STATE OF MICHIGAN

COURT OF APPEALS

TERESA COX, as Next Friend of BRANDON COX, minor,

Plaintiff-Appellant,

v

BOARD OF HOSPITAL MANAGERS FOR THE CITY OF FLINT d/b/a HURLEY MEDICAL CENTER,

Defendant-Appellee,

and

EDILBERTO MORENO, M.D.,

Defendant.

UNPUBLISHED
November 22, 1996
AFTER REMAND

No. 184859
LC No. 92-012247

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order on remand which granted defendant's motion for judgment notwithstanding the verdict (JNOV) and in the alternative a new trial. We reverse.

Two days after the premature birth of Brandon Cox at Hurley Hospital, an umbilical arterial catheter (UAC) inserted into Brandon was dislodged. As a result of the dislodged UAC, Brandon lost a significant amount of blood. Plaintiff claimed that this blood loss resulted in significant injuries to Brandon and that the UAC dislodged due to the negligence of defendant and its agents. Specifically, plaintiff claimed that the UAC line was dislodged when Nurse Martha Plamondon repositioned Brandon twenty minutes before the dislodged UAC was discovered. Defendant claimed that Brandon would have suffered these injuries regardless of the dislodgment of the UAC because of his premature birth.

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* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant further claimed that it had not acted negligently with respect to the maintenance of the UAC and that Brandon had kicked it out.

The jury determined that defendant was guilty of malpractice, that defendant's malpractice was a proximate cause of the damages that Brandon suffered, and that plaintiff's damages were $2.4 million. Subsequent to the verdict, defendant moved for JNOV and in the alternative a new trial, and for remittitur. After noting that the evidence did not clearly establish how the UAC became dislodged, the trial court granted defendant a new trial unless plaintiff was willing to accept remittitur to the amount of $475,000.

In Docket No. 179366, plaintiff appealed as of right to this Court. This Court vacated the order granting a new trial, and remanded for reconsideration of the motion for new trial. This Court instructed that if, on remand, the trial court deemed remittitur appropriate, "it shall prepare a detailed opinion analyzing the economic and non-economic damages."

On remand, the trial court, after reviewing the economic and non-economic damages evidence, granted defendant JNOV or in the alternative a new trial. Specifically, the court noted that there was only speculation as to the cause of the dislocation of the UAC and as to whether defendant's agents failed to act properly in supervising the placement of the UAC.

Plaintiff argues that the circumstantial evidence presented regarding defendant's negligence was sufficient to support the jury's verdict. We agree. The standard of review for judgments notwithstanding the verdict requires review of the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Orzel v Scott Drug Co*, 449 Mich 550, 557; 537 NW2d 208 (1995); *Severn v Sperry Corp*, 212 Mich App 406, 412; 538 NW2d 50 (1995). If reasonable jurors could honestly have reached different conclusions, the jury verdict must stand. *Severn*, *supra*, p 412.

In this case it needs to be decided whether plaintiff's circumstantial evidence was sufficient for a jury to infer that, but for defendant's negligence, Brandon's injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). Because there were no witnesses with respect to how the UAC dislodged, plaintiff was required to rely on circumstantial evidence to establish the causal link between defendant's alleged negligence and the harm suffered. *Garabedian v William Beaumont Hosp*, 208 Mich App 473, 475; 528 NW2d 809 (1995). It is insufficient to submit to the jury a causation theory that, while factually supported, is, at best, just as possible as another theory. *Skinner*, *supra*, p 164; *Scott v Illinois Tool Works*, 217 Mich App 35, 39-40; ___ NW2d ___ (1996). Rather, the plaintiff must present substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred. *Skinner*, *supra*, pp 164-165; *Scott*, *supra*, p 40. If there is evidence which points to any one theory of causation, indicating a logical sequence of cause and effect, then there is a juridical basis for such a determination, notwithstanding the existence of other plausible theories with or without support in the evidence. *Skinner*, *supra*, p 164; *Scott*, *supra*, p 40.

Here, plaintiff's theory was that the UAC was dislodged at 4:00 p.m. when Nurse Plamondon repositioned and drew blood from Brandon. Plaintiff presented two experts to support this theory. Dr. Houchang Modanlou testified that although he did not know how the UAC dislodged, a UAC would not come out in the absence of negligence. Dr. Modanlou stated that the UAC "most likely" dislodged because it was not fixed in place properly. He supported his opinion by noting that Brandon had been bleeding for approximately twenty minutes before the dislodged UAC was discovered, placing the time of dislodgment at the same time as Nurse Plamondon repositioned Brandon. Similarly, Dr. Carolyn S. Crawford testified that a properly secured UAC would not dislodge absent negligence. Dr. Crawford agreed that the repositioning of Brandon was the "most probable contributing factor to the dislodgment at that particular time." Dr. Crawford opined that Nurse Plamondon must not have exercised due care while repositioning Brandon.

It is true that Dr. Steven Mark Donn testified that a reasonable explanation for why the UAC came out was that Brandon had kicked it out. However, we must review the evidence and all legitimate inferences in the light most favorable to the nonmoving party. *Orzel*, *supra*, p 412. Here, when the evidence is viewed in that light, reasonable jurors could have concluded that, but for the negligent repositioning of Brandon, his injuries "more likely than not" would not have occurred. *Skinner*, *supra*, pp 164-165; *Scott*, *supra*, p 40; see *Jones v Porretta*, 428 Mich 132, 157; 405 NW2d 863 (1987).[1] Accordingly, the jury verdict must stand. *Severn*, *supra*, p 412.

Plaintiff also argues that the trial court erred in conditionally granting defendant's motion for a new trial. We agree. A new trial may be granted when the verdict is clearly excessive. MCR 2.611(A)(1)(d). This Court reviews a trial court's grant of a motion for a new trial for an abuse of discretion. *People v Hubbard (Aft Remand)*, 217 Mich App 459, 472; ___ NW2d ___ (1996). The proper consideration in deciding a motion for remittitur is whether the jury award was supported by the evidence. *Phillips v Deihm*, 213 Mich App 389, 404; 541 NW2d 566 (1995). The trial court's inquiry is limited to objective considerations regarding the evidence adduced and the conduct of the trial. *Id.* Appellate courts must defer to a trial court's decision because of the trial court's superior ability to view the evidence and evaluate the credibility of the witnesses. *Id.*

Here, in making its findings of fact, the trial court acknowledged that plaintiff's expert testified that Brandon's wage loss over his life time would be between $1,088,520 and $1,504,000. The trial court further acknowledged that plaintiff's expert testified that a caretaker would be needed, and would cost $985,500. Based on this evidence alone, and notwithstanding the existence of other evidence of damages, the jury's award of $2.4 million was supported by the evidence. Accordingly, the trial court abused its discretion in conditionally granting defendant's motion for a new trial. *Phillips*, *supra*, p 404. Although defendant asserts in its brief on appeal that other issues warranted a new trial, these claims were not raised by way of a cross-appeal. Accordingly, review of these issues is precluded. *Barnell v Taubman Co, Inc*, 203 Mich App 110, 123; 512 NW2d 13 (1993).

Reversed. We do not retain jurisdiction.

/s/ Myron H. Wahls
/s/ E. Thomas Fitzgerald
/s/ Leopold P. Borrello

[1] In *Dziurlikowski v Morley*, the companion case to *Jones*, the plaintiffs attempted to prove that, "but for" somebody's negligence, a particular complication does not ordinarily occur after surgery. Because the plaintiffs presented expert testimony in support of that premise, and despite the existence of conflicting expert testimony, the Supreme Court held that the jury could have found causation.