

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

Jose Ramirez, independent administrator
of the estate of Ebeilda Ramirez, decedent,

Plaintiff,

v.

Holly Carobene, M.D. and
Comprehensive Pain Care,

Defendants.

No. 21 L 9652

MEMORANDUM OPINION AND ORDER

A motion for a judgment notwithstanding the verdict should be granted if there is a complete lack of evidence proving a necessary element of a plaintiff's case. The jury in the trial of this matter heard testimony from which it could have reasonably concluded that the defendant-physician's acts and failures to act proximately caused the decedent's death. For that reason, the defendants' post-trial motion must be denied.

Facts

This case proceeded to trial in July 2023. The jury heard testimony that Dr. Holly Carobene prescribed hydrocodone to Ebeilda Ramirez from June 2011 to June 2015 for Ramirez's chronic neck and lower back pain. At the time Ramirez came under Carobene's care, Ramirez executed a contract advising her that narcotics had a high potential for misuse and that certain behavior could be found to be a "red flag." The contract provided that, given such behavior, Carobene, at her discretion, could refer Ramirez to a specialist for an assessment of whether she was at risk for psychological dependence or addiction and, if Ramirez were at risk, Carobene could cut off Ramirez's prescription.

The jury heard testimony that Ramirez, while under Carobene's care, claimed to have left her pain medication in Mexico and on another occasion that her husband had flushed them down a toilet. The jury also heard testimony that Ramirez had sought additional pain medication from a dentist. Carobene testified that she knew of Ramirez's drug seeking behavior in 2011 and 2012, but not later, and that Carobene did not enforce the contract's terms, cut off Ramirez's pain medication, or contact the dentist.

Between 2011 and 2015, Ramirez experienced increasing bouts of abdominal pain, nausea, vomiting, weight loss, and malnutrition. During that time, hospitals admitted Ramirez more than 12 times. There was conflicting testimony as to whether Ramirez suffered from narcotic bowel syndrome, but no treating physician made that diagnosis. By March 2015, Ramirez's condition had become so dire that hospital-based physicians installed a peripherally inserted central catheter (PICC) line for parenteral nutrition and instructed her to stop taking hydrocodone. Carobene knew the Ramirez had received a PICC line and, three months later, in June 2015, wrote a prescription upping Ramirez's hydrocodone from 150 to 180 pills per month. Ramirez died eight days later.

The evidence central to this case came from courtroom testimony by the parties' various expert witnesses. For example, Dr. Kristin Alvarenga, a pathologist at the Cook County medical examiner's office, testified that Ramirez's autopsy showed that she died from acute hydrocodone toxicity. Alvarenga made a secondary finding of foreign body multinucleated giant cell reaction in Ramirez's lungs. The secondary finding served as the basis for Alvarenga's conclusion that Ramirez had been crushing her hydrocodone pills and injecting them into her PICC line. Alvarenga testified that Ramirez's premorbid findings were not consistent with hydrocodone toxicity and that the particulates in Ramirez's lungs could have caused death independent of a toxic level of hydrocodone. Dr. Stephen Cina, Ramirez's forensic pathology expert witness, testified that Ramirez's crushing of hydrocodone pills and injecting them into the PICC line did result in a lethal concentration of hydrocodone in Ramirez's blood, but he could not opine on the number of pills Ramirez would have had to inject to reach that level. In contrast, Dr. Andrew Baker, Carobene's forensic pathology expert witness, agreed that the hydrocodone concentration in Ramirez's blood was at a lethal level, but he also testified that he found no evidence to support the theory that Ramirez had died from hydrocodone toxicity.

Dr. Andrew Engel, Ramirez's pain management expert, testified that Carobene breached the standard of care by continuing to prescribe hydrocodone despite knowing of Ramirez's drug shopping and her lack of improvement in pain or function. According to Engel, Carobene also breached the standard of care by failing to refer Ramirez to an addictionologist for drug withdrawal and by failing to diagnose Ramirez with narcotic bowel syndrome. Dr. Wajahat Mehal, Ramirez's expert gastroenterologist, testified that Ramirez developed narcotic bowel syndrome because Carobene continued Ramirez's hydrocodone prescription. Further, Dr. Olivera Bugonovich, Ramirez's psychiatric addictionology expert, testified that Ramirez would have been diagnosed with an opioid-use disorder had Carobene referred Ramirez to a specialist.

Carobene testified that she knew in 2014 and 2015 that Ramirez was suffering debilitating abdominal pain that had progressed to the point that she

did not eat, had lost weight, and had a PICC line installed to supply her with nutrition. Carobene also testified that she knew patients could misuse or abuse narcotic medication by crushing tablets and injecting them into a PICC line. She testified that she did not know Ramirez was taking part in such conduct.

Dr. Jay Joshi, Carobene's anesthesiology and interventional pain management expert witness, acknowledged that Ramirez had sought prescriptions from a dentist, that she claimed to have lost her pain medication in Mexico, claimed her husband had flushed them down a toilet, and had negative urine screens. Yet Joshi testified that Ramirez's conduct did not support an addiction diagnosis. He also testified that he did not believe Ramirez should have been diagnosed with narcotic bowel syndrome. Dr. Michael Frank, Carobene's gastroenterology expert, also opined that Ramirez did not have narcotic bowel syndrome.

The jury returned a verdict in Ramirez's favor and against the defendants. The jury awarded damages in the amount of \$6 million. The defendants subsequently filed a motion for a judgment notwithstanding the verdict (JNOV). The parties fully briefed the motion.

Analysis

A motion for a JNOV poses "a question of law as to whether, when all of the evidence is considered, together with all reasonable inferences from it in its aspect most favorable to the plaintiffs, there is a total failure or lack of evidence to prove any necessary element of the [plaintiff's] case." *York v. Rush-Presbyterian-St. Luke's Med. Cntr.*, 222 Ill. 2d 147, 178 (2006) (quoting *Merlo v. Public Serv. Co. of N. Ill.*, 381 Ill. 300, 311 (1942)). As the standard for entering a JNOV is high, a motion for a JNOV should not be granted if "reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented." *Id.* (quoting *Pasquale v. Speed Prod's Eng.*, 166 Ill. 2d 337, 351 (1995)). A court faced with a motion for a JNOV is not to weigh evidence or consider witness credibility but is to focus only on the evidence and reasonable inferences in the light most favorable to the non-moving party. *Maple v. Gustafson*, 151 Ill. 2d 445, 453 (1992).

The defendants' motion for a JNOV is predicated on Ramirez's arguable failure to establish proximate cause between Carobene's alleged breaches of the standard of care and Ramirez's death. The existence of proximate cause is normally a factual question for a jury to decide. *Stanphill v. Ortberg*, 2018 IL 122974, ¶ 34; see also *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 27. It is said that a proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Kuhn v. Commonwealth Edison Co.*, 2023 IL App (1st) 220105, ¶ 23.

Proximate cause contains two elements: (1) cause in fact; and (2) legal cause. *Krywin v. Chicago Transit Auth.*, 238 Ill. 2d 215, 225-26 (2010). Cause in fact requires the defendant's conduct to be a material and substantial factor in bringing about the plaintiff's injury, or that, in the absence of the defendant's conduct, the injury would not have occurred. *Id.* at 226. When considering cause in fact, courts generally employ either the traditional "but for" test or the "substantial factor" test. *See Nolan v. Weil-McLain*, 233 Ill. 2d 416, 431 (2009). Under the "but for" test, "a defendant's conduct is not the cause of an event if the event would have occurred without it." *Id.* (quoting *Thacker v. UNR Indus., Inc.*, 151 Ill. 2d 343, 354 (1992)). Under the "substantial factor" test, "the defendant's conduct is said to be a cause of an event if it was a material element and a substantial factor in bringing the event about." *Id.* (internal quotation marks omitted.)

Legal cause is present if the injury is of the type that a reasonable person would see as a likely result of the defendant's conduct. *First Springfield Bk. & Trust v. Galman*, 188 Ill. 2d 252, 257-58 (1999); *Simmons v. Garces*, 198 Ill. 2d 541, 558 (2002); *Abrams v. City of Chicago*, 211 Ill. 2d 251, 258 (2004). In other words, legal cause involves an assessment of foreseeability. *Lee v. Chicago Transit Auth.*, 152 Ill. 2d 432, 456 (1992). Courts ask whether the injury is the type that a reasonable person would see as a "likely result" or whether the injury is so "highly extraordinary" that imposing liability is not justified. *Id.*; *see also City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 395 (legal cause "is established only if the defendant's conduct is so closely tied to the plaintiff's injury that he should be held legally responsible for it" (internal quotation marks omitted)). "The question is one of policy—How far should a defendant's legal responsibility extend for conduct that did, in fact, cause the harm?" *Id.*; *see also Prodomos v. Everen Securities, Inc.*, 389 Ill. App. 3d 157, 171 (1st Dist. 2009) ("Because the consequences of every action stretch forward endlessly through time and the causes of every action stretch back to the dawn of human history, the concept of proximate cause was developed to limit the liability of a wrongdoer to only those injuries reasonably related to the wrongdoer's actions.").

In this case, the evidence presented during the trial was sufficient for the jury to find the existence of both cause in fact and legal cause. As to cause in fact, the jury could have reasonably found that, but for Carobene prescribing and ultimately increasing Ramirez's prescription for hydrocodone, Ramirez would not have become addicted and would not have eventually crushed her medication and injected it into her PICC line. In an apparent attempt to sidestep the "but for" test, Carobene focuses on side issues. For example, it does not matter that Bugonovich did not testify that Ramirez would not have continued seeking narcotics in 2015 had she undergone addiction treatment in 2012. Rather, the jury heard testimony that Carobene continued to prescribe hydrocodone despite

Ramirez's red-flag conduct. Similarly, it is beside the point that Mehal admitted that Ramirez was never diagnosed with narcotic bowel syndrome. Regardless of Ramirez's actual or purported symptoms, the jury could have concluded that Carobene's continued prescribing of hydrocodone and her failure to contact Ramirez's other treating physicians and dentist were material and substantial factors leading to Ramirez's death. Finally, even if Engel improperly speculated that a diagnosis of narcotic bowel syndrome would have prevented Ramirez's death, the jury heard unrefuted evidence that Carobene continued to prescribe hydrocodone despite knowing of Ramirez's drug seeking conduct.

The same conclusion applies as to legal cause. Carobene testified that she never thought Ramirez was addicted to narcotics. She further testified that she treated Ramirez only for her pain complaints, not other medical conditions that she may have had. Yet legal cause in this case focuses on whether Ramirez's death was a result that a reasonable person would find likely based on Carobene's acts and failures to act. Here, the evidence presented permitted the jury to conclude that Carobene should have known or at least suspected that Ramirez was addicted and made further inquiry. The jury was certainly free to disregard Carobene's testimony that she did not treat Ramirez for anything other than her pain complaints given that Carobene also knew Ramirez had lost weight and appetite and that other physicians had inserted a PICC line to supply nutrition. The jury was also free to conclude that, as a pain management physician, Carobene should have at least inquired of Ramirez's other physicians, especially her dentist. In short, there was sufficient evidence for the jury to conclude that Ramirez's death was not so extraordinary a result that Carobene could not be found liable.

In sum, the jury heard ample evidence to conclude that Carobene's acts and failures to act singularly or in combination proximately caused Ramirez's addiction to hydrocodone and that such addiction led to her death. Given that the defendants raised no points of error other than proximate cause, there are no other issues to be addressed.

Conclusion

For the reasons presented above, it is ordered that:

The defendants' motion for a JNOV is denied.


John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

DEC 28 2023

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