

STATE OF MICHIGAN
COURT OF APPEALS

LISA HUNTER, Personal Representative of the
Estate of ALEX HUNTER, Deceased,

Plaintiff-Appellant,

v

MADISON COMMUNITY HOSPITAL, INC.,
YATINDER M. SINGHAL, M.D., YATINDER
M. SINGHAL, M.D., P.C., TRINITY HEALTH
CORPORATION, d/b/a ST. JOSEPH MERCY
HOSPITAL OF MACOMB, and KENNETH
ANDREWS, M.D.,

Defendants-Appellees.

UNPUBLISHED
December 28, 2006

No. 270770
Oakland Circuit Court
LC No. 2003-053683-NH

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motions for summary disposition in this medical malpractice action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff's husband, Alex Hunter, was admitted to Madison Community Hospital, after he tried to commit suicide. Hunter was treated by defendant Dr. Yatinder Singhal, who determined that Hunter had sufficiently improved and that he could be released and obtain treatment on an outpatient basis at defendant St. Joseph Mercy Hospital. The day after his release, Hunter went to St. Joseph Hospital where he was evaluated by defendant Dr. Kenneth Andrews. Dr. Andrews determined that Hunter did not need to be admitted as an inpatient and could begin the hospital's day program the following day. Hunter killed himself later that same day. The trial court ruled that plaintiff failed to present sufficient evidence to create an issue of fact regarding causation.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also any depositions, affidavits, admissions, and other documentary evidence submitted by the parties, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party. Summary disposition is appropriate only if the

opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In order to establish a cause of action for medical malpractice, a plaintiff must establish four elements, one of which is that the plaintiff's injuries were the proximate result of the defendant's breach of the applicable standard of care. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004). In a medical malpractice action, the plaintiff must prove that the injury was more probably than not caused by the defendant's negligence. MCL 600.2912a(2). Further, "the plaintiff cannot recover for loss of an opportunity to survive or an opportunity to achieve a better result unless the opportunity was greater than 50%." *Id.*

Proximate cause comprises two separate elements: cause in fact and legal or proximate cause. *Skinner v Square D Co*, 445 Mich 153, 162-163; 516 NW2d 475 (1994). "Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without . . . that act or omission." *Craig, supra* at 87. "While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause." *Id.* (emphasis in original, footnote omitted). "Cause in fact may be established by circumstantial evidence, but the circumstantial evidence must not be speculative and must support a reasonable inference of causation." *Robins v Garg*, 270 Mich App 519, 527; 716 NW2d 318 (2006).

The issue of proximate cause is generally a question of fact. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000). If, however, "the facts bearing upon proximate cause are not in dispute and reasonable persons could not differ about the application of the legal concept of proximate cause to those facts," the issue is a question of law for the court. *Paddock v Tuscola & Saginaw Bay R Co, Inc*, 225 Mich App 526, 537; 571 NW2d 564 (1997).

Plaintiff's expert, Dr. Mark Fettman, opined that Dr. Singhal breached the standard of practice by releasing Hunter when there were indications that he was not ready to be released. However, he admitted that he did not know if Hunter was in fact suicidal at the time of discharge. Hunter denied suicidal thoughts and Dr. Fettman had no reason to believe that he was not being candid at the time. Further, while Dr. Fettman testified that Dr. Singhal should not have released Hunter, he never testified that the discharge was a cause of Hunter's suicide. He testified only that Hunter's condition was such that upon his evaluation at St. Joseph Mercy Hospital the following day, he should have been immediately accepted as an outpatient in the day program or as an inpatient. But Dr. Fettman could not say what would have happened had Hunter been hospitalized that day; he simply hoped hospitalization would have interfered with Hunter's thoughts of suicide. Further, Dr. Fettman admitted that even if Hunter had entered the day program, he did not know if further evaluation would have revealed that Hunter was a candidate for inpatient admission. In short, Dr. Fettman never testified how Dr. Singhal's decision to discharge Hunter, or Dr. Andrews's decision not to hospitalize Hunter, caused Hunter to commit suicide or that it was more probable than not that defendants' decisions caused Hunter to commit suicide.

Dr. Fettman's affidavits of merit were insufficient to create an issue of fact regarding causation. In his affidavits, Dr. Fettman stated that as a proximate result of defendants' negligence, Hunter suffered various injuries, including premature death. However, "it is not

sufficient . . . to merely state that the defendants' alleged negligence caused an injury. Rather, [the statute] requires . . . a statement as to the *manner* in which it is alleged that the breach was the proximate cause of the injury." *Roberts v Mecosta Co Gen Hosp (After Remand)*, 470 Mich 679, 699 n 16; 684 NW2d 711 (2004) (emphasis in original). Because Dr. Fettman did not explain how Dr. Singhal's decision to discharge Hunter, or Dr. Andrews's decision to allow Hunter to leave caused him to commit suicide, the affidavits were insufficient to establish a genuine issue of fact regarding causation. Therefore, the trial court did not err in granting defendants' motions.

Affirmed.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly