

STATE OF MICHIGAN
COURT OF APPEALS

HARVEY GROESBECK, guardian of LORETTA
GROESBECK, a protected person,,

UNPUBLISHED
February 26, 2013

Plaintiff-Appellee,

v

No. 307069
Macomb Circuit Court
LC No. 2009-003523-NO

HENRY FORD HEALTH SYSTEM, d/b/a
HENRY FORD BI-COUNTY HOSPITAL, d/b/a
HENRY FORD MACOMB HOSPITAL, d/b/a
DETROIT OSTEOPATHIC HOSPITAL,

Defendant-Appellant.

Before: HOEKSTRA, P.J., and K. F. KELLY and BECKERING, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order denying its motion for partial summary disposition. The trial court held that plaintiff could pursue a claim based on ordinary negligence rather than medical malpractice and that the finder of fact could decide the case based upon a theory of *res ipsa loquitur*. We reverse.

I. BASIC FACTS

Plaintiff sued defendant for injuries suffered by 86-year-old Loretta Groesbeck when she fell while undergoing rehabilitation treatment in defendant's hospital on February 1, 2007. On the day in question Loretta was being treated by Esther Karunakar, a licensed physical therapist. Loretta had suffered a minor stroke and Karunakar was to evaluate Loretta's condition and determine the appropriate course of physical therapy to help her stand and walk. Karunakar first saw Loretta on the morning of February 1, 2007. At that first meeting Loretta was too dizzy to undergo the physical therapy evaluation. Karunakar returned to visit Loretta later that afternoon. Loretta felt improved, so Karunakar proceeded with the evaluation. Karunakar assessed Loretta's mobility by having her stand, move to a wheelchair, then operate the wheelchair to move down a hallway. Finally Karunakar assessed Loretta's gait by having her stand up and

walk a few steps with the assistance of a gait belt¹ and pyramid walker. Loretta began walking with the assistance of the walker. Karunakar followed behind Loretta, holding the gait belt with one hand and the wheelchair with the other. After taking three steps Loretta collapsed and fell, striking her head.

Plaintiff filed his complaint against defendant on July 1, 2009. Plaintiff's complaint was preceded by a Notice of Intent. Count I of plaintiff's complaint alleged a claim for ordinary negligence, asserting that defendant's employees failed to exercise reasonable care and caution in connection with the physical therapy session by allowing Loretta to stand and walk and by failing to secure or hold her to prevent her from falling while she attempted to walk. Count II of plaintiff's complaint raised an alternative claim of medical malpractice based on the same alleged negligence. Count IV of the complaint asserted a claim for negligence based on a theory of *res ipsa loquitur*, alleging that Loretta's injury was of a kind which does not ordinarily occur without negligence, that defendant had exclusive control over Loretta and the surrounding area, and that any possible explanation as to why she was allowed to fall would be accessible to defendant rather than to plaintiff.

Plaintiff's complaint was accompanied by affidavits of merit signed by physical therapist expert Leonard Elbaum, who opined that Karunakar breached the standard of care for physical therapists by not adequately evaluating her patient's condition and by failing to properly secure or hold Loretta to prevent her from falling while attempting to walk. Elbaum reiterated this opinion in his deposition testimony, maintaining that Karunakar's actions in evaluating Loretta fell below the standard of care applicable to licensed physical therapists by failing to recognize that her patient was at great risk for falling and that Karunakar violated the standard of care by failing to adequately guard Loretta against falling. Plaintiff's second physical therapy expert, Paul Roubal, believed that Karunakar committed an error in professional judgment by immediately starting gait evaluation or training for Loretta following an initial evaluation which showed that she suffered from poor standing balance. At deposition Dr. Elbaum admitted that falls can occur in the course of physical therapy during gait training or assessment even where the physical therapist has not violated the standard of care. Elbaum testified that the fact that a patient fell did not mean that the physical therapist violated the standard of care and that "[i]t's possible you can do the very best you can and still have someone injure themselves during a fall"

Defendant moved for partial summary disposition pursuant to MCR 2.116(C)(8) and (10), asking the court to dismiss plaintiff's claim for ordinary negligence and claim for negligence brought under the theory of *res ipsa loquitur*. Defendant argued that there was no genuine issue of material fact that plaintiff's negligence claims called into question the professional standards for physical therapists and the decision-making of physical therapist Esther Karunakar. Defendant maintained that when and whether to have an impaired patient try to walk was a matter of medical judgment to be exercised by the professional therapist.

¹The gait belt goes around the patient's waist and is held by the therapist, who is ready to provide support if necessary.

Defendant argued that the applicable standards and their application were well beyond the understanding of ordinary laymen and, accordingly, the claim was one for medical malpractice rather than ordinary negligence.

In response, plaintiff's counsel characterized the matter as one of common knowledge or common sense rather than involving trained or professional judgment, arguing "How medically trained do you have to be to know that you're not supposed to let her fall; that you have to hold her?" and that one did not have to be an expert to know that "if you're holding a patient in your arms, you can't drop her." Plaintiff argued that a jury could easily understand the theory of negligence involved without expert testimony.

In denying defendant's motion, the trial court cited this Court's unpublished opinion in *Sheridan v West Bloomfield Nursing Ctr*, unpublished opinion per curiam of the Court of Appeals, issued March 6, 2007 (Docket No. 272205). The trial court concluded that plaintiff's claim was within the common knowledge and experience of an ordinary juror and did not require expert testimony concerning the exercise of medical judgment:

This Court is convinced that, as an ordinary person would be, that as a matter of common sense, that if you are helping a five-foot-two-inch, one-hundred four-pound, eighty-six-year-old woman, experiencing dizzy spells and dizziness, and you're helping her to walk, you should hold on carefully or get further assistance. Such is the matter clearly within the realm of common knowledge and experience when dealing with persons in such a condition.

The trial court also denied summary disposition of plaintiff's *res ipsa loquitur* theory, explaining as follows:

The elements, as we've just gone over *res ipsa loquitur* are that it doesn't usually absent someone's negligence; that it's caused by agency within the defendant's control; that it's not due to the plaintiff's actions; and, four, evidence of true --- of the true explanation of the event must be more readily accessible to the defendant than to the plaintiff.

The injury in this case did not result from a medical procedure. It is not contested that it resulted from a fall. The fall came as the therapist was helping plaintiff up or helping her to walk or asking her to walk, but in some way directing her and controlling her. The plaintiff's statement was that she was quote/unquote "dropped". Whether dropped or fell, it is within the ordinary sense and common knowledge that an elderly person who is suffering continuous dizziness needs full assistance to get up and to ambulate. The injury in this case would not ordinarily occur in such a circumstance, but for some negligence. This issue can be determined by a jury without expert testimony.

The trial court denied defendant's motion in an order issued September 27, 2011, and subsequently denied defendant's motion for reconsideration. On December 15, 2011, this Court granted defendant's application for leave to appeal, but denied its motion for peremptory

reversal. *Groesbeck v Henry Ford Health Sys*, unpublished order of the Court of Appeals, entered December 15, 2011 (Docket No. 307069).²

II. STANDARDS OF REVIEW

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Summary disposition pursuant to MCR 2.116(C)(8) is appropriate where "[t]he opposing party has failed to state a claim on which relief can be granted." Therefore, a motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). "The motion should be granted if no factual development could possibly justify recovery." *Id.* In contrast, a motion under MCR 2.116(C)(10) tests the factual sufficiency of a complaint. *Maiden*, 461 Mich at 120. A reviewing court must consider the affidavits, depositions, admissions, and other documentary evidence submitted by the parties and, viewing that evidence in the light most favorable to the nonmoving party, determine whether there is a genuine issue of material fact for trial. *Id.*

This Court also reviews de novo the proper classification of an action as ordinary negligence or medical malpractice. *Bryant v Oakpointe Villa Nursing Ctr*, 471 Mich 411, 419; 684 NW2d 864 (2004).

Similarly, this Court reviews de novo whether the doctrine of res ipsa loquitur applies to a particular case. *Jones v Porretta*, 428 Mich 132, 154 n 8; 405 NW2d 863 (1987).

III. ORDINARY NEGLIGENCE VS. MEDICAL MALPRACTICE

Defendant argues that the trial court erred in failing to grant defendant summary disposition on plaintiff's ordinary negligence claim where plaintiff's action was one that clearly involved the exercise of medical judgment. We agree.

Not all injuries that occur in a medical facility at the hands of health care providers sound in medical malpractice. *Bryant*, 471 Mich at 421. Some injuries are the result of "ordinary negligence," where no medical judgment is exercised. Our Supreme Court has explained how to distinguish a medical malpractice claim from one alleging ordinary negligence:

A medical malpractice claim is distinguished by two defining characteristics. First, medical malpractice can occur only "within the course of a professional relationship." Second, claims of medical malpractice necessarily "raise questions involving medical judgment." Claims of ordinary negligence, by contrast, "raise issues that are within the common knowledge and experience of the [fact-finder]." Therefore, a court must ask two fundamental questions in determining whether a claim sounds in ordinary negligence or medical

² The Michigan Supreme Court denied defendant's application for leave to appeal from this Court's order. *Groesbeck v Henry Ford Health Sys*, 491 Mich 855; 809 NW2d 147 (2012).

malpractice: (1) whether the claim pertains to an action that occurred within the course of a professional relationship; and (2) whether the claim raises questions of medical judgment beyond the realm of common knowledge and experience. If both these questions are answered in the affirmative, the action is subject to the procedural and substantive requirements that govern medical malpractice actions. [*Id.* at 422 (citations omitted).]

There is no dispute that Loretta's injury occurred within the course of a professional relationship. The only issue is whether "the reasonableness of the health care professionals' action can be evaluated by lay jurors, on the basis of their common knowledge and experience, it is ordinary negligence" or whether "the reasonableness of the action can be evaluated by a jury only after having been presented the standards of care pertaining to the medical issue before the jury explained by experts." *Id.* at 423.

In *Bryant*, the plaintiff's decedent was a resident in a nursing home and suffered a myriad of physical ailments. *Id.* at 415. Staff were authorized to employ "various physical restraints" including wedges or bumper pads preventing the decedent from "entangling herself in ... the rails" of her bed. *Id.* at 415-416. Nursing assistants observed that the decedent "was lying in her bed very close to the bed rails and was tangled in her restraining vest, gown, and bed sheets." *Id.* at 416. They untangled her and informed their supervisor that the wedges afforded inadequate protection. *Id.* The following day, the decedent "slipped between the rails of her bed and was in large part out of the bed with the lower half of her body on the floor but her head and neck under the bed side rail and her neck wedged in the gap between the rail and the mattress, thus preventing her from breathing" and she died as a result of positional asphyxiation. *Id.* at 417.

The plaintiff's complaint in *Bryant* alleged that the defendant negligently failed to train staff to properly assess the risk of positional asphyxia, failed to inspect the beds and bed frames to ensure that there was no risk of positional asphyxia, and failed to take steps to protect plaintiff's decedent when she was, in fact, discovered entangled between the bed rails and the mattress the day before her death. *Id.* at 417-418. Our Supreme Court held that the plaintiff's failure to train and failure to inspect claims sounded in medical malpractice. With respect to the plaintiff's claim for failure to adequately train, the *Bryant* Court noted:

in order to assess the risk of positional asphyxiation posed by bed railings, specialized knowledge is generally required, as was notably shown by the deposition testimony of plaintiff's own expert, Dr. Steven Miles. Dr. Miles testified that hospitals may employ a number of different bed rails depending on the needs of a particular patient. Accordingly, the assessment of whether a bed rail creates a risk of entrapment for a patient requires knowledge of that patient's medical history and behavior. It is this particularized knowledge, according to Dr. Miles, that should prompt a treating facility to use the bedding arrangement that best suits a patient's "individualized treatment plan," and to properly train its employees to recognize any risks inherent in that bedding arrangement and to adequately monitor patients to minimize those risks. [*Id.* at 427 (footnotes omitted).]

Similarly, with respect to the plaintiff's failure to inspect claim, the *Bryant* Court noted:

as demonstrated through the deposition testimony of plaintiff's expert, the risk of asphyxiation posed by a bedding arrangement varies from patient to patient. The restraining mechanisms appropriate for a given patient depend upon that patient's medical history. Thus, restraints such as bed railings are, in the terminology of plaintiff's expert physician, part of a patient's "individualized treatment plan."

The risk assessment at issue in this claim, in our judgment, is beyond the ken of common knowledge, because such an assessment require[s] understanding and consideration of the risks and benefits of using and maintaining a particular set of restraints in light of a patient's medical history and treatment goals. In order to determine then whether defendant has been negligent in assessing the risk posed by Hunt's bedding arrangement, the fact-finder must rely on expert testimony. [*Id.* at 429-430.]

However, the Supreme Court concluded that the plaintiff's claim for failure to take steps to protect the decedent after previously discovering her tangled in her bed sounded in ordinary negligence:

No expert testimony is necessary to determine whether defendant's employees should have taken *some* sort of corrective action to prevent future harm after learning of the hazard. The fact-finder can rely on common knowledge and experience in determining whether defendant ought to have made an attempt to reduce a known risk of imminent harm to one of its charges. [*Id.* at 430-431 (emphasis in original).]

In denying defendant's motion for summary disposition, the trial court relied on *Bryant* and an unpublished case – *Sheridan v West Bloomfield Nursing & Convalescent Ctr.*³ In *Sheridan*, the plaintiff's complaint alleged that the defendants were negligent when "two nurse assistants dropped plaintiff's decedent while moving her from her bed to a wheelchair using a 'gait belt.'" *Id.* at slip op p 1. The trial court in *Sheridan* granted the defendants' motion for summary disposition after concluding that the plaintiff's claim sounded in medical malpractice. *Id.* This Court reversed, finding that the issue of "whether, having decided to use and having secured the gait belt, defendants acted reasonably when they failed to maintain a secure grip on plaintiff's decedent and dropped her or allowed her to fall on the floor" was a matter "within the common knowledge and experience of an ordinary juror and [did] not require expert testimony concerning the exercise of medical judgment." *Id.* However, critical to the case at bar, is the following distinction – the plaintiff in *Sheridan* "is not challenging the decision to move the decedent from her bed, the decision to use a gait belt, or the manner in which the gait belt was fastened to her body." Here, plaintiff hastily notes in his appellate brief that the "crux of this lawsuit" is that Karunakar "failed to carefully hold Ms. Groesbeck to prevent her from falling."

³ An unpublished opinion "has no precedential force." *Nuculovic v Hill*, 287 Mich App 58, 68; 783 NW2d 124 (2010); MCR 7.215(C)(1).

However, a clear reading of the complaint belies that notion. Plaintiff plainly takes issue with Karunakar's decision to conduct the gait assessment in the first place.

For its part, defendant relies upon *Sturgis Bank & Trust Co v Hillsdale Community Health Ctr*, 268 Mich App. 484; 708 NW2d 453 (2005). In *Sturgis*, the plaintiff was injured when she fell out of her hospital bed. *Id.* at 486. "Plaintiff alleged in the complaint that defendant's nursing staff was negligent in failing to prevent [her] from falling out of her hospital bed, which could have been accomplished by proper monitoring and the use of bedrails, where hospital personnel were aware that [she] was in a physical and mental state that required heightened scrutiny in guarding against such an accident." *Id.* at 486-487. The trial court found that the plaintiff's claim sounded in medical malpractice and this Court agreed:

It is clear from the deposition testimony that a nursing background and nursing experience are at least somewhat necessary to render a risk assessment and to make a determination regarding which safety or monitoring precautions to utilize when faced with a patient who is at risk of falling. While, at first glance, one might believe that medical judgment beyond the realm of common knowledge and experience is not necessary when considering [the plaintiff's] troubled physical and mental state, the question becomes entangled in issues concerning [the plaintiff's] medications, the nature and seriousness of the closed-head injury, the degree of disorientation, and the various methods at a nurse's disposal in confronting a situation where a patient is at risk of falling. The deposition testimony indicates that there are numerous ways in which to address the risk, including the use of bedrails, bed alarms, and restraints, all of which entail some degree of nursing or medical knowledge. Even in regard to bedrails, the evidence reflects that hospital bedrails are not quite as simple as bedrails one might find at home. In sum, we find that, although some matters within the ordinary negligence count might arguably be within the knowledge of a layperson, medical judgment beyond the realm of common knowledge and experience would ultimately serve a role in resolving the allegations contained in this complaint. [*Id.* at 498.]

In *David v Sternberg*, 272 Mich App 377; 726 NW2d 89 (2006), the plaintiff suffered injury to her foot following a bunionectomy. She alleged that "defendants failed to properly apply strictures to the leg, ankle, and foot, failed to take steps to relieve pain and loss of circulation, failed to properly train their staffs, failed to respond to plaintiff's complaint of pain, and failed to clean and change the dressing." *Id.* at 383. The trial court determined that the plaintiff's claim sounded in medical malpractice and the plaintiff appealed, arguing that "her claim is not about how the bandage was wrapped, but about defendants' failure to take corrective action despite plaintiff's complaints of pain and fever." *Id.* She cited the deposition testimony of her expert, who testified that "it is within the common knowledge of a layperson that these types of complaints indicate a cutoff in blood supply and require removal of the bandage." *Id.* This Court found that, regardless of how the plaintiff attempted to couch her claims, her claims sounded in medical malpractice because they raised questions of medical judgment:

According to defendant Charlanne Bratton's deposition testimony, plaintiff underwent surgery on her foot on February 15, 2002. On February 18, 2002, Dr.

Bratton removed the outer layers of the surgical dressing and decided not to reapply certain parts of the dressing. On February 22, 2002, Dr. Bratton removed all the layers of the dressing and reapplied some layers more loosely. X-rays were also taken and read at this time. Dr. Bratton assessed plaintiff's condition and determined there was no infection or abnormal microbial growth. On February 25, 2002, Dr. Bratton removed all the dressing and reapplied some layers. At each of these visits, Dr. Bratton determined that there was appropriate capillary fill in the toes and no signs of infection. In all these visits, Dr. Bratton exercised medical judgment in evaluating plaintiff's condition and deciding how to treat her. On the basis of plaintiff's complaint and the record evidence, we conclude that discerning infection, capillary flow, and the postsurgical condition of plaintiff's surgical site and identifying and treating plaintiff's medical condition are not within the realm of common knowledge. . . .This is different from the *Bryant* case, in which the action the defendant failed to take was simply untangling the plaintiff from bedsheets. Because plaintiff's allegations in this case raise questions involving medical judgment, her claim sounds in medical malpractice, not ordinary negligence. [*Id.* at 384.]

Here, just as in *Sturgis* and *David*, plaintiff's claims raise questions involving the medical or professional judgment. There are two issues at play: 1) whether Karunakar adequately assessed Loretta's physical abilities before testing her ability to walk; and, 2) whether Karunakar took adequate or reasonable precautions to prevent Loretta from falling during the assessment. While an ordinary layman may know that an elderly patient with impaired balance may fall, he is not likely to know when it is proper to assess that person's gait or what precautions to take to limit the risk of falling. It takes medical knowledge and judgment beyond the realm of common knowledge and experience to determine whether the assessment should have been performed and what precautions should have been taken to prevent Loretta from falling under the circumstances presented. One need only look to plaintiff's complaint and the testimony of her experts to see that the action clearly sounds in medical malpractice.

The ordinary negligence claim in plaintiff's complaint provided, in relevant part:

- a. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK required two-person assisted showers;
- b. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK required a seatbelt while in a wheelchair for safety;
- c. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK had a problem with bed mobility and positioning;
- d. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK had balance deficits;

- e. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK had abnormal mobility;
- f. Negligently allowed LORETTA GROESBECK to ambulate or walk, which a reasonably careful person would not do where LORETTA GROESBECK was complaining of being dizzy on February 1, 2007, and was having a problem with dizziness;
- g. Negligently failed to recognize that allowing a person in LORETTA GROESBECK'S condition to walk was simply unsafe and dangerous, which a reasonably careful person would have recognized;
- h. Negligently failed to secure or hold LORETTA GROESBECK while she was allowed to walk or ambulate, so as to prevent her from falling, where a reasonably careful person would have secured or held her under such circumstances;
- i. Negligently failed to catch or assist LORETTA GROESBECK when she became dizzy and was falling, and/or negligently failed to be in a close enough position to catch or assist her when she began to fall, where a reasonably careful person would have caught or assisted her, and would have been in a position to catch or assist her, under such circumstances.
- j. Negligently failed to obtain further help or assistance from additional persons or staff to assist in the subject event, where a reasonably careful person would have sought such additional help or assistance.

In addition, plaintiff's experts testified that Karunakar's actions involved medical judgment. Leonard Elbaum testified that he did not necessarily take issue with Karunakar's decision to perform the gait assessment, but that Karunakar was negligent in executing the assessment. Conversely, Paul Roubal took issue with Karunakar's decision to even conduct a gait assessment:

A. Because I felt as though the therapist, after she finished the evaluation and had come up with a poor to fair sitting balance and then a, very simply, poor standing balance, that it was inappropriate for her to initiate gait training on that day when she had at least a two week window to work towards that and that was one of the recommendations by the physiatrist.

Q. Ms. Karunakar did not violate the standard of care in her evaluation, is that fair?

A. Not from what I could see in the evaluation, no.

Q. Okay. And what you're – if I understand what you're saying, it is her exercise of her judgment in implementing gait training based upon the evaluation?

A. Yes, sir.

Again, while a juror might have some basic knowledge that a certain degree of care would be needed in dealing with an elderly, infirm patient with balance issues, Karunakar utilized her medical or professional judgment in assessing Loretta and in implementing the gait evaluation, causing it to fall within the definition of medical malpractice, not ordinary negligence. Plaintiff's own experts testified that Karunakar exercised professional medical judgment (improvidently or not) in determining whether to perform a gait assessment and in executing the gait assessment. There is simply no way for plaintiff to avoid the conclusion that the claims sound in medical malpractice, regardless of artful wording and argument. Accordingly, the trial court clearly erred in failing to grant defendant summary disposition on plaintiff's ordinary negligence claim.

IV. RES IPSA LOQUITUR

Defendant next argues that the trial court erred in denying defendant summary disposition on plaintiff's res ipsa loquitur claim. We agree.

Proof of negligent conduct can be established by a permissible inference of negligence from circumstantial evidence. To invoke the doctrine of res ipsa loquitur, a plaintiff must show: (1) that the event was of a kind that ordinarily does not occur in the absence of negligence; (2) that it was caused by an agency or instrumentality within the exclusive control of the defendant; (3) that it was not due to any voluntary action of the plaintiff; and (4) that evidence of the true explanation of the event was more readily accessible to the defendant than to the plaintiff. *Woodard v Custer*, 473 Mich 1, 6-7; 702 NW2d 522 (2005). "[I]f a medical malpractice case satisfies the requirements of the doctrine of res ipsa loquitur, then such case may proceed to the jury without expert testimony." *Id.* at 6.

Plaintiff's own expert Leonard Elbaum admitted that physical therapy patients can fall during gait assessment or gait training without any negligence being committed by the physical therapist. The fact that a patient falls during gait assessment did not mean that the therapist violated the standard of care. Elbaum testified:

Q. . . . Falls do occur during physical therapy, during gait training, during gait assessment?

A. Unfortunately they do, yes.

Q. And you're not saying that just because somebody falls and injures themselves during a gait assessment and gait training, that that means the therapist violated the standard of care?

A. No, I'm certainly not saying that in every instance.

Q. Where the use of a gait belt is appropriate in gait training or gait assessment, the idea is that if the patient does lose his or her balance, the therapist can attempt to steady the patient by hands-on contact; correct?

A. Yes.

Q. And unfortunately a physical therapist, under some circumstances, can be using appropriate parameters for guarding, and the patient suddenly falls and unfortunately the fall occurs and the patient can be injured?

A. It's possible you can do the very best you can and still have someone injure themselves during a fall, yes.

Therefore, plaintiff is unable to demonstrate that the event was of a kind that ordinarily does not occur in the absence of negligence. Falling could occur in the absence of any negligence and was a potential consequence of receiving physical therapy. In a medical malpractice case, more than an adverse or bad result is required; while an adverse result may be offered to the jury as part of the evidence of negligence, it does not, standing alone, create an issue for the jury. *Jones*, 428 Mich at 154, 156.

Additionally, the doctrine of *res ipsa loquitur* "entitles a plaintiff to a permissible inference of negligence from circumstantial evidence . . . when the plaintiff is unable to prove the actual occurrence of a negligent act." *Id.* at 150. *Res ipsa loquitur* permits proof by circumstantial inferences rather than direct evidence. Plaintiff has pointed to a variety of negligent acts or omissions that allegedly caused Loretta to fall. Thus, plaintiff is not trying to avail himself of *res ipsa loquitur* to permit an inference of negligence when the true cause is unknown, which is the rationale behind the rule. *Id.* Accordingly, the trial court clearly erred in denying defendant's motion for summary disposition as to plaintiff's *res ipsa loquitur* claim.

Reversed and remanded for further proceedings not inconsistent with this opinion. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Kirsten Frank Kelly