

STATE OF MICHIGAN
COURT OF APPEALS

RUSSELL BARETTA,

Plaintiff-Appellant,

v

RODOLJUB DIMITRIJEVIC, M.D., and
RODOLJUB DIMITRIJEVIC, M.D., P.C.,

Defendants-Appellees.

UNPUBLISHED

August 6, 2002

No. 231744

Oakland Circuit Court

LC No. 99-011938-NH

Before: Murray, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant's motion for directed verdict of no cause of action on plaintiff's malpractice claim. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff initiated this malpractice suit claiming that his stroke in February 1997 was the result of defendant's negligence in failing to prescribe a therapeutic dose of the anticoagulant Coumadin. Defendant is a cardiologist who first saw plaintiff in February 1996. Tests revealed plaintiff was having atrial fibrillation, which increases the potential for blood clot formation. There is no dispute that defendant appropriately prescribed Coumadin. Plaintiff had no complaints during the remainder of 1996, although his blood levels for Coumadin were consistently below the recommended "therapeutic" blood level of between two and three. However, in January 1997, he began to again experience atrial fibrillation. On January 30, 1997, the level of Coumadin in his blood was 1.73. Defendant prescribed an increased dosage. According to plaintiff's expert, plaintiff's blood levels should have increased within twenty-four hours. However, a few days later, plaintiff suffered a stroke.

During trial, defendants moved for summary disposition, arguing that as of January 30, 1997, plaintiff's own evidence showed that his blood levels were at least 1.73, and plaintiff's expert testified that a level of 1.8 is sixty to seventy percent as effective as the recommended therapeutic level. Therefore, defendants argued, on the day of his stroke, plaintiff lost only thirty to forty percent of the benefit of the optimum level of Coumadin. Under MCL 600.2912a(2), a plaintiff cannot recover for the loss of an opportunity to achieve a better result unless the loss was greater than fifty percent; thus, plaintiff had to prove that as of January 30, 1997, the difference between a blood level of 1.73 and a blood level of 2 reduced his chance to avoid a stroke by more than fifty percent. The trial court treated the motion as one for directed verdict,

and granted it based on the finding that plaintiff failed to establish that proper treatment would have increased his chances for a better result by over fifty percent.

This Court reviews the grant or denial of a directed verdict de novo. *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997). In reviewing the trial court's decision, the evidence presented up to the time of the motion is viewed in the light most favorable to the nonmoving party, and any conflict in the evidence is resolved in that party's favor in determining whether a question of fact existed. *Thomas v McGinnis*, 239 Mich App 636, 643-644; 609 NW2d 222 (2000). A directed verdict is appropriately granted only when no factual questions exist on which reasonable jurors could differ. *Meagher, supra* at 708.

MCL 600.2912a(2) states in part: "In an action alleging medical malpractice, the plaintiff cannot recover for loss of an opportunity to survive or an opportunity to achieve a better result unless the opportunity was greater than 50%." Plaintiff argues that under this Court's decision in *Wickens v Oakwood Healthcare System*, 242 Mich App 385; 619 NW2d 7 (2000), reversed in part and vacated in part, 465 Mich 53 (2001), it is the total opportunity lost that must be considered, without factoring in any residual opportunity. Thus, under plaintiff's view, because therapeutic levels of Coumadin reduce the likelihood of blood clots by seventy percent, and these levels were not maintained, the trial court should not have granted the motion for directed verdict.

Plaintiff's reliance on *Wickens, supra*, is misplaced, because that case involved a complete failure to diagnose or treat the patient's cancer. In contrast, in this case plaintiff's expert agreed that defendant properly diagnosed plaintiff's condition and that the medications prescribed were appropriate for that condition. Although the expert testified that defendant's failure to maintain plaintiff at a therapeutic dosage caused plaintiff's stroke, he also admitted that a study showed that a blood level of 1.8 was sixty to seventy percent as effective as the accepted therapeutic dose. Consequently, the only opportunity plaintiff lost was the difference between a fully effective dose and the dose he was receiving. This difference amounted to less than fifty percent, particularly in view of the fact that it was undisputed that, even at optimal levels, Coumadin is only about seventy percent effective in preventing strokes. Plaintiff's loss was therefore thirty to forty percent of seventy percent, or between twenty-one and twenty-eight percent. Therefore, we find that the trial court properly granted judgment for defendants.

Affirmed.

/s/ Christopher M. Murray
/s/ David H. Sawyer
/s/ Brian K. Zahra