

STATE OF MICHIGAN
COURT OF APPEALS

LULA RAINES, Personal Representative of the
ESTATE OF JOYCELYN HARVEY, Deceased,

UNPUBLISHED
December 6, 1996

Plaintiff-Appellant,

v

No. 173729
LC No. 89-918345 NH

ZDZISLAW FIUTOWSKI, M.D.,

Defendant-Appellee,

and

NORTH DETROIT GENERAL HOSPITAL,

Defendant.

Before: Young, P.J., and Holbrook, Jr., and J. Richard Ernst,* JJ.

PER CURIAM.

In this wrongful death action alleging medical malpractice, a jury found that defendant Zdzislaw Fiutowski, M.D., had been negligent, but that his negligence was not a proximate cause of decedent's death. Plaintiff's post-trial motion for a new trial or in the alternative for judgment notwithstanding the verdict was denied by the trial court. Plaintiff now appeals as of right and we affirm.

On appeal, plaintiff argues that she is entitled to a new trial because the jury's verdict that Dr. Fiutowski's negligence was not a proximate cause of decedent's death was against the great weight of the evidence. We disagree. In reviewing whether a trial court abused its discretion in denying a motion for new trial, this Court engages in an in-depth analysis of the record, MCR 2.611(A)(1)(e), and will give substantial deference to the lower court's determination that a verdict was not against the great weight of the evidence. *Arrington v Detroit Osteopathic Hospital Corp*, 196 Mich App 544; 493 NW2d 492 (1992).

* Circuit judge, sitting on the Court of Appeals by assignment.

At trial, plaintiff's medical expert opined that Dr. Fiutowski had been negligent in failing to order immediate blood transfusions for decedent through a central line and in failing to order additional antibiotics to treat decedent's infection. However, defendant's medical expert opined that defendant had not breached the standard of care in his treatment of decedent, and that decedent's condition had reached the point of irreversibility before defendant Fiutowski began treating her. Most compelling, however, was the undisputed evidence that decedent sat unattended for approximately five hours in defendant-hospital's emergency room before receiving any treatment. Given these circumstances, the jury's verdict was not against the great weight of evidence and the trial court did not abuse its discretion in denying plaintiff's motion for a new trial. Moreover, the jury's finding that Fiutowski's negligence did not proximately cause decedent's death was neither logically nor legally inconsistent with jury's award of substantial damages against defendant hospital. Defendant hospital had defaulted, effectively admitting liability for decedent's death. A default operates as an admission of liability solely against the defaulting party, and does not bind the codefendant who appears and contests the action. *Allstate Ins Co v Hayes*, 442 Mich 56, 73, n 20; 449 NW2d 743 (1993); *Klimmer v Klimmer*, 66 Mich App 310, 313; 238 NW2d 586 (1975).

Plaintiff also argues that she is entitled to a new trial because the trial court abused its discretion in disallowing plaintiff's expert witness from testifying that defendant Fiutowski had breached the applicable standard of care when he failed to order platelet transfusions for plaintiff's decedent. We find no abuse of discretion.

Pursuant to MCR 2.302(E)(1), a party is under a duty to supplement a discovery response to include later acquired information regarding the identity of expert witnesses and the subject matter and substance of the expert's testimony. If a party fails to comply with this rule, the trial court may impose sanctions as provided by MCR 2.313(B)(2), including "refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence." See MCR 2.302(E)(2). A trial court's decision to impose discovery sanctions is discretionary, and we review it on appeal for an abuse of that discretion. *Middleton v Margulis*, 162 Mich App 218, 222; 412 NW2d 268 (1987).

Here, in denying plaintiff's motion for new trial, the trial court noted that, although plaintiff raised the issue of Dr. Fiutowski's failure to transfuse decedent with platelets in her complaint and in the final pretrial order filed five days before trial, in supplemental interrogatories submitted just three days before trial, she did not identify this as a claim that would be supported by her expert witness at trial. The court held that defendant would have been prejudiced had plaintiff's expert been allowed to testify regarding the need for a platelet transfusion. Given the court's broad discretion regarding the conduct of trial, we are unable to say that an abuse of discretion occurred.¹ In any event, the imposition of the sanction did not deny plaintiff the opportunity to support her claim that defendant breached the standard of practice, and, indeed, the jury was persuaded that defendant was negligent in some respect. We find it highly improbable that the jury would have found the failure to administer platelets was a proximate cause of decedent's death, when it did not find that the failure to order additional antibiotics or to order that blood transfusions be administered through a central line was a proximate cause of death. Furthermore,

given defendant-hospital's admission of negligence and causation, and the jury's substantial damage award against the hospital, the exclusion of this testimony did not affect the outcome of the trial.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Donald E. Holbrook, Jr.

/s/ J. Richard Ernst

¹ We also reject plaintiff's argument that the term "blood transfusions" was meant to include both packed red blood cells and platelets because the evidence clearly established that a platelet transfusion is distinct from other types of transfusions.