



Considering the evidence in the light most favorable to the plaintiff, including all favorable inferences, as the court is required to do, the court finds that there is a legally sufficient evidentiary basis for reasonable jurors to render the verdict returned in this case. It is undisputed that the decedent was “limited assistance” as testified to by the witness Marquis Thompson, whose testimony was relevant and admissible. The decedent’s own statement to the defendant, after repeated questioning about what happened as part of their immediate investigation and report to state authorities, was admissible.

Dr. Adam Lewis, a neurosurgeon, gave an opinion that the decedent hit his head in the manner he described, resulting in the injuries to be expected. Dr. Keith Miller gave an opinion that the injury caused the decedent’s ultimate death. Both of these expert opinions were reasonable and supported by sufficient testimony to establish causation.


Dr. Hill-O’Neill testified that it was a breach of the standard of care to leave a slide board within reach of the decedent, given his “limited assistance” care plan and high risk of fall by the decedent. It was foreseeable that the decedent could be injured attempting to get out of bed unassisted, without a defendant employee standing by for assistance if needed, even though he had apparently done it a number of times without any help. It was also foreseeable that the decedent would be getting out of bed at that time, a thirty-minute known window when he went to breakfast.

Significantly, following the defendant’s required investigation and report to state authorities, there were two glaring omissions. First, it was reported that the decedent had no prior falls at the facility, when in fact he had a prior documented fall in the bathroom.

Second, it was reported to the state that he could get up unassisted when their own care plan for the decedent was clearly “limited assistance.”

The court finds that the defendant’s motion for JNOV or in the alternative, a new trial, should be and is hereby denied.

SO ORDERED, this the 27<sup>th</sup> day of June, 2022.

  
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FORREST A. JOHNSON  
SPECIAL JUDGE

(Order Prepared by Court)