

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

Annette Solid, as independent administrator)	
of the estate of Valerie Walker, deceased,)	
)	
Plaintiff,)	
)	
v.)	No. 18 L 12583
)	
Alden Town Manor Rehabilitation and Health)	
Care Center, Inc., an Illinois corporation d/b/a)	
Alden Town Manor Rehab & HCC, Alden)	
Management Services, Inc., an Illinois corporation)	
d/b/a Alden Management Services, Inc., and)	
Diana M. Kassel, RN,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

The Code of Civil Procedure authorizes summary judgment if there exists no question of material fact and the moving party is deserving of a summary decision as a matter of law. Here, there remain questions of material fact as to whether the defendants owed the decedent a duty and whether their alleged acts and omissions proximately caused or contributed to the decedent's death. For those reasons, the defendants' summary judgment motion must be denied.

Facts

In 2016, Valerie Walker suffered a stroke and was hospitalized at Presence St. Mary's of Nazareth Hospital. On November 23, 2016, Alden Town Manor Rehabilitation and Health Care Center ("ATM"), a long-term-care facility in Cicero, admitted Walker as a resident. At the time of her admission, Walker suffered from multiple, serious co-morbidities, including a chronic embolism, vein thrombosis, sequelae from a left, dominant cerebral hemorrhage, convulsions, hyperlipidemia, and dysphagia. At the time of Walker's admission, her physician indicated her prognosis was poor, and he told Walker's family there was little he could do to improve her condition.

On December 9, 2016, Walker had difficulty breathing. Paramedics transported Walker to MacNeal Hospital where doctors diagnosed her with pneumonia secondary to her upper respiratory secretions, a urinary tract

infection, anemia, anasarca related to low albumin, upper and lower extremity edema, Dilantin toxicity, transaminitis, a sacral ulcer and hypertension. Walker had a history of Dilantin toxicity prior to her ATM admission.

Walker never returned to ATM after December 9, 2016. Rather, after her December 31, 2016 discharge from MacNeal Hospital with a “very poor prognosis,” Kindred Northlake Hospital admitted her as a patient. Over the next 18 months, Walker had a peripatetic existence, moving to Aperion Care International, a long-term care facility, to St. Mary’s Hospital, back to Kindred Northlake Hospital, to Continental Nursing and Rehabilitation, back to St. Mary’s Hospital, to Kindred Hospital, to Continental Nursing and Rehabilitation, to St. Mary’s Hospital, to Continental Nursing and Rehabilitation, to Swedish Covenant Hospital, and finally to Continental Nursing and Rehabilitation. On May 28, 2018, Walker died from renal failure and hypertension.

On November 20, 2018, Annette Solid, as the independent administrator of Walker’s estate, filed an eight-count complaint against various defendants. Counts one, two, and three are directed against ATM; counts four and five against Alden Management Services (“AMS”); counts six and seven against Diana M. Kassel, a former Director of Nursing at ATM; and count eight against respondents in discovery. Counts four and six assert negligence claims. In the causes of action based on the Wrongful Death Act—counts three, five, and seven—Solid alleges that, while at ATM, Walker developed a sacral decubitus ulcer and the defendants administered Dilantin to Walker at toxic levels.

On February 2, 2022, the defendants filed a motion for partial summary judgment in connection with the wrongful death causes of action filed against them, specifically counts three, five, and seven. The defendants argue that none of their acts or omissions proximately caused Walker’s death. Defendants AMS and Kassel have also filed for summary judgment on the negligence causes of action in counts four and six. AMS and Kassel argue that none of them rendered direct care to Walker; therefore, none of them owed Walker a duty. AMS and Kassel also argue there exists no evidence linking their alleged acts and omissions proximately cause or contributed to Walker’s death. Solid’s response brief includes affidavits from two Rule 213(f)(3) controlled expert witnesses.

Analysis

The defendants bring their summary judgment motion pursuant to the Code of Civil Procedure. The Code authorizes the issuance of summary

judgment “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. See *Land v. Board of Educ. of the City of Chicago*, 202 Ill. 2d 414, 421, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff's case by establishing that the plaintiff lacks sufficient evidence concerning an element essential to a cause of action; this is the so-called “*Celotex* test.” See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), followed *Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only if the record indicates the plaintiff had extensive opportunities to establish a case but failed in any way to demonstrate it could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

As to the wrongful death causes of action in counts three, five, and seven, the defendants argue that Solid has failed to present evidence that Walker's development of a sacral decubitus ulcer and the alleged excessive Dilantin administration proximately caused or contributed to her death. In support, the defendants rely on Walker's death certificate indicating that she died from hypertension—a condition Walker developed before arriving at ATM—and renal failure—a condition Walker developed after leaving ATM. Any other conclusion, according to the defendants, would impermissibly rely on speculation, surmise, or conjecture. As to the negligence causes of action in counts four and six, AMS and Kassel argue that they owed Walker no duty of care because they did not provide her with any direct care or treatment and that their alleged acts and omissions did not cause or contribute to Walker's death.

A proximate cause is one that produces an injury through a natural and continuous sequence of events unbroken by any effective intervening cause. *Crumpton v. Walgreen Co.*, 375 Ill. App. 3d 73, 79 (1st Dist. 2007). 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). Courts considering cause in fact generally use 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 Industries, 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 exists if the injury is of the type that a reasonable person would see as a likely result of his or her 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” of his or her conduct, 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 (2004) (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 *Prodromos v. Everen Secs., 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.”).

Proximate cause is generally a question of fact to be decided by the trier of fact. *Fenton v. City of Chicago*, 2013 IL App (1st) 111596, ¶ 27. Yet a plaintiff must present evidence that it is more probably true than not that the defendant’s negligence proximately caused the plaintiff’s injuries. *Johnson v. Ingalls Mem’l Hosp.*, 402 Ill. App. 3d 830, 843 (1st Dist. 2010). If a plaintiff fails to prove causation, summary judgment is proper as a matter of law. *Williams v. University of Chicago Hosp.*, 179 Ill. 2d 80, 88 (1997).

As noted above, the defendants argue they did not proximately cause or contribute to Walker’s death that, according to the coroner, resulted from hypertension and renal failure. The death certificate does not, however, necessarily exclude other conditions as potential causative factors leading to Walker’s death. Indeed, Solid disclosed Dr. David Seignious as a Rule 213(f)(3) witness who averred that, to a reasonable degree of medical certainty, Walker’s sacral ulcers caused “significant deconditioning of her body,” and that, along with her other medical conditions, “the sacral pressure injury contributed to” Walker’s death. Seignious’s averments establish both cause in fact and legal cause linking the sacral ulcer to Walker’s death and, therefore, are sufficient, at least at this point, to create a question of material fact that defeats the defendants’ summary judgment motion.

As to AMS and Kassel, the defendants argue they owed Walker no duty to oversee her day-to-day care and treatment, including the administration of medications. That may be correct, but Solid's allegations are far broader than mere day-to-day care and treatment. Rather, Solid's complaint alleges that ATM had a duty to ensure adequate nursing services and that Kassel owed Walker a duty to supervise and oversee those nursing services, including a comprehensive assessment of Walker's needs.

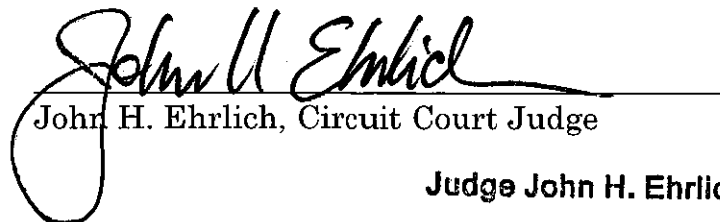
Robert Molitor, AMS's chief executive officer, testified that AMS controls the budget of Alden facilities, including ATM. AMS assists ATM with determining its annual budget, and all facilities must request through AMS all budget increases if they wish to hire more staff. As to Kassel, Solid attached to her response brief an affidavit by Kathleen Hill-O'Neill, a licensed nurse practitioner. Hill-O'Neill averred that Kassel, as the director of nursing at ATM, owed Walker a duty to ensure that she received the type of care she required. In sum, the record presents evidence sufficient to raise a question of material fact as to whether AMS and Kassel owed Walker a duty of care.

The record also defeats AMS and Kassel's argument that there exists no proximate cause linking their acts or omissions to Walker's death. The alleged insufficient staffing to care for Walker certainly could be a material and substantial factor that resulted in her injuries and death. Further, a reasonable person could certainly find that Walker's injury and death likely resulted from AMS's and Kassel's failures to fund and staff ATM sufficiently. To that end, Hill-O'Neill's affidavit also specifically indicates that Kassel failed to ensure that nurses turned and repositioned Walker to prevent her development of sacral pressure ulcers and failed to provide on a timely basis a low-air-loss mattress as ordered by Walker's physician. Again, these omissions could be seen by a jury as causing or contributing to Walker's death.

Conclusion

For the reasons presented above, it is ordered that:

The defendants' summary judgment motion is denied.


John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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