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ATTORNEY FOR APPELLANT:

EDWARD L. MURPHY, JR.
HEIDI K. KOENEMAN
Murphy Law Group
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE:

NATHANIEL LEE
LAURA CROWLEY
Lee Cossell Kuehn & Love, LLP
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ELKHART GENERAL HOSPITAL,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A05-1007-CT-467
	)	
DORIS WILLIAMS, Individually and as Administratrix of the Estate of Ben Williams, Sr.,	)	
	)	
Appellee.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable Stephen R. Bowers, Judge
Cause No. 20D02-0308-CT-505

April 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Elkhart General Hospital (the Hospital) appeals from the trial court's order denying its motion to correct error after a jury trial resulted in a verdict in favor of Doris Williams (Doris), individually and as the administratrix of the Estate of Ben Williams, Sr. (collectively the Estate). The Hospital raises the following restated issue for our review: Did the trial court err in denying the Hospital's motion to correct error based upon the sufficiency of the evidence of causation in the wrongful death action brought by the Estate?

We affirm.

On September 11, 2001, Ben Williams, Sr. (Ben) was seen by Dr. Luisito Gonzales for a cardiac stress test and echocardiogram and the results of those tests were abnormal. Also on that date, Ben underwent a coronary angiogram, which revealed severe blockages in his coronary arteries; specifically he had a ninety-five percent blockage in the left main coronary artery and a total blockage of the mid-portion of the right coronary artery. Ben was referred to Dr. Walter Halloran for a surgical consultation on September 12, 2001. Dr. Halloran concluded that a coronary bypass surgery was urgently required, and he performed Ben's bypass surgery shortly thereafter. The surgery was completed without complications. Ben was moved to the Intensive Care Unit (ICU) after surgery, where his condition became stable and he was able to talk.

On September 13, Ben's condition began to deteriorate. Dr. Halloran had left specific call parameters to be used by the Hospital's staff in the ICU. The nurses were to call Dr. Halloran if Ben's heart rate fell below sixty or rose above one hundred twenty, if his systolic blood pressure fell below ninety or rose above one hundred fifty, if his respiratory rate was greater than twenty-eight, or if his urine output was below thirty. At approximately 5:00 p.m.

Ben's blood pressure reading was 81/53, which was the first reading outside of the call parameters established by Dr. Halloran. The Hospital staff decided to wait for another reading outside of the call parameters prior to notifying Dr. Halloran. At 6:00 p.m., Ben's blood pressure reading was 79/45, and the staff contacted Dr. Halloran, who telephoned an order for Albumin. Administration of the Albumin was successful in improving Ben's blood pressure over the course of the next few hours.

At approximately 10:00 p.m. on September 13 Ben's systolic blood pressure dropped to eighty-nine. Again, the Hospital staff decided to wait for another reading outside of the call parameters prior to contacting Dr. Halloran. At 12:00 a.m. on September 14 Ben's blood pressure was 80/56, he had a heart rate in the nineties, his pulse was good, and his lungs were clear. At 2:00 a.m. his blood pressure was 81/55, and by 5:00 a.m. it was 89/68. The Hospital staff decided not to call Dr. Halloran at that time, but noted that Ben's condition had changed as he was less responsive, falling asleep, complaining of chest tightness, and exhibiting symptoms of kidney failure due to a lack of blood flow. Those symptoms were consistent with the early onset of a heart attack.

Dr. Halloran's physician's assistant, Christine Rullo, saw Ben at approximately 7:00 a.m. and Dr. Gonzales also saw Ben that morning. Neither of them ordered additional tests or treatment. When Dr. Halloran saw Ben at approximately 9:30 that morning, Ben's condition had worsened. Dr. Halloran ordered blood tests, an echocardiogram, inserted a balloon pump, and then took Ben to the cardiac catheterization lab where he ultimately suffered an anoxic cerebral event, or brain death.

On August 7, 2003, the Estate filed a proposed complaint with the Indiana Department of Insurance alleging that Ben's death was caused by the Hospital and his treating physicians. Then on August 11, 2003, the Estate filed a complaint for damages in Elkhart Superior Court, alleging that Ben's death was the result of the Hospital's negligence. The Hospital filed a motion to delay answering the state court complaint until the proposed complaint had proceeded before the Medical Review Panel. On January 24, 2008, the Medical Review Panel found that the treating physicians had not failed to meet the appropriate standard of care, but that the Hospital did fail to meet the appropriate standard of care. The Medical Review Panel found, nonetheless, that the Hospital's conduct was not a factor of the damages alleged in the complaint.

The Estate was granted leave to amend its state court complaint, which it did on May 13, 2008. The Hospital filed an answer to the complaint and a demand for jury trial. A jury trial commenced on April 5, 2010 and concluded on April 9, 2010. At the conclusion of the Estate's case-in-chief, the Hospital moved for a directed verdict arguing that the Estate had failed to present any evidence to sustain a loss of chance theory of recovery as opposed to a wrongful death claim. The trial court denied the motion and at the conclusion of the trial, the jury returned a verdict in favor of the Estate and against the Hospital. The trial court entered judgment on the jury's verdict in the amount of $108,128.

The Hospital filed a motion to correct error alleging that the jury's verdict was not supported by sufficient evidence on the issue of causation, and asking the trial court to act as a thirteenth juror and reverse the jury's verdict. The trial court held a hearing on the Hospital's motion to correct error and took the matter under advisement. The trial court

ultimately denied the Hospital's motion, and noted that it would not necessarily have reached the same conclusion as the jury, but that evidence of causation sufficient to support the jury's verdict existed in the record. The Hospital now appeals. Additional facts will be supplied.

The Hospital filed its motion to correct error pursuant to Indiana Trial Rules 50 and 59. As previously stated, the Hospital's motion alleged the insufficiency of the evidence of causation to support the jury's verdict against it. T.R. 50(A)(4) allows a party to move for judgment on the evidence in a motion to correct error. *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763 (Ind. Ct. App. 2009).

> Pursuant to Indiana Trial Rule 59(J), a trial court is required to take such action as will cure any "prejudicial or harmful error," to grant a new trial on a motion to correct error if the court determines that the jury verdict is "against the weight of the evidence," and to enter judgment if it determines that the jury verdict is "clearly erroneous as contrary to or not supported by the evidence."

Paragon Family Res. v. Bartolini, 799 N.E.2d 1048 (Ind. 2003) (citing Ind. Trial Rule 59(J)). The trial court's denial of a motion to correct error under T. R. 59 is reviewed for an abuse of discretion. *Newland Res., LLC v. Branham Corp.*, 918 N.E.2d 763. An abuse of discretion will be found only when the trial court's action is against the logic and effect of the facts and circumstances before it and the inferences that may be drawn therefrom. *Id*.

> In the appellate review of a claim of insufficient evidence in a civil case, we affirm a verdict when considering the probative evidence and reasonable inferences, a reasonable jury could have arrived at the same determination.

TRW Vehicle Safety Systems, Inc. v. Moore, 936 N.E.2d 201, 208 (Ind. 2010) (quoting *Gary Cmty. Sch. Corp. v. Powell*, 906 N.E.2d 823, 830 (Ind. 2009)). We neither reweigh the evidence nor reassess witness credibility, but consider only the evidence and inferences most favorable to the judgment. *TRW Vehicle Safety Sys., Inc. v. Moore*, 936 N.E.2d 201. We

reverse the trial court's judgment only if there is a lack of evidence or evidence from which a reasonable inference can be drawn on an essential element of the plaintiff's claim, in this case causation. *Id*.

In a medical malpractice action, the plaintiff has the burden of proving all three elements of its claim: (1) the defendant's duty to the plaintiff; (2) the defendant's breach of that duty by failure to conform its conduct to the requisite standard of care required by that relationship between the defendant and the plaintiff; and (3) an injury to the plaintiff resulting from that failure. *Dughaish v. Cobb*, 729 N.E.2d 159 (Ind. Ct. App. 2000). In malpractice cases, health care providers "must exercise that degree of care, skill, and proficiency exercised by reasonably careful, skillful, and prudent practitioners in the same class to which he belongs, acting under the same or similar circumstances." *Vergara v. Doan*, 593 N.E.2d 185, 187 (Ind. 1992). The plaintiff is required to provide expert testimony in order to show that the health care provider's negligence was the proximate cause of the plaintiff's injuries. *Dughaish v. Cobb*, 729 N.E.2d 159.

"A negligent act or omission is the proximate cause of an injury if the injury is a natural and probable consequence which, in light of the circumstances, should reasonably have been foreseen or anticipated." *City of Portage v. Lindbloom*, 655 N.E.2d 84, 86 (Ind. Ct. App. 1995). Proximate, in this context, "means the immediate, nearest, direct, next in order, and, in its legal sense, closest in causal connection." *Id*.

In the present case, the Hospital presented the testimony of four expert witnesses. Two of the expert witnesses were Medical Review Panel members, one who specializes in non-invasive cardiology, and the other, who is a cardiologist. They also presented a

pathologist and an expert who reviewed the treatment records in this matter. Their testimony reflects their collective belief that Ben's death was not caused by the Hospital's breach of its duty to Ben, but was caused by his severe heart condition.

The Estate's expert witness, Dr. Hilton Hudson, is a cardiothoracic surgeon. He testified that he had performed 2500 cardiothoracic surgeries, such as heart bypasses, transplants, and valve surgeries, as of the time of his testimony in this case. He further testified that he had successfully surgically intervened in a case similar to Ben's and saved that eighty-nine-year-old patient's life. He credited his success in that case to the prompt notification of the patient's post-operative progress by the nursing staff, and opined that had the Hospital's nursing staff notified Dr. Halloran per his call parameters, Ben would not have died. The Estate also pointed out to the jury that there were no cardiothoracic surgeons on the Medical Review Panel that examined this case. One of the Medical Review Panel members who testified in this case stated that he regularly relied upon Dr. Hudson's opinion.

What the Hospital asked the trial court to do via a motion to correct error, and this court to do on appeal, is to determine witness credibility and assign a weight to the evidence of causation. This we may not do. The trial court correctly determined that while it might have reached a different result, it was for the jury to determine witness credibility and weigh the evidence. The trial court's task as to the motion to correct error and our task on appeal is to determine if there was sufficient evidence of causation to support the jury's verdict. We conclude that the trial court correctly found that there was sufficient evidence of causation.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.