

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

FILED  
DIVISION 11  
20-Nov-2017 16:26  
CIRCUIT COURT OF JACKSON COUNTY, MO  
BY \_\_\_\_\_

KL, \_\_\_\_\_ )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JW, M.D., \_\_\_\_\_ )  
 )  
Defendant. )

CASE NO: \_\_\_\_\_  
DIVISION 11

**JUDGMENT AND ORDER GRANTING DEFENDANTS W, A AND ANESTHESIA SERVICES, PC'S MOTION FOR SUMMARY JUDGMENT BASED ON PLAINTIFF'S FAILURE TO PROVE CAUSATION AND UNCONTROVERTED STATEMENTS OF FACT**

On this 20th day of November, 2017, the Court considers Defendants W, A, and Anesthesia Services, PC's Motion for Summary Judgment Based on Plaintiff's Failure to Prove Causation and Uncontroverted Statements of Fact, filed August 2, 2017. Being fully advised in the premises, the Court hereby GRANTS Defendants W, A, and Anesthesia Services, PC's Motion for Summary Judgment Based on Plaintiff's Failure to Prove Causation and Uncontroverted Statements of Fact, for the following reasons:

**Standard of Review**

Summary judgment is appropriate only where the moving party demonstrates there is no genuine issue of material fact and is therefore entitled to judgment as a matter of law. *Hill v. Ford Motor Co.*, 277 S.W.3d 659, 664 (Mo. 2009); *Stanley v. City of Independence*, 995 S.W.2d 485, 487 (Mo. 1999); Mo.R.Civ.Pro. 74.04. The record is reviewed in the light most favorable to the non-moving party, and the non-movant is given the benefit of all reasonable inferences from the record. *Woodson v. City of Independence*, 124 S.W.3d 20, 26, 2004 Mo. App. LEXIS 10, 14

(Mo. Ct. App. 2004).

“A movant's right to judgment as a matter of law differs significantly depending upon whether that movant is a ‘claimant’ or a ‘defending party.’” *ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp.*, 854 S.W.2d 371, 381 (Mo. banc 1993).

[A] "defending party" may establish a right to judgment by showing (1) facts that negate any one of the claimant's elements facts, (2) that the non-movant, after an adequate period of discovery, has not been able to produce, and will not be able to produce, evidence sufficient to allow the trier of fact to find the existence of any one of the claimant's elements, or (3) that there is no genuine dispute as to the existence of each of the facts necessary to support the movant's properly-pleaded affirmative defense. Regardless of which of these three means is employed by the "defending party," each establishes a right to judgment as a matter of law.

*ITT Commercial Fin. Corp.*, 854 S.W.2d at 381.

### **Background**

On or about the early morning hours of August 21, 2014 Plaintiff (“KL”) delivered her second child via C-section. During the procedure, she was administered a mixture of 13 medications for the purpose of pain relief during the procedure. KL alleges that Defendants negligently gave her too much morphine. Further, she alleges that by giving her too much morphine, she suffered sleepiness, nausea/vomiting, itching, decreased respiratory rate, mental depression, feeling of being overwhelmed, inability to care for and bond with her baby, and dark thoughts. KL alleges that these injuries persisted until late evening of August 21, 2014.

Defendants bring the instant motion, asserting that there is no genuine issue of material fact because KL cannot prove causation in that she failed to designate an expert witness who would presumably testify that her injuries were caused by Defendants’ acts or omissions.

KL responds by arguing that she does not need an expert witness to testify to causation. In support of this claim, she makes three arguments. First, KL claims absolute certainty is not required to prove causation in negligence cases. Next, she argues that she did not suffer a “sophisticated injury” which would require expert testimony to prove causation. Finally, KL argues that the “sudden onset” doctrine applies in that even a layperson is capable of inferring that her injuries were caused by the actions of the Defendants.

### Analysis

Experts that parties intend to call as witnesses must be identified in advance of trial. *Missouri Rule of Civil Procedure* 56.01(b)(4). KL was ordered to designate her expert by March 30, 2017. *Civil Scheduling Order and Pretrial Order*, December 5, 2016 (“Scheduling Order”). KL has not designated an expert witness in this case. *Plaintiff’s Response in Opposition to Defendant’s Statement of Uncontroverted Facts*, 33. Further, KL requested that the instant motion not be ruled on until discovery was complete, and reserved the right to update her response after the completion of discovery. *Plaintiff’s Memorandum in Opposition to the Motion for Summary Judgment*, 1. Discovery was closed on October 31, 2017. *Scheduling Order*. No supplemental response has been filed by KL.

“Three elements must be established to make a prima facie case of medical malpractice: (1) an act or omission of the defendant failed to meet the requisite medical standard of care; (2) the act or omission was performed negligently; and (3) the act or omission caused the plaintiff’s injury.” *Mueller v. Bauer*, 54 S.W.3d 652, 656 (Mo. Ct. App. 2001) (internal citations omitted). “In a medical malpractice case, where proof of causation requires a certain degree of expertise, the plaintiff must present expert testimony to establish causation.” *Sundermeyer v. SSM Reg’l Health Servs.*, 271 S.W.3d 552, 554 (Mo. 2008) (internal citations omitted). Finally,

“[c]ausation requires not only proximity in time, but also a showing that plaintiff would not have been injured but for defendant's negligence.” *Delisi v. St. Luke's Episcopal-Presbyterian Hospital, Inc.*, 701 S.W.2d 170, 176 (Mo. Ct. App. 1985).

In *Delisi v. St. Luke's Episcopal-Presbyterian Hospital, Inc.*, the Court found that the mere nature of antibiotics and their commonly understood effects to be insufficient to support an inference of causation without expert testimony because “the therapeutic propensities of antibiotics are not such that an average juror can know the results reasonably to be anticipated from them.” 701 S.W.2d at 175-76 (emphasis added).

Here, KL was given a mixture of 13 different drugs. Even assuming that she was given the overdose of morphine that she alleges, the nature and mechanisms of each drug's effect, the dosages necessary to manifest those effects, along with the interactions and side effects of these 13 drugs is not knowledge that the average juror can be expected to have. Without competent medical expert testimony, KL cannot establish that her symptoms were caused by an overdose of morphine rather than a side effect of a normal dose of morphine, another drug, an interaction of any number or combination of the drugs she received, or a complication of pregnancy and childbirth.

### **Conclusion**

KL failed to designate an expert witness. However, the injuries she claims are, in theory, the result of complex chemical interactions and side effects (or lack thereof) of the 13 different medications she received. The knowledge of these drugs and their side effects are not within the competency of the average juror. Without the testimony of an expert witness, KL has failed to create a genuine issue of material fact with respect to the causation element of

a medical malpractice claim in that she cannot and will not be able to produce evidence sufficient to allow the trier of fact to find that the Defendant's acts or omissions caused her injuries.

Because there is no genuine issue of material fact, Defendants have shown that they are entitled to judgment as a matter of law in that Plaintiff cannot prove an essential element of her claim. Therefore Defendants W, A, and Anesthesia Services, PC's Motion for Summary Judgment Based on Plaintiff's Failure to Prove Causation and Uncontroverted Statements of Fact is hereby GRANTED.

IT IS SO ORDERED.

November 20, 2017

Date



GEORGE E. WOLF, Judge

This is to certify that a copy of the foregoing was automatically forwarded to the attorneys of record through the Court's eFiling system on November 20, 2017.

ME, Attorney for Defendant  
VG, Attorney for Defendant  
WR, Attorney for Plaintiff  
BD, Attorney for Defendant  
AR, Attorney for Plaintiff  
EI, Attorney for Defendant



Law Clerk, Division 11