

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 0398

THERESA CLAYTON, BRIAN GREENLEE, SR., and BRIAN GREENLEE, JR.

VERSUS

NORTHSHORE REGIONAL MEDICAL CENTER, ET AL

Judgment Rendered: SEP 26 2008

On Appeal from the Twenty-Second Judicial District Court
In and For the Parish of St. Tammany
State of Louisiana
Docket No. 2007-10983

Honorable Reginald T. Badeaux, Judge Presiding

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BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

Handwritten initials: ME, JW, RAB

McCLENDON, J.

In this wrongful death and survival action, the plaintiffs, Theresa Clayton, Brian Greenlee, Sr., and Brian Greenlee, Jr.,¹ appeal from the summary judgment granted in favor of one of the defendants, NorthShore Regional Medical Center, L.L.C., d/b/a Northshore Regional Medical Center (Northshore Regional), dismissing all claims against it. For the reasons that follow, we reverse the judgment of the trial court and remand.

FACTS AND PROCEDURAL HISTORY

On June 14, 2003, Shirlee M. Greenlee presented to the emergency department of Northshore Regional complaining of abdominal pain and nausea. Mrs. Greenlee was examined by Dr. Maurice Mayer and treated with Dilaudid and Phenergan and released that day. Upon her discharge, Mrs. Greenlee was prescribed a fentanyl Duragesic pain patch, and a seven-day supply of Cipro and Flagyl was called in to a local drugstore. Additionally, Mrs. Greenlee was instructed to continue her previously prescribed medications,² and to follow up with her primary care physician, Dr. Aleta DeClouet, at Primary Care Associates of Slidell, Inc. (Primary Care Associates). Mrs. Greenlee was seen by Dr. DeClouet on June 16, 2003, for a previously scheduled appointment, at which time Mrs. Greenlee was evaluated and the Duragesic patch was continued. Tragically, on June 19, 2003, Mrs. Greenlee went into cardiac arrest and died.³

On June 12, 2004, the plaintiffs filed a medical malpractice complaint against Northshore Regional, Dr. Mayer, Primary Care Associates, and Dr. DeClouet. In seeking a medical review panel against Northshore Regional, the plaintiffs alleged that the hospital failed to supervise its physicians, failed to properly diagnose and administer treatment, failed to properly instruct upon

¹ According to the plaintiffs' petition, Brian Greenlee, Sr., is the surviving spouse of the decedent, Shirlee M. Greenlee, and Theresa Clayton and Brian Greenlee, Jr., are the sole descendents of Mrs. Greenlee.

² Previously prescribed medications included Glucophage and Actos, Mobic, Zocor, Prinivil, Zoloft, OxyContin, and Klonopin. We note that these medications are commonly used in the treatment of diabetes, arthritis, cholesterol, blood pressure, depression, pain, and anxiety, respectively.

³ Mrs. Greenlee collapsed at home and was taken by Acadian Ambulance Service to Slidell Memorial Hospital, where she was pronounced dead.

discharge, and failed to take adequate follow-up measures. The complaint was considered by a medical review panel that unanimously concluded that the evidence did not support a finding that the defendants failed to meet the applicable standard of care as charged in the complaint. Specifically, with regard to Northshore Regional, the panel members concluded that there was "nothing in the record presented to the panel to indicate that the hospital or its employees deviated from the standard of care."⁴

On March 2, 2007, the plaintiffs filed a Petition for Damages for Wrongful Death and Survival Action, alleging that Northshore Regional, Primary Care Associates, Dr. DeClouet, and Dr. Mayer were liable to the plaintiffs due to their negligence in treating Mrs. Greenlee with a fentanyl patch while having the knowledge that she was already taking OxyContin; due to their negligence in prescribing a drug that was the proximate cause of Mrs. Greenlee's death; due to their prescribing a drug that was unreasonably dangerous when combined with Mrs. Greenlee's existing prescription of OxyContin; due to the unreasonably dangerous nature of their treating Mrs. Greenlee with a drug that would counteract with her existing prescription of OxyContin; and due to their failure to provide adequate warning to Mrs. Greenlee.

Northshore Regional answered the petition, generally denying its allegations and asserting that Mrs. Greenlee received reasonable and proper care by the defendant and its employees. Thereafter, Northshore Regional filed a motion for summary judgment, asserting that there was no evidence that it was negligent or breached its standard of care with regard to Mrs. Greenlee, and therefore no genuine issues of material fact existed and it was entitled to judgment as a matter of law. Following a hearing, the trial court agreed with Northshore Regional and granted summary judgment. The plaintiffs appealed.

⁴ The expert opinion further concluded that "Dr. Mayer's evaluation and treatment plan were appropriate and within the standard of care." With regard to Dr. DeClouet and Primary Care Associates, the medical review panel determined that Mrs. Greenlee was appropriately instructed to return to the emergency room and that her medication regimen was appropriate, particularly in the setting of a long-term patient-physician relationship.

DISCUSSION

On appeal, the plaintiffs contend that the trial court erred in granting summary judgment in favor of Northshore Regional, because genuine issues of material fact exist as to its liability.

Summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action. LSA-C.C.P. art. 966(A)(2). Appellate courts review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether a summary judgment is appropriate. **Duplantis v. Dillard's Dept. Store**, 02-0852, p. 5 (La.App. 1 Cir. 5/9/03), 849 So.2d 675, 679, writ denied, 03-1620 (La. 10/10/03), 855 So.2d 350. A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact, and that mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

The burden of proof remains with the movant. However, if the movant will not bear the burden of proof at trial, its burden on the motion does not require it to negate all essential elements of the adverse party's action, but rather to point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim. Thereafter, if the adverse party fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact. LSA-C.C.P. art. 966(C)(2). Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is "material" for summary judgment purposes can be seen only in light of the substantive law applicable to the case. **Dickerson v. Piccadilly Restaurants, Inc.**, 99-2633, pp. 3-4 (La.App. 1 Cir. 12/22/00), 785 So.2d 842, 844.

The motion for summary judgment at issue herein arose in the context of a suit for medical malpractice. To establish a claim for medical malpractice, a plaintiff must prove, by a preponderance of the evidence: (1) the standard of care applicable to the defendant; (2) that the defendant breached that standard

of care; and (3) that there was a causal connection between the breach and the resulting injury. See LSA-R.S. 9:2794. Expert testimony is generally required to establish the applicable standard of care and whether or not that standard was breached, except where the negligence is so obvious that a lay person can infer negligence without the guidance of expert testimony. **Pfiffner v. Correa**, 94-0924, 94-0963, 94-0992, pp. 9-10 (La. 10/17/94), 643 So.2d 1228, 1234.

In the present case, Northshore Regional moved for summary judgment, asserting that it did not deviate from the appropriate standard of care. In support of its motion, Northshore Regional offered the opinion of the medical review panel. Northshore Regional also submitted its medical records regarding Mrs. Greenlee, as well as the records for Acadian Ambulance Service and Slidell Memorial Hospital. In response to Northshore Regional's motion, the plaintiffs submitted the affidavit of Dr. William R. Huffman, an expert in emergency medicine. Dr. Huffman stated in his affidavit that he reviewed the medical records relating to Mrs. Greenlee, including those from the emergency department at Northshore Regional, and he opined, in pertinent part:

3. Maurice Mayer performed an adequate history, physical and work up of Mrs. Greenlee's abdominal pain. That being said it is my opinion that he deviated from the standard of care when he prescribed a [D]uragesic patch knowing that Mrs. Greenlee was already being treated with [O]xy[C]ontin. The combination of these two drugs can lead to severe respiratory depression and or death, which may have occurred in Mrs. Greenlee's case.

4. It is therefore my opinion that [Mrs.] Greenlee received inadequate and below the minimally accepted standard of care from Northshore Regional Medical Center which ultimately may have contributed to her death.

5. The above opinions are based on reasonable medical certainty.

The trial court determined that Dr. Huffman's affidavit, while discussing the doctor's breach of the standard of care, was insufficient to establish Northshore Regional's culpability in this matter for the purpose of summary judgment. We disagree. The affidavit of Dr. Huffman sets forth his opinion that Mrs. Greenlee received inadequate and below the minimally accepted standard of care from Northshore Regional. Simply put, Dr. Huffman's opinion contradicts

the opinion of the medical review panel and raises genuine issues of material fact as to whether Northshore Regional deviated from the appropriate standard of care. Therefore, upon our *de novo* review, we conclude that summary judgment in favor of Northshore Regional was improperly granted.⁵

CONCLUSION

For these reasons, we reverse the judgment of the trial court granting summary judgment in favor of Northshore Regional and remand the matter for further proceedings consistent with the opinions expressed herein. Costs of this appeal are assessed to Northshore Regional.

REVERSED AND REMANDED.

⁵ We do not address the issue of whether the plaintiffs established the required causal connection between the alleged breach and the injury, as Northshore Regional did not point out to the trial court the absence of factual support as to said causality. Thus, we do not believe that this issue is properly before us.