

STATE OF MICHIGAN
COURT OF APPEALS

APRIL NUDELL, Minor, by her Conservator,
TINA NUDELL,

UNPUBLISHED
August 3, 2006

Plaintiff-Appellant,

v

No. 267203
Wayne Circuit Court
LC No. 03-341381-NH

OAKWOOD HEALTHCARE, INC., d/b/a
OAKWOOD HOSPITAL & MEDICAL CENTER,
HUMBERTO BERNAL, M.D. and DEARBORN
OBSTETRICAL & GYNECOLOGICAL
ASSOCIATES, P.C.,

Defendants-Appellees.

Before: Jansen, P.J., and Murphy and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendants. We affirm.

Plaintiff alleged that defendants' failure to perform a Caesarian section to deliver April Nudell caused April to suffer from spastic diplegia, a form of cerebral palsy. April was born at 2:52 p.m. on April 20, 1998. Plaintiff's standard of care experts opined that April should have been delivered by Cesarean section between 11:00 and 11:45 a.m. However, these experts did not testify as to what caused April's injuries. Instead, plaintiff presented the testimony of Dr. Ronald Gabriel to provide evidence of causation. Dr. Gabriel testified that Tina suffered from chorioamnionitis, which through the development of pro-inflammatory cytokines, affected April's circulation and led to periventricular leukomalacia, or PVL. Dr. Gabriel opined that if April had been delivered in a timely manner, she would not have suffered from cerebral palsy. The trial court concluded that Dr. Gabriel's testimony was speculative and did not establish causation.¹

¹ The trial court, for purposes of the motion for summary disposition, accepted Dr. Gabriel's testimony as admissible. In light of our ultimate decision in this case, we decline to address (continued...)

This Court reviews a trial court's ruling on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* In ruling on a motion for summary disposition under MCR 2.116(C)(10), the trial court is to consider the pleadings, affidavits, depositions, admissions, and other admissible evidence submitted by the parties in the light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the evidence does not establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Plaintiff argues that Dr. Gabriel provided sufficient evidence of causation to survive defendants' motion for summary disposition. We disagree. To establish a cause of action for medical malpractice, a plaintiff must show (1) the appropriate standard of care that governed the defendant's conduct at the time of the alleged negligence, (2) that the defendant breached this standard of care, (3) that the plaintiff was injured, and (4) that the defendant's breach of the standard of care proximately caused the plaintiff's injuries. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).

The concept of proximate causation encompasses both cause in fact and legal cause. *Id.* Causation must be proven by a "more probable than not" standard. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 477; 633 NW2d 440 (2001). Cause in fact requires a showing that, but for the defendant's negligence, the injuries would not have occurred. *Skinner v Square D Co*, 445 Mich 153, 163; 516 NW2d 475 (1994). "While a plaintiff need not prove that an act or omission was the *sole* catalyst for his injuries, he must introduce evidence permitting the jury to conclude that the act or omission was *a* cause." *Craig, supra* at 87 (emphasis in original). Additionally, a plaintiff cannot show cause in fact by alleging only that the defendant's conduct may have caused the injuries. *Id.* "Rather, a plaintiff establishes that the defendant's conduct was a cause in fact of his injuries only if he 'set[s] forth specific facts that would support a reasonable inference of a logical sequence of cause and effect.'" *Id.*, quoting *Skinner, supra* at 174.

Cause in fact may be established by circumstantial evidence, but such proof must be subject to reasonable inferences, not mere speculation. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 496; 668 NW2d 402 (2003). "An explanation that is consistent with known facts but not deducible from them is impermissible conjecture." *Id.* "[N]egligence is not established if the evidence lends equal support to inconsistent conclusions or is equally consistent with contradictory hypotheses." *Badalamenti v William Beaumont Hosp-Troy*, 237 Mich App 278, 286; 602 NW2d 854 (1999).

In a medical malpractice case, proximate cause must often be proven by expert testimony. The evidence "must draw a causal connection between the defendant's breach of the applicable standard of care and the plaintiff's injuries." *Craig, supra* at 90. An "expert opinion based upon only hypothetical situations is not enough to demonstrate a legitimate causal connection between a defect and injury." *Skinner, supra* at 173. Testimony that only establishes

(...continued)

whether the trial court properly performed its MRE 702 gatekeeping function with respect to Dr. Gabriel's testimony.

a correlation between conduct and injury is not sufficient to establish cause in fact, as “[i]t is axiomatic in logic and in science that correlation is not causation.” *Craig, supra* at 93. Where the connection between the defendant’s negligent conduct and the plaintiff’s injuries is entirely speculative or merely a possibility, the plaintiff cannot establish negligence. *Id.*

Dr. Gabriel testified that he believed that if April had been delivered before 11:35 a.m., she would not have suffered from cerebral palsy. However, Dr. Gabriel also stated that in order to prevent injury, delivery would have been required before fetal distress occurred, which was noted at least as early as 10:30 a.m. Dr. Gabriel stated that the damaging processes had begun once fetal distress occurred, and he could not say how long it likely took once April was born for the allegedly damaging cytokines to dissipate. Nor did Dr. Gabriel specify what damage occurred after 11:45 a.m., the time at which plaintiff alleges that delivery should have been completed. Because Dr. Gabriel could not say when the damaging processes began or whether complying with the standard of care (i.e., delivery by 11:45 a.m.) would have prevented April’s injuries, plaintiff has not set forth facts that “support a reasonable inference of a logical sequence of cause and effect.” *Craig, supra* at 87, quoting *Skinner, supra* at 174.

Further, although Dr. Gabriel testified that he believed that if April had been delivered before the fetal distress occurred she would have been a normal child, Dr. Gabriel did not clearly establish why this would be true. Dr. Gabriel testified that April’s exposure to chorioamnionitis caused her injuries. Dr. Gabriel explained his reasoning as follows:

The chorioamnionitis caused problems in circulation as it relates to nutrients and gases. It causes problems in the development of pro-inflammatory cytokines, which are lipopolysaccharides, which can affect the vascularity and perfusion and which then can produce problems as it relates to areas like the periventricular region.

Dr. Gabriel further stated that the PVL was not directly caused by the production of cytokines due to the chorioamnionitis. Dr. Gabriel stated that the current hypothesis was that the cytokines affect circulation, which can lead to PVL. However, Dr. Gabriel admitted that the role of cytokines in this process remains unclear. Dr. Gabriel also noted that the adverse effects of chorioamnionitis are set into effect once a fetus goes into distress.

We therefore conclude that Dr. Gabriel’s theory was not sufficient to establish causation and the trial court correctly granted summary disposition. Dr. Gabriel could not testify with any certainty regarding how the cytokines affected April’s PVL. Dr. Gabriel admitted that his testimony was a hypothesis and that the science regarding cytokines and their effect was still developing. An “expert opinion based upon only hypothetical situations is not enough to demonstrate a legitimate causal connection between a defect and an injury.” *Skinner, supra* at 173. Like the testimony in *Craig*, Dr. Gabriel’s testimony indicated a correlation between chorioamnionitis and April’s cerebral palsy, but did not adequately establish causation. *Craig, supra* at 93. Moreover, Dr. Gabriel’s testimony demonstrated that even if defendants had delivered April in the time frame suggested by plaintiff’s experts, she may have still suffered her injuries. Plaintiff has not shown that, but for April’s late delivery after 11:45 a.m., her injuries would not have occurred. As plaintiff did not submit sufficient evidence of causation, the trial court correctly granted summary disposition in favor of defendants.

Affirmed.

/s/ Kathleen Jansen
/s/ William B. Murphy
/s/ Karen M. Fort Hood