

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY**

JOHN BELLISSIMO,
ADMINISTRATOR OF THE ESTATE
OF JENILINA BELLISSIMO,
DECEASED,

Plaintiff-Appellant,

- vs -

TRIPOINT MEDICAL CENTER, et al.,

Defendants,

THOMAS WILSON, M.D.,

Defendant-Appellee.

CASE NO. 2023-L-037

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2020 CV 000002

OPINION

Decided: January 8, 2024
Judgment: Reversed and remanded

Paul W. Flowers, Flowers & Grube, Terminal Tower, 40th Floor, 50 Public Square, Cleveland, OH 44113, and *Jeffrey A. Leikin*, 25201 Chagrin Boulevard, Suite 270, Beachwood, OH 44122 (For Plaintiff-Appellant).

Dirk E. Riemenschneider, *Timothy A Spirko*, and *Susan R. Massey*, Buckingham Doolittle & Burroughs, LLC, One Cleveland Center, Suite 1700, 1375 East Ninth Street, Cleveland, OH 44114 (For Defendant-Appellee).

ROBERT J. PATTON, J.

{¶1} Appellant, John Bellissimo, administrator of the estate of Jenilina Bellissimo (“appellant”), appeals the trial court’s entry granting the defendant-appellee’s, Thomas

Wilson, MD (“Dr. Wilson”), motion for a directed verdict. For the following reasons, we reverse and remand to the trial court for further proceedings.

{¶2} On January 2, 2020, appellant filed a wrongful death action against Tripoint Medical Center (“TriPoint”); Lake Health; Lake Hospital Systems, Inc.; Lake Health Physicians Group; Primehealth, Inc.; and Dr. Wilson, pursuant to R.C. 2125, et seq.

{¶3} On November 16, 2020, appellant filed his first Amended Complaint which added Michael Cunningham, MD (“Dr. Cunningham”) as a new-party defendant.

{¶4} On November 23, 2020, appellant filed a Notice of Dismissal as to defendants Lake Health Physicians Group and Primehealth, Inc. only. On January 21, 2021, appellant filed a second notice of dismissal, stating that Lake Health, Lake Hospital Systems, Inc., and Tripoint Medical Center had been dismissed.

{¶5} Dr. Cunningham filed a motion for summary judgment and a motion for judgment of the pleadings on February 19, 2021. Appellant did not file a response to the motions. On March 26, 2021, the trial court granted the motion for summary judgment in part, concluding that the amended complaint naming Dr. Cunningham as a new-party defendant was filed after the expiration of the statute of limitations for a wrongful death action. The trial court granted Dr. Cunningham’s motion and dismissed him from the case with prejudice due to the untimeliness of the amended complaint. Appellant then sought to vacate the order granting Dr. Cunningham’s motion for summary judgment which was granted due to defense counsel’s inadvertent failure to serve the motions upon appellant. Appellant subsequently dismissed Dr. Cunningham on April 23, 2021.

{¶6} The case proceeded to a jury trial on March 13, 2023. The following facts were elicited during appellant’s case-in-chief.

{¶7} Dr. Wilson is an invasive cardiologist who primarily performed hospital work at TriPoint and LakeWest. He also had three office locations where he would see patients. Dr. Wilson served as the primary provider of care in cardiology at TriPoint. Dr. Wilson was also Jenilina Bellissimo's cardiologist. Ms. Bellissimo was a patient of Dr. Wilson's for 22 years. Ms. Bellissimo had several health issues according to Dr. Wilson, including congestive heart failure, lung disease, peripheral vascular disease, both arterial and venous, high-grade carotid vascular disease, chronic obstructive pulmonary disease (COPD), diabetes, and chronic kidney disease. According to Ms. Bellissimo's sons, David and John; her daughter, Karen Duda; and her granddaughters, Jena Feranto and Jamie Hanculak, Ms. Bellissimo was mobile, active, and independent despite her ailments.

{¶8} On September 25, 2018, Ms. Bellissimo, a 79-year-old woman, was taken to TriPoint after falling at the dialysis center. She was seen by Dr. Steven Lojewski, an emergency room physician. She was complaining of chest pain. It was noted that Ms. Bellissimo had bradycardia, or low heart rate, and slightly elevated troponin levels. Troponin is a "muscle enzyme" and is a marker for heart injury according to Dr. Wilson. Ms. Bellissimo was given morphine and Norco for pain. Dr. Wilson testified that Norco would not be used for cardiac pain. According to the medical records, Dr. Shreeniwas Lele and Dr. Lojewski concluded that the chest pain was probably not cardiac related. Ms. Bellissimo was admitted and Dr. Lele requested consultations by Dr. Wilson in cardiology, as well as nephrology and neurology departments.

{¶9} After an independent evaluation, Dr. Wilson agreed with Dr. Lele and Dr. Lojewski's opinion. It was recommended that she stop taking metoprolol and losartan in

order to raise her heart rate and avoid elevated potassium levels. This evaluation was done around 10:00 a.m. the morning she presented at the hospital.

{¶10} Ms. Bellissimo received her dialysis that she was scheduled to have that morning at the hospital. Her granddaughter, Jena, testified that she was tired after dialysis.

{¶11} Around 5 o'clock that evening, Ms. Bellissimo's condition changed. Jena and Jamie both recalled Ms. Bellissimo's heart rate was high and that she had become restless and anxious. Ms. Bellissimo was transferred from the step-down unit to the intensive care unit. Hospital staff attempted to contact Dr. Wilson but were unsuccessful.

{¶12} The medical records from TriPoint noted that hospital staff attempted to page Dr. Wilson at 5:10 p.m., 5:30 p.m., and 5:42 p.m and placed calls to his cellphone and home phone number. Dr. Lele testified that at 5:45 p.m. he was contacted by nursing staff regarding Ms. Bellissimo's care when they were unable to reach Dr. Wilson. Dr. Lele testified that he ordered a repeat electrocardiogram ("EKG"), basic metabolic panel, and another troponin test. According to the records, Dr. Azem, the nephrologist treating Ms. Bellissimo, also attempted to contact Dr. Wilson at 5:56 p.m. An entry pertaining to Dr. Azem stated: "Operator: GetCurrentOnCall – Dr. Thomas Wilson." At 6:14 p.m., it was notated that if staff could not reach Dr. Wilson to call Dr. Cunningham. Staff then placed a page to Dr. Cunningham.

{¶13} Ms. Bellissimo's EKG showed atrial fibrillation, a heart rate which increased to approximately 140 beats per minute, and her blood work revealed her troponin levels had increased.

{¶14} Dr. Cunningham testified that he did receive messages from the hospital regarding Ms. Bellissimo's care. Dr. Cunningham called the hospital at 6:25 p.m. He attempted to reach Dr. Wilson on his cell phone. Dr. Cunningham testified that he did not see Ms. Bellissimo that night, however, he spoke with nursing staff, reviewed the EKG and medical records. He testified that he concurred with the other physician's order to administer heparin and metoprolol to stabilize Ms. Bellissimo's heart rate. Dr. Cunningham testified that at 6:25 p.m., he could have ordered the transfer to University Hospitals, but did not feel it was necessary at that time. Dr. Cunningham had not been notified of the change in troponin levels.

{¶15} Ms. Bellissimo's sons, David and John, both testified that they do not recall seeing any doctors or any activity during this time. David, John, and Jamie recalled that the monitors in her room were consistently ringing. Jena testified that she remained at TriPoint until approximately 8:00 p.m. She testified that she saw her grandmother and conversed with her. Jena also testified that "[a]t that point the nursing staff didn't say anything alarming so we were fine. It wasn't anything that I felt was in that second going to be life-threatening just waiting for her to be evaluated further."

{¶16} According to medical records, other doctors did see Ms. Bellissimo or reviewed her case during this period. Specifically, the records indicated Dr. Lele received notifications of changes in orders. Dr. Cunningham testified he ordered a central line when IV access was not possible. At 8:15 pm, Dr. Todorinov placed a central line to administer metoprolol.

{¶17} Dr. Cunningham testified that between 7:30 p.m. and 9:00 p.m., he attempted to reach Dr. Wilson on his cell phone. Dr. Cunningham testified that once he

spoke with Dr. Wilson, that Dr. Wilson took over Ms. Bellissimo's care. It was decided that Ms. Bellissimo required additional cardiac care that was not available at TriPoint and that she would be transferred to University Hospitals.

{¶18} Betsy Snyder ("Ms. Snyder"), administrative assistant to several physicians throughout the cardiology department of University Hospitals, testified regarding the hospital's use of TeleMed and QGenda. She testified that on September 25, 2018, the on-call schedule indicated "self on call." Ms. Snyder testified that such designation meant that each doctor covered their own patients. On cross examination, Ms. Snyder indicated on the QGenda reports, the on-call doctor was listed as Dr. Rosenthal.

{¶19} According to Dr. Wilson, the call log generated from the answering service, TeleMed, was incorrect that he was on call on September 25, 2018. He also indicated the call logs showed that contact was made to his cell phone, however Dr. Wilson testified he did not have his phone at the time. Dr. Wilson did not return any calls or pages until 9:00 p.m.

{¶20} Ms. Bellissimo was transferred to University Hospital in Cleveland, Ohio. According to her son, John, she was talking and alert when she arrived at approximately 11:00 p.m. There she underwent a cardioversion to shock her heart into normal rhythm. Once she was stabilized, a cardiac catheterization was done to remove a blockage. Unfortunately, Ms. Bellissimo died on September 27, 2018. The death certificate lists the cause of death acute myocardial infarction. Ms. Bellissimo's daughter Karen testified: "I just feel like my time was taken and something could have maybe been done sooner."

{¶21} Dr. Alexander's testimony was recorded and played for the jury. Dr. Alexander is a cardiologist with a medical practice in Connecticut. He did not physically

examine Ms. Bellissimo but reviewed her medical records in order to provide an expert opinion. Dr. Alexander testified that Dr. Wilson’s “failure to answer his pages in a prompt manner and deliver more definitive care directly contributed to her demise.” He further testified that Dr. Wilson breached the standard of care and “that the delay in transferring her for definitive treatment caused her death.” According to Dr. Alexander, addressing Ms. Bellissimo’s heart rate of 130 to 140 and her EKG which showed ischemic changes was critical because “every half hour, every hour that those conditions continue, increases her chance of dying as a result of her cardiac status.”

{¶22} Dr. Alexander also testified that “if I’m not aware of the phone call, there is no standard.” He clarified that even if a doctor were not on-call, his duty to his patients remains and that he had a “responsibility and obligation to return that call.” Dr. Alexander also testified on cross-examination that Dr. Cunningham could have ordered the transfer to University Hospital. He was unsure if any other doctor overseeing Ms. Bellissimo’s care at TriPoint could have made that decision. Dr. Alexander further testified that while the steps taken by hospital staff, including a repeat EKG and a central line were appropriate, he indicated that the decision to transfer the patient, which occurred more than three hours after the cardiac event, fell below the standard of care.

{¶23} Dr. Alexander further testified that “I think it’s more likely than not that had a transfer occurred substantially less than the five hours and 20 minutes I referenced, her chances of survival would have been greater.”

{¶24} Appellant timely appeals and raises the following assignments of error:

[1]. “The trial court erred, as a matter of law, by directing a verdict at the close of plaintiff-appellant’s case-in-chief.”

[2]. “The trial court committed an abuse of discretion, to plaintiff-appellant’s considerable detriment, by striking proper and relevant expert testimony.”

[3]. “The trial court committed a further abuse of discretion, and violated plaintiff-appellant’s fundamental right to confront adverse witnesses, by improperly precluding effective impeachment of them.”

[4]. “A final abuse of discretion was committed when the trial court refused to permit any proof or discussion of the timing that certain defense exhibits were produced during discovery.”

{¶25} Dr. Wilson raises a single cross-assignment of error: “The trial court should have granted a directed verdict in Dr. Wilson’s favor on the basis of the second ground arguments as well as the first ground.”

{¶26} Appellant’s first assignment of error and the cross assignment of error raised by appellee will be addressed jointly as both assigned errors relate to the trial court’s decision regarding Dr. Wilson’s motion for directed verdict. Specifically, appellant asserts that the trial court erred when it granted Dr. Wilson’s motion for directed verdict after the close of appellant’s case-in-chief. Dr. Wilson disagrees and asserts that the trial court properly granted his request. He argues in his cross assignment of error that the trial court should have granted his motion on both grounds raised below.

{¶27} “A motion for a directed verdict may be made on the opening statement of the opponent, at the close of the opponent’s evidence or at the close of all the evidence.” Civ. R. 50(A)(1). “When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse

to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.” Civ.R. 50(A)(4).

{¶28} A motion for a directed verdict tests the legal sufficiency of the evidence, not the weight of the evidence or the credibility of witnesses. *Huffman v. Kazak Bros.* 11th Dist. No. 2000-L-152, 2002-Ohio-1683 (Apr. 12, 2002) citing, *Osler v. Lorain* (1986), 28 Ohio St.3d 345, 347, 504 N.E.2d 19. Therefore, “[a] trial court’s decision on a motion for directed verdict presents a question of law, which an appellate court reviews de novo.” *Lloyd v. Thornsbery*, 11th Dist. Portage No. 2019-P-0080, 2021-Ohio-239, ¶ 78 citing, *Groob v. Keybank*, 108 Ohio St.3d 348, 2006-Ohio-1189, ¶14. “If there is substantial, competent evidence favoring the nonmoving party, so that reasonable minds might reach different conclusions, the motion must be denied.” *Masek v. Gehring*, 11th Dist. Geauga No. 2004-G-2569, 2005-Ohio-3900, ¶ 21 citing, *Ramage v. Cent. Ohio Emergency Serv., Inc.* (1992), 64 Ohio St.3d 97, 109, 592 N.E.2d 828.

{¶29} In a wrongful death suit as a result of medical malpractice, the plaintiff is required to prove “that the doctor, nurses, and/or staff did not satisfy the standard of care required, and that such deviation proximately caused death.” *Safranic v. Belany*, 89 Ohio App.3d 65, 67, 623 N.E.2d 611, 612 (11th Dist.1993).

{¶30} Dr. Wilson asserted in the court below that a directed verdict was appropriate because the testimony presented indicated that none of the doctors relied upon the TeleMed schedule. Instead, doctors in Dr. Wilson’s group relied upon the handwritten schedule. The incomplete handwritten schedule, however, indicated that Dr. Wilson was not on call on September 25, 2018. Dr. Wilson further argued that there was no evidence that he received the pages or the call. The evidence supports that the pages were sent

but there was no evidence that the pages were received or that Dr Wilson was aware of the pages.

{¶31} In this case, appellant asserts that Dr. Wilson breached the standard of care by failing to answer the urgent stat pages sent from hospital staff and from his colleagues regardless of whether he was on call on September 25, 2018. Dr. Alexander testified that physicians have an obligation to respond to any messages or pages regarding their patients. Dr. Alexander also testified that delays in responding in this case and delays in care, directly contributed to Ms. Bellissimo's death. Dr. Alexander testified that certain conditions, such as a suspected cardiac event, delays of a half hour, or an hour, can diminish the likelihood of recovery.

{¶32} Appellant argues, as he did in the court below, that the contradictory evidence of the TeleMed schedule and the handwritten schedule was a fact that the jury could decide. He further asserts that whether Dr. Wilson received the pages was also a credibility determination that should have appropriately been determined by the jury. We agree.

{¶33} However, the issue becomes whether there was a delay in Ms. Bellissimo's care. The testimony appears to support the contention that Ms. Bellissimo did not receive care from the onset of her cardiac distress from around 5:00 p.m. until 5:45 p.m. when Dr. Lele was contacted. During that time, the evidence shows that hospital staff attempted to contact Dr. Wilson via page to his cell phone and home phone at least three times.

{¶34} As noted above, when determining a motion for a directed verdict, the test is legal sufficiency of the evidence. It is not testing the weight of the evidence or the credibility of witnesses. *Huffman v. Kazak Bros.* 11th Dist. Lake No. 2000-L-152, 2002-

Ohio-1683 (Apr. 12, 2002). Because there is testimony which supports plaintiff's claim, the trial court erred when it determined that Dr. Wilson did not receive the text messages based upon his testimony. As such, the trial court erred when it granted Dr. Wilson's motion for a directed verdict.

{¶35} Appellant's first assignment of error is sustained. Necessarily, given the finding above, Dr. Wilson's cross assignment of error is overruled. Given the disposition on appellant's first assignment of error, the remaining assignments are rendered moot. For the reasons set forth in the opinion, the decision of the Lake County Court of Common Pleas is reversed, and this matter is hereby remanded to the trial court for a new trial.

MARY JANE TRAPP, J.,

MATT LYNCH, J.,

concur.