

and that this negligence was the proximate cause of her mother's death. The trial court granted summary judgment in favor of Dr. Wade, from which order Janel appeals.

¶ 4

FACTS

¶ 5

Medical and Procedural Background

¶ 6 Dr. James Wade was the primary care physician for Carol Wenneman. Carol suffered from back pain, which resulted in hospitalizations at St. Elizabeth's Hospital in Belleville, including back surgery, and rehospitalizations for subsequently developed postsurgical infections—all between the dates of March 26, 1999, and July 30, 1999. The last hospitalization during this time period occurred on July 12, 1999. During this admission, Carol was diagnosed with renal problems. A nephrologist, Dr. Robert Haake, was called to consult on Carol's medical condition. He diagnosed Carol with rapidly progressing glomerulonephritis—damage to the part of the kidneys that filters waste from the blood. Left untreated, the patient could lose renal function. To treat the condition, Dr. Haake prescribed two potent medications—Cytosan and prednisone. Patients who are taking these drugs, particularly Cytosan, require monitoring by blood tests because both drugs impact the immune system. Cytosan lowers the white blood cell count. Prednisone elevates the white blood cell count.

¶ 7 Carol was discharged on July 30, 1999, and followed up with Dr. Wade at his office on August 3, 1999. Based upon Carol's complaints at this appointment, Dr. Wade diagnosed her with vertigo and increased her prednisone dosage as treatment for the condition. Carol had blood tests completed pursuant to Dr. Haake's orders on August 4, 1999, and August 18, 1999.

¶ 8 On August 23, 1999, Dr. Wade was contacted and asked to refill Carol's prescription for Cytosan. Apparently, attempts to reach Dr. Haake had been unsuccessful. Dr. Wade filled the prescription.

¶ 9 On August 24, 1999, Dr. Haake saw Carol for the first time since her July 30, 1999, hospital discharge. After reviewing Carol's two sets of laboratory results, he reduced her dosages on both Cytosan and prednisone.

¶ 10 Carol next had blood tests on September 7, 1999.

¶ 11 On September 8, 1999, Carol had another appointment with Dr. Haake. She was not feeling well at this appointment. After some confusion over the test results and after consultation with the laboratory for clarification, Dr. Haake learned that Carol's white blood cell count had fallen dangerously low. Dr. Haake immediately hospitalized Carol. During the hospitalization, Carol's health deteriorated, and she developed acute respiratory distress syndrome. She died on October 16, 1999.

¶ 12 In 2001, Carol Wenneman's daughter, the executor of her estate, filed a lawsuit against Healthlink, Inc., Olsten Certified Healthcare Corporation, St. Elizabeth's Hospital, Dr. Haake, and Dr. Wade for medical negligence resulting in Carol's death.

¶ 13 A second amended complaint was filed on August 27, 2002. Healthlink, Inc., and Dr. Haake settled with the plaintiff and were dismissed. Plaintiff also dismissed the claims against St. Elizabeth's Hospital and Olsten Health Care, Inc.

¶ 14 In this second amended complaint, the plaintiff alleged that Dr. Wade deviated from the requisite standard of care as follows:

- "a. That Dr. Wade failed to recognize the significance of the infection that Carol Wenneman had, and failed to properly diagnose or treat said infection;
- b. That Dr. Wade negligently prescribed prednisone and cytosan and then negligently and abruptly discontinued said drugs when the discontinuation of said drugs should have been weaned over time;
- c. That Dr. Wade negligently failed to properly monitor the patient while

she was in the hospital;

- d. That Dr. Wade negligently allowed her to be discharged from the hospital precipitously on June 21, July 8, and July 30, 1999;
- e. Dr. Wade negligently failed to properly monitor Carol Wenneman and provide care to her while she was in the hospital between September 8, 1999 and the time of her death;
- f. Dr. Wade negligently failed to require proper and appropriate home health nursing care, including the monitoring of her condition for her infection and the monitoring of the drugs that she was on;
- g. Dr. Wade negligently failed to require that she be properly monitored while she was weaned from the drugs cytoxan and prednisone;
- h. Dr. Wade negligently failed to communicate with Olsten nurses and Hospital nurses concerning the patient's condition; and
- i. Dr. Wade negligently failed to communicate and coordinate the care of Plaintiff's decedent with her other treating doctors."

Dr. Wade's answer to the complaint denied these allegations.

¶ 15 Codefendant Dr. Haake and Expert Witness Testimony

¶ 16 Dr. Robert J. Haake. Robert J. Haake, D.O., became a treating physician for Carol Wenneman by way of referral from Dr. Wade. He is board-certified in internal medicine, nephrology, and critical care.

¶ 17 Dr. Haake first saw Carol on July 22, 1999, when she was hospitalized at St. Elizabeth's in Belleville. In his referral, Dr. Wade informed Dr. Haake that his patient appeared to be in acute renal failure. Dr. Haake's initial role with the patient was to diagnose the condition, and then to intervene as the treater, and manage the patient's care. After physical examination and review of her lab test results, Dr. Haake diagnosed Carol with

rapidly progressive acute glomerulonephritis. Additional tests were ordered. Those tests confirmed the initial diagnosis. Dr. Haake prescribed steroidal medications to treat the condition by reducing renal inflammation. Use of these medications, however, is with risk, and Dr. Haake testified about the necessary monitoring of white blood cell counts, which typically increase in response to the steroidal treatment.

¶ 18 Dr. Haake testified about the interaction between the primary and specialist physicians, explaining that upon his acceptance of Carol as his patient, he handled her renal care and kept Dr. Wade notified. Dr. Wade did not have any input into the monitoring protocol utilized by Dr. Haake upon Carol's discharge from the hospital.

¶ 19 Carol was discharged from the hospital by a nephrologist covering Dr. Haake's patients. This nephrologist directed Carol to schedule an appointment with Dr. Wade in one week and an appointment with Dr. Haake in two weeks. In addition to these two appointments, Carol was told to have laboratory tests completed on August 4, 1999, and August 18, 1999.

¶ 20 According to Dr. Haake, the first blood tests results from August 4, 1999, reflected renal improvement. Her white blood cell count had dropped as he expected from the usage of Cytoxan, but the levels recorded on August 4, 1999, were still within the range of normal. The August 18, 1999, results were similar and showed continued recovery.

¶ 21 Dr. Haake saw Carol in his office on August 25, 1999. Dr. Haake learned that Dr. Wade increased Carol's prednisone dosage from 60 milligrams to 80 milligrams at his August 3, 1999, appointment. Dr. Haake expressed his opinion that the slight increase in prednisone between August 3 and August 25 did not adversely affect Carol's health. At this appointment, Dr. Haake reduced Carol's prednisone dosage and also reduced her dosage of Cytoxan because she was improving and it was important to reduce the amounts of these drugs before negative side effects began to occur. Dr. Haake did not consult with Dr. Wade

before he modified these medications.

¶ 22 Dr. Haake next saw Carol in his office on September 8, 1999. Carol had a fever and her most recent test results from September 7, 1999, reflected a large decrease in her white blood cell count. Dr. Haake diagnosed her with neutropenic fever, and she was hospitalized that day.

¶ 23 Despite the antibiotic therapy she received during this hospitalization, Carol's white blood cell count continued to drop. She suffered with breathing problems and ultimately succumbed to adult respiratory distress syndrome, dying on October 16, 1999.

¶ 24 On cross-examination, Dr. Haake indicated that in the first week following Carol's July 30, 1999, hospital discharge, Dr. Wade monitored her care by reviewing the lab results and by seeing her in his office. Dr. Haake distinguished between duties involving the monitoring of a patient with managing the care of a patient. Dr. Haake explained that while Dr. Wade monitored Carol for that first week, he never managed Carol's renal care.

¶ 25 Dr. Steven A. Sahn. Steven A. Sahn, M.D., was hired by the plaintiff as an expert witness with respect to internal medicine, pulmonary medicine and critical care medicine.

¶ 26 Dr. Sahn testified that Dr. Haake's treatment of Carol's renal condition with prednisone and Cytoxan was appropriate. He explained that Cytoxan usage requires patient monitoring because of associated negative side effects. How often the tests should be ordered depends upon which medical source is consulted. Dr. Sahn testified that the frequency of testing recommended depends upon which medical professional standards are consulted and considered to be authoritative. Recommended testing could be as often as once per week for the first month. An alternate source only recommends testing every one to two weeks for the first month. However, after the first month, the frequency of testing declines no matter which medical professional source is consulted. Dr. Sahn explained the various components tested in white blood cell counts, and stated that a physician should

reduce the Cytoxan dosage if the total white blood cell count falls below 3500 and/or the neutrophil count falls below 1500.

¶ 27 Dr. Sahn testified that as of mid-August 1999, Carol's white blood cell counts were stable in light of the similar results from the tests on August 4 and August 18. Given the increase in prednisone ordered by Dr. Wade on August 3, and in light of her August 18 test results, Dr. Sahn testified that the white blood cell count may have increased in response to the prednisone increase, but that the count was still considered stable. While he did not believe that Dr. Wade's involvement in changing Carol's medication was appropriate within the applicable standard of care, he testified that he did not believe "that particular incident had an effect on the long-term outcome" and reiterated that "more likely than not, it did not have an effect on the outcome."

¶ 28 In cross-examination, Dr. Sahn stated his opinion that monitoring a patient on Cytoxan and prednisone was not something that Dr. Wade should have been in charge of doing, and that it was appropriate for Dr. Wade to defer to Dr. Haake. Even so, Dr. Sahn found that what monitoring Dr. Wade did regarding Carol's condition was without problem.

¶ 29 Dr. Sahn testified that a primary problem with Carol's care involved Dr. Haake's delay in obtaining the next set of laboratory tests—three weeks after August 18. Dr. Sahn testified that if Dr. Haake ordered lab work to be done within two weeks following August 18—on or about September 1—that this would have been within the required standard of care. Dr. Sahn testified that Cytoxan caused the decline of Carol's white blood cell count within a reasonable degree of medical certainty. He also rendered his opinion that if the decrease in the white blood cell count had been detected one week earlier, appropriate treatment could have been taken and Carol would not have died. Dr. Sahn testified that Carol became septic, that this sepsis led to respiratory failure, and that the respiratory failure ultimately caused her death. The sepsis was caused by neutropenia secondary to the Cytoxan she was taking.

¶ 30 Dr. David Birnbaum. David Birnbaum, M.D., was hired by the plaintiff as an expert witness on the matters of family medical practice.

¶ 31 Dr. Birnbaum testified it would be outside the parameters of a family practitioner to prescribe Cytoxan, a toxic and immunosuppressive drug. He agreed that Cytoxan and prednisone, prescribed by Dr. Haake, were necessary for the treatment of Carol's condition. He testified that if a patient is taking these drugs, the patient must be monitored at reasonable intervals with laboratory blood tests.

¶ 32 Dr. Birnbaum stated that Dr. Wade's duty in caring for and treating Carol's renal condition was dependent upon whether he was in charge of the Cytoxan prescription. If Dr. Wade was managing the Cytoxan prescription, then he would be responsible to frequently schedule and review her blood tests. Dr. Birnbaum stated that if he was not managing the patient's renal care, then he needed to contact Dr. Haake, if and when Dr. Wade prescribed those drugs. As a physician, Dr. Birnbaum testified that he understood the situation by which Dr. Wade came to prescribe Cytoxan to the patient—that Carol was out of the Cytoxan, needed a refill, and could not locate Dr. Haake. However, by taking on the task of refilling the medication, it was then incumbent upon Dr. Wade to find Dr. Haake to tell him that he refilled the prescription. If he had contacted Dr. Haake, his responsibility to the patient regarding the renal condition would have concluded. On cross-examination, Dr. Birnbaum admitted that since Carol was seen by Dr. Haake just two days after Dr. Wade refilled her Cytoxan, Dr. Haake—not Dr. Wade—was managing the patient. Dr. Birnbaum stated his opinion that in the two-day period of time between Dr. Wade's refill and Carol's appointment with Dr. Haake, Carol was not injured or damaged.

¶ 33 Dr. Birnbaum confirmed that Dr. Wade's office note from August 3—four days after discharge—did not reference any blood test results, but reflected an increase in the dosage of prednisone. On redirect examination, Dr. Birnbaum stated his opinion that Dr. Wade should

not have increased Carol's prednisone prescription without speaking to Dr. Haake. While prednisone can be used to treat dizziness, Dr. Birnbaum testified that there are alternate medications available. Dr. Birnbaum testified that Carol's blood test results of August 4 and August 18 showed that her white blood cell count was in the normal range and that her creatinine levels had improved, which indicated that the treatment was working.

¶ 34 Dr. Birnbaum stated that it was appropriate for a family practitioner to rely upon the specialist to monitor the patient for this type of condition and the prescriptions necessary to treat the condition. Reliance upon the specialist is in compliance with the standard of care. However, if Dr. Wade was monitoring Carol's renal condition and the effect of the prescribed medications on her white blood cell count, then reliance upon the expert was outside the requisite standard of care.

¶ 35 Summary Judgment

¶ 36 Dr. Wade filed his motion for summary judgment on July 22, 2011, arguing that there was no genuine issue of material fact on the matter of proximate causation. None of the expert witnesses or treating physicians involved in the care of or analysis of the care given to Carol found that Dr. Wade's actions and/or inactions were a proximate cause of her death. Evidence depositions of the expert witnesses had already been taken. The time for naming any additional expert witnesses had passed, and trial was set for August 8, 2011. As proximate causation must be established in a medical negligence case, Dr. Wade argued that plaintiff was not going to be able to meet that burden of proof at trial and consequently that summary judgment was an appropriate order.

¶ 37 In response, plaintiff argued that Dr. Wade undertook to monitor Carol's condition and to coordinate her care, and that failures in these duties led to the inadequate monitoring of her medication which allowed her to become gravely susceptible to infections, which ultimately resulted in her death. Plaintiff argued that Dr. Wade's actions or inactions were

a proximate cause of Carol's death. In support, he failed to cite to the record or to evidentiary testimony. Plaintiff claimed that if the case was allowed to go to trial, there would be evidence of proximate causation, but no details of this evidence were provided to the court. Finally, plaintiff cited to one case as authority for her contention that summary judgment is inappropriate in a case if there is even slight evidence countering judgment. See *Snelson v. Kamm*, 204 Ill. 2d 1, 787 N.E.2d 796 (2003) (case where the court reinstated the jury's verdict after the trial court entered judgment notwithstanding that verdict, with the court stating that even if the evidence is slight, the matter was within that jury's discretion).

¶ 38 In consideration of the summary judgment motion and arguments countering the motion, the court noted that all trial testimony of plaintiff's experts was contained within the evidence depositions of Dr. Sahn, Dr. Birnbaum, and Dr. Haake. The trial judge indicated that he had read these depositions and had considered all evidence in favor of and against the motion. On the basis of the evidence, the court concluded that there was no genuine issue of material fact and that Dr. Wade was entitled to judgment as a matter of law because plaintiff offered no expert testimony that the alleged negligence of Dr. Wade more probably than not caused or contributed to cause Carol Wenneman's death.

¶ 39 From this order, the plaintiff appeals.

¶ 40 **LAW AND ANALYSIS**

¶ 41 On appeal, courts review summary judgment orders *de novo*. *Myers v. Health Specialists, S.C.*, 225 Ill. App. 3d 68, 72, 587 N.E.2d 494, 497 (1992). Summary judgment is intended as a vehicle to determine whether or not a factual question exists—not to resolve questions of fact. *Martens v. MCL Construction Corp.*, 347 Ill. App. 3d 303, 312, 807 N.E.2d 480, 487 (2004) (citing *Gilbert v. Sycamore Municipal Hospital*, 156 Ill. 2d 511, 517, 622 N.E.2d 788, 792 (1993)). The court must consider all pleadings, depositions, admissions, and affidavits on file to decide if there is any issue of material fact. *Myers*, 225

Ill. App. 3d at 72, 587 N.E.2d at 497. If material facts are in dispute, then the trial court is required to "view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences from the facts presented in favor of the nonmovant." *Martens*, 347 Ill. App. 3d at 312, 807 N.E.2d at 487 (citing *In re Estate of Hoover*, 155 Ill. 2d 402, 410-11, 615 N.E.2d 736, 739-40 (1993)). While in general, summary judgments are a quick way to put an end to a lawsuit or a portion thereof, the use of summary judgment is considered to be a drastic method of concluding litigation and should only be granted if the facts and issues raised by the party seeking judgment are free from doubt. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 272, 586 N.E.2d 1211, 1215 (1992); *Colvin v. Hobart Brothers*, 156 Ill. 2d 166, 169-70, 620 N.E.2d 375, 377 (1993).

¶ 42 A mere factual possibility is insufficient to defeat a summary judgment motion. *Wilmere v. Stibolt*, 152 Ill. App. 3d 642, 648, 504 N.E.2d 916, 919 (1987). In considering the motion, the court was not required to ignore evidence or inferences negative to plaintiff's position. *Yacko v. Curtis*, 339 Ill. App. 3d 299, 302, 789 N.E.2d 1274, 1276 (2003).

¶ 43 While the complaint contains multiple allegations of neglect by Dr. Wade, we must review the expert opinions regarding these allegations. No one provided opinions that anything Dr. Wade did, or did not do, had bearing on the ultimate cause of her death. All experts acknowledged that Dr. Wade was in a position of deference to the specialist, Dr. Haake.

¶ 44 At best, the evidence may be sufficient to establish that Dr. Wade "monitored" Carol's care for the first week after discharge from the hospital. Dr. Haake acknowledged that Dr. Wade was not responsible for "managing" Carol's care during that week. Even if we disregard the distinction between "monitoring" and "managing" Carol's medical case, the undisputed facts as demonstrated by the laboratory test results show that during that one-week time frame, Carol's condition improved. After that first week, no treating

physician or expert witness tied Dr. Wade to any sort of role in managing Carol's continuing care of her renal condition in light of the fact that a nephrologist was involved with and handling her care.

¶ 45 While there was issue taken by Dr. Birnbaum about the fact that Dr. Wade increased Carol's dosage of prednisone, her next set of blood test results reflected little change and was construed as indicative that the treatment was effective. Dr. Haake testified that in his opinion, the slight prednisone dosage increase did not adversely affect Carol's health between August 3 and August 25 (when he lowered the dosages of her medication). Dr. Sahn testified that it was inappropriate for Dr. Wade to have changed Carol's dosage of prednisone, but that the increased dose had no adverse effect on Carol's condition.

¶ 46 Dr. Wade was responsible for refilling Carol's prescription of Cytosan on August 23, when the pharmacy and/or Carol could not locate Dr. Haake, but no expert found that Dr. Wade's actions were inappropriate. The only criticism is that Dr. Wade should have located Dr. Haake to tell him that he had done so. But, in two days, Carol was in Dr. Haake's office for an appointment. No treating or expert witness rendered an opinion that continuing the original Cytosan dosage for the two days before her appointment with Dr. Haake was detrimental to Carol's condition.

¶ 47 There were no expert opinions about the other allegations contained within the second amended complaint.

¶ 48 While we recognize the limitations of summary judgment in that the courts are not supposed to resolve questions of fact, there must be some material fact still in issue in order to deny the motion. In this case, there were claims made that Dr. Wade should not have refilled the Cytosan or increased the dosage of prednisone. Despite the fact that Dr. Wade made these prescription medication decisions, there was absolutely no evidence that those decisions had any effect on the patient's outcome.

¶ 49 While plaintiff's attorney attempted to elicit opinions to the effect that Dr. Wade was contemporaneously managing Carol's care, or should have been ordering blood tests for Dr. Haake, the expert opinions were all contrary.

¶ 50 Consequently, we conclude that the trial court's entry of summary judgment was proper.

¶ 51 **CONCLUSION**

¶ 52 For the foregoing reasons, the judgment of the circuit court of St. Clair County is hereby affirmed.

¶ 53 Affirmed.