STATE OF MICHIGAN

COURT OF APPEALS

AMY HAMMOND,

Plaintiff-Appellant,

v

PORT HURON HOSPITAL, SANDRA DAGENAIS, R.N., KHALIDA GRAHAM, R.N., and VENERA GREER, R.N.

Defendants-Appellees.

UNPUBLISHED
September 30, 2014

No. 315755
St. Clair Circuit Court
LC No. 12-000042-NH

Before: METER, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

In this nursing-negligence case, plaintiff appeals as of right from a grant of summary disposition to defendant Port Huron Hospital ("defendant").[1] We affirm.

On January 6, 2012, plaintiff filed a complaint alleging that, in 2010, plaintiff was taken to defendant's emergency department[2] and diagnosed with "H1N1 and pneumonia"[3] and placed into a medically-induced coma. Plaintiff alleged that she developed a "late stage pressure ulcer" because defendant's nurses failed to turn her with sufficient frequency and that permanent scarring developed. Plaintiff also made reference to a lack of proper "follow up care." She alleged negligence against defendant and against nurses Sandra Dagenais, Khalida Graham, and Venera Greer. The parties later stipulated to the dismissal of the individual nurses.

[1] The other defendants were listed on the caption in the claim of appeal but have been dismissed from the case.

[2] The record shows that the visit to the emergency department and subsequent admission to the hospital occurred on March 3, 2010.

[3] Defendant presented an affidavit averring that plaintiff suffered from "acute respiratory failure requiring ventilation, bilateral pneumonia, obstructive sleep apnea, morbid obesity, oxygenation desaturation with movement, asthma, hypertension and heart disease."

On February 25, 2013, defendant filed a motion for summary disposition under MCR 2.116(C)(10). Defendant alleged that plaintiff had failed to establish a breach of the standard of care and had failed to demonstrate that "anything [d]efendant did or did not do was a proximate case of her alleged damages." Defendant attached numerous deposition excerpts to its motion. Dagenais testified that when plaintiff was admitted to the hospital, "She had multiple skin rashes under her breasts, her groin, all of her skin folds. I just remember that she was very sick." Dagenais testified that she turned plaintiff every two hours, which was the standard interval for turning someone who cannot turn herself. Dagenais stated that because of plaintiff's condition, she was at risk of developing pressure ulcers. Dagenais testified that procedures were undertaken to prevent ulcers, such as the placement of plaintiff in a bed for larger patients, regular skin assessments, and use of special creams.

Graham testified that plaintiff had "multiple skin issues from the beginning [and a] moist, yeasty rash under body folds." Graham testified that plaintiff was turned every two hours[4] and that procedures were implemented to prevent pressure ulcers. Graham stated:

> She was put on a specialty bed with a pressure reduction surface with continuous rotation. We were working on minimizing the effects of moisture, minimizing friction and sheer [sic], frequent repositioning, optimizing nutrition, controlling blood sugars.

Graham testified that when plaintiff did develop a wound on her back, the treatments implemented included "dry gauze with Hydrogel, irrigating with saline, observation, utilizing a pillow and repositioning."

Greer testified that plaintiff was repositioned "about every two hours." She further testified that additional measures, such as managing excess moisture, were implemented to try to prevent pressure ulcers. Greer indicated that when plaintiff did develop an ulcer, application of Nystatin powder and monitoring of her dressings were implemented.

In its motion, defendant also argued that plaintiff's proposed expert regarding the standard of care, Nurse Kathryn Rudd, was not qualified to testify as an expert because she had no particular qualifications aside from being a nurse.[5]

In response, plaintiff argued that Rudd was a nursing instructor and was qualified to testify as an expert. Plaintiff further argued that she sufficiently established a breach of the standard of care and causation because Dagenais testified that, around the time the wound was noticed, she checked on plaintiff at 8:00 p.m., 12:20 a.m., and 4:44 a.m. Plaintiff argued that this

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[4] Graham initially stated that plaintiff was turned every two hours, "condition permitting." She explained that certain critically ill patients cannot tolerate repositioning. However, she went on to state that plaintiff was turned every two hours, even though it would take plaintiff some time to "recover the oxygen levels."

[5] Defendant also raised other issues that are not analyzed by plaintiff in this appeal.

was evidence that plaintiff was not turned every two hours, as required by the standard of care. Plaintiff also cited excerpts from the depositions of plaintiff, her mother Linda Hammond, and her friend April Emerick. Plaintiff testified that despite her coma and condition, she had "sporadic memories" of "being very uncomfortable because I was left in the same position and not . . . moved." Linda Hammond testified that she spent periods longer than four hours in the hospital with plaintiff and plaintiff was never repositioned. Emerick testified that plaintiff was often in the same position and that she had a discussion with Graham in which Graham stated that plaintiff "gets very upset when we move her and it affects her breathing" after Emerick asked her, "Why is she not being repositioned?"

The trial court granted defendant's motion. The court stated that Nurse Rudd "appears to have ignored or discounted the sworn testimony of all three nurses that [p]laintiff was turned every two hours, that the [p]laintiff was assessed every four hours, that [p]laintiff was placed in a specialty bed with a pressure reduction surface, and that nurses even applied medication to [p]laintiff's wounds." The court stated: "By not considering the testimony of these witnesses all of whom were there and all of whom observed the events in question as well as the treatment rendered to [p]laintiff that is documented in medical records, Nurse Rudd based her opinion on assumptions that were not in accord with the established facts." The court ruled that Rudd's conclusions were "based upon speculation and conjecture" and that plaintiff "has failed to present legally sufficient evidence to establish causation between the alleged breaches of care and the [p]laintiff's injuries." The trial court stated that, in light of its ruling, it did not need to address the issue of Rudd's qualifications as an expert.

This appeal followed.

> We review de novo a trial court's decision on a motion for summary disposition. Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence submitted by the parties, viewed in the light most favorable to the nonmoving party, shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. [*Pennington v Longabaugh*, 271 Mich App 101, 104; 719 NW2d 616 (2006) (citations omitted).]

Plaintiff argues that she presented sufficient evidence of a breach of the standard of care and of causation[6] in order to survive a motion for summary disposition. Plaintiff primarily relies

[6] Plaintiff refers to her claim as a claim for "medical malpractice" and acknowledges that she must show the following in order to prevail:

> (1) the appropriate standard of care governing the defendant's conduct at the time of the purported negligence, (2) that the defendant breached that standard of care, (3) that the plaintiff was injured, and (4) that the plaintiff's injuries were the proximate result of the defendant's breach of the applicable standard of care. [*Craig ex rel. Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).]

on Rudd's opinions; the testimony of plaintiff, Linda Hammond, and Emerick; the fact that the turning of plaintiff every two hours was not documented; and the fact of the ulcer itself (arguing that its very existence was evidence of negligence).[7]

The trial court correctly granted defendant's motion for summary disposition. The three nurses involved all testified that plaintiff was turned approximately every two hours, as required. Rudd testified that she questioned this conclusion because the turns were not documented in the chart. However, the lack of documentation in the chart does not create a question of fact sufficient to survive a motion for summary disposition. See, generally, *Zdrojweski v Murphy*, 254 Mich App 50, 64; 657 NW2d 721 (2002) (discussing the fact that no injury resulted from a lack of adequate charting). Rudd testified that pressure ulcers were always the result of a breach of the standard of care. However, Rudd also answered "Yes" when asked, "even under the best of circumstances, there would be a risk of a patient such as [plaintiff] perhaps developing skin tearing or a complication along those lines under [the] circumstances?"

Moreover, plaintiff did not testify with specificity regarding the frequency of her being turned. Although Linda Hammond and Emerick stated that they did not see plaintiff being turned frequently or at all, Rudd did not emphasize this testimony as a basis for her conclusions regarding the turning schedule; instead, she explicitly based her conclusions on the lack of charting and on the discussion that Emerick had with Graham[8] in which Graham allegedly stated that plaintiff "gets very upset when we move her and it affects her breathing."[9] However, Graham, in this alleged conversation, never explicitly and directly contradicted her testimony that plaintiff was repositioned every two hours, and, at any rate, it is difficult to discern how an expert witness evaluating a possible breach of the standard of care should place more weight on this secondhand recitation as opposed to the direct statements from Graham. We note that Rudd

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Plaintiff also implicitly acknowledges that expert testimony is necessary with regard to issues surrounding the standard of care. See *Thomas v McPherson Community Health Center*, 155 Mich App 700, 705; 400 NW2d 629 (1986).

[7] We decline to consider evidence cited by plaintiff on appeal that was not included in the lower-court record. *In re Rudell Estate*, 286 Mich App 391, 405; 780 NW2d 884 (2009).

[8] Rudd referred to the "discussion by Nurse Graham [with] *the family*" (emphasis added), but presumably she was referring to Emerick.

[9] Although Rudd referred generally to the depositions of Linda Hammond and Emerick, she stated the following when asked to explain why she did not believe that plaintiff had been repositioned every two hours:

> They state that in their deposition[s]. However, there is no documentation in their own charting that they have actually moved the patient. And there is discussion by Nurse Graham [with] the family that, due to the fact that [plaintiff] was not tolerating the fact of being moved, . . . she was moved on a limited basis.

At any rate, we note that neither Linda Hammond nor Emerick were there to observe plaintiff at all times.

answered "No" when asked whether she was accusing the nurses of lying at their depositions. Rudd did not adequately explain the discrepancy between her conclusions and the nurses' testimony.

Plaintiff cites the testimony of Dagenais in which Dagenais mentions checking on plaintiff less frequently than every two hours. However, this testimony referred to "checking on" plaintiff, not turning her.

Even after viewing the evidence in the light most favorable to plaintiff, we find that plaintiff failed to establish a genuine issue of material fact. Indeed, Rudd's conclusions were based on assumptions not sufficiently supported by facts. See *Thornill v Detroit*, 142 Mich App 656, 658; 369 NW2d 871 (1985).[10]

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly

[10] Plaintiff focuses on the alleged lack of sufficient turning. We note, however, that Rudd also testified that some sort of "wound care specialist" should have been called in to help plaintiff. However, Rudd acknowledged that she did not know what type of specialist defendant had available in this regard and that she had not sought that information from anyone. Rudd's testimony was insufficient to create a question of fact for trial, in light of testimony that the nurses implemented procedures to care for the wound.