[Cite as *Thompson v. Mercy Health*, 2026-Ohio-1183.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

MELANIE MESHEL THOMPSON, INDIVIDUAL CAPACITY & AS REPRESENTATIVE OF ESTATE OF BARRY LAZICH ALLISON FKA MESHEL,

Plaintiff-Appellant,

v.

MERCY HEALTH DBA ST. ELIZABETH HOSPITAL et al.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 25 MA 0029

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2022 CV 02282

BEFORE:
Carol Ann Robb, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Affirmed.

Atty. Percy Squire, Percy squire Co., LLC, for Plaintiff-Appellant and

Atty. Marshall D. Buck, *Atty. Thomas J. Wilsoin,* Comstock, Springer, & Wilson Co. L.P.A., for Appellee, Mercy Health dba St. Elizabeth Hospital and *Atty*. *Emily K. Anglewicz, Atty. Stephen W. Funk, Atty. Megan M. Millich,* Roetzel & Andress, LPA, for Appellee, Eugene Potesta, Jr., M.D.

Dated: March 30, 2026

Robb, J.

{¶1} Appellant, Melanie Meshel Thompson in her individual capacity and as the representative of the Estate of Barry Allison, fka Meshel (Thompson), appeals the trial court's April 7, 2025 judgment directing a verdict in favor of Appellees, Mercy Health dba St. Elizabeth Hospital (the hospital) and Eugene Potesta, Jr., M.D. (Potesta), and against Thompson.

{¶2} Thompson raises four assignments of error on appeal. She challenges the trial court's ruling on two motions in limine. Thompson additionally asserts the court erred by denying her motion for a mistrial and granting the hospital's and Potesta's motions for a directed verdict. For the following reasons, we affirm.

Statement of the Case

{¶3} On December 29, 2022, Thompson filed a wrongful death complaint against the hospital, Potesta, and several unnamed employees of the hospital.[1] She asserted multiple claims for relief, including medical malpractice against all defendants, negligence against the hospital and its John Doe employees, loss of consortium against all defendants, and wrongful death. (December 29, 2022 Complaint.)

{¶4} According to the complaint, the decedent underwent an outpatient surgical procedure in November of 2019 at St. Elizabeth Hospital in Boardman. Potesta, an otolaryngologist, performed the procedure. The decedent was discharged and died later that day from cardiac arrest. The decedent was Thompson's brother.

{¶5} Thompson alleges the decedent was a high-risk patient who should not have been discharged home. Thompson alleges the failure to admit the decedent to the hospital to assess him and provide supportive care after the procedure was a breach of

[1] Thompson's December 2022 complaint indicates it was a refiled case.

the standard of care, and as a result of the failure to meet the standard, he experienced pain, mental anguish, and died.

{¶6} For her requested relief, Thompson sought compensatory and punitive damages, costs, and prejudgment interest. Thompson attached the probate court entry appointing her fiduciary of the decedent's estate to her complaint. (December 29, 2022 Complaint.)

{¶7} Thompson moved the court for additional time to provide her affidavit of merit. Potesta opposed and moved to dismiss. (January 17, 2023 Opposition & Motion to Dismiss.) Potesta filed his answer the same day. (January 17, 2023 Answer.)

{¶8} Counsel for the hospital entered a notice of appearance and moved to join the pending motion to dismiss filed by Potesta. (February 8, 2023 Motion.) Thompson filed her affidavit of merit of Dr. Barry Lloyd Wenig, MD, MPH, FACS. (February 8, 2023 Notice.) The parties conducted discovery, and the case was set for jury trial.

{¶9} Potesta moved for partial judgment on the pleadings. He asked the court to dismiss Thompson's claims for punitive damages and attorney's fees because the allegations contended the defendants were generally negligent; she did not assert claims of actual malice sufficient to support a claim for a punitive damages award. (May 23, 2024 Motion.) Thompson opposed, and the trial court granted the motion. (June 11, 2024 Judgment.)

{¶10} Potesta and the hospital were granted leave to move for summary judgment. Each filed separate motions for summary judgment. Potesta alleged in his motion that Thompson's only medical expert was unable to testify during his deposition as to the proximate cause of the decedent's death with reasonable degree of medical probability. (June 21, 2024 Potesta's Motion for Summary Judgment.)

{¶11} The hospital likewise moved the court to grant judgment in its favor. The hospital argued there was a lack of evidence demonstrating liability based on Thompson's allegation of respondeat superior. Instead, the hospital argued the evidence only showed it was the location chosen by the decedent and Potesta for an outpatient procedure. The hospital argued the decedent had not presented to the hospital seeking a physician. (June 24, 2024 Motion for Summary Judgment.)

{¶12} Thompson opposed both summary judgment motions. The defendants filed replies in support, and the trial court overruled both motions. (August 7, 2024 Judgment.)

{¶13} Potesta then filed two motions in limine. First, he asked the court to exclude testimony from an economics expert who was going to offer an opinion on the value of the decedent's life. Potesta contended this testimony was unreliable and generally inadmissible in Ohio. (August 13, 2024 Motion in Limine.) Separately, Potesta moved to exclude Thompson from offering certain testimony by Dr. Wenig at trial, which was allegedly not disclosed in his expert report and thus untimely. Thompson opposed both motions.

{¶14} The trial court addressed both motions in the same judgment. It granted the first motion in limine and held that opinions as to the lost value of life were preliminarily excluded from trial. Applying caselaw cited by the parties, the court explained these injuries or types of damages are not relevant in a wrongful death case because the focus is on "what damages have been suffered by surviving relatives." And considering these damages were not recoverable, the court denied the request for a Daubert hearing. The judgment explicitly states the rulings are preliminary and "reflect the anticipatory treatment of these evidentiary matters at trial." (Emphasis sic.) (March 21, 2025 Judgment.)

{¶15} The trial court also noted the second motion was granted in part and denied in part. The court states Potesta "argues Dr. Wenig's report does not suggest that a contraindicated surgical procedure was the proximate cause of death, and thus, must be excluded." The court explained that Dr. Wenig articulated two separate opinions: "First, the Defendant should not have performed the [procedure] *under general anesthesia*. Second, because [the patient] was subjected to general anesthesia, he should not have been discharged to home." (Emphasis added.) The court preliminarily determined Dr. Wenig was permitted to testify consistent with these conclusions.

{¶16} Although the court indicated it was granting the motion in limine in part as to Dr. Wenig, the court did not articulate what it was excluding. However, in light of its statement that Potesta was seeking to exclude Dr. Wenig's testimony that the decision to perform the procedure was the cause of death, one could infer the court was preliminarily excluding Dr. Wenig's testimony to the extent he would testify in this manner. (March 21, 2025 Judgment.)

{¶17} The jury trial commenced in April of 2025. At the conclusion of Thompson's case in chief, counsel for Potesta and the hospital moved for directed verdicts in their favor. The trial court granted the motions and articulated its reasoning on the record out of the presence of the jury. The trial court stated:

> I deemed Dr. Wenig to be qualified as an expert witness for the plaintiff over defendants' objections, of course. . . . his testimony was allowed and it was heard by the jury. And he was the only expert called on direct examination by plaintiff to prove the material elements of their claim.
>
> . . .
>
> [P]laintiff alleges three claims here. Actually four. But the three claims that were alleged were medical malpractice, wrongful death and negligence. There's also a claim for loss of consortium.
>
> [A]t issue in these motions is whether the plaintiff has established a prima facie case through expert testimony regarding the elements of the claimed causes of action. Specifically what I am looking at is proximate causation. In order to meet the evidentiary burden regarding the element of proximate cause, a plaintiff's expert must be able to give an opinion in terms of a reasonable degree of medical certainty or medical probability that the plaintiff's injury more likely than not resulted from the defendant's negligence.
>
> . . .
>
> [The court then quoted Dr. Wenig's testimony on direct examination, stating:]
>
> Question: In your opinion, Doctor, to a reasonable degree of medical certainty, would it have been preferable to retain Mr. Allison overnight for observation versus discharging him to home?
>
> . . .
>
> Answer: Yes, given the high risk nature of his medical condition, I think it would have been appropriate to observe him overnight to make sure that he did not have any medical issues that would be considered emergent. And if he did, they could have handled it in the hospital in a much more

efficient manner than it could have been had he been discharged and sent home.

. . .

Relative to whether the breach was a proximate cause of the injuries alleged was testified to by Dr. Wenig as follows, as to the cause of death of Mr. Allison. On direct examination by Mr. Squire, page 35, lines 11 to 22, question by Mr. Squire: Now, Dr. Wenig, were you asked to form an opinion in this case based upon a reasonable degree of medical certainty concerning Mr. Allison's cause of death? Answer: Yes. Question: And what was that opinion? Answer: I could not say with -- to a reasonable degree of medical certainty as to the specific cause of his death. There are factors that certainly could have played into it, but the actual reason for cause of death other than what was listed in the -- in the death certificate as a cardiac event, I could not say.

Furthermore, on cross examination by Mr. Buck, page 37 of the transcript, lines 9 through 13. Question: Okay, thank you. Now, is it your opinion that no one can know what would have avoided the death of Mr. Allison? Answer: As we don't know the actual cause of death, I have to agree with that.

Dr. Wenig does not establish a causal link specific to Mr. Allison's death or to Ms. Meshel's case. Dr. Wenig does not provide any opinion as to whether Dr. Potesta's alleged breach of the standard of care was the proximate cause of Mr. Allison's death. In fact, even at the very least, plaintiff has not provided any evidence that Mr. Allison's death was more likely than not caused by the alleged negligence of Dr. Potesta. Plaintiff failed to establish a requisite element of a prima facie case of medical malpractice, wrongful death and negligence. Plaintiff's theory of liability lacked the elements of proximate cause. Failure to establish proximate causation is fatal to plaintiff's claims. The Court, after construing the evidence and all reasonable inferences most strongly in favor of the plaintiff, finds that upon the issue of proximate causation, reasonable minds could

> come to but one conclusion upon the evidence submitted and that conclusion is that there is no substantial evidence to support the element of proximate causation.
>
> Therefore, the Court has no choice but to sustain the Rule 50 motions for directed verdict.

(Trial Tr. 503-515.)

{¶18} Thompson then moved for a mistrial. She alleged procedural issues caused irregularities in the proceedings that adversely affected her substantial rights and denied her a fair trial. Thompson claimed her trial counsel had to rush through Dr. Wenig's direct testimony because his return flight to Chicago was canceled due to bad weather. As a result, Dr. Wenig was forced to take an earlier flight home the same day as his arrival. However, because of the length of time it took to empanel a jury, Dr. Wenig's testimony did not commence until 2 p.m.

{¶19} Thompson claimed her counsel erroneously thought Dr. Wenig had satisfied Evid.R. 601 because he had already been qualified as a witness to testify during his deposition. As a result of this error caused by his flight change, she alleges Dr. Wenig's credentials were not fully developed at trial. Consequently, Thompson claims reversible error due to her counsel's failure to satisfy Evid. R. 601. Thus, she alleges a mistrial was warranted, and the fact that she failed to provide testimony establishing the proximate cause of the decedent's death became moot. (April 3, 2025 Motion.)

{¶20} The court denied Thompson's motion during trial. It found no irregularities in the proceedings that would warrant a mistrial. (March 31 2025 Tr. 513.) Thompson appealed.

Motions in Limine

{¶21} Thompson's first two assignments of error arise from the trial court's rulings on Potesta's motions in limine. We address them out of order for ease of analysis.

{¶22} Thompson's second assignment of error asserts:

"The trial court committed reversible error by granting Defendant Eugene Potesta Jr. M.D.'s motion in limine to exclude the expert opinion testimony of Dr. John Burke on Lost Value of Life."

{¶23} Ordinarily we review decisions granting or denying a motion in limine for an abuse of discretion. *Estate of Johnson v. Randall Smith, Inc.*, 2013-Ohio-1507, ¶ 22. Thus, we must affirm unless the trial court's action was unreasonable, arbitrary, or unconscionable. *Id.*

{¶24} A decision granting a motion in limine is generally an interlocutory ruling reflecting a court's anticipatory treatment of the evidentiary issue at trial. *State v. Grubb,* 28 Ohio St.3d 199, 201 (1986). Motions in limine reduce the injection of error or prejudice into the proceedings "by prohibiting opposing counsel from raising or making reference to an evidentiary issue until the trial court is better able to rule upon its admissibility outside the presence of a jury once the trial has commenced." *Id.*

{¶25} Finality does not attach when a motion in limine is preliminarily granted. *Id*. at 202, citing *State v. White*, 6 Ohio App.3d 1, 4 (1982); *but see Toledo v. Bryant-Bey*, 2023-Ohio-4798, ¶ 19 (6th Dist.) (noting Evid.R. 103 was revised to preserve an objection when a court's decision is definitive and cannot be reconsidered in the context of trial.) Instead, a decision granting a motion in limine temporarily prohibits the party from referring to the evidence. Thereafter, it is incumbent on that party to introduce the evidence by proffer or otherwise in the context of trial to enable the court to make a final determination as to admissibility. A proffer in the context of trial preserves an objection for an appeal. *Id.* at 203; *State v. Hancock,* 2006-Ohio-160, ¶ 47.

{¶26} As stated, the trial court granted the motion in limine concerning Dr. Burke and held that opinions as to the lost value of life were preliminarily excluded from trial. Thereafter and during trial, Thompson did not call Dr. Burke to testify. Thompson likewise did not raise the issue or proffer Dr. Burke's testimony as to the value of lost life.

{¶27} Contrary to her argument, the trial court's decision on this issue was not definitive or conclusive such that the issue was preserved. The trial court expressly stated its decision on both motions in limine was preliminary. Thus, it was incumbent on Thompson to raise the matter and proffer the evidence to preserve the issue.

{¶28} In light of her failure to raise the issue at trial, Thompson has waived her right to object to the issue on appeal. *See Grubb,* above. Accordingly, Thompson's second assignment of error is overruled.

{¶29} Thompson's first assignment of error asserts:

"The trial court committed reversible error by granting Defendant Eugene Potesta Jr.'s Motion in Limine to exclude the expert opinion testimony of Dr. Barry Lloyd Wenig on the issue of causation."

{¶30} Thompson argues the trial court erroneously precluded her from presenting Dr. Wenig's testimony that the "contraindicated surgical procedure was the proximate cause of Mr. Allison's death." In support, Thompson directs us to Dr. Wenig's December 5, 2021 written report concerning the decedent's treatment and death. Thompson heavily relies on Dr. Wenig's conclusion in this report that the proximate cause of death was "[t]he fact he was subjected to general anesthesia and laryngeal manipulation with discharge to home."

{¶31} Thompson further alleges counsel for Potesta misinformed the trial court about the timeliness of receiving the report and the court wrongfully eliminated Thompson's most critical evidence before trial commenced.

{¶32} In response, Potesta contends this argument is moot because Dr. Wenig was not prohibited from testifying as to proximate cause during trial. Potesta claims the predicate for Thompson's argument is lacking and erroneous. Moreover, Potesta argues Thompson was simply disappointed with her expert's testimony at trial since he testified he was unable to determine Mr. Allison's cause of death with a reasonable degree of medical certainty. (Trial Tr. 81-82.)

{¶33} Additionally, Potesta contends the issue was not preserved and was waived for appellate review since Thompson did not make an offer of proof at trial. Potesta alleges Thompson failed to proffer the substance of the testimony she claims was improperly excluded by the trial court, and as such, any alleged error is waived.

{¶34} The hospital likewise argues that neither defendant moved to limit the scope of Wenig's trial testimony and the argument in the motion in limine was not renewed at trial. The hospital also asserts the court did not limit or exclude his testimony before the jury, and none was stricken. Consequently, the preliminary ruling did not become final and was mooted by the admission of Dr. Wenig's testimony without limitation. It contends that this, coupled with the lack of proffer at the time of trial, show the arguments were not preserved. We agree.

{¶35} The August 13, 2024 Motion in Limine filed by Potesta sought to exclude Dr. Wenig from testifying about matters and opinions beyond those contained in Dr. Wenig's March 14, 2024 expert report. Potesta's motion contends the report does "not disclose opinions that a contraindicted surgical procedure was the proximate cause of death, and thus must be excluded at trial."

{¶36} Potesta alleged Thompson was attempting to add opinions not contained in Dr. Wenig's timely disclosed expert report, in contravention to Civ.R. 26(B)(7). Potesta's motion asserted the timely disclosed report of Dr. Wenig did not contain both proximate cause opinions. Instead, Potesta alleged the timely report only contained Dr. Wenig's opinion that the proximate cause of the decedent's death was a result of Potesta's decision not to admit him overnight for monitoring after the procedure. Potesta alleged the timely report did not contain Dr. Wenig's opinion that Potesta's decision to perform the procedure under general anesthesia was also a proximate cause of the death. (August 13, 2024 Motion in Limine.)

{¶37} In response, Thompson argued Dr. Wenig's timely disclosed report contained both opinions. Thompson averred Dr. Wenig opined in his report the cause of death was "the fact that [the patient] was subjected to general anesthesia ***and*** laryngeal manipulation with discharge to home." (Emphasis added.) Thompson further claimed Dr. Wenig concluded that Potesta's decision to perform the biopsy in the operating room under general anesthesia was superfluous and should have been done as an outpatient procedure. (August 15, 2024, Corrected Response.)

{¶38} Notwithstanding the court's statement it was granting the motion in limine in part as to Dr. Wenig's testimony, a review of the court's decision shows it agreed with Thompson's arguments. The court noted in its judgment that the doctor did "take issue with the procedure itself being performed under general anesthesia" and did conclude in part that "[t]he fact that he was subjected to general anesthesia and laryngeal manipulation with discharge to home as an outpatient was, in my opinion, the proximate cause of his demise." The court concluded "[i]t is clear that Dr. Wenig is articulating two separate opinions." Although the court stated it was granting the motion in limine in part, the court's judgment does not identify what it was preliminarily excluding. (March 21, 2025 Judgment.)

{¶39} Thus, to the extent Thompson claims the court erred or that she was prejudiced as a result of the court's March 21, 2025 motion in limine ruling, we disagree. This judgment does not show what aspect of Dr. Wenig's expert opinion was preliminarily precluded. As stated in the statement of the case, we could infer the court was preliminarily excluding Dr. Wenig's testimony that the decision to perform the procedure was the cause of death. However, a review of the trial transcript shows Dr. Wenig's testimony was not limited during trial. There is no proffered testimony in the trial transcript or of record demonstrating what, if any, testimony was precluded by the court's ruling on the motion in limine and that evidence in this regard was then actually precluded at trial.

{¶40} For these reasons, her first assigned error lacks merit.

Directed Verdict

{¶41} Thompson's third assignment of error contends:

"The trial court committed reversible error in granting Defendants' motions for directed verdict at the close of Plaintiff's case."

{¶42} As stated, at the conclusion of Thompson's case in chief, counsel for Potesta and the hospital requested directed verdicts in their favor. The hospital argued Thompson failed to qualify Dr. Wenig as an expert under the rules of evidence and Thompson failed to come forward with expert testimony establishing the hospital failed to meet the standard of care or did anything wrong. Separately, Potesta argued Thompson failed to establish Dr. Wenig's qualifications to testify as an expert. Potesta also urged the court to find that Thompson failed to establish the proximate cause of the decedent's death. (Trial Tr. 481-494.) Thompson opposed. The trial court granted directed verdicts in favor of the hospital and Potesta.

{¶43} Civ.R. 50(A) governs motions for directed verdicts and states in part:

> (1) *When Made*. 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.
>
> . . .
>
> (3) *Grounds*. A motion for a directed verdict shall state the specific grounds therefor.

> (4) *When Granted on the Evidence*. 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.

{¶44} A trial court's decision granting a motion for directed verdict presents a question of law, which an appellate court reviews de novo. *Carter v. R & B Pizza Co., Inc.*, 2010-Ohio-5937, ¶ 15 (7th Dist.).

{¶45} A motion for directed verdict tests the sufficiency of the evidence at trial, not the weight of the evidence or witness credibility. *Sayavich v. Creatore*, 2009-Ohio-5270, ¶ 44 (7th Dist.). We must decide whether there was sufficient material evidence presented on the issue such that a factual question remains for the jury. *One Step Further Physical Therapy, Inc. v. CTW Dev. Corp.*, 2012-Ohio-6137, ¶ 35 (7th Dist.).

{¶46} Thompson identifies three reasons the court's directed verdict decision was erroneous. First, she claims the court erroneously precluded Dr. Wenig's testimony as to causation via its motion in limine ruling.

{¶47} Second, Thompson claims the trial court ignored inferences in her favor regarding causation, and upon construing the evidence in her favor, reasonable minds could have inferred the unnecessary medical procedure resulted in the decedent's death. Without a precise citation to the trial transcript, Thompson summarily asserts "Dr. Roller terms it a CONSTANT risk," suggesting Dr. Roller established the necessary evidence of causation. She also contends the trial court improperly weighed Dr. Wenig's testimony in favor of the defendants.

{¶48} Finally, Thompson suggests this is the exceptional case where a deviation from the standard of care and breach of that standard were evident to laypersons. For the following reasons, we disagree with each contention.

{¶49} Thompson raised three claims for relief, medical malpractice, wrongful death, and negligence. Each cause of action requires a plaintiff to establish via expert testimony the applicable standard of care and the breach of that standard was the

proximate cause of the injury. *See Wilson v. Kenton Surgical Corp*, 141 Ohio App.3d 702, 705 (2001), *citing Roberts v. Ohio Permanente Med. Group, Inc.*, 76 Ohio St.3d 483 (1996) (medical malpractice plaintiff must prove causation through medical expert testimony to establish the injury was, more likely than not, caused by the defendant's negligence.); *Kittis v. Cleveland Clinic Found.*, 2024-Ohio-659, ¶ 39-40 (8th Dist.) (wrongful death plaintiff must prove causation via expert medical testimony); *Grieser v. Janis*, 2017-Ohio-8896, ¶ 20-22 (10th Dist.) (failure to provide expert testimony establishing the breach of the applicable standard of care was the direct and proximate cause of an injury is fatal to a medical negligence claim.).

{¶50} When a plaintiff fails to present expert testimony that a physician breached the applicable standard of care or that the breach constituted the direct and proximate cause of the injury, judgment is warranted in favor of the defendant. *Click v. Georgopoulos,* 2009-Ohio-6245, ¶ 29-30 (7th Dist.); *Korreckt v. Ohio Health,* 2011-Ohio-3082, ¶ 12 (10th Dist.).

{¶51} As for Thompson's first argument stemming from the court's ruling on Potesta's motion in limine, we disagree. As detailed under her first assignment of error, the trial court's decision regarding Dr. Wenig's expert opinion states it was granted in part and overruled in part. Yet, the judgment does not identify what aspect of Dr. Wenig's expert opinion it was preliminarily precluding. Moreover, the court's judgment states it was a preliminary ruling. Thereafter, Dr. Wenig's testimony was not limited during trial, and Thompson did not proffer testimony during trial demonstrating what evidence, if any, was excluded.

{¶52} More importantly, the trial court allowed Dr. Wenig to offer his expert medical opinion as to whether Dr. Potesta met the applicable standard of care by performing the procedure on the decedent. Dr. Wenig testified to the following on direct examination:

> My opinion is that Dr. Potesta did not meet the standard of care in the procedure that he performed on November 7th.
>
> . . .
>
> He performed the procedure on Mr. Allison that was totally unnecessary and subsequently Mr. Allison, as a result of the procedure and

the aftermath, was discharged to home as an outpatient and was found to have passed away shortly thereafter.

. . .

[Q.] And in what manner was the standard of care violated, in your opinion, Doctor?

[A.] I believe that the procedure that Mr. Allison had on November 7th was unnecessary. Dr. Potesta had an opportunity when initially evaluating . . . Mr. Allison in the hospital at the prior admission to be able to perform a fine needle aspiration biopsy of the neck mass. He had the opportunity to perform [the procedure] as an outpatient. He had the opportunity to perform a flexible fiberoptic laryngoscopy to look at the upper aerodigestive tract when Mr. Allison came to see him or at any other time. And he had the record of two esophagoscopies performed when Mr. Allison was in the hospital, both of which reported no abnormalities in the esophagus.

So given all of the that, I believe that the standard of care was violated because Mr. Allison, as a high-risk patient, to undergo general anesthesia, did not need general anesthesia.

[Q.] In your opinion, Doctor, to a reasonable degree of medical certainty, would it have been preferable to retain Mr. Allison overnight for observation versus discharging him to home?

. . .

[A.] Yes, given the high risk nature of his medical condition, I think it would have been appropriate to observe him overnight to make sure that he did not have any medical issues that would be considered emergent. And if he did, they could be handled in the hospital in a much more efficient manner than it could have been had he been discharged and sent home.

. . .

[Q.] Now, Dr. Wenig, were you asked to form an opinion in this case based upon a reasonable degree of medical certainty concerning Mr. Allison's cause of death?

[A.] Yes.

[Q.] And what was that opinion?

[A.] I could not say with - - to a reasonable degree of medical certainty as to the specific cause of his death. There are factors that certainly could have played into it, but the actual reason for cause of death other than what was listed in the . . . death certificate as a cardiac event, I could not say.

(Trial Tr. 76-82.) The following testimony of Dr. Wenig was elicited on cross-examination:

[Q.] [I]s it your opinion that no one can know what would have avoided the death of Mr. Allison?

[A]. As we don't know the actual cause of death, I have to agree with that.

[Q.] [C]an cocaine cause a cardiac event?

[A.] It can.

(Trial Tr. 84.)

{¶53} A review of the trial transcript shows Dr. Wenig's testimony was not limited. Accordingly, this argument lacks merit as it does not show evidence was improperly excluded or that a factual question remains for the jury.

{¶54} Thompson's second argument contends the trial court ignored inferences in her favor regarding causation. She claims upon construing the evidence in her favor, reasonable minds could have inferred the unnecessary medical procedure resulted in the decedent's death. We disagree.

{¶55} In her argument, Thompson acknowledges her brother's extensive medical issues. She notes he was 68 years old at the time of his death and he had an extensive medical history, including uncontrolled Type 2 diabetes, peripheral vascular disease, polyneuropathy, and bipolar disorder. She also indicates he suffered from an infected diabetic foot ulcer; he lost toes on both feet as a result of his diabetes; and he had his lower extremities amputated as a result. The decedent also suffered from asthma, hypertension, stage three kidney disease, and congestive heart failure, among other issues.

{¶56} Without a precise citation to the trial transcript or quote, Thompson summarily asserts "Dr. Roller terms it a CONSTANT risk," suggesting Dr. Roller

established the necessary evidence of causation. Additionally, Thompson contends the trial court improperly weighed Dr. Wenig's testimony against her.

{¶57} Thompson also called Dr. Potesta to testify on cross-examination. Thompson also presented the testimony of Stephanie Romeo, RN, on cross-examination, as well as Keith Roller, M.D. on cross-examination.

{¶58} She generally directs us to the testimony of Dr. Roller and suggests it tends to establish that Potesta's failure to meet the applicable standard of care was the proximate cause of her brother's death. We disagree.

{¶59} Dr. Roller testified that he is an employee of Bel-Park Anesthesia Associates, who provides anesthesia services at St. Elizabeth Hospital in Boardman. Roller explained he has authority to refuse to provide anesthesia to a patient who is not a suitable candidate. Dr. Roller agreed the decedent had "significant risk factors for anesthesia and surgery." Dr. Roller also stated that the decedent's history of myocardial infarction and congestive heart failure increased the risks associated with anesthesia and surgery. (Trial Tr. 283, 301.) On direct examination, Dr. Roller testified that in the decedent's anesthesia record, he was given an "ASA physical status designation of four, which indicates he has severe medical conditions which present a constant threat to life." (Trial Tr. 361.)

{¶60} While Dr. Wenig and Dr. Roller both seemed to testify the decedent had countless medical issues and pre-existing health concerns, which arguably supported Dr. Wenig's testimony that Potesta violated the standard of care by performing the procedure under general anesthesia, none of this testimony demonstrates that the alleged breach of the standard of care proximately caused the decedent's death. Dr. Roller did not provide an opinion as to causation. There was no expert testimony or evidence that performing the surgery or failing to admit the decedent overnight after the surgery was the proximate cause of his death.

{¶61} As stated, when a plaintiff fails to present expert testimony that a physician's breach of the applicable standard of care was the direct and proximate cause of the injury, judgment is warranted in favor of the defendant. *Click v. Georgopoulos,* 2009-Ohio-6245, ¶ 29-30 (7th Dist.); *Korreckt v. Ohio Health,* 2011-Ohio-3082, ¶ 12 (10th Dist.). This aspect of Thompson's second assigned error lacks merit.

{¶62} Thompson's third argument under this assignment contends she did not need expert medical testimony to establish the defendants' conduct was the proximate cause of the decedent's injuries. Instead, Thompson alleges the common knowledge exception applies.

{¶63} The common knowledge exception is when medical testimony is not required to prove the elements of a claim since the matter is within a layperson's common knowledge. *Ramage v. Cent. Ohio Emergency Serv., Inc.*, 64 Ohio St.3d 97, 102 (1992). The application of this exception is rare. It applies "in cases where the nature of the case is such that the lack of skill or care of the [medical professional] is so apparent as to be within the comprehension of laymen and requires only common knowledge and experience to understand and judge it." *Bruni v. Tatsumi*, 46 Ohio St.2d 127, 130 (1976).

{¶64} Dr. Wenig testified he could not identify with a reasonable degree of medical certainty what caused the decedent's death. It was repeatedly stated he died from cardiac arrest. However, there was no evidence establishing what caused Thompson's brother to suffer cardiac arrest. Thompson's expert could not identify the cause and agreed that no one could identify what would have avoided his death. Thus, we decline to find this is the rare case in which the cause of death was evident to laypersons. The third aspect of Thompson's third assigned error lacks merit.

{¶65} Because our review of the record shows there was no expert testimony as to the decedent's cause of death, a factual question did not remain for the jury. Upon construing the evidence most strongly in Thompson's favor, we agree that reasonable minds could come to but one conclusion and a directed verdict was warranted.

{¶66} This assignment of error lacks merit in its entirety.

Motion for Mistrial

{¶67} Thompson's fourth assignment of error asserts:

"The trial court committed reversible error when it overruled Plaintiff's motion for mistrial."

{¶68} Thompson's motion for a mistrial argued error based on the court's decision to allow Dr. Wenig to testify or to be qualified as an expert. She argues her counsel erred by cutting Dr. Wenig's testimony short about his qualifications. And even though this was not the basis for the court's directed verdict, Thompson now argues that her attorney's

failure to satisfy Evid.R. 601 invalidates the court's decision finding she failed to offer the necessary expert testimony as to causation. We disagree.

{¶69} Upon overruling the motion for a mistrial, the court explained:

> [T]he Court finds that there were no irregularities in trial and the fact that Mr. Squire was hurried in his examination of Dr. Wenig because Dr. Wenig had to return to Chicago and his ride was waiting by 3:30 in the afternoon and we actually went beyond that time, the Court finds that that was not an irregularity that would justify sustaining a motion for mistrial. So, Mr. Squire's motion for mistrial is respectfully overruled.

(Trial Tr. 513.)

{¶70} "A mistrial should only be granted when the party seeking it demonstrates that he or she has suffered material prejudice such that a fair trial is no longer possible." *McKinley v. Hall*, 2024-Ohio-3100, ¶ 19 (10th Dist.), quoting *Hillman v. Kosnik*, 2008-Ohio-6303, ¶ 17 (10th Dist.), ¶ 17; Civ.R. 59(A)(1).

{¶71} We review the denial of a motion for mistrial for an abuse of discretion. *State v. Treesh*, 90 Ohio St.3d 460, 480 (2001). Thus, absent a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable, we affirm. *State v. Brady*, 2008-Ohio-4493, ¶ 23.

{¶72} As Thompson alleges, both the hospital and Potesta urged the court to grant them directed verdicts. Both argued Thompson failed to set forth sufficient testimony to qualify Dr. Wenig as an expert to testify. Yet, the court rejected this argument. The court stressed it was *not* granting the directed verdict for this reason, stating: "I deemed Dr. Wenig to be qualified as an expert witness for the plaintiff over defendants' objections. . . .his testimony was allowed and it was heard by the jury." (Trial Tr. 52, 476, 501.)

{¶73} The trial court granted a directed verdict in the hospital and Potesta's favor due to the lack of expert testimony establishing the proximate cause of the decedent's death. Absent this necessary element, Thompson's causes of action fail as a matter of law. Thompson's counsel's alleged failure to qualify Dr. Wenig as an expert does not invalidate the fact that Thompson failed to establish the proximate cause of her brother's injuries and death. The outcome of the directed verdict motions would have been the same even if Thompson properly laid a foundation for Dr. Wenig's testimony.

{¶74} Because we agree with the court's determination that a directed verdict was appropriate given the lack of evidence establishing proximate cause, our analysis of the issue and arguments in this assignment would have no practical effect on the controversy. Courts should not rule on moot questions or abstract propositions that cannot affect the outcome of the proceedings. *Maurent v. Spatny*, 2025-Ohio-5002, ¶ 11, citing *Travis v. Public Util. Comm.*, 123 Ohio St. 355, 359 (1931).

{¶75} Thompson's fourth assignment of error is overruled.

Conclusion

{¶76} For the foregoing reasons, each of Thompson's assigned errors lacks merit. The trial court's judgment is affirmed.

Hanni, J., dissents with dissenting opinion.

Dickey, J., concurs.

Hanni, J., Dissent with Dissenting opinion. .

{¶77} With regard and respect to my colleagues, I must dissent from the majority opinion. Applying the proper standard of review, I would find that the trial court erred by granting Dr. Potesta's motion for directed verdict.

{¶78} Based upon a de novo review and construing the evidence most strongly in favor of Appellant, I would find that sufficient material evidence was presented such that reasonable minds could come to differing conclusions concerning proximate cause. The majority holds that the trial court properly granted a directed verdict for Dr. Potesta because "[t]here was no testimony or evidence that performing the surgery or failing to admit the decedent overnight after the surgery was the proximate cause of his death." (Opinion at ¶ 60).

{¶79} However, Dr. Wenig directly testified that Dr. Potesta performed an unnecessary procedure on high-risk patient Mr. Allison, which subjected him to general anesthesia. (Trial Tr. 89-90). Dr. Wenig further testified that in light of Dr. Potesta performing this unnecessary procedure on high-risk patient Mr. Allison under general anesthesia, he should have kept him in the hospital overnight for observation.

{¶80} Dr. Wenig did testify that he could not state the "specific cause of death" to a reasonable degree of medical certainty. However, he was not required to state the "specific cause of death." Rather, he was required only to state that Dr. Potesta's violation of the standard of care by performing this unnecessary procedure on high risk patient Mr. Allison under general anesthesia without overnight observation more likely than not caused Mr. Allison's death.

{¶81} I would find that Dr. Wenig presented such testimony. On direct examination, the following discussion was had between Dr. Wenig and Appellant's counsel:

> A [Dr. Wenig]: My opinion is that Dr. Potesta did not meet the standard of care in the procedure that he performed on November 7th.
>
> Q [Counsel]: And which manner did he not meet the opinion -- the standard of care I should say. I'm sorry. In what connection did he not comply with the applicable standard of care for an otolaryngologist in

> connection with his treatment of Mr. Allison on November 7th that's applicable within a reasonable degree of medical certainty in your opinion?
>
> . . .
>
> A [Dr. Wenig]: He performed the procedure on Mr. Allison that was totally unnecessary and subsequently Mr. Allison, as a result of the procedure and the aftermath, was discharged to home as an outpatient and was found to have passed away shortly thereafter.

(Trial Tr. 76-77).

{¶82} Dr. Wenig repeated his opinion later in direct cross-examination:

> A [Dr. Wenig]: I believe that the procedure that Mr. Allison had on November 7th was unnecessary. Dr. Potesta had an opportunity when initially evaluating Mr. Potesta -- I'm sorry -- Mr. Allison in the hospital at the prior admission to be able to perform a fine needle aspiration biopsy of the neck mass. He had the opportunity to perform a fine needle aspiration biopsy as an outpatient. He had the opportunity to perform a flexible fiberoptic laryngoscopy to look at the upper aerodigestive tract when Mr. Allison came to see him or at any other time. And he had the record of two esophagoscopies performed when Mr. Allison was in the hospital, both of which reported no abnormalities in the esophagus.
>
> So, given all of that, I believe that the standard of care was violated because Mr. Allison, as a high-risk patient, to undergo general anesthesia, did not need general anesthesia. All the procedures that were done for diagnostic purposes only were – could have been done on an outpatient basis and not requiring hospitalization or general anesthesia.

(Trial Tr. 79-80).

{¶83} Dr. Wenig opined that while he could not state the specific cause of Mr. Allison's death, he identified the ways in which Dr. Potesta breached the standard of care and testified that "[t]here are factors that certainly could have played into it" when asked about the cause of his death. (Trial Tr. 82). Viewing this testimony in a light most favorable to Appellant, the jury could have inferred that those factors included the

unnecessary medical procedure performed on a high risk patient like Mr. Allison under general anesthesia without overnight observation with Mr. Allison's serious, known medical conditions. (Trial Tr. 80-81).

{¶84} Accordingly, I would find that the trial court erred by granting Dr. Potesta's motion for directed verdict.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.