2016 IL App (4th) 150488-U

NO. 4-15-0488

FILED
May 9, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

RICHARD DORSETT, as Independent Administrator of the Estate of Carl Dorsett, Deceased, and as Executor of the Estate of Betty Joan Dorsett, Deceased, Plaintiff-Appellant, v. DR. ANDY ARWARI and CARLE HEALTHCARE, INC., Defendants-Appellees, and BRENT E. MILLER, M.D.; SARAH BUSH LINCOLN HEALTHCARE CENTER; and PETERSEN HEALTH OPERATION, LLC, d/b/a NEWMAN REHABILITATION & HEALTH CARE CENTER, Defendants.	)	Appeal from Circuit Court of Douglas County No. 09L13 Honorable Richard L. Broch, Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's grant of summary judgment was proper. We find no genuine issue of material fact raised on appeal.

¶ 2 On June 27, 2008, decedent, Carl Dorsett, died from a stroke. At the time, he was prescribed Coumadin, an anticoagulant. In November 2009, Richard Dorsett, administrator of Carl Dorsett's estate, filed a second amended complaint against multiple defendants. The allegations against these defendants, Dr. Andy Arwari and Carle Healthcare, Inc., were wrongful death (counts VII and X) (740 ILCS 180/1 (West 2008)), a survival action for medical malpractice (counts VIII and XI) (755 ILCS 5/27-6 (West 2008)), and medical battery (counts IX

and XII). Defendants moved for summary judgment on counts VII through XII, which the trial court granted. This appeal followed.

¶ 3 I. BACKGROUND

¶ 4 On May 29, 2008, decedent, Carl Dorsett, arrived at Carle Foundation Hospital (Carle Hospital) after suffering a hemorrhagic stroke. Dr. Andy Arwari was in charge of his care at the time. Arwari is a physician for Carle Healthcare, Inc., which is distinct from Carle Hospital. When he arrived, decedent was taking Coumadin, an anticoagulant, to prevent blood clotting. Arwari immediately suspended decedent's Coumadin medication to mitigate bleeding from his stroke. Decedent was unable to speak and barely conscious. Arwari spoke with decedent's wife and family to determine their wishes with respect to decedent remaining on Coumadin.

¶ 5 Arwari explained decedent needed Coumadin to prevent blood clotting around his mechanical mitral valve (prosthetic heart valve), but Coumadin also promoted bleeding, which would exacerbate a hemorrhagic stroke. Either alternative carried risks. At the time of decedent's discharge from Carle Hospital, decedent had not taken Coumadin for seven days. Decedent's wife, and the rest of his family, opted to keep decedent off Coumadin. On June 4, 2008, decedent was discharged, in stable condition, to Newman Rehabilitation and Health Care Center (Newman).

¶ 6 On June 4, 2008, a fax was sent at 10:32 a.m. to Newman entitled "Discharge Transfer Order" (draft transfer order). It listed a daily three milligram dose of Coumadin under a section called "Ordered Discharge Medications." This section actually listed decedent's prescribed medications *prior to* admission to Carle Hospital. In Arwari's deposition, he described the draft transfer order as a working draft of his treatment plan for decedent, which was automatically generated by the hospital's computer system. He never intended to send this

to Newman, and he changed it before decedent left Carle Hospital. Arwari claimed he did not sign the draft transfer order or authorize sending it.

¶ 7 Registered nurse (RN) Joanna Nance also testified about the draft transfer order. She stated the "Ordered Discharge Medications" section of the draft transfer order referred to the medications the patient was taking prior to admission to the hospital. The computer system automatically populated this document based on information provided at the time of admission to the hospital. The draft transfer order also lists "None" under the sections titled "Discharge Follow-up Orders" and "Discharge Summary Notes." Nance stated no orders were issued at the time. The draft transfer order lists Dr. Arwari as the attending physician. The physician's signature line reads "TORB Dr. Arwari/J. Nance, RN." Nance confirmed signing the document and signing Dr. Arwari's name. The word "TORB" stands for "telephone order read back" and indicates Nance spoke with Dr. Arwari. Despite its purpose, Nance stated she did not recall if she actually spoke with Arwari about the document. She never showed the draft transfer order to Dr. Arwari. According to Nance, it was standard practice to sign the doctor's name on the draft transfer order.

¶ 8 According to Nance, the draft transfer order was regularly faxed to a nursing home when a patient was transferred to inform the nursing home's pharmacy to order any necessary medications. She claimed the nursing staff at Newman understood the draft transfer order to be a preliminary document. The nursing staff at Carle Hospital would normally call the nursing staff at Newman before or after faxing a draft transfer order to inform them of the patient's care. This conversation would include any medication the patient discontinued. Nance indicated she spoke with a nurse named "Kay" at Newman. Nance noted the final discharge instructions, not the draft transfer order, had all the relevant information regarding a patient's care, including prescribed medications after discharge.

¶ 9 The second document sent to Newman was entitled "Discharge Instructions." It was completed at 11:50 a.m. and supposedly sent to Newman with the patient. It was signed by "Joanna Nance, RN." The discharge instructions listed medications decedent was taking. Coumadin was not on the list. It indicated he had not taken any Coumadin in the last seven days. Arwari did not personally prepare the discharge instructions, but he knew they were prepared with every discharged patient as part of standard procedure. He claims he electronically signed the discharge instructions, but nothing on the document indicates Arwari's signature. In his deposition, Arwari stated a patient cannot leave the hospital without discharge instructions from him. The discharge instructions were ordinarily given to the ambulance driver to deliver to the nursing home whenever a patient was discharged to a rehabilitation facility. Nance stated the discharge instructions were received by Newman because she was provided with a copy of the discharge instructions among documents Newman turned over for this case. Newman disputes receipt of the discharge instructions.

¶ 10 On June 5, 2008, Dr. Brent Miller was first informed decedent was at Newman. Miller was the attending physician at Newman at the time, but he maintained a practice off-site. He never personally examined decedent. Any documents related to decedent were stored with decedent's file at the Newman facility. Miller's off-site office discarded any patient documents sent from Newman because they were believed to be duplicates. Miller never saw the discharge transfer order or discharge instructions. Decedent's care was managed without any documents from Carle Hospital and almost exclusively through phone calls with the nursing staff at Newman.

¶ 11 Specifically, on June 5, 2008, Dr. Miller received two calls regarding decedent's care at Newman: one from the nursing staff and one from decedent's wife. Decedent's wife called first and informed Miller of decedent's stroke. She did not mention the type of stroke or

the family's wish to keep decedent off Coumadin. A member of the nursing staff called Miller regarding decedent's care. Miller assumed she was relying on discharge instructions to report decedent's care to Miller. The nursing staff member only informed Miller of the discharge medications listed on the draft transfer order. As a result, Miller believed decedent was taking a daily three milligram dose of Coumadin at the time he was discharged from Carle Hospital.

¶ 12 On June 9, 2008, a "discharge summary" was authorized by Dr. Arwari, which provided a detailed explanation of decedent's care and the family's wish to discontinue Coumadin. It is unclear when or how it was sent to Newman. Miller never saw this document. The same day, Miller prescribed 100 milligrams of Macrobid, an antibiotic, to manage decedent's urinary tract infection. On June 16, 2009, Miller increased decedent's daily Coumadin dose from three milligrams to five milligrams. The increase was based on the results of decedent's blood tests ordered on June 9, 2008. On June 20, 2008, decedent was prescribed 500 milligrams of Levaquin as an additional antibiotic. He took Levaquin on June 20, 21, and 22. Miller admitted antibiotics combined with Coumadin can raise the risk of anticoagulation (inability to stop bleeding). He accounted for this when prescribing antibiotics to treat decedent's infection. On June 22, 2008, decedent had a second stroke and was hospitalized. Decedent died on June 27, 2008.

¶ 13 Several experts were deposed in preparation for trial. Nurse Laura Northway testified as an expert in nursing on behalf of plaintiff. She was a former nursing home administrator for multiple homes, including Newman. Northway did not have any personal interaction with decedent but had a general understanding of standard nursing procedures at Newman. She reviewed portions of the depositions from Dr. Arwari, Dr. Miller, and Nance and some of the exhibits in discovery before her deposition.

¶ 14 In her deposition, she stated Dr. Miller was the attending physician once decedent

was admitted at Newman. According to her, instructions for patient care were usually delivered with the patient, but could be faxed. The decision to administer Coumadin was based on the draft transfer order signed by Dr. Arwari. Northway admits the staff could have called either Miller or Arwari to confirm a discrepancy in the draft transfer order and discharge instructions. Neither doctor was contacted.

¶ 15 Dr. Dennis Norem was deposed as an expert internist on behalf of plaintiff. He believed Dr. Miller was responsible for decedent at the time he was admitted to Newman. Norem believed the medical standard of care permitted administering or abstaining from administering Coumadin in decedent's circumstance. The medical standard of care also required accurate communication between medical care providers. Norem reviewed the draft transfer order and found it lacked many essential details a proper discharge instruction would contain, like a diagnosis, physical therapy, and discharge notes.

¶ 16 The time of admission, according to Norem, was at least June 5, 2008, when Miller was contacted by decedent's wife and accepted decedent as a patient at the nursing home. At that moment, Norem believed Miller had a duty to review the patient's medical information and plan his care. Miller and the Newman nursing staff had a duty to reconcile any discrepancies in the documents sent to Newman. Regardless of the information received from Carle Hospital, it was ultimately Miller's responsibility to evaluate decedent's medical needs and order the Newman staff to administer (or discontinue) medication. Provided Arwari did not sign the draft transfer order, Norem believed Arwari met the appropriate standard of care.

¶ 17 Dr. Matthew Landler was deposed as an expert hospitalist on behalf of Dr. Arwari. Landler opined the cause of death was decedent's second stroke, which occurred, in part, from taking Coumadin. He viewed the draft transfer order as an incomplete document because it lacked crucial information related to decedent's care, like diet, recent lab test results,

and instructions for physical therapy. If the draft transfer order was the only document received by Newman, it should at least have prompted a phone call or an investigation for more information. He shared Dr. Norem's opinion Dr. Miller was responsible for decedent's care upon admission at Newman. Landler believed the medical standard of care permitted administering or abstaining from administering Coumadin in decedent's circumstance.

¶ 18 Dr. Gerald Suchomski was deposed as an expert on behalf of Dr. Miller. He believed the standard of care required Carle Hospital to timely communicate the proper medication required for decedent's care. After the initial fax, he opined Carle Hospital or Newman had a responsibility to contact Miller regarding the discrepancy in medications listed on the draft transfer order and the discharge instructions. He believed the medical standard of care permitted administering or abstaining from administering Coumadin in decedent's circumstance.

¶ 19 Nurse Connor Andreano-Young testified on behalf of plaintiff. Young believed Newman and Miller should have questioned the administration of Coumadin on the draft transfer order in light of decedent's hemorrhagic stroke, even if Newman did not receive the discharge instructions.

¶ 20 In plaintiff's second amended complaint, he alleged Dr. Arwari and his employer, Carle Healthcare, Inc., were liable for wrongful death (count VII and X), a survival action for medical malpractice (count VIII and XI), and medical battery (count IX and XII). The defendants moved for summary judgment. They argued no genuine issue of material fact was presented establishing they were responsible for decedent's injuries or death. On May 12, 2015, the trial court granted defendants' motion for summary judgment on counts VII through XII. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, plaintiff argues the trial court erred in granting summary judgment on

counts VII through XII. We disagree. Summary judgment is appropriate when "the pleadings, depositions, and admissions on file *** show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c) (West 2008); *Essig v. Advocate BroMenn Medical Center*, 2015 IL App (4th) 140546, ¶ 38, 33 N.E.3d 288. Summary judgment is proper when plaintiff fails to prove an element of the cause of action. *Id.* It is not appropriate when "undisputed material facts could lead reasonable observers to divergent inferences." *Pielet v. Pielet*, 2012 IL 112064, ¶ 53, 978 N.E.2d 1000. Our review of a grant of summary judgment is *de novo*. *Id.* ¶ 30.

¶ 23 A. Survival Action

¶ 24 Plaintiff argues the trial court improperly granted summary judgment on his survival action. We disagree. Survival actions enable the representative of an estate to bring suit for certain claims accrued prior to decedent's death, including medical malpractice claims. 755 ILCS 5/27-6 (West 2008); *Turcios v. DeBruler Co.*, 2015 IL 117962, ¶ 17, 32 N.E.3d 1117. Three elements must be established to prove medical malpractice: (1) the proper standard of care, (2) negligent breach of the standard of care, and (3) proximate cause linking the breach to the resulting injury. *Jones v. Dettro*, 308 Ill. App. 3d 494, 498, 720 N.E.2d 343, 346 (1999) (quoting *Higgins v. House*, 288 Ill. App. 3d 543, 546, 680 N.E.2d 1089, 1092 (1997)). Expert testimony is used to establish the medical standard of care. *Suttle v. Lake Forest Hospital*, 315 Ill. App. 3d 96, 102-03, 733 N.E.2d 726, 731 (2000).

¶ 25 Doctors Landler, Norem, and Suchomski all noted administration of Coumadin was not for or against the medical standard of care in decedent's situation. Either alternative was acceptable in this situation. The experts agreed doctors have a duty to convey accurate information regarding a patient's decisions for treatment. Dr. Norem stated Arwari was in compliance with this standard as long as he did not order Coumadin against the family's wishes.

Arwari knew the family's wishes were to keep decedent off Coumadin and reflected those wishes in the discharge summary and the discharge instructions. Arwari did not authorize or sign the draft transfer order, which lists Coumadin as a medication.

¶ 26 The only evidence potentially disputing Arwari's authorization of the draft transfer order is Nance's testimony. She does not remember what occurred. As standard procedure, she testified to sometimes signing "TORB" and the doctor's name and sending draft transfer orders without actually calling the doctor. Nance also knew no discharge orders were given at the time the draft transfer order was sent. Rather, the medications listed were automatically entered by the computer system. Arwari did not issue any discharge orders at the time. This suggests he was unaware of the draft transfer order. The only reasonable inference is Arwari did not authorize the draft transfer order. As a result, he did not breach the duty of care and summary judgment in his favor was proper.

¶ 27 Plaintiff alternatively argues Dr. Arwari is at least partially responsible for decedent's injury. We disagree. A defendant can be held liable when only partially responsible for a party's injury. *Kunz v. Little Company of Mary Hospital & Health Care Centers*, 373 Ill. App. 3d 615, 622, 869 N.E.2d 328, 335 (2007). Arwari had no role in authorizing the draft transfer order. He had no connection to the only document appearing to prescribe Coumadin to decedent. Without a connection to the draft transfer order, Arwari is not partially liable for decedent's injury.

¶ 28 Finding defendant did not breach his duty, we need not address proximate cause.

¶ 29 B. Wrongful Death

¶ 30 Plaintiff argues the trial court erred in granting summary judgment based on wrongful death caused by Dr. Arwari's actions. We disagree for the same reasons we discussed under the survival claim. An estate may bring a wrongful death action for negligence against a

decedent as long as decedent would have been able to bring the same action if he had lived. 740 ILCS 180/1 (West 2008); *Williams v. Manchester*, 228 Ill. 2d 404, 421, 888 N.E.2d 1, 11 (2008) (quoting *Varelis v. Northwestern Memorial Hospital*, 167 Ill. 2d 449, 454-55, 657 N.E.2d 997, 1000 (1995)). The action must accrue at the time of the decedent's death. *Williams*, 228 Ill. 2d at 421, 888 N.E.2d at 11. For our purposes, the estate must prove the cause of action existed at the time of decedent's death in addition to the elements of medical malpractice. 740 ILCS 180/1 (West 2008); See *Varelis*, 167 Ill. 2d at 454, 657 N.E.2d at 999 (discussing wrongful death predicated on medical malpractice). Having found defendant not liable for medical malpractice, plaintiff is unable to establish a wrongful death claim. Consequently, the trial court did not err in granting summary judgment as defendant is not liable for wrongful death.

¶ 31 C. Medical Battery

¶ 32 Plaintiff argues the trial court erred in granting summary judgment for Dr. Arwari for medical battery when the draft transfer order prescribing Coumadin was sent to Newman. We disagree. Medical battery can be established by proving treatment (1) was administered against a patient's consent, (2) was given against a patient's will, or (3) varied substantially from the consent given. *McDonald v. Lipov*, 2014 IL App (2d) 130401, ¶ 19, 13 N.E.3d 179. Consent is a question of fact. *Curtis v. Jaskey*, 326 Ill. App. 3d 90, 97, 759 N.E.2d 962, 967 (2001). If a patient lacks the capacity to consent, the patient's spouse and family can make decisions on his behalf (755 ILCS 40/25 (West 2008)). Decedent was barely conscious and unable to speak during his hospitalization at Carle Hospital. Arwari spoke to decedent's family to discuss treatment options. Decedent's family unanimously agreed to discontinue decedent's Coumadin medication. Arwari did not administer Coumadin for the remainder of decedent's stay at Carle Hospital. Arwari authorized two different documents sent to Newman, and both complied with the family's wish to refrain from administering Coumadin.

¶ 33 The draft transfer order is the only document listing Coumadin as a medication. Similar to the reasons stated above, Arwari was not responsible for authorizing or sending the draft transfer order to Newman. Nothing else in the record on appeal supports Arwari prescribing Coumadin. Arwari's actions conformed to the family's wish to keep defendant off Coumadin. The trial court did not err in granting summary judgment as Arwari is not liable for medical battery.

¶ 34 D. Carle Healthcare, Inc.

¶ 35 Having found summary judgment was properly granted on all counts against Dr. Arwari, we find summary judgment in favor of his employer, Carle Healthcare, Inc., was proper for the same reasons.

¶ 36 III. CONCLUSION

¶ 37 The trial court properly granted summary judgment on all counts related to Dr. Arwari and Carle Healthcare, Inc.

¶ 38 Affirmed.