

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANNETTE STEVENS, individually and as Personal  
Representative for the Estate of DONALD STEVENS,  
deceased,

UNPUBLISHED  
December 6, 1996

Plaintiff-Appellant,

v

No. 185708  
LC No. 92-001779-NH

ROGERS CITY HOSPITAL, n/k/a HURON  
SHORES HEALTH CENTER, and LARRY  
FARMER, Personal Representative for the Estate of  
ETHEL HEIN, R.N., deceased,

Defendants-Appellees.

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Before: MacKenzie, P.J., and Jansen and T.R. Thomas,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from a May 5, 1995, order of the circuit court granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10)<sup>1</sup> in this medical malpractice action. We affirm.

Plaintiff Annette Stevens filed a complaint for injuries incurred when defendant Ethel Hein, R.N., allegedly failed to remove all of a Foley catheter used for a surgery in 1971. In 1992, plaintiff was admitted to another hospital to be examined for stress incontinence because of a bladder calculus and urinary infections with frequent dysuria. A bladder calculus was then removed. Plaintiff claimed that the failure to remove the catheter in 1971 was the cause of her medical problems in 1992.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), claiming: (1) that plaintiff failed to establish that the piece of catheter was from the catheterization for plaintiff's 1971 surgery rather than from her surgeries in 1970 or 1992, and (2) that plaintiff failed to establish a prima facie case of professional negligence with regard to the standard of care and breach thereof. Defendants also moved for summary disposition pursuant to MCR 2.116(C)(7) on the ground of

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

governmental immunity. The trial court granted summary disposition pursuant to MCR 2.116(C)(7) only to defendant Rogers City Hospital. The trial court also granted summary disposition pursuant to MCR 2.116(C)(10) for both defendants, ruling that plaintiff failed to establish that the catheter from the 1971 surgery was the cause of her problems.

Summary disposition may be granted when “except as to the amount of damages there is no genuine issue as to any material fact.” MCR 2.116(C)(10). On appeal, a trial court’s grant of summary disposition will be reviewed de novo in order to determine whether the moving party was entitled to judgment as a matter of law. *Horn v Dep’t of Corrections*, 216 Mich App 58, 66; 548 NW2d 660 (1996). The court must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted to it. MCR 2.116(G)(5). The court’s task is to review the record evidence, and all reasonable inferences from it, and determine whether a genuine issue of any material fact exists to warrant a trial. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

A negligence claim against a nurse since July 9, 1975 is characterized as medical malpractice. *Chase v Sabin*, 445 Mich 190, 192, n 2; 516 NW2d 60 (1994), citing MCL 600.5838; MCL 27A.5838. The elements of a medical malpractice claim are: (1) the applicable standard of care by the defendant, (2) breach of that standard of care by the defendant, (3) injury, and (4) proximate causation between the alleged breach and the injury. *Locke v Pachtman*, 446 Mich 216, 222; 521 NW2d 786 (1994). The basis for the trial court’s grant of summary disposition was its determination that plaintiff failed to present sufficient evidence that would allow a reasonable inference that the catheter was left in plaintiff during the surgery involving defendants rather than during one of the other surgeries she had.

Our Supreme Court has defined proximate cause as “that which in a natural and continuous sequence, unbroken by any new, independent cause, produces the injury, without which such injury would not have occurred.” *McMillian v Vliet*, 422 Mich 570, 576; 374 NW2d 679 (1985), citing *Weissert v Escanaba*, 298 Mich 443, 452; 299 NW 139 (1941). However, an intervening cause breaks the chain of causation and constitutes a superseding cause which relieves the original actor of liability, unless it is found that the intervening act was reasonably foreseeable. *McMillan, supra*, p 576. When the causal link is established with circumstantial evidence, the plaintiff’s circumstantial proofs must facilitate reasonable inferences of causation, not mere speculation. *Skinner, supra*, p 164. The circumstantial evidence must establish that the plaintiff’s hypothesis is more probable than any other hypothesis reflected by the evidence. *Id.*, pp 166-167.

Plaintiff had three surgeries, one in 1970, the one here at issue in 1971, and one in 1992, that involved the use of catheters. The record reveals that plaintiff had experienced abdominal pain since her 1970 surgery and that her problems with incontinence did not develop until many years after the 1971 surgery. Further, plaintiff’s expert witness stated that the documentations for both the 1970 and 1971 surgeries were equally poor. Moreover, plaintiff’s symptoms during her 1971 admission occurred before the catheter was removed, so it was as likely that her symptoms were caused from either just the general use of the catheter or some other source, such as a piece of catheter remaining in her. Although there was a genuine issue of material fact that the cause of plaintiff’s bladder calculus was a catheter, plaintiff failed to address the critical point that warranted the dismissal of her claim -- which catheter

caused her problems. The evidence presented made it equally as likely that the piece of catheter was from either the 1970 or 1971 surgeries.

Accordingly, the trial court did not err in ruling that plaintiff failed to raise a material factual dispute regarding proximate causation of her current medical problems.

Plaintiff also contends that the trial court erred in finding that plaintiff's retained expert nurse failed to testify with regard to duty and breach thereof in support of the negligence claim. We need not address this claim because we have already concluded that plaintiff failed to establish the element of proximate causation.

Last, plaintiff contends that the trial court erred in finding that she failed to sufficiently plead a failure to document. A complaint must contain a statement of facts to provide the opposing party with reasonable notice of the nature of the claims against which the opposing party must defend. MCR 2.111(B)(1). "Leaving a defendant to guess upon what grounds plaintiff believes recovery is justified violates basic notions of fair play and substantial justice." *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992). Decisions concerning the meaning and scope of pleadings fall within the sound discretion of the trial court; therefore, we review the trial court's ruling for an abuse of discretion. *Id.*, p 328. An abuse of discretion occurs when the result was so grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*, 329.

After a review of the pleadings, we find that the pleadings do not give reasonable notice of a claim for failure to document. The reasonable notice of these pleadings would be a claim based on the removal of the catheter and inspection of the catheter after removal. Therefore, we find no abuse of discretion.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ Kathleen Jansen

/s/ Terrence R. Thomas

<sup>1</sup> The trial court also granted summary disposition to defendant hospital on the basis of MCR 2.116(C)(7) (claim barred by governmental immunity). However, plaintiff raises no issues on appeal challenging that ruling.