

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

Stephanie Ball, as independent)
administrator of the estate of)
Stafford Woods, Deceased)

Plaintiff,)

v.)

No. 18 L 465

Blue Island Hospital Company, LLC)
d/b/a MetroSouth Medical Center,)
and BM of Chicago Ridge, LLC d/b/a)
Chicago Ridge Nursing Center,)

Defendants.)

MEMORANDUM OPINION AND ORDER

A judicial admission is an intentional, unequivocal statement about a concrete fact within a party's particular knowledge. A settlement agreement between the plaintiff and a former defendant identified the injuries that did not cause the decedent's death, but did not address the non-settling defendants' conduct that allegedly contributed to the death. For that reason, the motion for partial summary judgment must be denied.

Facts

Stafford Woods was a resident of Belhaven Nursing and Rehab Center from January 18, 2016 through January 27, 2016, except for an intervening hospitalization. While a resident at Belhaven, Woods developed a pressure ulcer that required continued treatment. On January 27, 2016, MetroSouth Medical Center admitted Woods for medical services. In February 2016, Woods became a resident at Chicago Ridge Nursing Center. On July 15, 2016, Wood died.

On November 6, 2017, the probate division appointed Stephanie Ball, Woods' daughter, as the independent administrator of his estate. On January 12, 2018, Ball filed a complaint against the defendants, and on November 19, 2018 filed an amended complaint. Ball alleges that Woods was at risk for developing and the worsening of pressure ulcers while at the defendants' facilities. Improper care and treatment allegedly caused Woods to sustain an untreated sacral pressure ulcer that caused and or contributed to his death. Ball directed counts I-III of the amended complaint against Belhaven pursuant to the Nursing Home Care Act, the Survival Act, and the Wrongful Death Act, respectively.

On March 12, 2020, Ball presented a motion to approve a settlement with Belhaven only. The motion explicitly provides, in part, that:

4. Decedent's Death Certificate lists his cause of death as Pneumonia. (See Exhibit 2, Death Certificate).
5. Throughout the course of litigation, we have determined that the injuries alleged in this case, in fact, did not cause the decedent's death. The injury at issue being sacral/coccyx decubitus ulcers.
6. Accordingly, *Plaintiff requests that the Court dismiss Count[] III of Plaintiff's First Amended Complaint at Law (wrongful death counts).*

Mtn. to Approve Settlement at 2. This court approved the settlement and dismissed Belhaven as a defendant. As a result, the remaining causes of action lie against MetroSouth and Chicago Ridge. Counts IV and V are directed against MetroSouth under the Survival Act and the Wrongful Death Act, respectively. Counts VI, VII, and VIII are directed against Chicago Ridge under the Nursing Home Care Act, the Survival Act, and the Wrongful Death Act, respectively.

On May 13, 2020, MetroSouth filed a motion for partial summary judgment on count V, the Wrongful Death Act cause of action. On May 26, 2020, Chicago Ridge filed a motion to join MetroSouth's motion and adopt and incorporate the arguments. The plaintiff filed a response, and the defendants replied. This court has reviewed each of the parties' submissions.

Analysis

Summary judgment is appropriate if the pleadings, affidavits, depositions, and admissions on file, if viewed in the light most favorable to the nonmoving party, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 30-31 (1999); 735 ILCS 5/2-1005(c). While a plaintiff is not required to prove her case at the summary judgment stage, she is required to present some factual basis that would arguably entitle her to a judgment under the applicable law. *Kimbrough v. Jewel Companies, Inc.*, 92 Ill. App. 3d 813, 819 (1st Dist. 1981). If a plaintiff fails to establish any element of the cause of action, summary judgment for the defendant is proper. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

MetroSouth contends that Ball's motion to approve the settlement presents a conflict. In the motion, Ball stated the injury alleged in the complaint – Woods' pressure ulcer – did not cause or contribute to his death. According to the defendants, that statement conflicts with Ball's continued prosecution of the Wrongful Death Act causes of action against MetroSouth and Chicago Ridge. The defendants argue the statement in the settlement motion constitutes a binding judicial admission that Woods' pressure ulcer did not cause or contribute to his death.

Ball responds that the defendants' negligent acts and omissions allowed Woods' sacral pressure ulcer to worsen and caused his physical and mental health to deteriorate, thereby causing or contributing to his death. Ball also argues the settlement language between plaintiff and Belhaven is clear, that it

is based on information related to Belhaven, not MetroSouth and Chicago Ridge. Further, the motion to approve the settlement specifically referenced the injuries Woods sustained at Belhaven's facility, not at MetroSouth or Chicago Ridge. Finally, Ball argues that she clearly intended to dismiss only the wrongful death counts against Belhaven, as evident in paragraph six, and explicitly requested that the case remain pending against the other defendants. According to Ball, it follows that paragraph five is not a judicial admission.

A judicial admission is a statement made during a judicial proceeding or contained in a document filed with the court. *Elliot v. Indus. Comm'n of Illinois*, 303 Ill. App. 3d 185, 187 (1st Dist. 1999); see also *Meade v. City of Rockford*, 2015 IL App (2d) 140645 ¶¶ 34-35 (2015). The purpose for finding a statement to be a judicial admission is to remove the temptation to commit perjury. *In re Estate of Rennick*, 181 Ill. 2d 395 (1998) (citing *Smith v. Ashley*, 29 Ill. App. 3d 932, 935 (4th Dist. 1975)). To constitute a judicial admission, a statement must not be a matter of opinion, estimate, appearance, inference, or uncertain summary. *Smith v. Pavlovich*, 394 Ill. App. 3d 458 (5th Dist. 2009). Rather, a judicial admission must be "an intentional statement that relates to concrete facts and not an unclear summary." *Id.* at 468 (citing *Williams Nationalease, Ltd. v. Motter*, 271 Ill. App. 3d 594, 597 (4th Dist. 1995)). Judicial admissions are not equivalent to evidence, but merely withdraw a fact from further consideration. *Garland v. Sybaris Club Int'l, Inc.*, 2014 IL App (1st) 112615, ¶ 79 (citing Michael H. Graham, *Graham's Handbook of Illinois Evidence*, at 974 (2017 ed.)).

The court in *Abruzzo v. City of Park Ridge* identified the type of statement that constitutes a judicial admission. 374 Ill. App. 3d 743 (1st Dist. 2013), *on subsequent appeal*, 2013 IL App (1st) 122360 ¶¶ 36-43. *Abruzzo* was a paramedic malpractice case in which the plaintiff alleged the paramedics failed to take the decedent to the hospital. The defendant's reply brief stated that, once the paramedics had arrived, they "provided no medical care of any kind" to the decedent. The court found this statement was a judicial admission because the defendants unequivocally stated

that the paramedics did not render aid to patient-decedent and the reply brief's statement admitted the facts read to the jury. *See* 2013 IL App (1st) at ¶¶ 36-43.

In contrast to the statement in the defendant's reply brief in *Abruzzo*, the statement in the Ball-Belhaven settlement agreement is not a judicial admission for at least three reasons. First, the settlement statement says nothing about contribution, only cause: "we have determined that the injuries alleged in this case, in fact, did not cause the decedent's death. The injury at issue being sacral/coccyx decubitus ulcers." The statement does not exclude the possibility that other defendants' acts or omissions could have contributed to Woods' death.

Second, MetroSouth's own motion acknowledges Ball's allegations of contributory negligence:

Plaintiff contends that MetroSouth, by and through its agents and employees, were negligent in properly caring for the patient, and failed to prevent the development *and worsening* of pressure ulcers. Further, as a "direct and proximate result of one of more of the foregoing negligent acts and/or omissions by the Defendant, Blue Island Hospital Company, LLC, a Foreign Limited Liability Company, Stafford's sacral pressure ulcer *worsened*, and caused deterioration in his physical and mental condition, and caused *or contributed to* cause his death."

MetroSouth Mtn. at 2, citing Cmpl't. at ¶ 15 (emphasis added). No irony is lost that MetroSouth is claiming the settlement agreement constitutes a judicial admission when the very motion seeking that finding acknowledges Ball's contribution allegations against MetroSouth and Chicago Ridge.

Third, a finding that the settlement agreement constitutes a judicial admission does nothing to further the purpose of preventing perjury. There is nothing potentially perjurious in a medical provider or a retained expert witness from testifying as to the

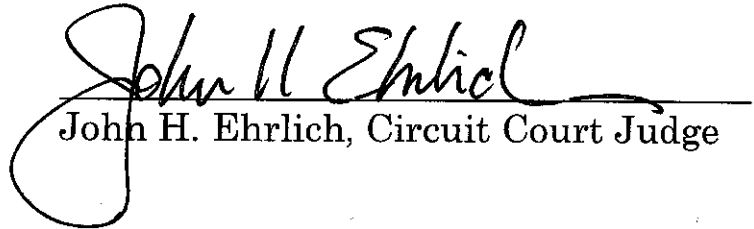
single cause or multiple causes that contributed to Woods' death. All parties will be able to present opinion testimony to that effect, and whether Woods died from one or multiple causes is for a jury to decide based on that expert testimony.

Conclusion

For the reasons presented above,

It is ordered that:

The defendant's motion for partial summary judgment is denied.


John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUL 30 2020

Circuit Court 2075