

STATE OF MICHIGAN
COURT OF APPEALS

ROYCE WILCOXSON-BEY, by Next Friend
PEPPER WILCOXSON-BEY, and ROXY
WILCOXSON-BEY, a Stillborn Child, by
PEPPER WILCOXSON-BEY, Personal
Representative, and PEPPER WILCOXSON-BEY,
Individually,

Plaintiff-Appellee,

v

PROVIDENCE HOSPITAL & MEDICAL
CENTERS, INC.,

Defendant-Appellant,

and

DEBRA WRIGHT, M.D., and ST. JOHN HEALTH
SYSTEMS, INC.,

Defendants.

UNPUBLISHED
December 11, 2008

No. 279146
Wayne Circuit Court
LC No. 05-524008-NH

Before: Schuette, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant Providence Hospital & Medical Centers, Inc., appeals as of right from a judgment, following a bench trial, awarding plaintiff \$3 million in this medical malpractice action. We reverse.

I. FACTS

Plaintiff was diagnosed with a monoamniotic-monochorionic twin pregnancy, an extremely rare high-risk pregnancy in which both fetuses share a single amniotic sac. A monoamniotic twin pregnancy involves increased risks of complications, including the chance that the two umbilical cords will become entangled and that one or both of the fetuses could die or be injured as a result of cord compression. Additionally, the death of one twin can lead to brain injury or death of the other. Tragically, that is what occurred here.

Plaintiff filed this action, alleging that her treating physician, Dr. Debra Wright, committed malpractice by failing to order inpatient monitoring at least once a day. Plaintiff's expert witness, Curtis Cetrulo, M.D., testified that the standard of care in 2003 required Dr. Wright to order daily non-stress testing (NST), and that Dr. Wright breached that standard by ordering NSTs only twice a week. Dr. Cetrulo acknowledged that there is always a risk with monoamniotic twins because "basically a hundred percent of the time there's some cord entanglement." He denied that the standard of care required that a patient be placed on a continuous fetal monitor, and acknowledged that, even if an NST were given three times a day, a patient could still experience an acute cord accident that would cause a poor result. Dr. Cetrulo believed, however, that data from the available literature suggested that, in a case involving monoamniotic twins, daily testing "can change the outcome and prevent a poor outcome in that setting."

Defendant argues that it was entitled to summary disposition because plaintiff failed to establish causation. We agree.

II. STANDARD OF REVIEW

We review a trial court's grant or denial of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim, and it should be granted if the evidence demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001).

III. ANALYSIS

A plaintiff in a medical malpractice action has the burden of proving proximate causation by showing, at a minimum, that his or her injury was "more probably than not" caused by the defendant's negligence. MCL 600.2912a(2); see also *Dykes v William Beaumont Hosp*, 246 Mich App 471, 477; 633 NW2d 440 (2001). The defendant's negligence must be a cause in fact of the plaintiff's injuries before it can be considered a proximate cause, but it need not be the sole cause. *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004). "It is important to bear in mind that a plaintiff cannot satisfy this burden by showing only that the defendant *may* have caused his injuries. Our case law requires more than a mere possibility or a plausible explanation." *Id.* (emphasis in original). Summary disposition of a plaintiff's claim is appropriate where plaintiff fails to establish a genuine issue of material fact as to causation. *Dykes*, *supra* at 478-479.

Here, Dr. Cetrulo initially testified that the infants' injuries were likely due to an acute cord accident, but when specifically asked, Dr. Cetrulo testified that he could not express an opinion as to whether it was an acute verses a chronic phenomenon.¹ Regardless, it could have

¹Deposition of Dr. Cetrulo, M.D., July 12, 2006, pp 101-103:

caused the fetal death of Roxy in as little as 15 to 20 minutes, and probably caused the brain injury to Royce within an hour. Dr. Cetrulo stated that the infants' injuries occurred sometime

(...continued)

Q. [Mr. Lenderman] All right. Let me see if I can refine it.

To detect variable decelerations resulting from cord occlusion or cord compression, obviously the patient would need to be on a monitor at this point in time, correct?

A. [Dr. Cetrulo] Yes.

Q. And up until and through, actually, the August 22nd monitoring on this patient, you don't see any evidence on the fetal monitor tracings that would suggest that the cords were entangled to the point that there was any element of occlusion or impairment of blood flow to the fetuses; is that true?

A. Yes.

Q. And the cord accident which you described earlier in this case involved either tightening of the knot or some other entangling of the cord of Twin A such that there wasn't adequate blood flow to that fetus, and that it subsequently resulted in demise, correct?

A. Yes.

Q. Do you have any opinion as to whether that was an acute versus a chronic phenomenon? And I'll define those for you.

A. No.

Q. Do you have any opinion as to how long that process took to cause the ultimate demise?

A. No.

Q. Could it have been as short as 15 to 20 minutes?

A. Yes.

Q. Could it have been something longer than a day?

A. Yes.

Q. Do you have any opinion in this case which of those two ends of the spectrum is more likely?

A. No.

between August 22 and August 26, but he could not say with any certainty what date or time the injuries actually occurred.²

Plaintiff argues that Dr. Wright's practice of performing NSTs only twice weekly was the cause of the infants' injuries. To support this argument, Dr. Cetrulo asserted that rather than the bi-weekly testing ordered by Dr. Wright, the appropriate standard of care required testing on a daily basis. However, Dr. Cetrulo acknowledged that the standard of care did not require continuous fetal monitoring.

As Dr. Cetrulo admitted, the infants' injuries could have occurred at anytime between August 22 and August 26, including when plaintiff was in the parking lot leaving the hospital. Therefore, plaintiff has not established that it was Dr. Wright's failure to perform daily NSTs that caused the infants' injuries.

Accordingly, the trial court erred in denying defendant's motion for summary disposition.³

² Deposition of Dr. Cetrulo, M.D., July 12, 2006, pp 115-116:

Q. [Mr. Lenderman] Do you have any opinion about when the cord accident occurred in terms of whether it was the 22nd, 23rd, 24th?

A. [Dr. Cetrulo] Prior to the 26th.

Q. And After the 22nd?

A. Yes.

Q. You have no further information with any greater detail as to what date or time that was?

A. No.

Q. Likewise, you have no opinion and aren't able to state, based upon any evidence available, where the patient was geographically when this cord event occurred, correct?

A. Yes.

Q. It could have happened as she's in the parking lot leaving the hospital on August 22nd, true?

A. Yes.

³ In light of our conclusion, we need not reach the remaining arguments raised by defendant on appeal.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Bill Schuette

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald