

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTY LEE SCHNEEMILCH and
RAYMOND CALECA,

UNPUBLISHED
October 17, 2006

Plaintiffs-Appellants,

v

No. 267881
Washtenaw Circuit Court
LC No. 04-000910-NH

J.J. SHIELDS, M.D., HURON VALLEY
RADIOLOGY, P.C., and TRINITY HEALTH,
a/k/a TRINITY HEALTH-MICHIGAN, d/b/a ST.
JOSEPH MERCY HEALTH SYSTEM
MCAULEY BREAST CARE,

Defendants-Appellees.

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

In this action alleging medical malpractice, plaintiffs appeal by right the trial court's order granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff Christy Lee Schneemilch¹ went to Trinity Health for bilateral mammography studies. During the examination, she showed an attendant a lump in her left breast. Defendant J.J. Shields, M.D., interpreted the mammography and found no significant abnormality. Almost a year later, Schneemilch went to her gynecologist with a complaint of an enlarged lump on her left breast. She was referred for another mammogram, biopsy, and ultrasound, which indicated an irregular solid nodule in the lower part of plaintiff's left breast. Subsequent biopsies revealed invasive ductal carcinoma. Schneemilch subsequently underwent a radical mastectomy.

¹ Schneemilch and plaintiff Raymond Caleca are husband and wife. Caleca's claim for loss of consortium is entirely derivative of his wife's claim.

Plaintiffs served their complaint, jury demand, and affidavit of merit on defendants, alleging medical malpractice. Plaintiffs' affidavit of merit addressed the issue of standard of care and proximate cause, stating:

3. The standard of care required J.J. Shields, M.D., to closely and thoroughly review mammography studies. The standard of care required Dr. Shields to note any abnormalities which were present on the mammography studies in his/her written report and/or otherwise notify the attending physician that the radiographic studies were abnormal. The standard of care required Dr. Shields to note the presence of a BB placed over Ms. Schneemilch's left breast, presumably by the technician after being informed that Ms. Schneemilch felt a lump or abnormal density in her left breast during self-examination. The standard of care required Dr. Shields to himself/herself note the aforementioned abnormal density, and further, to recommend and/or perform diagnostic studies to determine the nature and composition of the density. The standard of care also required Dr. Shields to inform Ms. Schneemilch of the abnormal density in her breast. The standard of care also required Dr. Shields to issue an accurate report depicting any abnormalities present on the screening mammograms and, further, to perform a diagnostic mammogram and/or other studies on March 14, 2002 before Ms. Schneemilch was released from the mammography facility.

4. J.J. Shields, M.D.[,] did none of these things and his/her failure to do so i[s] below the acceptable standard of care.

5. Had J.J. Shields, M.D., acted properly and within the standard of care, the abnormalities present in Ms. Schneemilch's left breast would have been noted, further diagnostic studies performed and early medical/surgical intervention [would have been] carried out.

Defendants moved for summary disposition under MCR 2.116(C)(7), (8), and (10). Defendants argued that plaintiffs' affidavit of merit does not specify the manner in which the alleged breach of the standard of care was the proximate cause of the injury alleged in the notice of intent as required by MCL 600.2912d(1)(d). On October 12, 2005, the trial court granted defendants' motions, stating that the affidavit was "insufficient as to the element of proximate cause." Plaintiffs moved for reconsideration, which the court denied.

This Court reviews de novo the grant of summary disposition. *Waltz v Wyse*, 469 Mich 642, 647; 677 NW2d 813 (2004). The trial court did not err in dismissing plaintiffs' action because the affidavit of merit does not adequately address the issue of proximate cause as required by MCL 600.2912d(1)(d) and because the limitation period has expired so that plaintiffs can no longer submit a timely and adequate affidavit of merit. To commence a medical malpractice action, a plaintiff must file both a complaint and an affidavit of merit signed by a healthcare professional that complies with MCL 600.2912d. *Scarsella v Pollak*, 461 Mich 547, 548; 607 NW2d 711 (2000). The purpose of an affidavit of merit is to have a health professional certify the allegations in the complaint. *Id.* MCL 600.2912d(1) requires that the affidavit must certify that the signing health professional "has reviewed the notice and all medical records supplied to him or her" and must contain a statement of each of the following:

(a) The applicable standard of practice or care.

(b) The health professional's opinion that the applicable standard of practice or care was breached by the health professional or health facility receiving the notice.

(c) The actions that should have been taken or omitted by the health professional or health facility in order to have complied with the applicable standard of practice or care.

(d) The manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice.

This case turns on whether plaintiffs' affidavit of merit adequately details the "manner in which the breach of the standard of practice or care was the proximate cause of the injury alleged in the notice." MCL 600.2912d(1)(d). The mere correlation between alleged malpractice and an injury is insufficient to show proximate cause. *Craig v Oakwood Hosp*, 471 Mich 67, 93; 684 NW2d 296 (2004). Proximate cause consists of both factual and legal causation. Factual cause is "but for" causation such that a plaintiff's injuries would not have occurred "but for" the defendant's conduct. Legal causation depends on whether a defendant could have foreseen a plaintiff's injury. *Id.* at 90-93.

In this case, plaintiff submitted the affidavit of merit signed by Liane Philpotts, M.D., which addressed the issue of proximate cause by simply stating that:

5. Had J.J. Shields, M.D., acted properly and within the standard of care, the abnormalities present in Ms. Schneemilch's left breast would have been noted, further diagnostic studies performed and early medical/surgical intervention [would have been] carried out.

This statement does not precisely describe the manner in which the breach of the standard of practice was the proximate cause of plaintiff's injury. Essentially the affidavit of merit states that defendant Shields's failure to properly and timely diagnose the lump in plaintiff's breast resulted in delayed treatment. However, the affidavit of merit does not state how the delayed treatment factually caused the metastasis of the cancer and foreseeably required a radical mastectomy of plaintiff Schneemilch's left breast. Therefore, plaintiff's affidavit of merit is insufficient to satisfy MCL 600.2912d(1)(d), and, under *Geralds v Munson Healthcare*, 259 Mich App 225, 235-236; 673 NW2d 792 (2003) and *Mouradian v Goldberg*, 256 Mich App 566, 574; 664 NW2d 805 (2003), plaintiffs' action must be dismissed with prejudice because plaintiffs failed to file an affidavit of merit with the complaint that complies with MCL 600.2912d before the two-year limitation period on Schneemilch's medical malpractice action expired.

Affirmed.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder