STATE OF MICHIGAN

COURT OF APPEALS

TIMOTHY J. DOOLEY and JUDY BARNES DOOLEY,

Plaintiffs-Appellees,

v

ST. JOSEPH MERCY HOSPITAL, a division of CATHERINE MCAULEY HEALTH SYSTEM, a division of SISTERS OF MERCY HEALTH CORPORATION,

Defendant-Appellant,

and

ASSOCIATES IN GENERAL AND VASCULAR SURGERY, P.C., NON-INVASIVE VASCULAR TESTING, INC., and SETH W. WOLK, M.D.,

Defendants.

UNPUBLISHED
July 7, 1998

No. 198024
Washtenaw Circuit Court
LC No. 94-001193-NH

Before: Corrigan, C.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Defendant appeals by right the judgment for plaintiffs on their claims for medical malpractice and loss of consortium. We vacate the judgment, and remand for entry of judgment for defendant.

I

Plaintiff Timothy Dooley has a genetic blood clotting disorder that became apparent in November 1992. His doctors treated him during his subsequent hospitalization with the anticoagulant Heparin, but directed that he take another anticoagulant, Coumadin, after his discharge. Dooley took Coumadin until June 1993. He returned to the hospital a month later, whereupon his physician again

treated his condition with Heparin. Dooley also underwent a venous duplex study on July 6 as part of this treatment. His physician discharged him on July 13, again directing that he take Coumadin. The next day, Dooley called his doctor because he was experiencing severe leg pain. The physician eventually instructed Dooley to go to defendant's noninvasive vascular laboratory for another venous duplex study.

Jeanne Page, a registered vascular technician employed by defendant, performed a venous duplex study on Dooley on July 19. She prepared a worksheet detailing her findings and called Dooley's doctor to report the test results. One of the doctor's associates received the oral report and directed Page to instruct Dooley to admit himself into the hospital. In accordance with defendant's policy, Dr. Seth A. Wolk then reviewed Page's worksheet and prepared a written report detailing the results within a day of the test. Dooley's physicians, acting on their mistaken belief that an extension of a clot existed, once again treated his condition with Heparin and eventually discharged him on July 30. Dooley experienced nausea, weakness, and diarrhea after his discharge. Doctors later discovered that Dooley had suffered an adrenal hemorrhage that destroyed his adrenal glands, leaving him with primary adrenal insufficiency.

Plaintiffs commenced this action for medical malpractice and loss of consortium, alleging that Page inaccurately reported to Dooley's physician that the July 19 venous duplex study showed an "extension" of a blood clot, thereby setting off a chain of events that culminated in Dooley having a reaction to Heparin that destroyed his adrenal glands. Plaintiffs further alleged that Dr. Wolk negligently failed to review the videotape of the July 19 study when preparing his report and negligently failed to compare the July 19 study with the July 6 study. Plaintiffs alleged that if Dr. Wolk had made the comparison and reported that no change existed, Dooley's doctors would not have treated him with Heparin and Dooley's adrenal glands would not have been destroyed. The jury returned a verdict for plaintiffs, awarding Timothy Dooley $400,000 and Judy Dooley $200,000. The trial court subsequently denied defendant's motion for judgment notwithstanding the verdict (JNOV) on the ground that plaintiffs failed to establish proximate causation between the alleged negligence and Dooley's injury.

II

Defendant raises several issues, but we need only address one because it is dispositive. We agree that the trial court erred in denying defendant's motion for JNOV because plaintiffs failed to present sufficient evidence to establish that defendant's alleged negligence was a legal cause of Dooley's injury.[1] In reviewing the trial court's decision on a motion for JNOV, we view the evidence in a light most favorable to the nonmoving party to determine whether reasonable jurors could reach different conclusions. *Zander v Ogihara Corp*, 213 Mich App 438, 441; 540 NW2d 702 (1995).[2] "If reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury." *Id.*

A plaintiff must prove four factors to establish a claim for medical malpractice: (1) the applicable standard of care, (2) breach of the standard of care by the defendant, (3) injury, and (4) proximate causation between the breach and the injury. *Locke v Pachtman*, 446 Mich 216, 222; 521

NW2d 786 (1994). To establish proximate causation, "the plaintiff must prove the existence of both cause in fact and legal cause." *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997).

> To establish legal cause, the plaintiff must show that it was foreseeable that the defendant's conduct "may create a risk of harm to the victim, and . . . [that] the result of that conduct and intervening causes were foreseeable." [*Id*. at 648, quoting *Moning v Alfono*, 400 Mich 425, 439; 254 NW2d 759 (1977).]

Proximate cause, or legal cause, involves considerations of policy akin to the issue of duty. *McMillan v State Highway Comm*, 426 Mich 46, 51; 393 NW2d 332 (1986). Regarding the interrelationship between duty and legal causation, our Supreme Court in *McMillan, supra* at 51-52, quoted extensively from Prosser & Keeton, Torts (5th ed), § 42, pp 272-274:

> "Unlike the fact of causation, with which it is often hopelessly confused, this is primarily a problem of law. *It is sometimes said to depend on whether the conduct has been so significant and important a cause that the defendant should be legally responsible. But both significance and importance turn upon conclusions in terms of legal policy, so that they depend essentially on whether the policy of the law will extend the responsibility for the conduct to the consequences which have in fact occurred*.
>
> * * *
>
> *It is quite possible to state every question which arises in connection with 'proximate cause' in the form of a single question: was the defendant under a duty to protect the plaintiff against the event which did in fact occur?*" [Emphasis in original.]

Proximate causation is for the court to decide when reasonable jurors could not differ about the application of undisputed facts to the legal concept. *McMillan, supra* at 63, n 8.

In this case, the trial court denied defendant's motion, reasoning that "there was sufficient evidence upon which the jury in this case could have and did find both malpractice and proximate cause." We disagree. We conclude that reasonable jurors could not differ about whether Dooley's adrenal hemorrhage was a foreseeable consequence of defendant's alleged negligence in reporting the results of the venous duplex study. Although defendant could arguably foresee that the report would induce Dooley's physician to hospitalize him and administer Heparin, plaintiffs presented no evidence to establish that defendant could foresee that the *change* in Dooley's medication would cause an adrenal hemorrhage.

The expert witnesses agreed that Dooley had a rare and unpredictable reaction to Heparin. Defendant's expert, Dr. David Schteingart, explained that Dooley's condition is "relatively rare" and adrenal insufficiency related to anticoagulants is "very rare." He testified that an adrenal hemorrhage is a "rare" cause of adrenal insufficiency. Plaintiffs' expert, Dr. Blake Tyrrell, stated that Dooley had an

"idiosyncratic" reaction to Heparin and that Dooley's medical history did not suggest that he would have been at risk for a hemorrhage while taking either Coumadin or Heparin. Dr. Tyrrell testified that because Dooley's reaction was idiosyncratic, he could not predict whether Dooley would have had the same reaction during later hospitalizations. Dr. Tyrrell explained that Dooley's reaction was "extremely unusual" and that he could have experienced the hemorrhage while taking Coumadin.

The record does not support plaintiffs' assertions that Dooley's doctors mistreated his condition because of defendant's alleged negligence or that Heparin poses different risks than Coumadin. The expert witnesses agreed that Dooley's doctors rendered either proper or permissible treatment. Although the expert witnesses made isolated references to Heparin as "more potent acutely" and Heparin treatment as "aggressive," "aggressive anticoagulation," and "additional therapy," the record is devoid of evidence that Heparin poses a higher risk of hemorrhage than Coumadin. Plaintiffs' own expert, Dr. Tyrrell, testified that Dooley's physicians could properly use either Coumadin or Heparin to treat his condition. Dooley's physicians, Drs. William Patton and Ronald Sanda, testified that a risk of hemorrhage exists with both drugs. Further, no evidence suggests that plaintiff's reaction resulted from a higher dose of Heparin.

We conclude on the basis of this evidence that plaintiffs failed to establish the legal cause component of proximate causation. Dooley had an extremely rare and unpredictable complication from the use of anticoagulants, a type of drug that he must take because of a genetic condition. Defendant's alleged negligence did not increase the risk Dooley already faced from this needed medication. Accordingly, the trial court erred in denying defendant's motion for JNOV because reasonable jurors could not differ about whether Dooley's adrenal hemorrhage was a foreseeable consequence of defendant's alleged negligence. *Weymers*, *supra* at 647; *Zander*, *supra* at 441. We therefore vacate the judgment and remand for entry of judgment for defendant.

Vacated and remanded. We do not retain jurisdiction. Defendant, being the prevailing party, may tax costs under MCR 7.219.

/s/ Maura D. Corrigan
/s/ William C. Whitbeck

[1] Plaintiff Judy Barnes Dooley's derivative claim for loss of consortium fails because it stands or falls with the primary claim for medical malpractice. *Long v Chelsea Community Hosp*, 219 Mich App 578, 589; 557 NW2d 157 (1996).

[2] Our recitation of the pertinent facts of this case is consistent with this requirement.