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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000652-MR

TERESA DOWDY, ADMINISTRATRIX
OF THE ESTATE OF ALBERT WAYNE
DOWDY (DECEASED); TERESA
DOWDY, AS NEXT FRIEND OF HER
MINOR CHILDERN, NATHAN WAYNE
DOWDY AND AARON WAYNE DOWDY — APPELLANTS

v.

APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 05-CI-00142

DINESH SHAH, M.D.; PINELAKE
REGIONAL HOSPITAL, LLC, D/B/A
JACKSON PURCHASE MEDICAL
CENTER; AND MORGAN-HAUGH, PSC — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, NICKELL, AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Teresa Dowdy (Mrs. Dowdy) appeals the decision of the Graves Circuit Court granting summary judgment to Dr. Dinesh Shah (Dr. Shah),

Pinelake Regional Hospital (Jackson Purchase Medical Center) and Morgan-Haugh, PSC. For the following reasons, we affirm.

On January 3, 2004, Albert Wayne Dowdy (Mr. Dowdy) attempted to commit suicide with an overdose of Tylenol-PM. He was transported to Jackson Purchase Medical Center (Jackson Purchase). Mr. Dowdy was admitted into the emergency room where life-saving procedures were performed. After stabilizing Mr. Dowdy, hospital staff determined he was depressed and maintained suicidal thoughts.

Dr. Shah admitted Mr. Dowdy to the hospital and was his primary care physician. He had treated Mr. Dowdy for anxiety and depression for the previous four years, Dr. Shah diagnosed Mr. Dowdy as severely depressed and acutely suicidal on January 3, 2004. He ordered a mental health consult through the Hospital's provider, Four Rivers Behavioral Health (Four Rivers); however, the contract between Jackson Purchase and Four Rivers to provide mental health consults had expired and for 20 days the Jackson Purchase was unable to provide psychological evaluations by mental health specialists. As a result, Dr. Shah resorted to in-patient psychiatric treatment for Mr. Dowdy.

On January 5, 2004, Dr. Shah noted that Mr. Dowdy was feeling better, but suggested a transfer for specialized psychiatric care. Mr. Dowdy declined a transfer. Five days after being discharged, on January 10, 2004, Mr. Dowdy died of a self-inflicted gunshot wound. Mrs. Dowdy[1] initiated this action

[1] As administratix of the Estate of Albert Wayne Dowdy, and as Next Friend of her minor children, Nathan Wayne Dowdy and Aaron Wayne Dowdy.

against Dr. Shah, Morgan-Haugh, PSC, his employer at the time care was given and Jackson Purchase. [2] Mrs. Dowdy alleged the medical providers had failed to adequately treat Mr. Dowdy during his hospitalization. Mrs. Dowdy disclosed Dr. Michael P. Young, an internal medicine specialist from Burlington, Vermont, as her medical expert. The parties took Dr. Young's deposition on September 26, 2006. Following this deposition, the defendants moved the trial court for summary judgment, arguing that Mrs. Dowdy failed to show proximate cause between Dr. Shah's care and Mr. Dowdy's suicide. The trial court granted the motion, finding the testimony did not sufficiently link causation with the alleged breach of duty. We agree.

Kentucky Rules of Civil Procedure (CR) 56.03 provides, in pertinent part, that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." On review of an order for summary judgment, "[t]he record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Cente., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). "The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to

[2] d/b/a Pinelake Regional Hospital

judgment as a matter of law." *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996) *citing* CR 56.03.

It is well established that a breach of duty alone is not sufficient to render a physician liable, but a patient must also prove the alleged negligence proximately caused the injury. *Walden v. Jones*, 439 S.W.2d 571, 574 (Ky. App. 1968). Kentucky law requires a plaintiff to present evidence "reflecting medical reasonable probability of proximate cause for the claimed adverse result as related to the charge of negligence." *Id*. at 576. In his deposition, Dr. Young's stated the following:

> Q. You say it would reduce the risk. Does the literature give us any indication of what that reduction of risk is?
>
> A. I can't tell you whether it's a 50 percent, 75 percent, or 25 percent risk reduction. We just – there certainly is a consensus though it's a substantial or robust risk reduction because we spend literally, billions of dollars on this intervention in this country alone, so clearly it's felt what needs to be done.
>
> Q. But I – I think you would agree with me, the same outcome could have resulted in this case?
>
> A. The same outcome could have come. Unfortunately, we'll never know because the standard of care wasn't provided.
>
> . . .
>
> Q. Would you agree that a mental health consultation for Mr. Dowdy would not necessarily have prevented his suicide?
>
> A. I can't say with certainty it would have prevented his suicide.

> Q. Can you say to a reasonable degree of medical probability that a mental health consultation would have prevented Mr. Dowdy's suicide?
>
> A. How are you defining medical probability?
>
> Q. More likely than not.
>
> A. I think it's unknown because the – we are provided too little information about Mr. Dowdy in the hospital, so it's like the core lab test that would predict wasn't done.
>
> . . .
>
> Q. You – you testified earlier that essentially there's not enough information to say one way or another whether or not a mental health consultation would have changed the outcome in this case, is that fair to say?
>
> A. Yes.
>
> Q. So, as we sit here today, you can't say one way or the other whether or not it would change the outcome?
>
> A. Correct, not with any certainty.

Mrs. Dowdy cites to *Richard v. Adair Hospital Foundation Corp.*, 566 S.W.2d 791 (Ky. App. 1978) in support of her position that Dr. Young's testimony sufficiently linked the actions of Dr. Shah to the injury suffered. The Kentucky Court of Appeals in *Richard* stated, "[g]iven the medical testimony in this case, that it could safely be said that this child's chances of recovery would have been substantially greater and better had she been treated earlier, a summary judgment was premature." *Id*. at 794. The Court further stated, "[t]he distinction drawn in *Walden* . . . that the causal connection between accident and injury must be shown

by medical testimony that causation is probable and not merely possible, is a matter of degree." *Id*. (Emphasis added).

Dr. Young's testimony does not provide any probable opinion that Mr. Dowdy's chances of survival would have been substantially greater had he been given a psychological evaluation. Dr. Young made no statements that had a mental health consult been given favorable results would have been probable. He stated that there was a possibility of favorable results, but did not give any indication of the likelihood of that possibility. He also stated there is a consensus that providing a mental health consultant is a substantial risk reduction because billions of dollars are spent on that intervention, but this does not address whether Dr. Shah's alleged lack of care proximately caused the injury to Mr. Dowdy.

Finally, Mrs. Dowdy argues the suicide letter prepared by Mr. Dowdy was circumstantial evidence that, coupled with the testimony of Dr. Young, is sufficient to support a verdict in her favor. Particularly, Mrs. Dowdy cites to the language, "[c]ircumstantial evidence may in some [circumstances] be sufficient to prove causation" where "causation is so apparent that laymen, with a general knowledge would have no difficulty in recognizing it." *Jarboe v. Harting*, 397 S.W.2d 775, 777-78 (Ky. 1965). Here, the suicide letter contained the phrases, "I don't know what's going on," "I have been wating [sic] for someone to tell me whats [sic] going on," and "nobody would help me on telling me nothing," which we find unpersuasive evidence in this case. The suicide letter made no reference to Dr. Shah or the hospital, and only confirmed he was depressed and suicidal at the

time of writing the letter. Further, this is not a situation in which causation is so apparent that it is easily recognizable by laymen. Here, causation needed to be proven by medical testimony.

For the following reasons the judgment by the Graves Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Robert L. Prince
Benton, Kentucky

BRIEFS FOR APPELLEES:

Frank P. Doheny, Jr.
Bradley A. Case
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