

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WADE HAMILTON, SR., personal representative  
of the ESTATE OF WADE HAMILTON, JR.,

UNPUBLISHED  
May 8, 2007

Plaintiff-Appellant,

v

DETROIT RECEIVING HOSPITAL,  
UNIVERSITY HEALTH CENTER, and KELLY  
KLEIN, M.D.,

No. 273096  
Wayne Circuit Court  
LC No. 05-515948-NH

Defendants-Appellees,

and

JOSEPH TIRADO, M.D., ROCHELLE  
EDELMAN, R.N.; GLORIA JORDAN, R.N., and  
JOHN STALLWOOD, R.N.,

Defendants.

---

Before: Talbot, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants in this medical malpractice action. Because the trial court properly found that plaintiff failed to establish a causal connection between defendants' alleged malpractice and plaintiff's decedent's death that occurred when he was hit by a car as he ran across the freeway six hours later, and granted summary disposition to defendants, we affirm.

Plaintiff's decedent, Wade Hamilton, Jr., was a mentally challenged thirty-eight-year-old man who from time to time functioned in a sheltered workshop, lived in a half-way house, traveled independently by bus, and notwithstanding an adaptive functioning age of seven years, he self-presented at the emergency room to deal with health concerns. In November 2003, Hamilton was taken by ambulance to the emergency room at defendant Detroit Receiving Hospital where he indicated he was feeling dizzy, had a history of seizures, and was taking Depakote, Neurotin, and Dilantin. Dr. Joseph Tirado examined Hamilton and diagnosed him with viral syndrome and treated him with fluids and Phenergan. Dr. Kelly Klein, an attending physician, also saw Hamilton and ordered some tests which came back normal. Hamilton ate a

box lunch provided at the hospital that he tolerated well. After Drs. Tirado and Klein followed-up with Hamilton who reported he was feeling better, they determined his condition was stable and decided to discharge Hamilton. Hamilton was then discharged with instructions to follow-up with a physician in two days. Hamilton left the ER via foot with a steady gait at approximately 1:00 pm. On the same day, at approximately 6:50 pm, Hamilton was killed when a car hit him as he ran across I-375.

Plaintiff filed suit against defendants for medical malpractice on the theory that defendants negligently discharged Hamilton when they failed to ensure that he had transportation home and that the negligent discharge caused him to run into the freeway and get hit by a car. Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) and (10) arguing that even if defendants negligently discharged Hamilton, that the discharge did not cause his death because it was an unforeseeable act, and even if it was foreseeable, plaintiff's theory was based on mere speculation which is insufficient to prove causation. After requesting additional briefing on the issue of causation, and entertaining oral argument on the motion, the trial court granted summary disposition in favor of defendants. The trial court held that it was not foreseeable that Hamilton would run into the freeway, and that running into the freeway was a superseding cause, and ultimately granted summary disposition to defendants on the basis of a lack of causation. This appeal followed.

The sole issue on appeal is whether the trial court erred in finding insufficient evidence of proximate causation and granting summary disposition in favor of defendants.<sup>1</sup> We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). To establish a cause of action for medical malpractice, a plaintiff "has the burden of proving that he or she suffered an injury that more probably than not was proximately caused by the negligence of the defendant or defendants." MCL 600.2912a(2). Thus, in order to properly support his medical malpractice claim, plaintiff was required to establish that Hamilton's death was proximately caused by defendants' breaches of the applicable standards of care. *Craig v Oakwood Hosp*, 471 Mich 67, 86; 684 NW2d 296 (2004).

---

<sup>1</sup> Defendants' motion for summary disposition in the trial court was based only on a lack of a causal relationship between defendants' actions and Hamilton's death. The trial court addressed only this issue, and did not rule on any other issues. On appeal, plaintiff raises issues in anticipation of possible defense arguments on appeal that this Court should affirm summary disposition alternatively on the basis of defendants' lack of negligence and duty. Defendants did not raise these issues on appeal and indeed, plaintiff concedes that the trial court never decided the issue of defendants' alleged negligence or duty, and decided the summary disposition motion only on a lack of causation. An issue is not properly preserved for appellate review if it is not raised before, addressed, or decided by the trial court. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005). Because the trial court did not address these issues, they are unpreserved for our review and there is no trial court record to review. We decline to address alternative bases for affirmance.

The issue of proximate cause is generally a question of fact. *Meek v Dep't of Transportation*, 240 Mich App 105, 115; 610 NW2d 250 (2000). If, however, “the facts bearing upon proximate cause are not in dispute and reasonable persons could not differ about the application of the legal concept of proximate cause to those facts,” the issue is a question of law for the court. *Paddock v Tuscola & Saginaw Bay R Co, Inc*, 225 Mich App 526, 537; 571 NW2d 564 (1997). To establish proximate causation in a medical malpractice case, 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. Testimony that only establishes 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.” *Id.* at 93. Where the connection between the defendant’s negligent conduct and the plaintiff’s injuries is speculative or merely a possibility, the plaintiff cannot establish causation. *Id.*

Plaintiff failed to establish proximate causation with respect to his claims against defendants. Again, to establish a cause of action for medical malpractice, a plaintiff must demonstrate “that the . . . injuries were the proximate result of the defendant’s breach of the applicable standard of care.” *Craig, supra* at 86. Plaintiff did not do so here. While defendants’ discharge of Hamilton from the emergency room can be considered one of many “but-for” causes of his death, it was not a proximate cause of the damage. See *id.* at 86-87. “[L]egal cause or ‘proximate’ cause normally involves examining the foreseeability of consequences, and whether a defendant should be held legally responsible for such consequences.” *Id.* at 87 (citation and quotation marks omitted). A review of the record reveals that there is no reason to conclude that it was foreseeable that discharging plaintiff from the ER on his own accord would result in Hamilton running across I-375 approximately six hours later that would ultimately result in his death. Accordingly, the trial court properly granted summary disposition to defendants.

Affirmed.

/s/ Michael J. Talbot  
/s/ Pat M. Donofrio  
/s/ Deborah A. Servitto