

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

**SHAINA PARKS, Individually and
as Special Administrator of the Estate
of BILLY PARKS, SR.; CASSIE PARKS;
and BILLY PARKS, JR.**

PLAINTIFFS

v.

No. 5:10-cv-240-DPM

**UNITED STATES OF AMERICA;
and JOHN DOES 1-10**

DEFENDANTS

ORDER

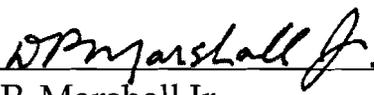
1. The United States' motion for summary judgment is granted in part and denied in part. Plaintiffs "agree that the only claim of negligence to be considered by the Court at trial is whether the VA's failure to timely diagnose and treat Mr. Parks's staph infection on September 6, 2008 ultimately caused damages, including Mr. Parks's death." *Document No. 43, at 16*. The United States is therefore entitled to judgment as a matter of law on all of Plaintiffs' other negligence claims.

2. On what the Court will call the September 6th claims, the United States' motion is denied because genuine disputes of material fact exist. First,

Dr. Quintiliani (Plaintiffs' retained expert) and Dr. Zawada (the treating ER doctor) offer conflicting opinions about whether the VA violated the standard of care on September 6th. Second, Dr. Quintiliani and Dr. Gelfand (Defendant's retained expert) offer differing opinions on whether the two-day delay in diagnosing the staph infection caused Mr. Parks's death. Proximate cause is usually for the fact-finder. *E.g., Arthur v. Zearley*, 337 Ark. 125, 135, 992 S.W.2d 67, 73 (1999). The mostly undisputed historical facts, *Document Nos. 33 & 44*, and the conflicting causation opinions of Drs. Quintiliani and Gelfand create a fact issue on proximate cause in this case. *Compare Ford v. St. Paul Fire & Marine Insurance Co.*, 339 Ark. 434, 438-39, 5 S.W.3d 460, 463 (1999) (expert unable to testify, within a reasonable degree of medical certainty, that patient would have survived but for delayed surgery).

3. Motion, *Document No. 31*, granted in part and denied in part. The Court will hold a pre-trial hearing on 21 October 2011 at 4:00 p.m. in Little Rock.

So Ordered.



D.P. Marshall Jr.
United States District Judge

11 October 2011