

No. 1-16-1775

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IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MICHAEL WAHBA,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 12 L 10348
)	
NORTHWESTERN MEMORIAL HOSPITAL, SANDRA)	
SWANTEK, M.D., individually and as agent of)	
NORTHWESTERN MEMORIAL HEALTHCARE,)	The Honorable
)	John P. Callahan,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

HELD: Trial court proper granted summary judgment in defendants' favor and properly denied plaintiff's motion to reconsider in medical malpractice action where plaintiff's own expert testimony failed to demonstrate any proximate causation between defendants' alleged negligence in treating plaintiff and plaintiff's injuries.

¶ 1 Pursuant to a motion filed by defendants-appellees Northwestern Memorial Hospital and Sandra Swantek, M.D., individually and as agent of Northwestern Memorial Healthcare

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(defendants, or as named), the trial court granted summary judgment in their favor and against plaintiff-appellant Michael Wahba (plaintiff) in plaintiff's medical malpractice action. The trial court also denied plaintiff's motion to reconsider. Plaintiff appeals, contending that the trial court erred in entering both orders because questions of fact regarding proximate cause exist that should have been presented to a jury, and because the court misapplied the law to the instant facts. He asks that we reverse the trial court's decisions, order the cause to proceed to trial, and grant any further applicable relief. For the following reasons, we affirm.

¶ 2

BACKGROUND

¶ 3 Plaintiff suffers from Tardive Dyskinesia (TD), a movement disorder commonly known as "lockjaw," which results in the involuntary twitching of the muscles in the face and is often caused by the use of certain psychiatric medications. Plaintiff's TD is permanent and irreversible.

¶ 4 As disclosed by the record, plaintiff began receiving psychiatric treatment at defendant hospital in 2001 by various physicians, which included the prescription of several different psychiatric medications; he was treated there intermittently until 2012. In 2007, he was diagnosed with TD. In 2010, he began treatment with defendant Dr. Swantek, a psychiatrist at defendant hospital. In July 2010, in an effort to mask and/or treat his TD, Dr. Swantek prescribed 2 milligrams daily of Abilify, a psychiatric medication, for 30 days. Dr. Swantek ordered the same prescription again in August 2010, following the first. After the completion of this second prescription, Dr. Swantek discontinued the medication. For the next two years, Dr. Swantek treated plaintiff and referred him to several specialists to help resolve his TD

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symptoms, including therapists, pain specialists and neurologists. Despite their treatment, plaintiff's symptoms did not resolve. Dr. Swantek stopped treating plaintiff in June 2012.

¶ 5 In September 2012, plaintiff brought a medical malpractice action against defendants¹ alleging negligence in their care of him and claiming that this negligence was the proximate cause of his TD, which rendered him permanently injured and unemployable. More specifically, as to Dr. Swantek, plaintiff alleged that she: failed to adequately inform him of the potential irreversible side effects of TD that can occur with antipsychotic medications, failed to sufficiently monitor his medication and movements, negligently continued to prescribe antipsychotics after diagnosing him with TD, failed to taper and discontinue this medication, failed to properly treat his condition, and failed to inform him that his TD was likely to be permanent.

¶ 6 During discovery on this cause, plaintiff presented one expert in support of his claims of Dr. Swantek's alleged negligence: psychiatrist Dr. William J. Giakas, who had reviewed plaintiff's medical records, his deposition and the depositions of some 13 other doctors associated with this cause. At the outset of his deposition, Dr. Giakas recognized that plaintiff had been treated for mental health concerns for 10 to 11 years with "a number of different medications" and "had exposure to a number of different antipsychotics," describing that "[a]ny one [of] them in and combination over a period of time" could have contributed to his TD. Dr.

¹The parties agree that plaintiff's suit was directed only against defendant Dr. Swantek and against defendant hospital as her principal, even though plaintiff was treated at defendant hospital for 11 years by several different doctors. Accordingly, the evidence below, as well as this appeal, focus only on Dr. Swantek and her treatment of plaintiff.

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Giakas acknowledged that plaintiff had been diagnosed with TD in 2007, three years before being treated by Dr. Swantek. He explained that plaintiff had gone to Egypt in 2006 for a time, returned to the United States on April 18, 2007, and was hospitalized that very day, whereupon he was diagnosed. During his years of treatment, plaintiff had been on several antipsychotic drugs as prescribed by his several doctors, including Abilify, all of which could cause and contribute to movement disorders such as TD. Dr. Giakas described that symptoms of TD can be masked by reinitiating an antipsychotic or increasing a dosage of such a drug for a period of time.

¶ 7 Dr. Giakas then testified specifically with respect to Dr. Swantek, as she was the only defendant doctor in this cause. He again noted for the record that plaintiff had taken Abilify before ever being treated by her. He further noted that a prescription of 2 milligrams daily, as Dr. Swantek ordered for plaintiff in July and August 2010, was the lowest strength tablet of that drug distributable and that Abilify itself is a third generation antipsychotic, meaning it is of the tier least likely to cause movement disorders. Dr. Giakas was then asked whether Dr. Swantek's two 30-day prescriptions caused plaintiff's TD. Dr. Giakas responded that they did not, as plaintiff already had the disorder before being treated by her. While further discussing these two prescriptions, Dr. Giakas was then asked whether they worsened plaintiff's TD. Dr. Giakas stated that while it may be possible, "it's hard to know[, i]t's difficult to know," and further admitted that "[i]t is unlikely."

¶ 8 As his deposition continued, Dr. Giakas was asked if any of the other medications Dr. Swantek had prescribed for plaintiff during her two-year treatment of him could have caused his

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TD or contributed to any worsening of it. Dr. Giakas reviewed some 10 other medications Dr. Swantek had prescribed to plaintiff and, as to each, found they were unlikely to have done so. He also admitted that several of the specialists whom plaintiff saw for additional treatment upon Dr. Swantek's referral had testified in their depositions that, while plaintiff believed his TD was worsening, they found no objective evidence that this was happening. Dr. Giakas averred that TD is not a degenerative disease.

¶ 9 When further asked to provide his opinion with respect to Dr. Swantek's care of plaintiff specifically, Dr. Giakas stated that he believed she deviated from the standard of care in two ways: in not fully documenting plaintiff's informed consent in a way that would be "appropriate" for receiving Abilify, and in believing that she could treat his TD with Abilify, a drug that he believed probably caused plaintiff's disorder when he first received it years before. However, after stating this, Dr. Giakas reiterated that the effect of Dr. Swantek's deviations did not cause plaintiff's TD nor did they contribute to any worsening of it. He admitted, "I don't know with a hundred percent certainty that it would make it worse." Instead, Dr. Giakas explained that his review of plaintiff's care was a more "global" one, and had not been specifically focused only on Dr. Swantek. The following exchange took place:

"A. [Dr. Giakas]: And I think that maybe the way this panned out, I did my assessment three years ago, reviewed 3,700 pages or whatever it was three years ago and then did some recent deposition review. I think there are other points where changes could have been made along the way in treatment for [plaintiff].

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Q. [Counsel]: *** Any of them pertain to Dr. Swantek?

A. Correct.

Q. None of them?

A. They don't.

Q. ***can you pinpoint a treatment -- a provider and a date on which you think something should have been done or could have been done that would have -- ***

A. I think when [plaintiff] started experiencing motor side effects early on.

Q. In 2007?

A. Yes, early on."

Dr. Giakas then described that plaintiff's 11 years of treatment were not consistent; he would see one doctor at one point in time, and then another doctor at another point in time, with periods of no treatment in between, resulting in "fragmented" care and a "lack of integration and awareness of what was going on," which "was a problem." He opined that "the point at which *** it was obvious that there should have been a change and an alteration in the course of treatment was definitely in 2007." Again, Dr. Giakas admitted that this was three years prior to plaintiff ever seeing Dr. Swantek.

¶ 10 A break was then taken during Dr. Giakas' deposition. When it resumed, Dr. Giakas averred that he feared he had not been very clear with respect to the effect of Dr. Swantek's treatment of plaintiff, and stated that the two prescriptions of Abilify she ordered for him "had to have contributed to his" TD, as she prolonged his exposure to antipsychotic medication for two

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months. However, upon further questioning, Dr. Giakas admitted there was no objective evidence to say plaintiff's TD worsened after he took the two prescriptions, he did not know the "percentage" of how these prescriptions made his TD worse, and he could not state when plaintiff's TD became permanent or what, if anything, changed in his condition after he took the two prescriptions ordered by Dr. Swantek. He simply averred that "[a]ll I know is that it did contribute."

¶ 11 Defendants moved for summary judgment, asserting that plaintiff did not prove that Dr. Swantek's two prescriptions of Abilify proximately caused his TD or its worsening.² The trial court agreed. It clarified that the issue in the cause focused on Dr. Swantek's treatment and prescription of Abilify, not on any prior care plaintiff had received from other doctors during his years of treatment. The court stated that, in this context, it believed "plaintiff does not have evidence to establish that Dr. Swantek's negligence was the proximate cause of" his injuries. In support of its conclusion, the court cited the "significant amounts of testimony" read into the record, particularly Dr. Giakas' deposition, with respect to whether Dr. Swantek's two prescriptions caused and/or worsened plaintiff's TD, and found that:

"it's clear from this *** that the expert testimony clearly stated that there's no proof established by -- there's no proof to establish by expert testimony to a

²For the record, defendants provided a second ground for their motion for summary judgment, arguing that there was a violation of the statute of limitations here, as the key act alleged—Dr. Swantek's two prescriptions of Abilify—were written in July and August 2010, whereas the cause was not filed until September 23, 2012. The trial court denied defendant's motion on this ground, finding that he filed his cause within the limitations period, as his last dose of the second prescription occurred on September 24, 2010. This partial denial of defendant's motion for summary judgment has not been appealed before our court.

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reasonable degree of medical certainty. Here, the causal connection is very speculative, and it's not even merely possible. In fact, it's unlikely, as the doctor testifies."

Upon dispute by plaintiff, the court made clear for the record that it had taken into account all the evidence presented, including the entirety of Dr. Giakas' deposition, which it had read multiple times, and his written medical report, weighing all applicable inferences in favor of plaintiff. In granting summary judgment for defendants on the issue of proximate cause, the court concluded:

"It's clear to this Court that when the doctor says unlikely, that's unlikely, and the plaintiff can never meet their burden as it relates to proximate cause."

Plaintiff filed a motion to reconsider, and the trial court denied his motion.

¶ 12

ANALYSIS

¶ 13 On appeal, plaintiff contends that summary judgment was improper because several questions of fact remained as to the issue of proximate cause. For example, he insists that the trial court improperly disregarded one of Dr. Giakas' opinions, namely, that plaintiff's symptoms were worsened, simply because this was based solely on plaintiff's own subjective opinion. Next, he asserts that the parties did not agree as to one key fact in the record, as there was confusion between the terms "dosage" and "prescription." And, he claims that defendants failed to produce any evidence that challenged plaintiff's remaining allegations of Dr. Swantek's negligence or Dr. Giakas' other opinions as to the proper standard of care. Additionally, plaintiff contends that the trial court erred in denying his motion to reconsider, as it misapplied the law to

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the facts of this cause. We disagree with his contentions.

¶ 14 We turn first to plaintiff's arguments regarding the trial court's grant of summary judgment in favor of defendants. Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001); accord *Purtill v. Hess*, 111 Ill. 2d 229, 240-44 (1986). While this relief has been called a "drastic measure," it is an appropriate tool to employ in the expeditious disposition of a lawsuit in which " 'the right of the moving party is clear and free from doubt.' " *Morris*, 197 Ill. 2d at 35, quoting *Purtill*, 111 Ill. 2d at 240. Appellate review of a trial court's grant of summary judgment is *de novo* (see *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992)), and reversal will occur only if we find that a genuine issue of material fact exists (see *Addison v. Whittenberg*, 124 Ill. 2d 287, 294 (1988)).

¶ 15 We find that there were no genuine issues of material fact remaining here and, thus, that the trial court's grant of summary judgment was proper.

¶ 16 While plaintiff did not need to prove his entire cause during this stage of litigation, he was nevertheless required, as the nonmoving party, to present some factual basis and evidentiary facts to support the elements of his cause of action. See *Bellerive v. Hilton Hotels Corp.*, 245 Ill. App. 3d 933, 936 (1993). In other words, he was not entitled to rely on the allegations in his complaint in order to raise a genuine issue of material fact. See *CitiMortgage, Inc. v. Bukowski*, 2015 IL App (1st) 140780, ¶ 19; accord *Rucker v. Rucker*, 2014 IL App (1st) 132834, ¶ 49; see

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also *Winnetka Bank v. Mandas*, 202 Ill. App. 3d 373, 387-88 (1990) (he has a duty to present a factual basis which would arguably entitle him to judgment in his favor based on the law). This basis must recite facts and not mere conclusions or statements based on information and belief. See *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010); *In Interest of E.L.*, 152 Ill App. 3d 25, 31 (1987).

¶ 17 In the context, as here, of medical malpractice, to properly state a cause of action for negligence, plaintiff was required to prove the standard of care by which to measure defendants' conduct, that defendants negligently breached that standard of care, and that defendants' breach was the proximate cause of his injuries. See *Seef v. Ingalls Memorial Hospital*, 311 Ill. App. 3d 7, 15 (1999); *Jones v. Chicago Osteopathic Hospital*, 316 Ill. App. 3d 1121, 1126 (2000).

Clearly, then, proximate cause is an essential element of a negligence claim, and the burden rested with plaintiff to positively show that defendants' alleged negligence cause his injuries. See *Bermudez v. Martinez Trucking*, 343 Ill. App. 3d 25, 29 (2003); accord *Aguilera v. Mount Sinai Hospital Medical Center*, 293 Ill. App. 3d 967, 972 (1997) (the "[p]laintiff must establish that it is more probably true than not true that the negligence was a proximate cause of the injury"). Significantly, the proof needed to sustain proximate causation in the medical malpractice context must come via medical expert testimony, or else plaintiff's cause of action fails. See *Seef*, 311 Ill. App. 3d at 15; accord *Mengelson v. Ingalls Health Ventures*, 323 Ill. App. 3d 69, 74-75 (2001) (in the absence of expert testimony presented by the plaintiff that the defendant's acts caused the injuries within a reasonable degree of medical certainty, a verdict in the plaintiff's favor cannot stand). And, critically, proximate causation is not established where

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the medical expert testimony of causal connection is "'contingent, speculative or merely possible.'" *Mengelson*, 323 Ill. App. 3d at 75, quoting *Newell v. Corres*, 125 Ill. App. 3d 1087, 1092 (1984); accord *Kunz v. Little Co. of Mary Hospitals & Health Care Centers*, 373 Ill. App. 3d 615, 620 (2007). Rather, "proximate cause in a malpractice case must be established by expert testimony to 'a reasonable degree of medical certainty.'" See *Aguilera*, 293 Ill. App. 3d at 972, quoting *First National Bank v. Porter*, 114 Ill. App. 3d 1, 13 (1983). While it is true that proximate cause is generally a question of fact for the trier of fact, "it becomes a question of law when the facts alleged indicate that a party would never be entitled to recover." *Bermudez*, 343 Ill. App. 3d at 30; accord *Mengelson*, 323 Ill. App. 3d at 75-76 (questions involving proximate cause in medical context are generally for a jury; however, they are no longer a material issue of fact where only one conclusion is clear from the evidence presented).

¶ 18 In the instant cause, the central focus, as the parties themselves state, is whether plaintiff demonstrated that Dr. Swantek's treatment of him, *i.e.*, the two prescriptions of Abilify she ordered for him in July and August 2010, was negligently performed and whether her negligence was the proximate cause of his injury, *i.e.*, that it caused or worsened his TD. Even with Dr. Giakas' expert testimony, plaintiff failed to meet this burden.

¶ 19 Plaintiff gleaned testimony from Dr. Giakas which provided his view of the standard of care in prescribing antipsychotic medications, including Abilify, for the treatment of TD. According to Dr. Giakas, such medications, which are given to treat psychological issues, sometimes result in TD as a side effect. He explained that this is why a patient's movements should be monitored while on such medications, to check for the onset of disorders like TD. Dr.

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Giakas also testified that, in his view, Dr. Swantek breached this standard of care in two ways: in not "appropriate[ly]" documenting plaintiff's informed consent when she prescribed the Abilify, and in believing she could treat his TD with Abilify, which he noted plaintiff had been prescribed years before and which he believed had cause his TD.

¶ 20 While Dr. Giakas' testimony in this respect is important because it demonstrates the standard of care applicable here, as well as the assertion that Dr. Swantek breached that standard, the remainder of his testimony wholly defeats plaintiff's cause. This is because there is no expert testimony from Dr. Giakas, or from any other expert for that matter, that this alleged breach in the standard of care by Dr. Swantek, even if accepted as true, was the cause of plaintiff's injury. In other words, plaintiff failed to establish that the violation of the standard of care, if Dr. Swantek did, indeed, violate it, was the legal cause of his TD or of the worsening of it. In fact, Dr. Giakas directly, and repeatedly, testified to the contrary.

¶ 21 First, there is no question that Dr. Swantek's two prescriptions of Abilify ordered to plaintiff did not cause his TD. As the record reflects, and as Dr. Giakas stated at the outset of his deposition, plaintiff was diagnosed with TD in April 2007—over three years before he ever saw Dr. Swantek or was treated by her. Plaintiff began treatment at defendant hospital in 2001 and was treated there intermittently for his mental health concerns for over a decade by several different doctors who ordered several different antipsychotic medications for him, including Abilify. According to Dr. Giakas, any one of these drugs, alone or in combination, could have contributed to the development of plaintiff's TD. However, he could not pinpoint what medication caused plaintiff's TD or when it developed, other than to affirm that it was diagnosed

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on April 18, 2007, when plaintiff was hospitalized upon his return from a lengthy trip to Egypt. Again, Dr. Giakas averred that this was long before he began seeing Dr. Swantek for treatment; plaintiff presented to Dr. Swantek already having had TD for some three years. Moreover, Dr. Giakas was questioned about whether, apart from the Abilify prescriptions at issue, any other medications she prescribed to plaintiff could have caused his TD. Dr. Giakas commented on over 10 such medications, specifically concluding that each one was unlikely to have done so. Critically, after describing how he believed Dr. Swantek deviated from the standard of care, Dr. Giakas admitted that her deviations did not cause plaintiff's TD.

¶ 22 Second, it is also clear that Dr. Swantek's two prescriptions of Abilify did not worsen plaintiff's TD. After taking a break and conferring with counsel, Dr. Giakas did testify that Dr. Swantek's prescriptions "had to have contributed to" plaintiff's TD, since they prolonged his exposure to Abilify for 60 days. However, throughout his deposition, Dr. Giakas repeatedly stated that Dr. Swantek's prescriptions did not worsen plaintiff's TD. Initially, Dr. Giakas admitted that while antipsychotic medications like Abilify can cause or contribute to TD and its permanency, they are also prescribed to treat, manage and mask the symptoms of TD, particularly when they are reinitiated after a time or when their dosage is increased. Here, plaintiff had taken Abilify in the past but was not taking it when Dr. Swantek reinitiated it to help him cope with his symptoms. She prescribed two 30-day prescriptions of 2 milligrams daily, which Dr. Giakas testified was the lowest strength tablet of this drug distributable, a third generation medication in the tier least likely to cause movement disorders. When asked if these prescriptions worsened plaintiff's TD, Dr. Giakas stated that, while it could be possible, "it's hard

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to know" and, more directly, he clearly admitted that "[i]t is unlikely." Additionally with respect to worsening, Dr. Giakas, who had reviewed the depositions of several of the specialists to whom Dr. Swantek had referred plaintiff to treat his symptoms over his two years of treatment with her, admitted they had all testified that, while plaintiff may have believed his condition was worsening during this time, there was no objective evidence that this was occurring. In fact, Dr. Giakas stated that TD is not a degenerative disease. And, Dr. Giakas firmly clarified during his deposition that he did not know "with a hundred percent certainty" that Dr. Swantek's treatment "would make [plaintiff's TD] worse." He admitted there was no objective evidence to this effect, and he could not state how her two prescriptions made his TD worse, when his TD became permanent, or what, if anything, changed in his condition when he took them.

¶ 23 Rather, the only expert testimony Dr. Giakas provided with a reasonable degree of medical certainty was that Dr. Swantek's two prescriptions of Abilify, while they may have been violative of the standard of care he presented, did not cause or worsen plaintiff's TD. In fact, Dr. Giakas consistently testified that his review of plaintiff's care was a more "global" one, spanning the 11 years of treatment he received, and not particularly the final two years with Dr. Swantek. In his view, the critical point in time of plaintiff's treatment—that point where Dr. Giakas believed changes in his treatment should have been made to prevent or minimize the effects of his TD—was, as he described, when plaintiff "started experiencing motor side effects early on," and "definitely in 2007." It was then that he believed something medically should have been done to change the course of plaintiff's treatment and that such an alteration would have resulted in a different outcome for him. Yet, as Dr. Giakas specified, this point in time in plaintiff's treatment

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did not pertain to Dr. Swantek.

¶ 24 Again, the issue in the instant cause is whether, as a matter of law, plaintiff has established that his injuries (his development and worsening of TD) were proximately caused by the alleged negligence of Dr. Swantek in prescribing the two Abilify prescriptions to him in July and August 2010. Plaintiff has not done so. Even assuming that Dr. Swantek did violate the standard of care, no medical testimony has been provided to establish to a reasonable degree of medical certainty that plaintiff's TD was the result of her negligence. Thus, summary judgment was proper here.

¶ 25 In support of his contention that genuine issues of material fact remain, plaintiff makes three arguments, all of which are wholly unavailing. First, he insists that the trial court improperly disregarded Dr. Giakas' opinion that plaintiff's symptoms worsened once Dr. Swantek ordered the two prescriptions of Abilify because it was based on plaintiff's own subjective opinion of his condition. However, "[a]n expert opinion is only as valid as the reasons for the opinion. When there is no factual support for an expert's conclusions, the conclusions alone do not create a question of fact." *Aguilera*, 293 Ill. App. 3d at 974. Again, Dr. Giakas testified that not only is TD not a degenerative disease, he had reviewed the depositions of all the specialists involved in plaintiff's care during the time he was seeing Dr. Swantek, and all of them agreed that, although plaintiff complained he believed his symptoms were worsening, there was no objective evidence to indicate that this was true. And, Dr. Giakas himself similarly admitted as much, stating he did not know the "percentage" of how Dr. Swantek's prescriptions made plaintiff's TD worse or how taking them changed his condition, if at all. Thus, Dr. Giakas'

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opinion as to the concept of worsening did not, contrary to plaintiff's insistence, create a question of fact.

¶ 26 Next, plaintiff argues that the record exhibits a confusion between the terms "dosage" and "prescription" during Dr. Giakas' testimony regarding how much Abilify Dr. Swantek prescribed and how much would have caused or affected his TD, and, since the parties did not agree as to their meanings, an issue of fact necessarily remains. This is a complete mischaracterization of the record, one to which even the trial court spoke. That is, during Dr. Giakas' deposition, the parties used the terms "two dosages" and "two prescriptions." Plaintiff is attempting to argue that Dr. Giakas' testimony became ambiguous because the terms really meant two different things, *i.e.*, the former meaning two pills of Abilify to which Dr. Giakas was referring when he testified the drug was unlikely to cause or worsen plaintiff's TD, and the latter meaning two 30-day supplies of the drug to which he did not give a clear opinion. However, the trial court did not find this argument valid below, and we similarly do not find it valid here. When faced with this argument during a discussion of whether plaintiff could succeed in demonstrating proximate cause, the trial court stated that it had reviewed Dr. Giakas' deposition twice and from that, it did not "think anyone in the deposition thought we were talking about two pills." The trial court continued that even "if that is the position of the plaintiff, it seemed to me that it was quite clearly cleared up that we're talking about two prescriptions and that [Dr. Giakas'] position in testimony [was that] it was unlikely that those two prescriptions caused the condition to worsen after he had had it for three years." We agree. From our review of Dr. Giakas' deposition, the plaintiff is correct that the terms were used interchangeably. However, this did not result in any

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confusion; both terms were used to mean two 30-day supplies of Abilify. At no point, even when the term "dose" was used by the parties and Dr. Giakas, is it even conceivable to us that anyone involved in this cause meant literally only two pills of Abilify, as opposed to two 30-day prescriptions, which was the focus of this cause—and the center of plaintiff's allegations of negligence on the part of Dr. Swantek—from the beginning. To argue this now is nothing more than a red herring.

¶ 27 Plaintiff's third, and final, argument claiming that questions of fact remain is his assertion that defendants failed to produce any evidence to challenge his other allegations of Dr. Swantek's negligence or Dr. Giakas' other opinions as to the proper standard of care. Not only was this not an issue in this cause, but plaintiff is mistaken as to the burden of proof here. Dr. Swantek's treatment of plaintiff at issue was her order of the two prescriptions of Abilify in July and August 2010 and her actions related to that. Even assuming she violated the standard of care in prescribing them and in failing to fully inform plaintiff with respect to the medication, as Dr. Giakas testified, there was no evidence—and certainly no evidence to a reasonable degree of medical certainty—to show that her violation of the standard of care was a proximate cause of the injuries he alleged. Again, Dr. Giakas, the only doctor plaintiff presented, stated as much in his deposition when he reviewed Dr. Swantek's two years of care and treatment of plaintiff. Moreover, plaintiff insists it is defendants who were required to challenge any other assertions of negligence he made against Dr. Swantek, which he states can be found in Dr. Giakas' written report. However, in the context of proximate causation and medical malpractice, the burden is on the plaintiff to establish that element of the cause of action with, again, appropriate expert

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medical evidence, and if he cannot do so, his negligence claim inherently fails. See *Mengelson*, 323 Ill. App. 3d at 74-75. Dr. Giakas testified that in his review of Dr. Swantek's treatment of plaintiff, she violated the standard of care in two ways, but also repeatedly admitted that these violations did not cause or worsen his injuries. Additionally, the trial court specifically noted that it had reviewed Dr. Giakas' written report, along with his deposition, and found nothing to support plaintiff's proximate cause argument. At this point, and contrary to plaintiff's contention, defendants were not required to produce anything else to challenge whatever remaining opinions Dr. Giakas had left in this cause.

¶ 28 Plaintiff's arguments that material questions of fact remain as to proximate causation here have no merit. Accordingly, based on the record before us, we find that the trial court's grant of summary judgment in favor of defendants was proper.

¶ 29 We note for the record that plaintiff on appeal also challenges the trial court's denial of his motion to reconsider. In a very brief argument on this matter, he asserts that his motion should have been granted because the trial court misapplied the law to the facts presented herein. In a similarly brief discussion, we disagree. Plaintiff's contention of misapplication essentially raises the same three arguments we have just discussed, namely, that the parties "did not agree on the relevant facts," that the trial court "disregarded" Dr. Giakas' opinion based on plaintiff's subjective opinion that his condition worsened, and that there was other, "uncontroverted evidence" that Dr. Swantek made his TD permanent and irreversible. Having already found each of these meritless, we need not discuss them again. Ultimately, here, the trial court cited plaintiff's own medical expert's testimony in concluding that the alleged violations of the

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standard of care committed by Dr. Swantek were not the proximate cause of plaintiff's injuries. Plaintiff presented nothing else to the contrary. Based on the law, without such medical evidence to show an adequate causal connection, plaintiff's claim of negligence cannot possibly stand. See *Mengelson*, 323 Ill. App. 3d at 74-75. Therefore, and again based on the record before us, the trial court did not misapply the law to the facts of this cause, and its denial of plaintiff's motion to reconsider was proper.

¶ 30

CONCLUSION

¶ 31 Accordingly, for all the foregoing reasons, we affirm both the trial court's grant of summary judgment in favor of defendants and its denial of plaintiff's motion for reconsideration.

¶ 32 Affirmed.