STATE OF MICHIGAN

COURT OF APPEALS

DENNIS E. MAUCH, Guardian for SARAH LAAKSO,

Plaintiff-Appellant,

v

HURLEY MEDICAL CENTER and DENISE C. WILL, N.P.,

Defendants-Appellees,

and

WILLIAM MCALLISTER, M.D.,

Defendant.

UNPUBLISHED
October 11, 2011

No. 299938
Genesee Circuit Court
LC No. 08-090185-NH

Before: MURPHY, C.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Plaintiff, Dennis E. Mauch, the guardian of Sarah Laakso, appeals as of right the trial court's order granting Hurley Medical Center (Hurley) and Denise C. Will, NP's motion for summary disposition and dismissing this medical malpractice cause of action. We affirm.

On appeal, plaintiff challenges whether sufficient evidence was presented to establish a genuine issue of material fact regarding proximate cause. The trial court concluded that plaintiff had not set forth specific facts establishing "'a reasonable inference of a logical sequence of cause and effect.'" *Teal v Prasad*, 283 Mich App 384, 392-393; 772 NW2d 57 (2009), quoting *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004).

We review de novo a trial court's decision to grant a motion for summary disposition. *Greene v A P Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006). When summary disposition is sought under MCR 2.116(C)(10), we view the documentary evidence presented in the light most favorable to the nonmoving party. *Id*. Summary disposition is properly granted "if there is

no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002).[1]

To sustain a medical malpractice claim such as this, plaintiff bears the burden of proving: "(1) the applicable standard of care, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury." *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). The fourth element, proximate cause, incorporates both cause in fact and legal cause. *Craig*, 471 Mich at 86. "'The cause in fact element generally requires showing that "but for" the defendant's actions, the plaintiff's injury would not have occurred. On the other hand, legal cause . . . involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.'" *Id*. at 86-87, quoting *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Legal cause is not considered until a plaintiff has first established cause in fact. *Id*. at 87.

The trial court correctly applied *Teal* to the instant case. In *Teal*, the plaintiff alleged that the defendants were responsible for Teal's suicide because they failed to properly diagnose Teal's depression and alcoholism, and prematurely discharged him from a psychiatric hospital without a proper treatment plan. *Teal*, 283 Mich App at 388-389. According to the plaintiff's expert, "it was more likely than not that Teal would not have committed suicide" if defendants had met the standard of care. *Id*. at 389. Yet, no evidence was presented to show how prematurely discharging Teal triggered the causal chain of events that resulted in Teal's suicide. *Id*. at 393. While this Court agreed that Teal would not have committed suicide if the defendants had locked Teal away for the rest of his life, it was too speculative and tenuous to conclude his suicide was the result of being prematurely discharged without "'a reasonable inference of a logical sequence of cause and effect.'" *Id*. at 392-393, quoting *Craig*, 471 Mich at 87.

The *Teal* decision precludes the success of plaintiff's argument that defendants were a cause in fact of the accident because all of the experts agreed that Laakso would not have been hit by the car if she had still been hospitalized. While it is certainly true that the accident could not have occurred if Laakso had still been in the psychiatric unit, plaintiff must present sufficient evidence that would allow a reasonable jury to infer a causal relationship between defendants' actions and Laakso's injuries. Without this evidence, a jury must speculate on how discharging Laakso set into motion a series of events that caused her to be hit by a car some 57 hours after her discharge.

The record reveals very little about Laakso's actions or state of mind for the 57 hours following her discharge and the accident. Although the information that is available is doubted by plaintiff's own experts, those experts summarily hypothesize that the accident would not have occurred if she had been better stabilized. But, drawing such a connection from this record is too

[1] Plaintiff's brief on appeal relies in part on an outdated and overruled summary disposition standard. No longer must a court deny a motion for summary disposition unless it is "impossible" for the non-moving party to support its claim at trial. See *Grand Trunk Western R, Inc v Auto Warehousing Co*, 262 Mich App 345, 350; 686 NW2d 756 (2004).

attenuated and speculative. There are simply too many unknowns. For example, what did Laakso eat and drink during this time period? Did she sleep at all? Did she ingest illegal drugs (as was possible based on her testimony)? Was she on or off her medication? What was her state of mind? Did she merely slip to her left and get hit by the car, or did she intend to get hit? Although the answer to one or more of these questions could have an impact on the issue of cause in fact, the absence of any evidence to allow the jury to conclude what actually occurred is a death knell to her case. *Teal*, 283 Mich App at 394 ("Any arguments regarding the causes of Teal's suicide are speculative, because there is scant evidence establishing Teal's mental state, thoughts, and suicidal tendencies after his discharge from the hospital.").

Furthermore, both of plaintiff's experts testified that while walking at night in dark clothing along a road may not be a wise choice, it does not mean the person needs psychiatric treatment. While it is unfortunate that Laakso was injured after being released from Hurley, plaintiff only speculates how discharging Laakso caused the accident and has not shown a causal relationship. Simply because there is a correlation between the two events does not mean that the former caused the latter. *Teal*, 283 Mich App at 392. Therefore, defendants' motion for summary disposition was properly granted.

Affirmed.

Defendants may tax costs, having prevailed in full. MCR 7.219(A).

/s/ William B. Murphy
/s/ Michael J. Talbot
/s/ Christopher M. Murray