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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-1813**

Karmen Michelle Ingersoll,  
as Trustee for the next of kin of Thomas Wade Ingersoll,  
Appellant,

vs.

Innovis Health, L.L.C.,  
Respondent.

**Filed August 3, 2020  
Reversed and remanded  
Hooten, Judge**

Polk County District Court  
File No. 60-CV-17-1135

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Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Hooten,  
Judge.

**UNPUBLISHED OPINION**

**HOOTEN**, Judge

In this appeal from the summary judgment of her medical malpractice claims against  
respondent medical clinic in a wrongful death action, appellant, who was the wife of

decedent and the trustee of decedent's estate, argues that the district court's analysis of proximate cause was clearly erroneous. We agree.

## **FACTS**

Appellant Karmen Michelle Ingersoll contends that her husband, the decedent Thomas Wade Ingersoll, was diagnosed with permanently debilitating rheumatoid arthritis in 1998. Her husband was treated for his arthritis with various opioid medications including Vicodin (a combination of hydrocodone and acetaminophen), hydrocodone, Percocet (oxycodone and acetaminophen), and oxycodone. There was evidence in the record that opioids are highly addictive and evidence of their long-term effectiveness for treating chronic pain is limited. Appellant reports that even though her husband had been taking opioid medication for five or six years, the medication was only periodically effective at managing his pain. Appellant became aware that her husband was abusing his opioid medication when he began nasally ingesting it and stealing appellant's opioid medication when his medication was in short supply.

Appellant's husband was first treated by respondent Innovis Health, L.L.C. (Innovis), in 2009, when a physician assistant (PA) at the clinic began prescribing him various opioids. Her husband continued taking these opioid medications until Friday, May 30, 2014, when appellant and her husband met with the PA to discuss further treatment. At that time, appellant's husband informed the PA that oxycodone was no longer controlling his pain. Appellant informed the PA that she was concerned that her husband was consuming too much medication and had taken some of her hydrocodone. In her chart notes, the PA noted that appellant's husband acknowledged that he was "using too much

medication,” that he was “in agreement to [go] off his narcotics,” and that the PA was “concerned about overuse of medication and possible addiction.”

The PA prescribed methadone, advising appellant and her husband that “[methadone] will help him with his pain and will prevent withdrawal from opiates, yet [it is] not a medication to seek a high from.” It is not clear from the record whether or not the PA informed appellant and her husband of the unique and dangerous properties of methadone including a delayed peak analgesic effect, which increases the likelihood of overdose, the signs of an overdose, or the need to seek medical attention if an overdose was suspected.

As part of the consultation, the PA stated that appellant agreed to manage her husband’s medication and keep the pills in a lockbox. However, appellant testified that she had “no control over his [medication]” and was merely told by the PA to put the medication in a lockbox—something she did not own. Further, appellant stated in her deposition that she did not remember whether or not she explicitly agreed to control her husband’s medication or put the medication in a lockbox.

The PA prescribed appellant’s husband 60 pills of methadone with instructions to take 40 mg/day. Appellant’s expert witness opined that this prescription deviated from accepted standards of practice, which would have called for no more than 11–17 mg/day, so as to limit the likelihood of a fatal overdose. The PA acknowledged that she did not consult with a pain management specialist to determine the dosage and that she based Mr. Ingersoll’s prescription dosage on dosages prescribed to other patients. Appellant’s expert witness stated that the accepted standard medical practice for calculating a correct dose of

methadone is a complex and personalized algorithm based on personal characteristics and medication history.

Following the Friday appointment, appellant and her husband filled the prescription for methadone and her husband took control of the bottle. Appellant claimed that she couldn't ask for the medication back, and that she witnessed her husband nasally ingest one dose of methadone before leaving him at home following the Friday appointment. Appellant's husband was asleep when she returned. Appellant asserted that she did not observe her husband ingesting any more medication over the weekend; however, it is not clear from the record how much medication her husband actually consumed or how he ingested that medication. Appellant spent Saturday away from her husband. Appellant stated that on Sunday, her husband told her that he felt "wobbly" and tired. Appellant testified that her husband often felt tired after taking his medication, and that before she left home she told her husband to lay down. Later that day, her husband died of a methadone overdose. It is not clear how much methadone was in his system upon his death.

Appellant sued Innovis as trustee on behalf of her husband's estate for medical negligence in a wrongful death action. Innovis moved for summary judgment. The district court granted summary judgment on behalf of Innovis, stating that the PA's alleged medical negligence was not the proximate cause of her husband's death as a matter of law because appellant's failure to secure her husband's methadone, and her husband's nasal ingestion of the methadone, were superseding causes of her husband's death and "no reasonable mind could conclude otherwise." This appeal follows.

## DECISION

Appellant argues that the district court erred when it granted summary judgment to Innovis because the actions of appellant and her husband were not, as matters of law, intervening, superseding causes of her husband's death. We agree.

“On appeal from summary judgment, we review whether there are any genuine issues of material fact and whether the district court erred in its application of the law. We view the evidence in the light most favorable to the party against whom summary judgment was granted.” *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76–77 (Minn. 2002) (citations omitted). “We review de novo whether a genuine issue of material fact exists. We also review de novo whether the district court erred in its application of the law.” *Id.* “When reasonable persons might draw different legal conclusions from the evidence presented, summary judgment must be denied.” *Kenneh v. Homeward Bound, Inc.*, 944 N.W.2d 222, 228 (Minn. 2020).

To establish a prima facie case of medical negligence, a plaintiff must demonstrate: (1) the accepted and recognized standard of care that applies to a particular provider's conduct, (2) the provider departed from that accepted and recognized standard, (3) the provider's departure from that accepted and recognized standard was a proximate cause of patient's harm, and (4) that damages resulted from this departure. *Reinhardt v. Colton*, 337 N.W.2d 88, 94 (Minn. 1982).

For an act to be a proximate cause of the harm, the act must have been a substantial factor in the harm's occurrence. *George v. Estate of Baker*, 724 N.W.2d 1, 11 (Minn. 2006). To establish that a defendant healthcare provider was the proximate cause of the

negligence, the plaintiff must prove that “it was more probable that (the injury) resulted from some negligence for which defendant was responsible than from something for which he was not responsible.” *Silver v. Redleaf*, 194 N.W.2d 271, 273 (Minn. 1972). In general, whether or not a defendant’s negligence was the proximate cause of a plaintiff’s harm is a question of fact that is better left to the jury. *Canada v. McCarthy*, 567 N.W.2d 496, 506 (Minn. 1997) (citation omitted).

Although there can be more than one proximate cause of a harm, the existence of a superseding cause can relieve the defendant-tortfeasor of any liability for his or her negligence. *Hafner v. Iverson*, 343 N.W.2d 634, 637 (Minn. 1984). A superseding cause is “an act” that is “in no way caused by the defendant’s negligence, or a force of nature, occurring after defendant’s negligent act or omission and operating as an independent force to produce the injury.” *Id.* (emphasis omitted). Therefore, for an intervening cause to be a superseding cause, and thereby relieve the defendant-tortfeasor of liability, the intervening cause must have: (1) occurred at some point after the original negligence, (2) “must not have been brought about by the original negligence,” (3) “must have actively worked to bring about a result which would not otherwise have followed from the original negligence,” and (4) “must not have been reasonably foreseeable by the original wrongdoer.” *Canada*, 567 N.W.2d at 507. All four elements must be satisfied for the district court to determine that an intervening cause was a superseding cause and thus that the defendant-tortfeasor was not, as a matter of law, the proximate cause of the harm. *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 113 (Minn. 1992).

**I. It is for a jury to determine if the actions of appellant and her husband were intervening, superseding causes of his death.**

Appellant argues that the district court erred when it determined that her failure to secure her husband's medication was an intervening superseding cause of his death because the PA's prescription of over double the recommended dosage of methadone: (1) allowed for her husband to overuse the prescription, (2) was sufficient to bring about his death, and (3) his death was a foreseeable outcome.

*A. Reasonable minds may differ as to whether appellant's actions actively worked to bring about a result which would not otherwise have followed from the PA's alleged negligence.*

Appellant argues that the district court erred as a matter of law when it determined that her "indifference to her agreement to secure and administer husband[']s . . . methadone . . . actively worked to bring about a result which would not otherwise have followed." Appellant contends that her failure to secure his medication was an inaction, not an affirmative action, and that her husband would have died even if she had secured the medication.

The third element of the superseding cause analysis is whether or not an intervening action actively worked to bring about a result which would not otherwise have followed from the original negligence. *Canada*, 567 N.W.2d at 507. The consequence of this element is that the intervening action changed the "natural" course of events and thus led to a different outcome. *State v. Hofer*, 614 N.W.2d 734, 738 (Minn. 2000) (relying on *Carlson v. Fredsall*, 37 N.W.2d 744, 748 (Minn. 1949)).

1. Reasonable minds may conclude that appellant never agreed to secure her husband's medication.

Appellant argues that any action undertaken by an intervening cause must be an affirmative act, and not merely a failure to act. However, where a duty arises to act, the failure to act is sufficient to constitute an intervening cause. *See Arnold v. N. States Power Co.*, 297 N.W. 182, 187 (Minn. 1941) (stating that “[t]here is no difference in law or morals between the effects” of inaction or action where a duty exists). Further, appellant argues that, at worst, her failure to act constitutes comparative negligence.

The consequence of appellant's argument is that either an agreement between the PA and appellant to manage and secure her husband's medication did not exist, or that the agreement did not create an affirmative duty for appellant to act. Innovis claims that appellant's agreement to manage her husband's medication created an affirmative duty for appellant to do so, and thus her failure to manage his medication constitutes an act for the purposes of an intervening cause.

The PA declared that during the Friday appointment appellant agreed to manage her husband's medication and keep the pills in a lockbox. However, appellant testified that she had “no control over his [medication]” and was merely told by the PA to put the medication in a lockbox—something she did not own. Further, appellant testified that she “might have” agreed to put the medication in a lockbox, but was “not sure.”

Nevertheless, the district court concluded that an agreement existed between appellant and the PA and it was appellant's failure to adhere to this agreement that led to her husband's overdose. As the district court did not state why it believed that an



agreement existed, we can only conclude that the district court made a relative credibility assessment between the PA's testimony and appellant's testimony. Nevertheless, based on the conflicting testimony alone, reasonable minds could conclude that an agreement to manage her husband's medication, resulting in a non-medical professional knowingly assuming all responsibility for any negligent actions resulting from a medical professional's practice of medicine, never existed.

Whether or not appellant and the PA entered into an agreement is a factual question that relies on assessing the relative credibility of appellant and the PA, and because reasonable minds may differ regarding the existence of such an agreement, we conclude that the district court erred as a matter of law when it determined that an agreement existed and that appellant's failure to adhere to the alleged agreement actively worked to bring about a result which would not otherwise have followed from the original negligence. *See Canada*, 567 N.W.2d at 507 (describing the elements of intervening, superseding cause).

2. Reasonable minds may conclude that the PA's prescribed dosage would have killed appellant's husband regardless of appellant's actions.

Appellant argues that regardless of the existence of an agreement, reasonable minds could conclude that her conduct did not alter the natural course of events because her husband would have ingested a deadly dose of methadone even if he took the medication as directed.

Appellant's expert testified that "if [the PA] had calculated and prescribed the appropriate dose of methadone, [appellant's husband] more likely than not would be alive today." However, the district court did not address whether or not the dosage prescribed

by the PA, over double the recommended dose, was sufficient to lead to appellant's husband's death. Indeed, the district court's conclusion ignores the opinion of the expert witness, essentially making a credibility determination in which the credibility of the expert was simply rejected without any analysis or discussion of the reasons behind such a rejection.

When considering the record in the light most favorable to appellant, *STAR Ctrs., Inc.*, 664 N.W.2d at 76, reasonable minds may conclude that the PA's allegedly negligent prescription of over twice the recommended safe dosage of methadone would have been sufficient to cause the overdose of appellant's husband even when taken as directed. Thus, as reasonable minds may conclude that her husband's death would have occurred regardless of appellant's actions with respect to the alleged agreement, we conclude that the district court erred when it concluded that appellant's conduct altered the natural course of events. Fundamentally, as there are material facts in dispute, it is for a jury to decide if appellant or her husband's actions were intervening, superseding causes of husband's death.

As all four elements of superseding cause must be satisfied for the district court to determine that an intervening cause was a superseding cause, *Wartnick*, 490 N.W.2d at 113, and we have concluded that the district court erred when it determined that appellant's actions brought about a result that would not otherwise have occurred as a matter of law, we need not address the other elements of intervening, superseding cause to conclude that the district court erred when it determined that appellant's actions were an intervening, superseding cause.

*B. Reasonable minds may differ as to whether the nasal consumption of the methadone by appellant's husband was an intervening, superseding cause as a matter of law.*

Appellant argues that the district court erred when it determined, without any subsequent analysis or citation, that her husband's nasal ingestion of the methadone was an intervening, superseding cause that independently led to his death. Appellant states that the record does not contain any evidence that the act of nasally ingesting methadone, and not the underlying dosage, was sufficient to cause his death.

The third element of the superseding cause analysis is whether or not an intervening action actively worked to bring about a result which would not otherwise have followed from the original negligence. *Canada*, 567 N.W.2d at 507. In order to establish a foundation for superseding causation, a defendant must provide evidence that the intervening act "broke the causal chain." *State v. Lund*, 474 N.W.2d 169, 174 (Minn. 1991). When information is not presented to the district court and is not in the record, it is not properly before this court. *301 Clifton Place L.L.C. v. 301 Clifton Place Condo. Ass'n*, 783 N.W.2d 551, 560 (Minn. App. 2010).

Innovis did not present any evidence to the district court that the act of nasally ingesting methadone could trigger an overdose of an otherwise safe dosage. Further, the district court did not subsequently discuss the PA's doubling of the recommended safe dose and did not consider whether or not the underlying dosage would have been sufficient to independently cause an overdose and death. Accordingly, the district court's reliance on the method of ingestion by appellant's husband as an event that "broke the causal chain,"

*Lund*, 474 N.W.2d at 174, and worked to bring about an event that would not have otherwise occurred, *Canada*, 567 N.W.2d at 507, is not supported by the record.

Further, as reasonable minds may conclude that the PA's allegedly negligent prescription would have been sufficient to cause the death of appellant's husband regardless of his method of ingestion, we conclude that the district court erred when it determined that the action of appellant's husband in nasally ingesting the methadone, as a matter of law, altered the natural course of events so as to be an intervening, superseding cause. Again, as there are material facts in dispute, it is for a jury to decide if appellant or her husband's actions were intervening, superseding causes of husband's death.

As all four elements of superseding cause must be satisfied for the district court to determine that an intervening cause was a superseding cause, *Wartnick*, 490 N.W.2d at 112, and we have concluded that the district court erred when it determined that the actions of appellant's husband brought about a result that would not otherwise have occurred as a matter of law, we need not address the other elements to conclude that the district court erred when it determined that such actions were an intervening, superseding cause. Therefore, we reverse the district court's grant of summary judgment and remand to the district court for further proceedings consistent with this opinion.

**Reversed and remanded.**