

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA02-164

NORTH CAROLINA COURT OF APPEALS

Filed: 31 December 2002

THERESA ANN WHITE and
BRUCE ROBERT WHITE,
Plaintiffs,

v.

Carteret County
No. 99-CVS-696

ROBERT M. SCHWARTZMAN,
MURRAY I. RESNICK, Attorney at
Law, RESNICK & ABRAHAM, LLC, and
M. DOUGLAS GOINES, ATTORNEY AT
LAW,
Defendants.

Appeal by plaintiffs from order entered 25 October 2001 by Judge Paul L. Jones in Carteret County Superior Court. Heard in the Court of Appeals 9 October 2002.

Dixon, Doub, Conner & Foster, PLLC, by Jeffery B. Foster, for plaintiffs-appellants.

Kilpatrick Stockton LLP, by M. Gray Styers, Jr., and Catharine W. Cummer, for defendants-appellees.

BRYANT, Judge.

Plaintiffs Theresa Ann and Bruce Robert White allegedly suffered injury and loss of consortium, respectively, following Mrs. White's 1992 hospital stay at the Cherry Point Naval Hospital in Cherry Point, North Carolina. Due to defendants' alleged negligence in relation to plaintiffs' underlying medical malpractice claim, plaintiffs filed an action seeking damages for

legal malpractice and further loss of consortium. Defendants filed a motion for summary judgment, arguing that they did not owe a duty to plaintiffs.

On 25 October 2001, the trial court granted defendants' summary judgment motion, noting that plaintiffs could not establish that defendants proximately caused their alleged damages. Furthermore, the court stated that plaintiffs failed to forecast sufficient evidence of an issue of material fact as to whether they would have prevailed in their medical malpractice action. Plaintiffs appeal.

"To establish a claim for professional malpractice, the plaintiff[s'] must show: "(1) the nature of the defendant's profession; (2) the defendant[s'] duty to conform to a certain standard of conduct; and (3) a breach of the duty proximately caused injury to the plaintiffs." *Greene v. Pell & Pell, L.L.P.*, 144 N.C. App. 602, 604, 550 S.E.2d 522, 523 (2001) (emphasis added) (citation omitted). Proximate cause is an essential element in a legal malpractice claim based on negligence. *Byrd v. Arrowood*, 118 N.C. App. 418, 455 S.E.2d 672 (1995) (citation omitted). Summary judgment is an appropriate remedy for the failure to establish an essential element of such a claim. See *Osburn v. Danek Medical, Inc.*, 135 N.C. App. 234, 241, 520 S.E.2d 88, 93 (1999).

In the record on appeal, plaintiffs present two assignments of error that the trial court erred in concluding that 1) plaintiffs failed to establish that defendants' actions were the proximate cause of plaintiffs' damages; and 2) plaintiffs' forecast of

admissible evidence failed to create an issue of material fact. In their brief to this Court, plaintiffs argue only that their forecast of evidence created a genuine issue of material fact as to the standard of care in their underlying medical malpractice claim. However, plaintiffs fail to address the trial court's conclusion that proximate cause did not exist.

Rule 28(b)(6) of our Rules of Appellate Procedure states, "Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned." N.C. R. App. P. 28(b)(6); see *Furr v. Fonville Morisey Realty, Inc.*, 130 N.C. App. 541, 503 S.E.2d 401 (1998). Because plaintiffs failed to address the issue of proximate cause, which was an independent reason for granting defendants' motion for summary judgment, this assignment of error is deemed abandoned and essentially unchallenged.

Furthermore, our review of plaintiffs' second assignment of error would be fruitless. Even if we were to find plaintiffs did in fact forecast sufficient evidence as to the underlying medical malpractice claim, plaintiffs would not be entitled to relief in absence of the critical element of proximate cause.

AFFIRMED.

Judges McCULLOUGH and TYSON concur.

Report per Rule 30(e).