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**IN THE
COURT OF APPEALS OF INDIANA**

DANIEL STOCK, M.D., and COMMUNITY)
HOSPITALS OF INDIANA, INC.,)
)
Appellants-Defendants,)
)
vs.)
)
VIOLET HUGGINS,)
)
Appellee-Plaintiff.)

No. 49A02-0507-CV-655

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn Moberly, Judge
Cause No. 49D12-0312-CT-2212

October 5, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellants-defendants Daniel Stock, M.D., and Community Hospitals of Indiana, Inc. (the Hospital) (collectively, the appellants) appeal from a judgment entered in a medical malpractice action that was brought against them by the appellee-plaintiff Violet Huggins. Specifically, the appellants claim that the verdict must be set aside because Huggins failed to prove that Dr. Stock's conduct was the proximate cause of her injuries, and that the award of special damages attributable to Dr. Stock's alleged negligence was erroneous. Concluding that Huggins successfully proved that Dr. Stock's negligent conduct was the proximate cause of her injuries and that the award of damages was proper, we affirm the judgment of the trial court.

FACTS

Sometime during October 1997, forty-two-year-old Huggins began to experience periods of numbness and tingling in her left forearm. That numbness would occasionally spread to Huggins's left armpit and chest. She also experienced some stiffness in her right leg that caused her to stumble. Tr. p. 31.

On December 8, 1997, Huggins presented these complaints to Dr. Stock, who was an employee of the Hospital. After performing a physical examination, Dr. Stock determined that there was some weakness in one finger of Huggins's left hand. Dr. Stock's initial diagnosis was that Huggins was experiencing transient ischemic attacks as opposed to some other ailment such as multiple sclerosis or disc disease. Hence, Dr. Stock did not order any further testing. However, Dr. Stock informed Huggins that he would order a magnetic resonance imaging (MRI) study of her brain and spinal cord if her symptoms progressed.

On January 28, 1998, Huggins returned to Dr. Stock's office to pick up a lab slip and advised one of the employees that she was continuing to have problems walking. As a result, Huggins scheduled another appointment with Dr. Stock. When Dr. Stock examined Huggins on February 18, 1998, he indicated in his notes "that both legs now are stiff in the muscles, not in her joints, like the feeling that they have been overused, that she has overused the muscles. It's worse in the right leg, greater than the left." Tr. p. 441. Dr. Stock's notes further described Huggins's complaints as

"worse after prolonged sitting and better with stretching. She had stiffness, worse in the morning, still worse in the right leg than the left leg. She advised Dr. Stock that her gait was intermittently altered, almost like her right foot wouldn't come all the way up, but without associated pain."

Id. at 442. Dr. Stock considered these complaints as a change in symptoms rather than a progression. None of the tests that Dr. Stock performed would have ruled in or ruled out any neurological causes for Huggins's symptoms. However, he did not refer Huggins to a neurologist or any other specialist.

As the symptoms persisted and worsened, a friend of Huggins advised her to be examined by a specialist. As a result, Dr. David Lukens examined Huggins on April 10, 1998. During that appointment, Huggins complained of the same signs and symptoms that she had presented to Dr. Stock in December 1997. Dr. Lukens recommended that Huggins undergo neuropsychological testing, a brain MRI, and an EMG.

Thereafter, in May 1998, Dr. Lukens referred Huggins to an orthopaedic surgeon, Dr. Douglas Kuhn. Dr. Kuhn examined Huggins on June 4, 1998, and suspected that her

problems were neurological in nature. Hence, he promptly referred Huggins to Dr. Kristi George, a neurologist, who met with Huggins later that same day. Dr. George determined that Huggins was hyperreflexic, had an abnormal gait, and had experienced sensory changes in her torso and extremities. As a result, Dr. George ordered an MRI, which revealed that Huggins had experienced nerve inflammation and cervical spinal cord compression from a ruptured disc. Thereafter, Huggins was referred to Dr. Herbert Biel, a spinal surgeon, who performed anterior cord decompression surgery on Huggins. Dr. Biel performed additional surgery a few days later to further decompress Huggins's spine. It was ultimately determined that Huggins suffers from permanent incomplete quadriplegia. This disease is a "weakness of all four extremities, as opposed to quadriplegia which is complete weakness of all four extremities." Appellant's App. p. 415 (emphasis added). Thereafter, Huggins began rehabilitation under the direction of Dr. Mark Duerden.

On October 29, 1999, Huggins filed a complaint with the Indiana Department of Insurance against Dr. Stock and the Hospital alleging that they were negligent in their care and treatment of her. The Medical Review Panel (MRP) unanimously concluded that Dr. Stock and the Hospital failed to meet the requisite standard of care and that Dr. Stock's conduct was a factor in the resultant damages to Huggins. Thereafter, on December 2, 2003, Huggins filed a complaint in the trial court. The matter proceeded to a bench trial on April 5, 2005. The trial court entered a judgment for Huggins and awarded her \$750,000 in damages. The trial court found that:

26. Violet Huggins has incurred medical expenses in the amount of \$102,973.38.

27. That Violet Huggins would have required the two surgeries performed by Dr. Biel irrespective of the delay in diagnosis as well as the associated hospital costs in the amount of \$64,616.34.
28. That the amount of medical expenses incurred as a result of the defendants' failure to meet the applicable standard of care is \$38,357.04.

CONCLUSIONS OF LAW

4. Daniel Stock, M.D., breached his duty of care to Violet Huggins by failing to act with the degree of skill possessed and exercised by a reasonably careful, skillful and prudent practitioner of general practice/family practice medicine treating such maladies under the same or similar circumstances.
5. That Dr. Daniel Stock breached his duty of care to Violet Huggins in paragraph four (4) in the following respects:
 - (a) Failed to make a timely referral;
 - (b) Failed to order or prescribe additional appropriate diagnostic testing[.]

. . .

9. Daniel Stock, M.D. owed Violet Huggins a duty to reasonably diagnose and treat her condition or in the alternative to make an appropriate referral for such care as was required of her condition.
10. As a direct and proximate result of the negligence and carelessness of the Defendant, Daniel Stock, M.D., Plaintiff, Violet Huggins, has been permanently physically injured, suffered and continues to suffer great mental anguish and physical pain, has incurred medical expenses in the amount of \$38,357.04, has suffered a significant loss of value of time and will do so in the future to follow her previously ordinary pursuits, and suffered a great loss of enjoyment of her life, and will continue to suffer such losses.

. . .

13. Community Hospital . . . was negligent in its care and treatment of Violet Huggins under respondeat superior since Dr. Stock was employed by Community Hospital . . . at all relevant times.

14. Judgment should be entered in favor of . . . Huggins, in the amount of the statutory cap of \$750,000 pursuant to I.C. § 34-18-14-3 in effect for occurrences of medical negligence prior to July 1, 1999. \$38,357.04 of that judgment is attributed to medical expenses proximately caused and incurred by the negligence of the defendants. The Plaintiff is awarded prejudgment interest for a period of 36 months at a rate of 8% per annum. . . . The Court enters a total Judgment in the amount of \$774,000 plus costs of this action.

Appellant's App. p. 14-17. Dr. Stock and the Hospital now appeal.

DISCUSSION AND DECISION

I. Standard of Review

In this case, the trial court entered special findings of fact and conclusions of law pursuant to Indiana Trial Rule 52(A). Therefore, our standard of review is two-tiered: we first determine whether the evidence supports the trial court's findings, and second, we determine whether the findings support the judgment. Boonville Convalescent Ctr., Inc. v. Cloverleaf Healthcare Serv., Inc., 834 N.E.2d 1116, 1121 (Ind. Ct. App. 2005). Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them, and the trial court's judgment is clearly erroneous if it is unsupported by the findings and the conclusions that rely upon those findings. Id. In determining whether the findings or the judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom. Id.

In conducting our review, we cannot reweigh the evidence or judge the credibility of any witness, and we must affirm the trial court's decision if the record contains any supporting evidence or inferences. Id. However, while we defer substantially to findings of

fact, we do not do so with regard to conclusions of law. Carmichael v. Siegel, 754 N.E.2d 619, 625 (Ind. Ct. App. 2001). Rather, we evaluate questions of law de novo and owe no deference to a trial court's determination of such questions. Id.

II. The Appellants' Contentions

A. Proximate Cause

Dr. Stock and the Hospital maintain that the verdict cannot stand because Huggins failed to prove that Dr. Stock's alleged negligent conduct was the proximate cause of her injuries. In essence, Huggins contends that the MRP's conclusion that Dr. Stock failed to meet the applicable standard of care was not sufficient evidence for the trial court to establish proximate causation.

In addressing this issue, we first note that in order for a plaintiff to prevail in an action for medical malpractice, she must prove (1) that the physician owed a duty to the plaintiff; (2) that the physician breached that duty; and (3) that the breach proximately caused the plaintiff's injuries. Mayhue v. Sparkman, 653 N.E.2d 1384, 1386 (Ind. 1995). Before liability can attach, there must be proof that the defendant's negligence proximately caused the plaintiff's harm. Dunn v. Cadiente, 516 N.E.2d 52, 55 (Ind. 1988). The element of proximate cause is established by connecting the alleged wrongful act with the injury. Id. Proximate cause requires, at a minimum, that the harm would not have occurred but for the defendant's conduct. Gates v. Riley ex rel. Riley, 723 N.E.2d 946, 950 (Ind. Ct. App. 2000). By the same token, the defendant's act need not be the sole cause of the plaintiff's injuries. Smith v. Beaty, 639 N.E.2d 1029, 1034 (Ind. Ct. App. 1994). Rather, the central question is

whether the defendant's wrongful act is one of proximate cause rather than a remote cause.

Id.

In this case, the appellants concede that substantial evidence exists to support the trial court's findings of fact as to the elements of duty and breach. Appellant's Br. p. 6. However, they claim that Huggins failed to present substantial evidence at trial to support the factual findings that connected Dr. Stock's alleged wrongful act to Huggins's injury. Hence, Dr. Stock and the Hospital content that the trial court's conclusions of law regarding causation are erroneous.

We first note that despite the appellants' contention that other testimony must have been offered at trial to prove proximate causation beyond the "bare conclusion" of the medical review panel, appellants' br. p. 8, our Supreme Court has observed that "because of the nature of the review process . . . we think the opinions of individual members of a medical review panel are imbued with sufficient probative value to permit the party favored by such an opinion to withstand a motion for judgment on the evidence." Bonnes v. Feldner, 642 N.E.2d 217, 221 (Ind. 1994); see also Sawlani v. Mills, 830 N.E.2d 932, 940 (Ind. Ct. App. 2005), trans. denied, (holding that the MRP's opinion that is favorable to the plaintiff on the issue of proximate cause is sufficient to withstand a defendant's motion for a judgment on the evidence). Moreover, even though this case is not before us on an issue regarding the grant or denial of a motion for a judgment on the evidence, the record before us demonstrates that additional evidence was presented in this case on the issue of proximate causation that was beyond the unanimous opinion of the MRP.

For instance, Dr. Jeffrey Collier, a member of the MRP, testified that addressing Huggins’s problem at an earlier time—such as referring her to a specialist—would have “spared her the additional months of symptoms, difficulty ambulating, pain and potential for permanent damage.” Appellant’s App. p. 323-24. Dr. Thomas Dascoli, another member of the MRP, testified that if Huggins’s problems had been discovered in March or April, “there would have almost certainly have been less permanent damage to the patient.” Id. at 408. Similarly, Dr. Patrick Reibold, another member of the MRP, testified that Dr. Stock’s conduct delayed the diagnosis and resulted in permanent damage that would not have occurred had Huggins’s problem been resolved earlier. Id. at 415. Additionally, Dr. Biel testified that Huggins’s spinal cord was so swollen that her discs must have herniated more than a month earlier, yet neither he nor anyone else had a “definite idea” of when the actual herniations occurred. Id. at 285.

In considering the above, the trial court could have reasonably inferred that Huggins’s problems were caused by compression of her spinal cord that was caused by a combination of degenerative changes and disc herniations. That inference is further bolstered by Dr. Reibold’s testimony that while it may have been impossible to say “exactly” when Huggins’s discs herniated, the discs could have been ruptured at the time that Dr. Stock examined her. Id. at 423. Notwithstanding Dr. Stock’s claim that the evidence failed to establish that her degenerative spine disease was the source of her symptoms at the time she was under his care, no evidence suggested that her symptoms were caused by anything other than a compression of her spinal cord. Similarly, no other diseases or conditions were diagnosed as

a cause of Huggins's neurological complaints. Hence, we conclude that the MRP's opinion and the evidence presented at trial provided a sufficient basis for the trial court's determination that Dr. Stock's breach of his duty to Huggins proximately caused her injuries. Thus, the appellants' allegation of error with respect to this issue fails.

III. Damages

Dr. Stock and the Hospital next argue that the verdict cannot stand because Huggins failed to prove that \$38,357.04 in medical expenses were proximately caused by and incurred as a result of Dr. Stock's negligence. In essence, the appellants contend that Huggins failed to prove any medical expenses attributable to Dr. Stock's conduct.

We initially observe that to support an award of compensatory damages, facts must exist and be shown by the evidence which afford a legal basis for measuring the plaintiff's loss. Ind. Univ. v. Ind. Bonding & Sur. Co., 416 N.E.2d 1275, 1288 (Ind. Ct. App. 1981). The damages must be ascertainable in some manner other than mere speculation, conjecture, or surmise and must be referenced to some fairly definite standard, such as market value, established experience, or direct inference from known circumstances. Id. When reviewing an award of damages, we will not reverse the award if it is within the scope of the evidence before the trial court. Dunn, 516 N.E.2d at 54.

Here, the evidence established that Huggins's medical expenses totaled \$102,973.38. Appellant's App. p. 14. Dr. Biel's itemized statement reflected medical costs to Huggins in the amount of \$86,457.46 and Dr. Duerden's expenses for Huggins's rehabilitation totaled \$16,515.92. Id. at 456-61. In addition, Huggins tendered an exhibit documenting the

medical expenses that were paid by her health care insurer. Id. at 469-717.¹ That exhibit listed expenses for medical testing and procedures other than those provided by Dr. Duerden and Dr. Biel. Id.

The trial court then subtracted what it found to be the surgery costs because Huggins would have required the two surgeries regardless of Dr. Stock's conduct. As noted above, there was evidence that Huggins's condition had considerably worsened by the delay in diagnosis that was caused by Dr. Stock's negligence. To be sure, Dr. Stock admits that by the time Huggins was examined by Dr. George on June 4, 1998, her condition had "markedly advanced." Appellant's Br. p. 3. The evidence showed that Huggins's condition had deteriorated to such an extent prior to the diagnosis that her recovery and rehabilitation were prolonged. Hence, the trial court could have based its finding of special damages on the reasonable inference that the total cost of the surgeries and associated hospital costs that would have been necessary in spite of the delay in diagnosis did not necessarily include all of the costs reflected in the exhibit showing Dr. Biel's charges that totaled \$86,457.47. In other words, by finding that only \$64,616.34 of Dr. Biel's expense itemizations were costs that Huggins would have otherwise incurred regardless of the delay in diagnosis, the trial court could have reasonably concluded that \$21,841.12 of the surgery and hospital costs associated with the two surgeries that Dr. Biel performed were amounts that were associated with the delay in diagnosis and subsequent prolonged recovery and rehabilitation that were caused by Dr. Stock's breach of duty to Huggins. By drawing such an inference and adding all of

¹ This exhibit contained 248 pages of medical expenses.

Huggins's expenses resulting from Dr. Duerden's care and treatment in the amount of \$16,512.92, the trial court could also have reasonably determined that \$38,357.04 was the amount of medical expenses incurred as a result of Dr. Stock's negligence.

In arriving at such a result, it is also apparent that the trial court considered the exhibit containing Dr. Biel's notes of his initial evaluation of Huggins as well as the memoranda regarding the surgery. Specifically, Dr. Biel determined that Huggins had an eight-month history of symptoms that had progressed by June 17, 1998, to the point that she had to use a cane during the previous three months. Dr. Biel also reviewed the MRI scan of Huggins's neck that was taken on June 10, 1998, and advised her that there was no guarantee that she could ever function normally. Tr. p. 135-36. Dr. Biel's records—as well as those of Dr. Duerden—indicate that Huggins's recovery and rehabilitation were significantly altered because of Dr. Stock's negligence.

In sum, the trial court heard all of the evidence that was presented at trial and reviewed the medical exhibits and the evidence associated with the expenses that Huggins incurred. Hence, it is apparent that the award of damages was within the scope of the evidence presented at trial, and we cannot say that the damage award was clearly erroneous.

The judgment of the trial court is affirmed.

VAIDIK, J., and CRONE, J., concur.