FIRST DIVISION
June 11, 2018

No. 17-1413

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

LINDA ROESLER and WILLIAM ROESLER, Plaintiffs-Appellants, v. (Syed Munzir, M.D., Access Neuro Care, P.C., and Richard Park, M.D., Defendants), and KONSTANTIN DZAMASHVILI, M.D. and CADENCE HEALTH d/b/a CENTRAL DUPAGE HOSPITAL, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County, Law Division No. 14 L 12786 Honorable John Callahan, Jr., Judge Presiding

JUSTICE GRIFFIN delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly entered summary judgment in favor of defendants where defendants did not owe plaintiff a duty of care. In addition, summary judgment was proper because there was no evidence from which a trier of fact could find that defendants proximately caused plaintiff's injury.

¶ 2 Plaintiffs Linda and William Roesler filed a complaint alleging that Linda Roesler ("plaintiff") received negligent medical treatment after suffering a stroke. Plaintiff contends that defendant Dr. Konstantin Dzamashvili committed medical malpractice when he failed to tell plaintiff's treating physician during a phone call that a particular treatment should have been administered to plaintiff. Dr. Dzamashvili moved for summary judgment arguing that he did not owe plaintiff a duty of care during that phone call and also moved for summary judgment on the basis that plaintiff failed to supply any evidence to create a genuine issue of material fact as to whether Dr. Dzamashvili proximately caused her injury. The trial court agreed with Dr. Dzamashvili on both bases and entered a judgment of no liability in his favor. Plaintiffs appeal, and we affirm.

¶ 3 BACKGROUND

¶ 4 Plaintiff Linda Roesler was at Sherman Hospital to undergo a diagnostic cardiac catheterization. After that procedure was performed, plaintiff had an ischemic stroke. An ischemic stroke generally results from an obstruction within a blood vessel supplying blood to the brain. When an ischemic stroke happens, time is of the essence to restore blood flow to the brain. One way to eliminate a blood deprivation to the brain in stroke patients is to intravenously administer tissue plasminogen activator (tPA) to break down the source of the blood flow blockage. However, depending on the severity of the stroke, administering tPA can be risky, and in the case of severe strokes, can result in symptomatic brain hemorrhaging that may be fatal.

¶ 5 After medical personnel recognized the deterioration of plaintiff's condition following her cardiac procedure, defendant Dr. Syed Munzir, a board certified neurologist, was called to examine plaintiff. Dr. Munzir quickly suspected that plaintiff had suffered a stroke. He ordered tests. In conjunction with the tests, the nurses attending to plaintiff performed the National Institute of Health's stroke scale assessment. The assessment requires medical professionals to

record certain observations of a patient's impairment to determine if the patient has had a stroke and, if so, to measure its severity. Points are assigned to certain observations that would generally indicate that a patient has suffered a stroke and, the higher the overall score, the higher the likelihood that the patient has suffered a severe stroke. A zero on the stroke scale would indicate that the patient showed no stroke symptoms, while any score greater than 21 would indicate that the patient has had a severe stroke. Plaintiff was assessed by the medical professionals at Sherman Hospital to have a score of 22 at the time of the examination.

¶ 6 As a result of plaintiff having what the medical professionals at Sherman Hospital assessed to be a severe stroke, Dr. Munzir considered and decided not to administer intravenous tPA to plaintiff. In his notes, referring to the medical procedure plaintiff underwent earlier that morning, Dr. Munzir recorded that plaintiff was "not a candidate for IV thrombolytic therapy, given the recent cardiac cath." Dr. Munzir testified at his deposition, however, that the main reason for not administering tPA to plaintiff was the severity of her stroke. He believed that administering tPA would "do more harm than good" and would "put [her] at significant jeopardy of having complications." Dr. Munzir then proceeded to arrange for plaintiff to be transferred to Central DuPage Hospital because Central DuPage offers a wider variety of stroke treatments and Dr. Munzir thought that the alternative treatments offered there would have a lower risk of complications and would provide plaintiff with more effective treatment options.

¶ 7 Sherman Hospital and Central DuPage Hospital have a "stroke transfer procedure" in place between them. The only real stroke treatment available at Sherman Hospital is the intravenous tPA treatment, but Dr. Munzir found the administration of tPA to be an inadvisable treatment option for plaintiff. The National Institute of Health's guidelines and Sherman Hospital's own guidelines caution against giving tPA to patients that have had severe strokes.

However, decisions to administer tPA always depend on each particular case. There are many considerations.

¶ 8 In connection with the scheduled transfer to Central DuPage Hospital—and this event is the genesis of this appeal—Dr. Munzir spoke with defendant Dr. Konstantin Dzamashvili, a neurologist at Central DuPage Hospital, regarding plaintiff's transfer. Dr. Munzir explained in his deposition that he did not remember the specifics of his conversation with Dr. Dzamashvili regarding plaintiff, but that doctors working out the transfer of patients under such circumstances would generally discuss that the patient had suffered a stroke, treatment options, and the decision not to administer tPa.

¶ 9 Dr. Dzamashvili was made a defendant in this lawsuit. The basis on which plaintiff alleges Dr. Dzamashvili is liable is that, during the phone call with Dr. Munzir, Dr. Dzamashvili negligently failed to recommend or direct Dr. Munzir to administer tPA to plaintiff. Both doctors testified in depositions about their conversation. Dr. Munzir testified that he was not open to any suggestion from Dr. Dzamashvili regarding the administration of tPA, he was not seeking medical advice in any way. Dr. Munzir also testified that he would have disagreed with Dr. Dzamashvili if he had recommended over the phone that tPA be administered, and that he would not have changed the course of treatment as a result of getting comment from Dr. Dzamashvili, or anyone else for that matter, who had not seen or evaluated the patient.

¶ 10 Plaintiff alleges that Dr. Dzamashvili's failure to recommend the administration of tPA during that phone call deviated from the standard of care and renders him liable. Dr. Dzamashvili moved for summary judgment in the trial court and succeeded. The trial court held that Dr. Dzamashvili did not owe plaintiff a duty of care during his phone call with Dr. Munzir leading up to plaintiff being transferred to Central DuPage Hospital. The trial court also held that there

was no evidence from which a trier of fact could find proximate cause between any act or omission by Dr. Dzamashvili and plaintiff's injury. Plaintiff appeals pursuant to the trial court's finding under Supreme Court Rule 304(a) that there was no just reason to delay the enforcement or appeal of the judgment in favor of Dr. Dzamashvili.

¶ 11 ANALYSIS

¶ 12 In Illinois, a physician's duty of care is limited to those situations where there is a direct physician-patient relationship or there is a special relationship sufficient to impose a duty on the physician. *Weiss v. Rush North Shore Medical Center*, 372 Ill. App. 3d 186, 188 (2007). A duty of care might result from a "special relationship" in this context when, for example, a physician is asked by another physician to provide a service to a patient, conduct laboratory tests, or review test results. *Id*. Whether a duty of care exists is a question of law. *Sandler v. Sweet*, 2017 IL App (1st) 163313, ¶ 11. We review a trial court's ruling on a motion for summary judgment *de novo*. *Illinois Tool Works Inc. v. Travelers Casualty & Surety Co.*, 2015 IL App (1st) 132350, ¶ 8.

¶ 13 Plaintiff contends that Dr. Dzamashvili owed her a duty of care during his phone call with Dr. Munzir in anticipation of the transfer to Central DuPage Hospital and that his failure to instruct Dr. Munzir to administer tPA constitutes medical negligence.

¶ 14 We are bound by our Supreme Court's holding that "a plaintiff cannot maintain a medical malpractice action absent a direct physician-patient relationship between the doctor and plaintiff or a special relationship *** between the patient and the plaintiff." *Kirk v. Michael Reese Hospital & Medical Center*, 117 Ill. 2d 507, 531 (1987). In this case, there was not an adequate relationship between Dr. Dzamashvili and plaintiff to impose a duty of care upon Dr. Dzamashvili for his conduct during his brief phone conversation with Dr. Munzir.

¶ 15 Plaintiff tacitly acknowledges that the above-cited precedent, as it has been applied in

Illinois courts, is fatal to her appeal. However, plaintiff goes on to examine decades of case law in Illinois and elsewhere and urges us to abandon the currently-applied duty analysis and reexamine the precedent that a physician owes a duty of care only to someone with whom he has a physician-patient relationship. We reject plaintiff's invitation to reexamine or abandon the duty analysis Illinois courts apply in medical malpractice cases. As we have reaffirmed time and again, the rule strikes the proper balance of holding physicians accountable while not stifling communication between doctors and expanding their duty of care to an indeterminate class of plaintiffs based on informal, cursory conversations. See *Reynolds v. Decatur Memorial Hospital*, 277 Ill. App. 3d 80, 85-87 (1996); *Weiss*, 372 Ill. App. 3d at 188-89 (2007).

¶ 16 Plaintiff argues that the holding in *Kirk*—that a direct physician-patient relationship is required for a duty to be imposed—has been "appropriated" by this court as a replacement for the traditional duty analysis. Plaintiff claims that for more than 20 years, this court, "most notably the First District," has consistently misapplied *Kirk* by analyzing the rule announced therein in a way that is "convoluted," "inconsistent," and "totally inadequate." However, whether we apply the rule set forth in *Kirk* or we apply only general negligence principles, Dr. Dzamashvili did not owe plaintiff a duty of care at the relevant time.

¶ 17 The uncontradicted evidence shows that plaintiff and Dr. Dzamashvili had essentially no relationship at the time of the phone call. Dr. Dzamashvili never provided any services to her, never reviewed her records or observed her, and never was asked for or offered advice concerning her treatment. The only purpose of the phone call was to secure permission for the transfer and to prepare Central DuPage Hospital for plaintiff's arrival. Dr. Dzamashvili was not under a duty to offer unsolicited medical advice regarding a patient who he knew nothing about. The patient was fully under the care of Dr. Munzir at the time. The burden plaintiff asks us to

place on non-treating physicians is extreme in its breadth. In other cases in which we have found no duty to exist, doctors have had far more of a connection to the plaintiff than exists here. See *Weiss*, 372 Ill. App. 3d at 188-89; *Siwa v. Koch*, 388 Ill. App. 3d 444, 447-48 (2009). Dr. Dzamashvili did nothing to undertake a duty during that short conversation and it would be totally contrary to established precedent and to established principles of negligence law to impose a duty of care on him under such circumstances.

¶ 18 Moreover, regardless of the duty analysis applied, the undisputed evidence demonstrates that Dr. Dzamashvili did not proximately cause plaintiff's injury. There is no genuine issue of material fact on the issue of proximate cause to preclude the entry of a judgment of no liability in favor of Dr. Dzamashvili.

¶ 19 In order for a plaintiff to recover in a medical malpractice case, the plaintiff must prove, among other things, that the defendant's negligence proximately caused the injuries for which the plaintiff seeks redress. *Wiedenbeck v. Searle*, 385 Ill. App. 3d 289, 292 (2008). While the issue of proximate cause is ordinarily a question of fact for the jury, at the summary judgment stage the plaintiff is required to present some affirmative evidence that the defendant's negligence was arguably a proximate cause of the plaintiff's injuries. *Id*. If the plaintiff fails to do so, summary judgment is proper as a matter of law. *Id*. at 292-93. Again, we review a trial court's ruling on a motion for summary judgment *de novo*. *Illinois Tool Works*, 2015 IL App (1st) 132350, ¶ 8.

¶ 20 There was no evidence presented at the summary judgment stage from which a trier of fact could ever find Dr. Dzamashvili liable for plaintiff's injury. In fact, to the contrary, the undisputed evidence establishes that no act or omission by Dr. Dzamashvili was the cause in fact or the legal cause of plaintiff's injury. Even if Dr. Dzamashvili did everything that plaintiff

alleges he was negligent for not doing, the undisputed evidence shows that nothing would have changed. Plaintiff failed to produce any evidence that could possibly show that Dr. Dzamashvili proximately caused her injury.

¶ 21 The only basis on which plaintiff contends Dr. Dzamashvili was negligent was by failing to recommend or direct Dr. Munzir to administer intravenous tPA during their conversation about transferring plaintiff from Sherman Hospital to Central DuPage Hospital. Dr. Dzamashvili had not examined plaintiff at the time. The only information Dr. Dzamashvili had about plaintiff's condition was the information provided to him by Dr. Munzir.

¶ 22 Dr. Munzir had full control over plaintiff's treatment and had all the necessary information at hand to make treatment decisions. He is a board certified neurologist. Dr. Munzir testified unequivocally that he made the independent clinical decision to not administer tPA to plaintiff. Dr. Munzir knew tPA was a possible treatment for plaintiff and he considered and rejected it as a viable option. Dr. Dzamashvili was not an active participant in treatment at the time of the phone call and could not control the care. Dr. Munzir was not calling Dr. Dzamashvili for treatment advice or anything of the sort. The decision to not administer tPA had already been made before Dr. Munzir spoke to Dr. Dzamashvili.

¶ 23 Moreover, Dr. Munzir also testified unequivocally that, even if Dr. Dzamashvili told him to administer tPA to plaintiff, he never would have done so. Dr. Munzir made an independent assessment that administering tPA would have done more harm than good, and he testified that he would not have changed that assessment based on anything another doctor said when that doctor had not even examined the patient. The evidence directly contradicts a point essential to plaintiff's claim: that "but for" Dr. Dzamashvili failing to advocate for the administration of tPA, plaintiff's injury could have been mitigated. Dr. Munzir's testimony makes clear that if anyone

was negligent for not administering tPA, it was himself. If Dr. Dzamashvili did everything plaintiff claims he was negligent for not doing, the uncontradicted evidence establishes that the outcome would have been exactly the same.

¶ 24 A number of cases have examined similar circumstances and found that when a treating physician testifies unequivocally that he would not have altered his course of treatment had he been given information that he did not have at the time of the allegedly negligent act, the party who failed to give the physician that information is not liable. The preeminent case on the issue is *Gill v. Foster*, 157 Ill. 2d 304, 310-11 (1993) wherein our supreme court affirmed a grant of summary judgment after a nurse allegedly failed to alert a doctor to a patient's chest pain before the patient was discharged from the hospital. However, the doctor already knew about the patient's chest pain, so "even assuming the nurse had breached a duty to inform the treating physician of the patient's complaint, this breach did not proximately cause the delay in the correct diagnosis of the plaintiff's condition." *Id*. at 311. Similarly here, the undisputed evidence establishes that Dr. Munzir knew all the relevant information to treat plaintiff, was in full control of the treatment, and nothing done by Dr. Dzamashvili proximately caused plaintiff's injury.

¶ 25 Even more on point is *Seef v. Ingalls Memorial Hospital*, 311 Ill. App. 3d 7 (1999) where the nurses treating a pregnant patient were alleged to have been negligent for failing to alert the doctor about abnormalities they observed in the strips used to monitor the condition of the fetus. However, the doctor "testified that he would have done nothing differently even had he seen the monitor strips earlier." *Id*. at 16. The *Seef* court succinctly noted that unlike other cases where we are charged with assessing proximate cause in the failure to inform context, "we need not infer what [the doctor] may or may not have done had he been notified earlier. [The doctor] provided that answer himself: he would have done nothing differently." *Id*. at 19-20. Thus, the court held,

as we do here that "[t]here was no question of fact to consider." *Id*. at 19; see also *Sunderman v. Agarwal*, 322 Ill. App. 3d 900, 904 (2001) (where lab tests were alleged to have been negligently performed, a doctor's testimony that he would not have done anything differently if the report had been different meant that there was no genuine issue of material fact as to the nonexistence of proximate cause).

¶ 26 Although plaintiff supplied expert testimony in her effort to generate some causal link between an act or omission by Dr. Dzamashvili and plaintiff's injury, the testimony is insufficient to create a triable question of fact on the issue of proximate cause. In *Snelson v. Kamm*, 204 Ill. 2d 1, 46 (2003), our supreme court acknowledged that there might be certain circumstances where expert testimony would be sufficient to create a genuine issue of material fact regarding causation even if the doctor testifies he would not have acted differently if he had all the information. But the expert testimony presented here is not of the character to create a genuine issue of material fact.

¶ 27 Plaintiff's expert, Dr. Stephen Levine, acknowledged in his testimony that it was Dr. Munzir who was "legally responsible" for plaintiff's care at the relevant time and that Dr. Munzir was "*the one that decided* not to give [tPA]." Dr. Levine acknowledged that regardless of what Dr. Dzamashvili would have said, Dr. Munzir was the one responsible for plaintiff's care. Dr. Levine's testimony as it relates to Dr. Dzamashvili's liability fails to create a genuine issue of material fact on the issue of proximate cause. If anyone was negligent for not administering tPA, Dr. Munzir has acknowledged that it would be himself, and there is no triable issue as to whether Dr. Dzamashvili proximately caused plaintiff's injury.

¶ 28 CONCLUSION

¶ 29 Accordingly, we affirm.

¶ 30 Affirmed.