicle was struck by Marley's vehicle. According to the accident report, Willie was uninjured in the collision and declined medical treatment at the scene. Approximately six months later, on March 5, 2018, Willie died after developing sepsis.

In March 2020, Hughes, as the personal representative of Willie's estate, sued Marley in the trial court, seeking relief under Alabama's

wrongful-death statute, § 6-5-410, Ala. Code 1975, and setting forth allegations of negligence and wantonness against Marley.¹ In June 2020, Hughes amended her complaint to provide a more definite statement. In that amended complaint, Hughes clarified that she was asserting a single wrongful-death cause of action premised on theories of negligence and wantonness.²

In July 2022, Marley moved for a summary judgment, arguing that Hughes had failed to produce sufficient evidence of a causal link between

¹In the complaint's "Statement of the Parties," Hughes specified that she was bringing the action under § 6-5-410. The two counts in the complaint, however, were not styled as claims of wrongful death. Instead, the heading of count one was styled "Negligence" and alleged, among other things, that Marley's negligence and wantonness had "caused [Willie] to lose his life." More specifically, count one alleged that the September 2017 accident had "caused the slow onset of enterococcal sepsis," which resulted in Willie's death on March 5, 2018. The heading of count two was styled "Wantonness" and incorporated by reference the allegations in count one of the complaint. In addition, count two alleged that Marley's negligence had proximately caused permanent damage to Willie's vehicle. In the complaint, Hughes sought compensatory damages, punitive damages, injunctive relief, and other relief.

²The amended complaint included only a single count. The heading of that count was styled "Wrongful Death" and reiterated the original complaint's allegations (1) that Marley's negligence and wantonness had caused the accident and (2) that the cause of Willie's sepsis and subsequent death was the trauma he had suffered during the accident. The amended complaint sought punitive damages, injunctive relief, and other relief, but did not request compensatory damages.

the accident and Willie's subsequent death and that the wrongful-death action was statutorily time-barred. Specifically, Marley's summary-judgment motion asserted that Willie had died from natural causes unrelated to any trauma he allegedly had sustained in the accident and that Willie had "continuously experienced health conditions that put him at a high risk for sepsis leading up to his death." Marley additionally stated that, because the June 2020 amendment to Hughes's complaint was filed "2 years, 3 months, and 13 days" following Willie's death, Hughes's claim was barred by the limitations period set forth in § 6-5-410(d), which requires that a wrongful-death action be "commenced within two years from and after the death of the testator or intestate."

Marley submitted various evidentiary materials in support of his summary-judgment motion. Among those materials were Willie's death certificate and medical records stating that Willie's immediate cause of death was sepsis due to pneumonia and characterizing his manner of death as "natural causes." Marley also included an excerpt of the deposition testimony of Dr. Arthur Robert Sheppard, the certifying physician on Willie's death certificate, who denied that there was any correlation between the September 2017 accident and Willie's

development of sepsis in February 2018.

Hughes opposed the summary-judgment motion, arguing that a jury question existed as to the cause of Willie's sepsis. In her motion, Hughes did not dispute that "[Willie] was a sick man," but she contended that Willie's medical history had "not include[d] the trauma derivative injury of [e]nterococcal [s]epsis." Hughes further argued that Marley's deponent witness, Dr. Sheppard, had acknowledged the possibility that trauma sustained in an automobile accident could lead to the development of enterococcal sepsis. In support of her motion opposing a summary judgment, Hughes attached an excerpt of Dr. Sheppard's deposition testimony.

In December 2022, the trial court granted Marley's motion for a summary judgment. Hughes now appeals.

Standard of Review

We review a summary judgment under the following standard:

"This Court's review of a summary judgment is de novo. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). We apply the same standard of review as the trial court applied. Specifically, we must determine whether the movant has made a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to a judgment as a matter of law. Rule 56(c), Ala. R. Civ. P.; Blue Cross & Blue Shield of Alabama v. Hodurski, 899

So. 2d 949, 952-53 (Ala. 2004). In making such a determination, we must review the evidence in the light most favorable to the nonmovant. Wilson v. Brown, 496 So. 2d 756, 758 (Ala. 1986). Once the movant makes a prima facie showing that there is no genuine issue of material fact, the burden then shifts to the nonmovant to produce 'substantial evidence' as to the existence of a genuine issue of material fact. Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989); Ala. Code 1975, § 12-21-12."

Dow v. Alabama Democratic Party, 897 So. 2d 1035, 1038-39 (Ala. 2004).

Discussion

On appeal, Hughes challenges the trial court's summary judgment in favor of Marley, arguing (1) that her wrongful-death action was commenced within the applicable limitations period and (2) that a genuine issue of material fact existed as to whether the accident caused Willie's sepsis and eventual death.

As an initial matter, we note that, in his motion for a summary judgment, Marley asserted that the wrongful-death claim against him was barred by § 6-5-410(d). In particular, Marley contended that the amended complaint had been filed after the expiration of the limitations period in § 6-5-410(d) and did not relate back to the filing of the original complaint.

Under § 6-5-410(d), a cause of action alleging wrongful death "must

be commenced within two years" of the decedent's death. "In determining the nature of a cause of action, this Court looks to allegations in the body of the complaint, not the caption or label the party applies." Elizabeth Homes, L.L.C. v. Cato, 968 So. 2d 1, 8 (Ala. 2007). Here, the original complaint was filed within two years of Willie's death and expressly stated that Hughes was bringing the action under § 6-5-410. Furthermore, count one of the original complaint alleged that Marley's negligent and wanton operation of a motor vehicle had caused Willie's death. Thus, the original complaint asserted a wrongful-death claim under Alabama law.³ Because the original complaint filed by Hughes adequately and timely pleaded a cause of action alleging wrongful death, the wrongful-death action is not barred by the two-year limitations period set forth in § 6-5-410(d).⁴ Thus, the dispositive issue presented in

³See Sledge v. IC Corp., 47 So. 3d 243, 247 (Ala. 2010) (stating that the different counts alleged in a complaint, including a count alleging "negligence and/or wanton conduct," were not separate claims but were, instead, variations of a single wrongful-death claim); Burns v. Moore, 494 So. 2d 4, 5 (Ala. 1986) ("This is a wrongful death case. Plaintiff brought her action on counts of negligence and wanton misconduct.").

⁴"[W]here the amendment [to a complaint] is merely a more definite statement, or refinement, of a cause of action set out in the original complaint, the amendment relates back to the original complaint in accordance with A[la]. R. Civ. P. 15(c)." Cooper v. Thomas, 456 So. 2d 280,

this case is whether the trial court erred in entering a summary judgment in favor of Marley based on a lack of evidence of causation.

In a wrongful-death action predicated on theories of negligence and wantonness, a plaintiff must establish that the defendant's tortious conduct proximately caused the decedent's death. See Martin v. Arnold, 643 So. 2d 564, 567 (Ala. 1994) ("Proximate cause is an essential element of both negligence claims and wantonness claims."); D.A.C. ex rel. D.D. v. Thrasher, 655 So. 2d 959, 961 (Ala. 1995) ("It is well settled in this state that damages claims cannot be presented to a jury in the absence of sufficient evidence of an unbroken sequence of cause and effect, i.e., evidence that the act complained of was the proximate cause of the injury." (citing Alabama Power Co. v. Bryant, 226 Ala. 251, 146 So. 602 (1933))). This Court, moreover, has defined proximate cause as "an act or omission that in a natural and continuous sequence, unbroken by any new independent causes, produces the injury and without which the

283 (Ala. 1984) (citing Denney v. Serio, 446 So. 2d 7 (Ala. 1984)). Here, although the amendment to the complaint altered the heading for count one, the substantive allegations and basic occurrence described in count one of the amended complaint were identical to those contained in count one of the original complaint. Thus, the amendment related back to the original complaint filed within two years of Willie's death. See Rule 15(c)(2), Ala. R. Civ. P.

injury would not have occurred." Thetford v. City of Clanton, 605 So. 2d 835, 840 (Ala. 1992).

To prevail on his motion for a summary judgment, Marley was required to either submit affirmative evidence negating an essential element of Hughes's claim or demonstrate that the evidence presented by Hughes was insufficient to establish an essential element of her claim. Ex parte General Motors Corp., 769 So. 2d 903, 909 (Ala. 1999) (citing Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989) (Houston, J., concurring specially)).

As explained above, proximate causation is an essential element of the wrongful-death claim at issue in this case. In his motion for a summary judgment, Marley did not dispute that he had negligently caused the September 2017 accident. Instead, he argued that he was entitled to a summary judgment because Hughes had failed to present evidence showing that the accident produced the condition that resulted in Willie's death approximately six months later.

Importantly, when the existence of a causal link between a defendant's conduct and a plaintiff's injury cannot be commonly perceived by laypersons, expert testimony can assist a trier of fact in

resolving the issue of medical causation. See Courtaulds Fibers, Inc. v. Long, 779 So. 2d 198, 202 (Ala. 2000); Millry Mill Co. v. Manuel, 999 So. 2d 508, 518 (Ala. Civ. App. 2008) (concluding that physician's "specialized knowledge ... would assist the trial court in resolving the causation issue"); see also Rule 702, Ala. R. Evid.

As previously noted, Marley's summary-judgment motion cited the deposition testimony of Dr. Sheppard, who testified that he could not "state to a reasonable degree of medical certainty" that there was "any correlation between ... [Willie's] motor vehicle accident ... and his development of sepsis" In support of his motion, Marley also proffered medical records indicating that Willie's sepsis was due to pneumonia, and not trauma allegedly sustained in the accident. According to Marley, those medical records further indicated that Willie had undergone hip surgery in January 2018 and had been diagnosed with a urinary-tract infection and other health conditions that had "put him at a high risk for sepsis leading up to his death." The arguments, evidence, and expert testimony set forth in Marley's summary-judgment motion demonstrated that Hughes lacked evidence of proximate causation -- an essential element of her wrongful-death claim against Marley. Thus, the burden

then shifted to Hughes to demonstrate that a genuine issue of material fact as to proximate causation did exist in this case.

As relevant here, "the testimony of expert witnesses is not binding upon the jury, unless uncontradicted and a subject exclusively within the knowledge of experts." Dyer v. Traeger, 357 So. 2d 328, 330 (Ala. 1978) (plurality opinion) (citing Union Cent. Life Ins. Co. v. Scott, 286 Ala. 10, 236 So. 2d 328 (1970)) (emphasis added). To defeat Marley's motion for a summary judgment, Hughes was required to direct "the trial court's attention to evidence of that essential element already in the record" Ex parte General Motors Corp., 769 So. 2d at 909 (quoting Berner, 543 So. 2d at 691 (Houston, J., concurring specially)). More specifically, Hughes was required to direct the trial court's attention to evidence contradicting Dr. Sheppard's testimony denying a causal relationship between the September 2017 accident and Willie's development of sepsis. See Dyer, 357 So. 2d at 330.

In her response opposing Marley's summary-judgment motion, Hughes argued that the deposition testimony of Marley's own expert witness, Dr. Sheppard, included evidence that sepsis could be caused by trauma from a car accident. A complete reading of Dr. Sheppard's

deposition, however, establishes that his testimony does not constitute substantial evidence demonstrating that Marley's conduct was a proximate cause of the sepsis that resulted in Willie's death:

"[Hughes's counsel]: But Doctor, you admit that the infection is activated sometimes by traumatic physical events?

"[Dr. Sheppard]: Yes, but they generally have to be, like, penetrating injuries where you have big lacerations, abdominal -- something that punches into the abdomen and breaks the gut biome interface, or penetrating lesions to the chest or that kind of thing. Yes, it can be related to trauma, but it's typically very bad trauma.

"[Hughes's counsel]: Doctor, are you familiar with any event that did not break the skin of the abdomen that just hit the abdomen that caused the onset of this infection?

"[Dr. Sheppard]: No.

"[Hughes's counsel]: Would you think that is possible that that could happen?

"[Dr. Sheppard]: I could imagine one situation where that might could occur if the -- if the trauma to the abdomen was so severe that in spite of the fact that it does not penetrate the skin, if it was so severe that it totally cut in part -- into pieces. That can occur with, like, seatbelt trauma where the trauma -- a person hit something at a high speed and the seatbelt going across the lap and put such tension on the gut that it can tear the gut. That kind of person would be bad sick within just an hour or two."

(Emphasis added.) As Dr. Sheppard clearly explained, if seatbelt trauma

sustained in the accident had been responsible for Willie's sepsis, Willie would have been terribly ill within hours of the accident. Here, the undisputed evidence indicated that Willie developed sepsis months after the accident.

Moreover, even assuming that Dr. Sheppard's testimony acknowledged the possibility that seatbelt trauma sustained in an automobile accident could lead to the development of sepsis months later, Dr. Sheppard expressly denied that any accident-related trauma had caused Willie's sepsis in this case. Importantly, ""the mere possibility that the negligence of [the] defendant caused the injury without evidence thereof, is not sufficient to carry the case to the jury, or to support a verdict."" Thrasher, 655 So. 2d at 961 (quoting Bryant, 226 Ala. at 254, 146 So. at 605, quoting in turn Koger v. Roden Coal Co., 197 Ala. 473, 476, 73 So. 33, 34 (1917)); see also Ex parte Diversey Corp., 742 So. 2d 1250, 1254 (Ala. 1999) ("Proof which goes no further than to show an injury could have occurred in an alleged way, does not warrant the conclusion that it did so occur, where from the same proof the injury can with equal probability be attributed to some other cause." (citations omitted)).

Accordingly, Hughes failed to present evidence, expert or otherwise, contradicting Dr. Sheppard's testimony that the accident did not cause Willie's sepsis and subsequent death. Although the issue of proximate cause is ordinarily a question for the jury, "[w]hen ... the facts of the cause are not conflicting, and where there can be no reasonable difference of opinion as to the conclusion to be reached upon them, those questions are for the decision of the court as a matter of law." Alabama Power Co. v. Moore, 899 So. 2d 975, 979 (Ala. 2004) (quoting Hercules Powder Co. v. DiSabatino, 55 Del. 516, 527, 188 A.2d 529, 535 (1963)). In this case, there can be no reasonable difference of opinion as to whether the accident proximately caused Willie's death. See Alabama Farm Bureau v. Henderson, 374 So. 2d 355, 357 (Ala. Civ. App. 1979) (concluding that there was no "legal evidence from which reasonable persons could find a causal relationship" between December 1976 automobile accident and plaintiff's April 1977 hospitalization for lower back pain.) Therefore, Hughes has failed to demonstrate that she is entitled to relief.

Conclusion

Because Hughes failed to establish the existence of a genuine issue of material fact as to whether Marley's conduct proximately caused

SC-2023-0009

Willie's sepsis and subsequent death, we affirm the trial court's summary judgment in favor of Marley.

AFFIRMED.

Parker, C.J., and Wise, Sellers, and Stewart, JJ., concur.