

STATE OF MICHIGAN
COURT OF APPEALS

CLAIRE SALOMONSON, Personal
Representative of the Estate of ROSE DEMARIO,
Deceased,

Plaintiff-Appellee,

v

CHRISTOPHER K. NICHOLS, D.O., and
PROFESSIONAL EMERGENCY CARE, P.C.,

Defendants.

and

OAKWOOD HOSPITAL & MEDICAL CENTERS
and OAKWOOD HEALTHCARE, INC.

Defendants-Appellants.

CLAIRE SALOMONSON, Personal
Representative of the Estate of ROSE DEMARIO,
Deceased,

Plaintiff-Appellee,

v

CHRISTOPHER K. NICHOLS, D.O., and
PROFESSIONAL EMERGENCY CARE, P.C.,

Defendants-Appellants.

and

OAKWOOD HOSPITAL & MEDICAL CENTERS
and OAKWOOD HEALTHCARE, INC.,

Defendants.

UNPUBLISHED
July 1, 2010

No. 290705
Wayne Circuit Court
LC No. 07-718137-NH

No. 291344
Wayne Circuit Court
LC No. 07-718137-NH

Before: HOEKSTRA, P.J., and MARKEY and DAVIS, JJ.

MEMORANDUM.

In this medical malpractice case, defendants, Oakwood Hospital & Medical Centers and Oakwood Healthcare, Inc., in Docket No. 290705, and Christopher K. Nichols, D.O., and Professional Emergency Care, P.C., in Docket No. 291344, appeal by leave granted the trial court's order denying their motions for summary disposition. We affirm.

Defendants argue that the trial court erred in denying their motions for summary disposition on plaintiff's medical malpractice claim, which they assert is a lost opportunity claim, because plaintiff cannot establish that the alleged malpractice by defendants caused the decedent to lose an opportunity that was greater than 50 percent, as required by MCL 600.2919a(2) and *Fulton v William Beaumont Hosp*, 253 Mich App 70; 655 NW2d 569 (2002). Plaintiff claims that the case is not a lost opportunity case but a traditional malpractice claim.

In *Stone v Williamson*, 482 Mich 144; 753 NW2d 106 (2008), the plaintiff suffered a ruptured aortic aneurysm that had gone undetected in physical examinations and testimony. The plaintiff had emergency surgery for the rupture, but because of preexisting conditions, amputation of the plaintiff's legs was necessary. The plaintiff sued a radiologist and two vicariously liable entities under a misdiagnosis theory. The plaintiff claimed that had the aneurysm been properly diagnosed, elective surgery would have been performed, increasing his chance of a better medical outcome. There was no majority opinion in *Stone*, but six Justices agreed that the case was not a lost-opportunity case. *Stone*, 482 Mich at 164 (opinion by TAYLOR, C.J.), 165, 185 (opinion by CAVANAGH, J.); see also *Velez v Tuma*, 283 Mich App 396, 405-406; 770 NW2d 89 (2009).

In *Velez*, the plaintiff claimed that the defendant's failure to properly diagnose and treat her acute vascular insufficiency condition resulted in the amputation of her left leg. This Court held that the plaintiff's claim was a claim for traditional malpractice, rather than a claim for lost opportunity. *Velez*, 283 Mich App at 406. It explained: "As in *Stone*, plaintiff's injury in this case was not the loss of an opportunity to avoid physical harm or the loss of an opportunity for a more favorable result; instead, plaintiff suffered the physical harm, the unfavorable result." *Id.*

In this case, plaintiff claims that, because of Nichols' failure to admit the deceased to the hospital on January 11, 2005, for evaluation of transient ischemic attacks or a stroke, the deceased suffered a stroke on January 16, 2005. As in *Stone* and *Velez*, the claimed injury was not the loss of an opportunity of a more favorable result, but the physical harm. Thus, we agree with plaintiff that the case is not a lost-opportunity case.

At oral argument, defendants claimed that even under principles relating to traditional malpractice claims, they are entitled to summary judgment. However, defendants' motions for summary disposition focused on the lost-opportunity doctrine. Defendants did not address plaintiff's claim as a traditional malpractice claim. Because the issue whether defendants are entitled to summary disposition on plaintiff's traditional malpractice claim was not before the trial court, the issue is not preserved, and we decline to address it for the first time on appeal. See *Lanigan v Huron Valley Hosp, Inc*, 282 Mich App 558, 269-570; 766 NW2d 896 (2009).

We affirm the trial court's order denying defendants' motion for summary disposition. Defendants' motions for summary disposition were based on the lost-opportunity doctrine, but plaintiff's claim is a traditional malpractice claim, not a claim for a lost opportunity. See *Fisher v Blankenship*, 286 Mich App 54, 70; 777 NW2d 469 (2009) (“[T]his Court will affirm where the trial court came to the right result even if for the wrong reason.”).

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Alton T. Davis