

STATE OF MICHIGAN
COURT OF APPEALS

DONALD BEEBE and EVA BEEBE,
Plaintiffs-Appellants,

FOR PUBLICATION
November 9, 2010
9:05 a.m.

v

RICHARD J. HARTMAN, JR., D.O. and
COMMUNITY HEALTH CENTER OF BRANCH
COUNTY,

No. 292194
Branch Circuit Court
LC No. 07-020084-NH

Defendants,

Advance Sheets Version

and

CHRISTINA SHEELY, D.O. and FAMILY
PRACTICE & ORTHOPEDIC CARE CENTER,
P.L.L.C.,

Defendants-Appellees.

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

BANDSTRA, J. (*concurring*).

I concur with the decision of the majority because, as explained in part III(A) of its opinion, for purposes of MCL 600.2955a(1), the relevant “event that resulted in the . . . injury” here was not the snowmobile accident and leg fractures suffered by plaintiff but, as alleged, the malpractice and resulting pain and contracture of plaintiff’s right foot. Accordingly, the majority correctly concludes that the defense provided by the statute is unavailable to defendants.

There is thus no need to further consider whether the defense is unavailable because of the language in the statute concerning the causal relationship between plaintiff’s alleged injury and his liquor-impaired ability to operate the snowmobile. To do so, as the majority does in part III(B) of its opinion, results in dicta. Further, the majority incorrectly says that “[f]or the absolute defense provided by the impairment statute to apply, plaintiff’s impairment from alcohol must also be the one proximate cause of plaintiff’s injuries suffered as a result of compartment syndrome.” *Ante* at _____. Unlike the statute at issue in *Robinson v Detroit*, 462 Mich 439; 613 NW2d 307 (2000), which apparently provides the majority the logical basis for this conclusion, the statute here does not refer to “the proximate cause.” Instead, MCL

600.2955a(1) limits its protection to situations in which the plaintiff “was 50% or more the cause of the . . . event that resulted in the . . . injury.” MCL 600.2955a(1). Thus, for the statute to apply, a plaintiff’s alcohol impairment need not be “the one proximate cause” of the event giving rise to an injury; it is sufficient if a plaintiff’s impairment, considered alongside any other proximate causes, constituted 50 percent or more of the cause of the event resulting in the injury.

/s/ Richard A. Bandstra