

STATE OF MICHIGAN
COURT OF APPEALS

ESTATE OF SHERIDA STANLEY, by
SHERELL STANLEY, Personal Representative,

UNPUBLISHED
February 19, 2013

Plaintiff-Appellant/Cross-Appellee,

v

No. 301237
Kalamazoo Circuit Court
LC No. 2005-000601-NH

KRISHNA MOHAN JAIN, M.D.,

Defendant-Appellee/Cross-
Appellant,

and

BORGESS MEDICAL CENTER, E.
ANDERSON, C. R. BEGEMAN, T. BENSCHER,
M. GALLAGHER, A. KENDALL, SUZANNE
SACKETT-MUMA, D. E. PEAKE, J.
SHINABARGER, Z. SMITH, CHRIS THOMAS,
and L. VROEGINDENWEY,

Defendants.

Before: BECKERING, P.J., and STEPHENS and BOONSTRA, JJ.

PER CURIAM.

Sherida Stanley died on June 10, 2003. Plaintiff, the Estate of Sherida Stanley, sued defendant, Krishna Jain, M.D., for medical malpractice arising out of Jain's handling of the insertion of a temporary catheter into the base of Stanley's neck and the ensuing complications that led to her death. An eight-day jury trial was held in September 2009. After the jury was unable to reach a verdict, the trial court declared a mistrial. Plaintiff appeals as of right the trial court's subsequent November 5, 2010 order granting defendant's motion to strike an expert witness and to dismiss the case with prejudice. Defendant cross-appeals the trial court's August 19, 2009 order denying his motion for summary disposition and the trial court's order denying his motion for directed verdict at the trial. We reverse the trial court's November 5, 2010 order granting defendant's motion to strike and motion to dismiss, and we affirm the trial court's orders denying defendant's motions for summary disposition and directed verdict.

I. BASIC FACTS

On June 10, 2003, Stanley, then 34 years old, was being treated at Borgess Medical Center for peritonitis, an infection of the membranes that line the abdominal cavity. Due to her end stage renal failure, Stanley had a peritoneal catheter in place for purposes of dialysis. Nephrologist Dr. Than Oo decided that Stanley's peritoneal catheter should be removed temporarily in order to best treat her infection. Because she would still require dialysis, defendant, a board-certified vascular surgeon, was enlisted to insert a temporary catheter at the base of Stanley's neck.

According to defendant's trial testimony, in the dialysis unit of Borgess Medical Center, he first inserted a catheter into Stanley's left subclavian vein. The subclavian vein cannot be seen from the outside of the body. Rather, landmarks on the body, the collarbone and the sterna notch, are used to find the vein. A needle is put into the vein before the catheter is inserted, and defendant was confident that he found the left subclavian vein with the needle. After the catheter was inserted, defendant tested the catheter for blood flow. He explained that a catheter works properly if 200 ccs of blood pass through it every minute. However, defendant did not get adequate blood flow from the catheter. He believed the reason that he did not get adequate blood flow was that either the catheter was kinked or the catheter was laying against the wall of the vein. According to defendant, Stanley was doing fine. She was not showing any signs of distress.

Defendant then inserted a curved catheter into Stanley's internal jugular vein. Again, he did not get adequate blood flow, and he removed the catheter. Defendant switched to a straight catheter. He inserted the catheter into Stanley's internal jugular vein, and got adequate blood flow. He was satisfied that the catheter would allow Stanley to receive dialysis. Defendant dictated an operative note at 9:31 a.m. Before he left the dialysis unit, defendant ordered a chest x-ray to check the placement of the catheter.

The x-ray was taken at 9:36 a.m. At approximately 10:00 a.m., defendant was notified that the radiologist wanted to speak with him. Defendant looked at the x-ray with the radiologist. The x-ray revealed that the catheter was not in the right spot. According to defendant, the catheter had left the internal jugular vein and had entered the chest cavity. The x-ray also showed haziness over Stanley's lung. The haziness was caused by blood in the chest.

Defendant returned to the dialysis unit and removed the catheter from Stanley. Stanley then became short of breath. Because of the blood in Stanley's chest, defendant put in a chest tube. The chest tube drained 1200 ccs of blood from Stanley. Defendant also called a code. In addition, defendant requested that a cardiothoracic surgeon be called for a consult. He knew that Stanley, because of the bleeding, might need a thoracotomy. It was cardiothoracic surgeons who were privileged at Borgess Medical Center to do that procedure. Defendant also ordered four units of blood for Stanley. Stanley stabilized. Dr. Mark Marbey, a cardiothoracic surgeon,

responded to defendant's request for a consult.¹ According to defendant, Marbey evaluated Stanley; he checked Stanley's vital signs, looked at the chest tube, and recommended that Stanley be observed for the next several hours. Because Stanley was "clinically stable," defendant agreed with Marbey's recommendation.

Sometime before 12:00 p.m., Stanley was transferred to the intensive care unit (ICU). She received one unit of blood.² At 1:50 p.m., a resident with the critical care unit noted that there was minimal bleeding from Stanley's chest tube. At 2:15 p.m., defendant checked Stanley's chest tube, and he noted that there was no active bleeding.

At 3:00 p.m., a nurse in the ICU was suctioning Stanley's endotracheal tube. Stanley began coughing, and 800 ccs of bright red blood filled the chest tube. Defendant responded to a page. When he arrived at the ICU, Dr. Alphonse DeLucia, Marbey's medical partner, was there. They began CPR on Stanley, who was extremely unstable. Stanley was transferred to an operating room, where defendant assisted DeLucia in surgery. After DeLucia cut open Stanley's chest, defendant broke Stanley's clavicle to gain access to the bleeding area. DeLucia put a stitch in a blood vessel. The surgery was unsuccessful, and Stanley died.

An autopsy was performed on Stanley. The pathologist concluded that Stanley bled to death. He found two areas of injury to Stanley. First, the pathologist found two "slit like injuries" to the left subclavian artery. The injuries were each approximately one to two millimeters in length. Second, the pathologist found a "slit like opening," which was about 3 millimeters in length and one millimeter in width, in the left subclavian vein. The pathologist could not determine whether the injuries to the artery or the injury to the vein caused the bleeding that led to Stanley's death. The pathologist did not find any injury to Stanley's internal jugular vein.

Plaintiff sued defendant, Borgess Medical Center, and numerous nurses for medical malpractice causing death. Plaintiff settled and/or dismissed its claims against the other defendants and went to trial against defendant. Plaintiff's expert, Steven Okuhn, M.D., a board-certified vascular surgeon, testified that defendant was negligent and that his negligence was a proximate cause of Stanley's death. Defendant called two board-certified vascular surgeons to refute plaintiff's claims. As stated above, the jury was unable to reach a decision, and the trial court declared a mistrial.

Before a second trial was held, the depositions of Marbey, DeLucia, and plaintiff's named—but not previously deposed—expert M. Wayne Flye, M.D., were taken. In August of 2010, defendant filed a motion to strike Flye as a witness and to dismiss the case. In November of 2010 the trial court granted defendant's motions and dismissed the case with prejudice.

¹ Marbey did not write a note regarding his evaluation of Stanley. In a progress note, defendant wrote that Marbey saw Stanley.

² Because Stanley had anti-JKA antigens in her blood, her blood was difficult to match and only one unit was available.

II. ISSUES RAISED BY PLAINTIFF ON APPEAL

A. MOTION TO DISMISS

On appeal, plaintiff first argues that the trial court erred by granting defendant's motion to dismiss. Defendant moved to dismiss the medical-malpractice claim under MCR 2.504(B). We generally review for clear error a trial court's decision on a motion for dismissal under MCR 2.504. *Rodenhiser v Duenas*, 296 Mich App 268, 272; 818 NW2d 465 (2012). However, MCR 2.504(B) plainly does not provide a basis for dismissal under the circumstances before us. Defendant's motion to dismiss was akin to a motion for summary disposition under MCR 2.116(C)(10); therefore, we consider it as such and review de novo the trial court's decision on the motion.³ *Moser v Detroit*, 284 Mich App 536, 538; 772 NW2d 823 (2009). Summary disposition is appropriate under MCR 2.116(C)(10) if "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." MCR 2.116(C)(10). We consider the evidence in the light most favorable to plaintiff, the nonmoving party. See *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 29; 772 NW2d 801 (2009). We review de novo issues of statutory interpretation. *Apsey v Mem Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007).

In his August 2010 motion to dismiss, defendant argued that the case was identical to *Martin v Ledingham*, 282 Mich App 158; 774 NW2d 328 (2009), rev'd 488 Mich 987 (2010). He asserted that, as in *Martin*, plaintiff could not establish proximate cause because Marbey and DeLucia, the two cardiothoracic surgeons who were available to perform an anterior thoracotomy on Stanley, testified that they would not have taken Stanley to surgery before she coughed and blood filled her chest tube. Thus, according to defendant, the facts demonstrated that Stanley's care would not have changed even if he had acted as plaintiff claims he should have acted.

To establish a medical-malpractice claim, a plaintiff must prove "(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), citing MCL 600.2912a. "'Proximate cause' is a legal term of art that incorporates both cause in fact and legal (or 'proximate') cause." *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).

Generally, an act or omission is a cause in fact of an injury only if the injury could not have occurred without (or "but for") that act or omission. 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.

³ In considering defendant's motion to dismiss as a motion for summary disposition, we note that the motion was untimely because it was not only filed long after the deadline for dispositive motions, but also after trial.

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. Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he "sets forth specific facts that would support a reasonable inference of a logical sequence of cause and effect." A valid theory of causation, therefore, must be based on facts in evidence. And while "the evidence need not negate all other possible causes," this Court has consistently required that the evidence "exclude other reasonable hypotheses with a fair amount of certainty." [*Id.* at 87-88 (emphases and alterations omitted).]

After the trial court granted the motion to dismiss, our Supreme Court reversed *Martin* and stated that it had been incorrectly decided. *Martin v Ledingham*, 488 Mich 987, 987-988; 791 NW2d 122 (2010).⁴ Accordingly, the argument presented by defendant in his motion to dismiss lacks merit. Defendant is not entitled to a dismissal of the medical malpractice-claim on the basis of the argument presented in the motion to dismiss.⁵

Defendant recognizes that *Martin* was reversed but still claims that *Martin*, along with *Ykimoff v WA Foote Mem Hosp*, 285 Mich App 80; 776 NW2d 114 (2009), require affirmance of the trial court's order dismissing the medical-malpractice claim. According to defendant, it is clear from *Martin* and *Ykimoff* that a medical-malpractice plaintiff must submit expert testimony

⁴ In its December 10, 2010 order, the Supreme Court stated in part:

Because the plaintiff's expert witness testified at his deposition that, if the nurses had timely informed the treating physician of the plaintiff's deteriorating condition, the standard of care would have required the treating physician to treat the plaintiff differently than he did, while the treating physician averred in his affidavit that he would not have treated the plaintiff any differently than he did even if the nurses had timely informed him of the plaintiff's deteriorating condition, a question of material fact exists that must be resolved by a jury. That is, having presented expert testimony regarding the treatment that the plaintiff, pursuant to the standard of care, should have received in the first 72 hours post-surgery, the treating physician's averment that he would have acted in a manner contrary to this standard of care presents a question of fact and an issue of credibility for the jury to resolve. [*Id.*]

⁵ The trial court did not grant defendant's motion to dismiss on the basis of the argument presented by defendant. Rather, the trial court reasoned that defendant was entitled to a dismissal because plaintiff had not presented any evidence that defendant failed to comply with the standard of care. However, defendant never argued that plaintiff could not prove that he breached the standard of care. His argument focused solely on proximate cause, and, on appeal, defendant does not assert the trial court's reasoning as a ground for affirmance. Accordingly, we decline to affirm the trial court's order dismissing the case on the basis of the reasoning used by it.

from a “qualified expert” regarding causation. Although a medical-malpractice plaintiff must present expert testimony on the element of causation, *Kalaj v Khan*, 295 Mich App 420, 429; 820 NW2d 223 (2012), neither *Martin* nor *Ykimoff* can be used to support any proposition regarding the necessary qualifications of expert witnesses who testify on causation. Neither this Court nor the Supreme Court discussed the qualifications of the expert witnesses in *Martin*. Likewise, *Ykimoff* contained no discussion of the qualifications of the plaintiff’s expert witnesses. Because neither *Martin* nor *Ykimoff* set forth any rule of law regarding the necessary qualifications of expert witnesses who provide causation testimony, defendant’s reliance on them in arguing that plaintiff did not present an expert witness who could properly testify about causation is misplaced.

Defendant does not explain what he means by the term “qualified expert,” but we assume that he is referring to a witness who is qualified under MCL 600.2169(1) to provide expert testimony. MCL 600.2169(1) provides:

In an action alleging medical malpractice, a person shall not give expert testimony on the appropriate standard of practice or care unless the person is licensed as a health professional in this state or another state and meets the following criteria:

(a) If the party against whom or on whose behalf the testimony is offered is a specialist, specializes at the time of the occurrence that is the basis for the action in the same specialty as the party against whom or on whose behalf the testimony is offered. However, if the party against whom or on whose behalf the testimony is offered is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty.

(b) Subject to subdivision (c), during the year immediately preceding the date of the occurrence that is the basis for the claim or action, devoted a majority of his or her professional time to either or both of the following:

(i) The active clinical practice of the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, the active clinical practice of that specialty.

(ii) The instruction of students in an accredited health professional school or accredited residency or clinical research program in the same health profession in which the party against whom or on whose behalf the testimony is offered is licensed and, if that party is a specialist, an accredited health professional school or accredited residency or clinical research program in the same specialty.

(c) If the party against whom or on whose behalf the testimony is offered is a general practitioner

In interpreting a statute, our goal is to ascertain and give effect to the intent of the Legislature. *Tevis v Amex Assurance Co*, 283 Mich App 76, 81; 770 NW2d 16 (2009). The first criterion in determining legislative intent is the language of the statute. *Id.* If the language is unambiguous, the Legislature is presumed to have intended the meaning clearly expressed, and

we must enforce the statute as written. *Ameritech Publishing, Inc v Dep't of Treasury*, 281 Mich App 132, 136; 761 NW2d 470 (2008). “[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself.” *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002).

MCL 600.2169(1) did not prohibit plaintiff’s expert, Okuhn, from providing causation testimony. First, MCL 600.2169(1) does not apply to causation testimony; rather, it applies to an expert providing testimony regarding the appropriate standard of practice or care at issue in the case. *Woodard v Custer*, 476 Mich 545, 558 n 4; 719 NW2d 842 (2006)(“MCL 600.2169(1) only applies to expert testimony on the appropriate standard of practice of care; it does not apply to other kinds of expert testimony, such as expert testimony on causation”). *Id.*; see also MCL 600.2169(1). Second, MCL 600.2169(1) did not prohibit Okuhn, in providing causation testimony, from testifying about whether a cardiothoracic surgeon should have taken Stanley to surgery. MCL 600.2169(1) governs standard-of-care testimony offered against or on behalf of a “party.” See MCL 600.2169(1)(a), (c). “A ‘party’ to an action is a person whose name is designated on record as plaintiff or defendant.” *Fast Air, Inc v Knight*, 235 Mich App 541, 544; 599 NW2d 489 (1999), quoting Black’s Law Dictionary (5th ed); see also Black’s Law Dictionary (7th ed) (defining “party” as “[o]ne by or against whom a lawsuit is brought”). Neither Marbey nor DeLucia was a defendant and, therefore, a “party” to the action; thus, plaintiff was not required to present an expert witness who was qualified under MCL 600.2169(1) to testify regarding the standard of care of a cardiothoracic surgeon. Accordingly, we reverse the trial court’s order dismissing the medical-malpractice action.

B. MOTION TO STRIKE

Plaintiff also argues that the trial court erred by granting defendant’s motion to strike Flye as a witness. We review for an abuse of discretion a trial court’s decision to admit or exclude evidence. *Craig*, 471 Mich at 76. An abuse of discretion occurs when the trial court’s decision falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

The trial court articulated two reasons for granting defendant’s motion to strike. First, the trial court stated that plaintiff had not demonstrated Flye’s “capacity to serve as an expert” and that, on the “technical question of his status as an expert, for the reasons proffered by the by the [sic] Plaintiff [sic],” it did not believe that Flye should be allowed to testify as an expert. We interpret these statements by the trial court as an acceptance of defendant’s argument that Flye was not qualified under MCL 600.2169(1) to testify as an expert witness. Pursuant to MCL 600.2169(1), Flye was not qualified to offer an opinion about whether defendant complied with the standard of care. Although Flye was board certified in vascular surgery, he did not devote a majority of his professional time to vascular surgery in the year immediately preceding the date of defendant’s alleged malpractice. See MCL 600.2169(1)(b). However, plaintiff never indicated that it intended to have Flye offer an opinion about whether defendant complied with the standard of care. Rather, plaintiff retained Flye to provide causation testimony. For the same reasons that MCL 600.2169(1) did not prohibit Okuhn from providing causation testimony, the statute does not prohibit Flye from giving causation testimony. First, MCL 600.2169(1) does not apply to causation testimony. *Woodard*, 476 Mich at 558 n 4. Second, MCL 600.2169(1) does not prohibit Flye, in providing causation testimony, from testifying about whether a

cardiothoracic surgeon should have taken Stanley to surgery because the statute only applies to standard-of-care testimony offered against or on behalf of a “party” and no cardiothoracic surgeon was a party to the lawsuit. Therefore, the trial abused its discretion by striking Flye’s testimony on the basis that he was not qualified to provide the testimony.

Second, the trial court also stated that it did not see “that there is anything gained in terms of [Flye’s] potential testimony regarding such issues as stability of the patient” and that “[t]he issues related to such things as blood pressure . . . in terms of questioning stability, were, in fact, explored at the last hearing by way of examination and cross-examination” We interpret the trial court’s statement as an explanation that it was excluding Flye’s testimony because the testimony was cumulative of Okuhn’s testimony regarding the stability of Stanley. If a trial court could exclude evidence simply because it was cumulative of other evidence, the trial court would not have abused its discretion by striking Flye’s testimony. However, a trial court may not exclude evidence merely because it is cumulative; rather, relevant evidence may be excluded if its probative value is substantially outweighed by a consideration of a needless presentation of cumulative evidence. MRE 403; *Morales v State Farm Mut Auto Ins Co*, 279 Mich App 720, 730; 761 NW2d 454 (2008).

In this case, there was substantial probative value to Flye’s testimony that Stanley was not stable. At retrial, defendant planned to present the testimony of Marbey and DeLucia, each of whom testified that, on the basis of a review of Stanley’s medical records, he would not have taken Stanley to surgery. Each explained that Stanley was stable and, therefore, that there was no reason to operate on Stanley. Flye’s testimony regarding the stability of Stanley contradicted the testimony of Marbey and DeLucia. Admittedly, Flye’s testimony that Stanley was not stable would be cumulative of testimony provided by Okuhn. However, it cannot be said that Flye’s testimony would be a needless presentation of cumulative evidence. The word “needless” is defined as “unnecessary; not needed.” *Random House Webster’s College Dictionary* (2005). Flye would be plaintiff’s second expert witness regarding causation. At trial, in addition to his own testimony, defendant presented the expert testimony of Dr. Walter Whitehouse and Dr. Otto Brown, both of whom opined that Stanley was stable. Then, for retrial, defendant planned to offer the testimony of Marbey and DeLucia. Thus, at retrial, defendant would have five witnesses testifying that Stanley was stable after the chest tube was inserted. A second expert witness for plaintiff to counter the testimony of five defense witnesses is not unnecessary. The trial court, therefore, abused its discretion by striking Flye’s testimony on the basis that it was cumulative.

Defendant asserts two alternative grounds for affirming the trial court’s order striking the testimony of Flye. He first argues that Flye’s causation testimony was not relevant, explaining that the fact of consequence was whether a cardiothoracic surgeon would have taken Stanley to surgery and that Flye’s opinion that Stanley more than likely would have survived had she been taken to surgery did not make it more or less probable that Stanley would have been taken to surgery. Relevant evidence is generally admissible, and irrelevant evidence is not admissible. MRE 402; see also *Morales*, 279 Mich App at 729. Relevant evidence is defined as “evidence having any tendency to make the existence of fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. It is clear from defendant’s motion to strike that defendant’s argument is premised on *Martin*. Because the Supreme Court reversed *Martin* and rejected the reasoning of this Court that

averments of the treating physicians about what they would have done are conclusive on the issue of proximate cause, we find no merit to defendant's argument. Regardless, Flye's testimony does not appear that it would be limited to whether Stanley would have survived had she been taken to surgery. He would also be testifying about Stanley's stability. Although there was no dispute that Stanley bled to death, the parties disagreed about whether Stanley was stable and no longer bleeding after the chest tube was inserted. Flye's testimony that Stanley was not stable, including his reasons for his opinion, has a tendency to make it more probable than not that Stanley was not stable after the chest tube was inserted. Therefore, Flye's testimony is relevant. See MRE 401.

Defendant also argues that Flye's testimony should have been stricken because plaintiff did not comply with the trial court's scheduling order, which required that discovery be completed 42 days before the date of case evaluation, when it first informed defendant of its intent to call Flye as an expert witness after the mistrial was declared.⁶ Because plaintiff did not identify Flye as an expert witness that it intended to use until after the mistrial was declared, we believe that the trial court would have selected a reasonable and principled outcome had it chosen to strike the testimony of Flye on the basis that plaintiff did not comply with the trial court's scheduling order. See *Maldonado*, 476 Mich at 388. However, we cannot conclude that the trial court's failure to strike Flye as a witness on this basis was an abuse of discretion. Defendant did not file the motion for summary disposition, which had the affidavits of Marbey and DeLucia attached, until July 13, 2009, about nine months after the deadline to file dispositive motions and only 2-1/2 months before trial was scheduled to begin, leaving plaintiff with little time to alter the presentation of its case in order to respond to a new theory of defense.⁷ Moreover, defendant never identified, either in his motion to quash Flye's trial deposition or in his motion to strike, any prejudice that he would suffer if Flye were allowed to testify at retrial. Defendant made no argument that Flye's testimony would in any way impair his ability to present his case at retrial or would alter the manner in which he prepared for retrial. He made no claim that Flye's testimony would introduce a new theory of causation, that his witnesses would be unable to respond to Flye's testimony, or that he needed to obtain a new expert to counter

⁶ We disagree with plaintiff that this argument is not properly before the Court because defendant did not raise it on cross-appeal. An appellee is limited to the issues raised by the appellant unless it files a cross-appeal. *Martin v Rapid Inter-Urban Transit Partnership*, 271 Mich App 492, 502; 722 NW2d 262 (2006), rev'd on other grounds 480 Mich 936 (2007). A cross-appeal is necessary to obtain a decision more favorable than that rendered by the trial court; however, a cross-appeal is not necessary to urge an alternative ground for affirmance, even if the alternative ground was considered and rejected by the trial court. *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 221; 625 NW2d 93 (2000). In arguing that the trial court should have struck Flye as a witness on the basis that plaintiff failed to comply with the trial court's scheduling order, defendant is arguing an alternative ground for affirmance. He is not requesting that we grant him a decision more favorable than that already given him by the trial court.

⁷ In January 2009, this Court decided *Martin*. On July 13, 2009, defendant filed a motion to dismiss based on *Martin*, and attached the affidavits of Marbey, DeLucia, and himself in support of the motion. The trial court denied the motion and the matter proceeded to trial.

Flye's testimony. Because defendant has not identified any prejudice to his ability to prepare for or to present his case at retrial, we conclude that the trial court did not abuse its discretion by failing to strike Flye's testimony on the ground that plaintiff failed to comply with the scheduling order.

Accordingly, we reverse the trial court's order granting defendant's motion to strike Flye as a witness.

III. ISSUES RAISED BY DEFENDANT ON CROSS-APPEAL

A. MOTION FOR DIRECTED VERDICT

On cross-appeal, defendant argues that the trial court erred by denying his motion for directed verdict. We review de novo a trial court's decision on a motion for directed verdict. *Sniecinski v Blue Cross & Blue Shield of Mich*, 469 Mich 124, 131; 666 NW2d 186 (2003). "[T]his Court views the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grants that party every reasonable inference, and resolves any conflict in the evidence in that party's favor to decide whether a question of fact existed." *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). "A directed verdict is appropriate only when no factual question exists regarding which reasonable minds may differ." *Id.* at 644.

Defendant claims that he was entitled to a directed verdict because plaintiff failed to present a cardiothoracic surgeon to address the issue of proximate cause. The argument is premised on *Martin* and *Ykimoff* and defendant's belief that these two cases require a medical-malpractice plaintiff to submit expert testimony from a "qualified expert" regarding causation. The argument is without merit. As previously explained, neither *Martin* nor *Ykimoff* support defendant's claim that plaintiff failed to present the necessary expert witness to establish proximate cause because neither case discussed the qualifications of the expert witnesses who provided causation testimony; furthermore, MCL 600.2169(1) did not prohibit Okuhn from providing causation testimony.

Defendant does not claim that Okuhn's testimony failed to establish a factual issue regarding proximate cause. In other words, he does not assert that Okuhn's testimony failed to set forth specific facts that would support a reasonable inference of a logical sequence of cause and effect. See *Craig*, 471 Mich at 87. However, defendant claims that Okuhn's testimony regarding proximate cause was not in accord with the facts because defendant consulted with Marbey after the chest tube was placed in Stanley and Marbey concluded that Stanley was not a candidate for surgery. This argument is also without merit. Okuhn recognized that the medical records indicated that defendant may have consulted with Marbey. Nonetheless, Okuhn testified that, even if defendant had consulted with Marbey and Marbey concluded that Stanley was not a surgical candidate, the standard of care required that defendant bring Stanley to the radiology unit to obtain proof that Stanley was bleeding. According to Okuhn, upon proof that a patient is bleeding, it would be inconceivable for a cardiothoracic surgeon not to bring the patient to surgery. Defendant's argument fails to recognize the full extent of Okuhn's standard-of-care testimony. Accordingly, we affirm the trial court's order denying defendant's motion for directed verdict.

B. MOTION FOR SUMMARY DISPOSITION

Defendant also argues that the trial court erred in denying his July 2009 motion for summary disposition. In the motion, defendant argued that the case was analogous to *Martin* and that, because Marbey and DeLucia averred that they would not have operated on Stanley, plaintiff could not establish proximate cause. However, as already stated, our Supreme Court reversed *Martin*, specifically stating that *Martin* was incorrectly decided. *Martin*, 488 Mich at 987-988. Accordingly, the argument presented by defendant in his motion for summary disposition is without legal merit and does not entitle defendant to summary disposition.

Because *Martin* was reversed, defendant presents this Court with different arguments than he presented to the trial court. Defendant argues that plaintiff failed to present any evidence to contradict the evidence that he submitted which showed that a cardiothoracic surgeon would not have performed an anterior thoracotomy. He also claims that Okuhn could not provide causation testimony because he was not qualified under MCL 600.2169(1) to testify regarding what a cardiothoracic surgeon should have done. These arguments are not preserved for appellate review because they were not raised below. See *Polkton Charter Twp v Pellegrum*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Although we may disregard the preservation requirements, *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006), we choose not to address defendant's arguments. The purpose of a motion for summary disposition under MCR 2.116(C)(10) is to avoid extended discovery and an evidentiary hearing when a case can be quickly resolved as a matter of law. *In re Handelsman*, 266 Mich App 433, 435; 702 NW2d 641 (2005). Here, the trial court conducted an eight-day jury trial for plaintiff's medical-malpractice claim, and both plaintiff and defendant extensively questioned Okuhn during the trial. Defendant has argued that he was entitled to a directed verdict because plaintiff failed to establish proximate cause, but defendant's argument is without merit. Where plaintiff presented evidence at trial to withstand a directed verdict, our failure to consider whether defendant was entitled to summary disposition on arguments that were not presented below and which are substantially similar to defendant's argument for why he was entitled to a directed verdict will not result in manifest injustice. See *Smith*, 269 Mich App at 427. Therefore, we affirm the trial court's order denying defendant's motion for summary disposition.

Affirmed in part, reversed in part, and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction. Plaintiff, having prevailed in full, may tax costs. MCR 7.219(A).

/s/ Jane M. Beckering
/s/ Cynthia Diane Stephens
/s/ Mark T. Boonstra