



IN THE CIRCUIT COURT OF MARSHALL COUNTY, ALABAMA

MARY F. CRANFORD, a/k/a/

MARY M. CRANFORD

Plaintiff,

v.

DEAN R. CHASSAY, M.D.,

an individual, et al

Defendants.

)
)
)
)
)
)
)
)
)
)
)

**CIVIL ACTION NO.:
CV-2016-900417.00**

**Defendants' Motion for Judgment as a Matter of Law
At the Close of Evidence**

COME NOW the Defendants, designated as Dean R. Chassay, M.D. and Marshall County Anesthesiology and Pain Specialists, LLC (collectively "Defendants"), and move this Honorable Court, pursuant to Rule 50, *Alabama Rules of Civil Procedure*, to grant judgment as a matter of law, separately and severally, as to all pending claims. In support thereof, Defendants offer the following:

**Grounds for Judgment as a Matter of Law as to Plaintiff's Claims Against
Defendant Dr. Chassay**

1. Defendant Dr. Chassay adopts and incorporates herein the arguments and authorities set forth in his Answers and made during the trial of this matter.
2. The party bearing the burden of proof at trial must present substantial evidence creating a factual dispute warranting resolution by the jury. *See McGaster v. South Baldwin Hospital*, 776 So. 2d 155, 156 (Ala. Civ. App. 2000).

3. This is a medical malpractice action brought pursuant to *Ala. Code* § 6-5-480, *et seq* (1975), as supplemented by the Medical Liability of Acts of 1987, 1996 and 2000. As such, the Plaintiff's burden of proof is governed by Section 6-5-548, which provides that a plaintiff's burden of proof is that of substantial evidence. *Ala. Code* § 6-5-548 (1975). "Substantial evidence is that character of admissible evidence which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed." *Ala. Code* § 6-5-542(5) (1975).

4. To establish a cause of action for medical malpractice, "a plaintiff must establish, generally by expert testimony: (1) the appropriate standard of care, (2) a breach of that standard of care, and (3) a proximate causal connection between the defendant doctor's act or omission constituting the breach and the injury sustained by the plaintiff." *Pruitt v. Zeiger*, 590 So. 2d 236, 238 (Ala. 1991).

5. Here, the Plaintiff has failed to present substantial evidence establishing the appropriate standard of medical care, and has failed to present substantial evidence of breach of the standard of care by Dr. Chassay. The Plaintiff offered testimony from her designated expert, Dr. Lowson; however, this testimony is insufficient to establish either a breach of the applicable standard of care or proximate cause. Dr. Lowson gave equivocal testimony as to whether epinephrine should have been given earlier to the Plaintiff during the Code. Moreover, Dr. Lowson could not testify with any degree of medical certainty that had epinephrine been given earlier, the outcome would be different. There has been no testimony since the close of Plaintiff's evidence to the contrary. Rather, the expert testimony in this case remains equivocal and legally insufficient to establish a breach of the standard of care. As such, Dr. Chassay is entitled to judgment in his favor, as a matter of law.

6. The Plaintiff has also failed to present substantial evidence of an alleged breach of the standard of care regarding her claim of monitoring. The expert testimony in this case has been that Dr. Chassay is not required to micromanage the CRNA or tell the CRNA the dosage amount when treating a patient. There has been no testimony since the close of Plaintiff's evidence that would allow submission of the Plaintiff's monitoring claim to the jury. Rather, the testimony in this case remains legally insufficient to establish a breach of the standard of care. As such, Dr. Chassay is entitled to judgment in his favor, as a matter of law.

7. Expert testimony is required to prove causation. *See DCH Healthcare Authority v. Mary K. Duckworth*, 883 So. 2d 1214, 1217 (Ala. 2003); *Alabama Health Services Foundation v. Bush*, 638 So. 2d 794, 802 (Ala. 1994). In order for the Plaintiff to prevail, “there must be more than the mere possibility that the negligence complained of caused the injury; rather, there must be evidence that the negligence complained of probably caused the injury.” *DCH Healthcare*, 883 So. 2d at 1217 (citing *Parker v. Collins*, 605 So. 2d 824, 826 (Ala. 1992)). Furthermore, expert witness opinion that is conclusory, speculative, and without a proper evidentiary foundation does not constitute substantial evidence of proximate causation. *See Bradley v. Miller*, 878 So. 2d 262, 267 (Ala. 2003). Where a plaintiff fails to present substantial evidence of causation, the defendant is entitled to judgment as a matter of law. *DCH Healthcare*, 883 So. 2d at 1221; *see also McGaster*, 776 So. 2d at 157.

8. Here, the Plaintiff has failed to present substantial evidence, by and through expert testimony, that Dr. Chassay's alleged breach of the applicable standard of care proximately caused the Plaintiff's claimed injuries. The Plaintiff offered testimony from Natalie Clarke, CRNA, regarding the timing of the event allegedly resulting in Plaintiff's injury. Ms. Clarke testified that the event occurred after 8:01 AM and any alleged damage to Plaintiff occurred in the minutes

following this event. She further testified that Plaintiff's injury could have occurred by 8:06 AM. The Code was called, per the records, at 8:06 AM. Dr. Chassay arrived at 8:07 AM. Thus, any alleged injury to Plaintiff occurred prior to Dr. Chassay's treatment. Accordingly, Dr. Chassay's alleged breach of the standard of care could not have been the proximate cause of Plaintiff's resulting injuries. There has been no testimony since the close of Plaintiff's evidence that would allow submission of the Plaintiff's claims to the jury. Rather, the testimony in this case remains legally insufficient to establish proximate cause. As such, Dr. Chassay is entitled to judgment in his favor, as a matter of law.

9. The Plaintiff lacks the capacity to bring any claims against Dr. Chassay. The statute of limitations has run as to all of Plaintiff's claims against Dr. Chassay. As such, any substitution would not relate back to the original filing and all claims are due to be dismissed. There are further concerns of prejudice due to Plaintiff's failure to have the proper party bring any claims against Dr. Chassay and not been able to properly defend himself in this action. Accordingly, Dr. Chassay is entitled to dismissal and or judgment as a matter of law as to all pending claims.

10. Plaintiff has failed to offer substantial evidence to show that any actions of Dr. Chassay are causally related to the damages complained of.

11. Plaintiff failed to prove damages by substantial evidence.

12. No evidence has been offered or received which raises a jury issue.

13. There is no controverted issue of fact upon which a reasonable jury would differ, that could justify a verdict for the Plaintiff.

14. Testimony and all inferences which the jury could justifiably draw from the evidence are insufficient to support a verdict for the Plaintiff under any claim brought by the Plaintiff.

15. The evidence does not establish facts sufficient to sustain a verdict in favor of the Plaintiff under any of the claims brought by the Plaintiff.

16. All the facts and inferences point strongly and overwhelmingly in favor of Dr. Chassay so that reasonable persons could not arrive at a contrary verdict other than one in favor of Dr. Chassay.

17. This motion is made separately and severally as to each claim of the Plaintiff.

Grounds for Judgment as a Matter of Law as to Plaintiff's Claims Against Defendant Marshall County Anesthesiology and Pain Specialists, LLC

1. Defendant Marshall County Anesthesiology and Pain Specialists, LLC adopts and incorporates herein the arguments and authorities set forth in its Answers and made during the trial of this matter.

2. The party bearing the burden of proof at trial must present substantial evidence creating a factual dispute warranting resolution by the jury. *See McGaster v. South Baldwin Hospital*, 776 So. 2d 155, 156 (Ala. Civ. App. 2000).

3. The Plaintiff seeks to hold Marshall County Anesthesiology and Pain Specialists liable for the acts or omissions of its employee, Dr. Chassay. The Plaintiff failed to prove by substantial evidence that Dr. Chassay breached the applicable standard of care and that his alleged breach proximately caused Plaintiff's injuries. There has been no testimony since the close of Plaintiff's evidence that would allow submission of the Plaintiff's claims to the jury. Rather, the testimony in this case remains legally insufficient to establish a breach of the standard of care and proximate cause. As such, Marshall County Anesthesiology and Pain Specialists cannot be held liable to the Plaintiff for her claimed injuries. *See A.L. Williams & Associates, Inc. v. Williams*, 517 So. 2d 596, 598-99 (Ala. 1987)(citation omitted).

4. The Plaintiff lacks the capacity to bring any claims against Marshall County Anesthesiology and Pain Specialists. The statute of limitations has run as to all of Plaintiff's claims against Marshall County Anesthesiology and Pain Specialists. As such, any substitution would not relate back to the original filing and all claims are due to be dismissed. Moreover, Marshall County Anesthesiology and Pain Specialists has been prejudiced by Plaintiff's failure to have the proper party bring any claims against it and has not been able to properly defend itself in this action. Accordingly, Marshall County Anesthesiology and Pain Specialists is entitled to dismissal and or judgment as a matter of law as to all pending claims.

5. Plaintiff failed to prove damages by substantial evidence.

6. No evidence has been offered or received which raises a jury issue.

7. There is no controverted issue of fact upon which a reasonable jury would differ, that could justify a verdict for the Plaintiff.

8. Testimony and all inferences which the jury could justifiably draw from the evidence are insufficient to support a verdict for the Plaintiff under any claim brought by the Plaintiff.

9. The evidence does not establish facts sufficient to sustain a verdict in favor of the Plaintiff under any of the claims brought by the Plaintiff.

10. All the facts and inferences point strongly and overwhelmingly in favor of Marshall County Anesthesiology and Pain Specialists so that reasonable persons could not arrive at a contrary verdict other than one in favor of Marshall County Anesthesiology and Pain Specialists.

11. This motion is made separately and severally as to each claim of the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, the Plaintiff's claims should be dismissed as a matter of law, separately and severally.

Respectfully submitted,

/s/ Christopher L. Albright
 Christopher L. Albright (ALB014)
 Lee T. Clanton (CLA066)
 Porterfield, Harper, Mills, Motlow
 & Ireland, P.A.
 22 Inverness Center Parkway, Suite 600
 Birmingham, Alabama 35242
 Phone.: (205) 980-5000
 Email: cla@phm-law.com
lrc@phm-law.com

CERTIFICATE OF SERVICE

I hereby certify that on **May 10, 2024**, I electronically filed the foregoing with the Clerk of Court using the Electronic Filing system which will send notification of such filing and/or by placing copies thereof in the United States Mail, first class postage prepaid and properly addressed to the following:

Mark W. Lee, Esquire
 Parsons, Lee & Juliano, P.C.
 600 Vestavia Parkway
 Suite 300, Shelby Building
 [P.O. Box 661228 35266-1228]
 Birmingham, AL 35216

S. Shay Samples, Esquire
 Ashley Peinhardt, Esquire
 Hare, Wynn, Newell & Newton, LLP
 The Massey Building, Suite 800
 2025 Third Avenue N.
 Birmingham, AL 35203

/s/ Christopher L. Albright
 OF COUNSEL