

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Case No. 2009-CP-08-3237

Finley C. Evans..... Appellant

v.

Roper Hospital, Inc. d/b/a Roper
St. Francis Healthcare and d/b/a
Roper-St. Francis Home Health..... Respondents.

FINAL BRIEF OF APPELLANT

Christy DeLuca
Jordan Calloway
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 (fax)

Attorneys for Appellant

Stephen L. Brown
Joseph J. Tierney, Jr.
Christine Kent Toporek
Russell G. Hines
Young Clement Rivers, LLP
25 Calhoun Street, Suite 400
P.O. Box 993
Charleston, SC 29402
(843) 720-5488

Attorneys for Respondent

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STATEMENT OF ISSUE ON APPEAL

1. Whether the circuit erred in finding no evidence Roper's negligent wound care proximately caused Finley Evans' profuse bleeding, hypotension, bradycardia and mental distress

STATEMENT OF THE CASE

Finley Evans suffers from hydradenitis, a glandular condition presenting as severe open wounds in the groin area. (R. p. 8, ¶ 11). Mr. Evans underwent surgery for this condition at Trident Medical Center in Charleston, South Carolina in September 2006. *Id.* Mr. Evans' surgeon suggested the use of a wound vac system to promote healing at the incision site. (R. p. 8, ¶ 12). As he recovered from surgery at home, Roper Hospital, Inc., d/b/a Roper St. Francis Healthcare and d/b/a Roper-St. Francis Home Health ("Roper") were responsible for Mr. Evans' wound care. On October 3, 2006, Roper sent employee/agent Janelle Belk, RN to Mr. Evans home. (R. p. 9, ¶ 18). Nurse Belk was responsible for assessing Mr. Evans' condition, changing the dressing covering the wound, and communicating Mr. Evans' condition to his treating physician.

During the October 3rd visit, Nurse Belk noted bleeding after she peeled off the dressing. Nurse Belk collected blood for laboratory analysis and placed a bag of rice over the bleeding sites to apply pressure. Nurse Belk did not properly assess Mr. Evans or ensure he was stable before leaving the Evans' home. A short time later, Finley Evans' wife Jane Evans called Nurse Belk in a panic as Mr. Evans was bleeding profusely from the incision site. Blood soaked the bed on which Mr. Evans was lying and he began to feel faint. Mr. Evans said his "goodbyes," telling loved ones he feared he would not make it. (R. p. 338). Before paramedics arrived, Mr. Evans lost a significant amount of blood and was taken by ambulance to the hospital. Mr. Evans lost consciousness in the ambulance and required IV fluids. Due to the amount of blood Mr. Evans lost in this episode, he was admitted to the hospital and kept overnight for observation.

Mr. Evans' claims were tried before a jury beginning on January 9, 2012 with the Honorable Stephanie P. McDonald presiding. Roper moved for a directed verdict at the

conclusion of Mr. Evans' case-in-chief. (R. p. 551). The court denied the motion. (R. p. 559). Roper renewed its motion at the conclusion of its case-in-chief. (R. p. 712). Judge McDonald granted the motion. (R. p. 747). Mr. Evans filed a Motion to Reconsider, Alter, and Amend Judgment that Judge McDonald denied at a hearing on March 15, 2012. This appeal followed.

STANDARD OF REVIEW

A trial judge has the authority to direct a verdict where the case “presents only questions of law.” Rule 50(a), SCRPC. A directed verdict should be granted only “where the evidence raises no issue for the jury.” Fletcher v. Med. Univ. of S.C., 390 S.C. 458, 462, 702 S.E.2d 372, 374 (Ct. App. 2010). In ruling on a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the nonmoving party and must draw all inferences reasonably deducible from the evidence in favor of the nonmoving party. Sabb v. S.C. State Univ., 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002); O’Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340, 638 S.E.2d 96 (Ct. App. 2006). The court “must resolve whether it would be reasonably conceivable to have a verdict for a party opposing the motion under the facts as liberally construed in the opposing party’s favor.” Pye v. Estate of Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006).

In ruling on a directed verdict motion, the trial court should not “decide credibility issues or...resolve conflicts in the testimony or evidence.” Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 463, 629 S.E.2d 653, 663 (2006). The court must focus solely on the “existence or non-existence of evidence” and not the existing evidence’s credibility or weight. Jones v. General Elec. Co., 331 S.C. 351, 503 S.E.2d 173 (Ct. App. 1998). In sum, a directed verdict is “not favored” and must be denied “if there is even a scintilla of evidence tending to prove the allegations of the complaint[.]” Jamison v. The Pantry, Inc., 301 S.C. 443, 444, 392 S.E.2d 474, 475 (Ct. App. 1990). Likewise on appeal, the Court must view the evidence in a light most favorable to the non-moving party and affirm a directed verdict only “where there is no evidence of any one element of the alleged cause of action.” S.C. Fed. Credit Union v. Higgins, 394 S.C. 189, 194, 714

S.E.2d 550, 552 (2011); Guffey v. Columbia/Colleton Reg'l Hosp. Inc., 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005).

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING NO EVIDENCE ROPER'S NEGLIGENT WOUND CARE PROXIMATELY CAUSED FINLEY EVANS' PROFUSE BLEEDING, HYPOTENSION, BRADYCARDIA, AND MENTAL DISTRESS.

Following its chase-in-chief, Roper renewed its motion for directed verdict on proximate cause. (R. p. 712). After hearing oral arguments, Judge McDonald concluded, "there is no proximate cause that allows me to send this to the jury." (R. p. 747). In reaching this conclusion, the Court erred in three ways: (1) misconstruing the evidence before the court; (2) misapplying established proximate cause principles; and (3) failing to apply the common knowledge exception to the expert witness requirement.

A. The circuit court's directed verdict was based on a misconstruction of evidence presented at trial.

The court was required to view the evidence in the light most favorable to Mr. Evans on Roper's directed verdict motion. Sabb, 350 S.C. at 427, 567 S.E.2d at 236. The court's role in this instance was not to resolve conflicts in the evidence but only to determine the "existence or non-existence of evidence" on proximate cause. Erickson, 368 S.C. at 463, 629 S.E.2d at 663; Jones, 331 S.C. at 356, 503 S.E.2d at 176. In granting Respondents' motion, Judge McDonald summarized Mr. Evans' case-in-chief as a demonstration that Mr. Evans failed to provide any evidence of proximate cause. However, several of the statements Judge McDonald made and appeared to rely on in directing a verdict fail to account for contrary evidence Mr. Evans produced at trial.

Mr. Evans' condition at the time Nurse Belk left his house was an important factor in the court's ruling. Judge McDonald summarized the evidence on this point as follows: "But when she left that day to go get the blood checked at the lab, because of the Coumadin, the testimony in the record is that the outer dressing was dry, that Mr. Evans was stable and the bleeding was controlled if not completely stopped." (R. p. 745). It is clear the court decided that the evidence was susceptible of only one conclusion: Mr. Evans was stable at Nurse Belk's departure. This conclusion failed to consider the testimony of Appellant's nursing expert registered nurse Lauren Cauwels. Nurse Cauwels was qualified "as an expert in the nursing field with wound health care, which includes the treatment of wounds." (R. p. 157). She was also qualified in "home health care which includes wound treatment. Id. Based on her experience, education, training and review of the records, Expert Cauwels testified, "To me, he was unstable" when Nurse Belk left. (R. p. 182). Several factors supported Nurse Cauwels' conclusion on this point including Nurse Belk's resort to use of a bag of rice and her explicit instruction that Mr. Evans not move. (R. p. 182-83).

The circuit court also based its directed verdict on the conclusion that Mr. Evans was not actively bleeding when Nurse Belk left his home. Judge McDonald concluded "the bleeding was controlled if not completely stopped" when Nurse Belk left. (R. p. 745). The court went on to find this was a situation where "the wound is stabilized." (R. p. 749). Mr. Evans produced evidence at trial that opposes this conclusion as well. Under cross-examination, Nurse Cauwels unequivocally testified that at Nurse Belk's untimely departure, "I believe that [Mr. Evans] had an active bleed." (R. p. 205). This is not an insignificant issue. Whether Mr. Evans was actively bleeding when Nurse Belk left was a

crucial element of the court's directed verdict analysis. As Judge McDonald noted, "you don't leave a patient if they've got an active bleed and aren't stable." (R. p. 749). Additionally, the circuit concluded Mr. Evans' case could go to the jury if there was an "active spurting bleed" when Nurse Belk left (R. p. 745).

The circuit court went on to find Mr. Evans suffered two bleeding episodes and a jury question on proximate cause was created only if Mr. Evans provided evidence that Roper or its agent "caused the second bleed." (R. p. 746). The court found a first bleeding episode that was caused by Nurse Belk's removal of the wound vac when she arrived at Mr. Evans' house. (R. p. 746). The second bleeding episode began at some point after Nurse Belk left. This conclusion is also opposed by evidence Mr. Evans presented tending to show a single continuous bleeding episode. Nurse Belk acknowledged she caused bleeding when she arrived, removed the wound vac, and changed Mr. Evans' dressing. (R. p. 506). Nurse Cauwels' testimony is evidence Mr. Evans' was bleeding when Nurse Belk left the Evans' home. (R. p. 205).

There is voluminous evidence Mr. Evans was profusely bleeding shortly after Nurse Belk's exit including the Evans' testimony. Ms. Evans testified that blood was squirting out when she raised the towel draped over Mr. Evans' wound. (R. p. 245). Mr. Evans saw blood running down the sides of the bed. (R. p. 335-36). Before he saw the profuse bleeding, Mr. Evans testified to feeling a "tickling" feeling near the wound site. (R. p. 335). Mr. Evans was the one suffering from the bleeding and, based on all he felt during the October 3rd episode, Mr. Evans thinks he "was bleeding all along." (R. p. 340). The court concluded Mr. Evans' bleeding stopped because a medical record indicated that the "outer dressing" covering the wound was dry. (R. p. 745). However, at Nurse

Belk and other witnesses testified, Mr. Evans' wound was covered by a large five pound bag of rice. Roper's expert nurse Renee Epting testified that the rice bag was large enough to cover the entire bandage draping Mr. Evans' wound. (R. p. 710). Mr. Evans' continuous bleed would not have been perceptible without removing the bag. (R. p. 710).

Core components of the circuit court's conclusion that Mr. Evans failed to present evidence of proximate cause were opposed by evidence Mr. Evans produced at trial. Nurse Cauwels' testimony on Mr. Evans' bleeding and instability at Nurse Belk's departure may have been opposed by Roper's evidence but Cauwels' opinions on these points were competent evidence the circuit court was not permitted to overlook or discount when ruling on a directed verdict motion. There was also evidence of a continuous bleed as opposed to two bleeding episodes as the court concluded. Since the circuit court relied on the conclusion that Mr. Evans was stable and not bleeding when Nurse Belk left and Mr. Evans produced competent evidence opposing that conclusion, the circuit court erred in directing a verdict on proximate cause relying on this conclusion.

B. The circuit court's directed verdict was an improper application of established proximate cause principles.

Finley Evans filed a medical negligence suit against Roper related to the post-surgery wound care Roper provided in September-October 2006. To ultimately prevail in a negligence claim, a plaintiff must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach. Rayfield v. S.C. Dep't of Corr., 297 S.C. 95, 374 S.E.2d 910 (Ct. App. 1988); O'Neal v. Carolina Farm Supply of Johnston, Inc., 279 S.C. 490, 493, 309 S.E.2d 776, 779 (Ct. App. 1983)(noting "settled rule that the plaintiff in a

negligence action has the burden of persuasion on the issue of proximate cause”). A plaintiff must only produce a “scintilla of evidence” on each element to defeat a directed verdict motion. Jamison, 301 S.C. at 444, 392 S.E.2d at 475. Proximate cause requires proof of both (1) causation in fact or “but for” causation and (2) foreseeability. Burnett v. Family Kingdom, Inc., 387 S.C. 183, 192, 691 S.E.2d 170, 175 (Ct. App. 2010).

Appellant produced evidence that Roper’s deviations from the standard of care proximately caused Mr. Evans’ damages. Since proximate cause is a connection between breach of duty and damages, a basic understanding of Appellant’s evidence on these two elements is essential in determining whether a directed verdict was appropriate. Appellant produced evidence that Roper breached its duty to Mr. Evans in several ways. Nurse Cauwels testified to the standard of care for the reasonable nurse in the situation Roper’s agent Nurse Belk encountered on October 3, 2006. In that situation, the standard of care required the nurse to perform an assessment of the patient’s condition. (R. p. 178)(“You don’t just rip off the dressing without assessing what is going on”). Based on the situation when Nurse Belk was present, the standard of care also required vigilant, assertive efforts to respond to Mr. Evans’ deteriorating condition. (R. p. 179).

Expert Cauwels’ testimony was not limited to establishing the standard of care. She also identified several ways in which Nurse Belk failed to meet the standard. When Nurse Belk first arrived on October 3rd, she failed to properly assess Mr. Evans’ condition. (R. p. 178). This was an especially important failure by Nurse Belk as Mr. Evans complained of pain and it was Nurse Belk’s job “to know where the pain was coming from.” (R. p. 178). Nurse Belk also failed to fully update the doctor, especially on the severity of Mr. Evans’ current condition. (R. p. 181). These standard of care

violations both lead up to Nurse Belk's central breach of duty: her decision to leave Mr. Evans' home while his condition was dire and continuing to deteriorate. According to Nurse Cauwels, this decision was a terrible misjudgment falling fall short of what a reasonable nurse would do in the same or similar circumstances. (R. p. 179).

Nurse Belk's breach of duty in prematurely leaving Mr. Evans' house has several components. Nurse Belk left when a reasonably prudent nurse would have observed conditions indicating a patient with an emergent condition. (R. p. 179). Nurse Belk asked Mrs. Evans to place a five-pound bag of rice on the wound site and explicitly instructed Mr. Evans not to move. These are signs that Mr. Evans was in real trouble and it would be clear to the reasonably prudent nurse that "[h]e need[ed] to get emergency help." (R. p. 179). Additionally, Nurse Belk left without calling an ambulance for Mr. Evans and ensuring he was transported to the hospital. (R. p. 183). A reasonable nurse would have recognized from an assessment that Mr. Evans "needed to be transported" far before the time when Nurse Belk left. (R. p. 183). In other words, Nurse Belk chose to leave the home while Mr. Evans was "unstable." (R. p. 182). This conduct fell well below the standard of care that a wound care nurse owes her patient. Quite simply, Nurse Belk "abandoned her patient" as it was unclear "when she was going to come back." (R. p. 204-05).

Appellant also produced evidence of damages he suffered. Mr. Evans endured physical pain, suffering, and other physical symptoms including nausea, disorientation, and blurry vision. (R. p. 337-38). Mr. Evans also experienced emotional distress in the shock and horror of witnessing blood gush from the incision site. Mr. Evans saw "inch deep" pools of blood on the bed where he was lying, and he "knew then that he had lost a

lot of blood.” (R. p. 338). By the time paramedics were finally called to assist Mr. Evans, he feared he would not survive. Before he was rolled away to the ambulance, Mr. Evans summoned his son, told him, “I don’t think that I am going to make it,” and instructed him to take care of Mrs. Evans. (R. p. 338). Once he arrived at the hospital, records document one liter of blood loss. See (R. p. 844). Mr. Evans lost so much blood that doctors required him to remain in the hospital overnight for observation.

In deciding whether Mr. Evans produced any evidence of a causal link between Nurse Belk’s breaches of duty and the various damages described above, the circuit court focused exclusively on evidence that Nurse Belk caused Mr. Evans to bleed. That focus was misplaced as Nurse Belk’s abandonment of her actively bleeding, unstable patient caused damages Mr. Evans would not have sustained had Nurse Belk remained at the Evans’ home. By leaving her patient while unstable and actively bleeding, Nurse Belk increased the amount of time Mr. Evans remained lying on his bed bleeding without emergency care. Even Nurse Epting testified that when there is active bleeding, a delay in summoning emergency medical care could cause “injury or damage” to Mr. Evans. (R. p. 702).

This is a common sense principle as well. Nurse Belk left and simply was not there to notice the continuous bleeding. The bleeding was only discovered later by Ms. Evans after it had continued for an extended period. The period of bleeding from the time of Nurse Belk’s untimely departure until emergency medical care arrived and all medical conditions associated with that extended bleeding were directly caused by Nurse Belk’s breaches of duty. In short, Mr. Evans was not required to prove Nurse Belk caused Mr. Evans bleeding to defeat a directed verdict motion on proximate cause. Mr. Evans

presented evidence that Nurse Belk caused Mr. Evans' significant blood loss, associated medical problems, and mental distress by abandoning her patient.

C. It is "common knowledge" that blood loss and related medical problems are caused by bleeding.

Medical malpractice cases typically involve ailments and treatments outside the realm of the ordinary person's knowledge. Ellis v. Oliver, 323 S.C. 121, 125, 473 S.E.2d 793, 795 (1996). Accordingly, South Carolina law generally requires an expert witness to provide a causal link between the claimed breach of duty and damage. Melton v. Medtronic, Inc., 389 S.C. 641, 663, 698 S.E.2d 886, 897 (Ct. App. 2010). However, an expert is not required "in situations where the common knowledge or experience of laymen is extensive enough for them to be able to...determine the presence of the required causal link between the [medical provider's] actions and the patient's medical problems." Id. at 663, 698 S.E.2d at 897-98 (quoting Pederson v. Gould, 288 S.C. 141, 142, 341 S.E.2d 633, 634 (1986)).

In this case, Mr. Evans presented evidence that Nurse Belk caused bleeding when she changed his wound dressing. Nurse Belk's documentation from October 3rd also shows that the dressing change caused bleeding. Mr. Evans also produced expert testimony that Nurse Belk fell below the standard of care in changing his wound dressing. Nurse Cauwels testified that the dressing change was performed without an adequate initial assessment. (R. p. 178). Nurse Cauwels testified that Mr. Evans was bleeding when Nurse Belk left. (R. p. 205). Nurse Belk testified that bleeding "continued" after she left. See (R. p. 522)("It's unfortunate that the bleeding continued after I left"). According to Mrs. Evans, Nurse Belk "kept telling [Mr. Evans] that it was bleeding." (R. p. 246). Mr. Evans was undoubtedly bleeding shortly after Nurse Belk left

when his wife contacted Nurse Belk and 911. Mr. Evans testified that he was bleeding the entire time. (R. p. 340).

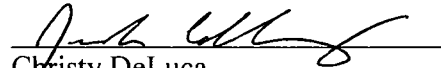
The causal connection Mr. Evans was required to make to prevail on his negligence claim and the connection for which he must have some evidence to defeat a directed verdict motion was between Nurse Belk's negligent wound dressing change which clearly caused bleeding and Mr. Evans' one-liter blood loss, pain and suffering, fear of imminent death, and hospitalization secondary to blood loss. In short, the fact finder was only required to find a causal relationship between bleeding and blood loss. This separates Mr. Evans' claim from medical malpractice suits involving intricate medical procedures or complex medical judgments. Compare Pederson, 288 S.C. at 143, 341 S.E.2d at 634 (deeming vaginal hysterectomy a "significant surgical procedure...not within the common purview") with Green v. Lilliewood, 272 S.C. 186, 192, 249 S.E.2d 910, 913 (1978)(recognizing tubal ligation as obviating need for intrauterine device "as a matter of common knowledge"). The causal connection between bleeding and blood loss is well-known by the common person and the common knowledge exception is appropriate to Mr. Evans' claims.

Accordingly, the circuit court erred in finding no proximate cause evidence as Mr. Evans presented evidence of blood loss (and related physical/mental damages) caused by bleeding and it is common knowledge that bleeding causes blood loss.

CONCLUSION

Based on the arguments above, the circuit court erred in directing a verdict in Respondent's favor by finding no evidence of proximate cause. Appellant respectfully requests the Court reverse the circuit court's order.

Respectfully submitted,



Christy DeLuca
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
(803) 328-5656 (fax)
cdeluca@mcgowanhood.com

Attorney for Appellant

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Rock Hill, South Carolina

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CERTIFICATE OF COUNSEL

Counsel hereby certifies that the Final Brief of Appellant and Final Reply Brief of Appellant comply with Rule 211(b), SCACR.

Respectfully submitted,


Christy Deluca
Jordan Calloway
McGowan, Hood & Felder, LLC
1539 Health Care Drive
Rock Hill, South Carolina 29732
(803) 327-7800
cdeluca@mcgowanhood.com
jcalloway@mcgowanhood.com

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Rock Hill, South Carolina

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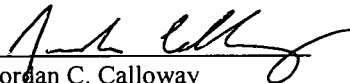
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St. Francis Healthcare and d/b/a
Roper-St. Francis Home Health..... Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on this 2nd day of May, 2013, he served counsel for the Respondents with a copy of the Final Brief of Appellant and Final Reply Brief of Appellant in this matter by mailing a copy of the same by United States Mail with first class postage prepaid to the following addresses:

Joseph J. Tierney, Jr.
Russell G. Hines
Stephen L. Brown
Young, Clement Rivers, LLP
25 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 720-5406
jtierney@ycrlaw.com


Jordan C. Calloway
McGowan, Hood & Felder
1539 Health Care Drive
Rock Hill, SC 29732
(803) 327-7800
jcalloway@mcgowanhood.com

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