2013 IL App (5th) 100396-U

NO. 5-10-0396

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT



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| MARGARET BOEHLER, Administrator of the Estate of Marilee Midden, Deceased,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>SALLY DAY and HELEN LONG,<br><br>Defendants-Appellees,<br><br>and<br><br>REBEKKA CHRISTIE and ALTON MEMORIAL HOSPITAL,<br><br>Defendants. | ) | Appeal from the Circuit Court of Madison County.<br><br>No. 03-L-2038<br><br>Honorable A. A. Matoesian, Judge, presiding. |

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Wexstten and Cates concurred in the judgment.[1]

**ORDER**

¶ 1 *Held*: The plaintiff presented sufficient evidence on the issue of proximate cause to survive a motion for summary judgment related to allegations of nurses' negligence for failure to go up the chain of command when the treating physician did not administer thrombolytic therapy and for failure to assist the physician by not understanding and informing the physician about delays in patient's transfer to a different hospital for cardiac catheterization.

[1]Originally, Justice Donovan was assigned to this case. Justice Cates was later substituted on the panel and has read the briefs and listened to the audiotape of oral argument.

¶ 2 The plaintiff, Margaret Boehler, filed a medical malpractice suit, alleging negligence in the death of her mother, Marilee Midden, following a myocardial infarction. She alleged negligence on the part of the emergency room physician and two nurses who were involved in her mother's care. Specifically, she alleged that the physician was negligent for failing to revascularize Midden by providing thrombolytic therapy and in failing to timely transfer her to a different facility where she could receive cardiac catheterization. She further alleged that the nurses had a duty to recognize the significance of the myocardial infarction and understand the protocol for the timely treatment options of thrombolytic therapy and coronary catheterization. She alleged that they violated that duty by (1) failing to recommend thrombolytic therapy to the doctor and/or take the matter up the chain of command when the physician refused to give thrombolytic therapy and (2) failing to assist the physician by not understanding and informing the physician about delays in the patient's transfer to a different hospital where she could receive a timely cardiac catheterization. The plaintiff appeals an order of the trial court granting a motion for summary judgment in favor of the two nurses. She argues that the pleadings, depositions, affidavits, and documents on file indicate that there is a genuine issue of material fact precluding summary judgment on each of these allegations. We reverse.

¶ 3 Marilee Midden called her daughter, plaintiff Margaret Boehler, at approximately 2:26 on the afternoon of October 20, 2002. Midden complained of indigestion and weakness. She also indicated that she was sweating. She thought that her symptoms began at around 1 p.m. Boehler, a cardiac nurse, went to her mother's house. Boehler thought that her mother needed to go to a hospital and called for an ambulance. The ambulance transported Midden to Alton Memorial Hospital.

¶ 4 Midden arrived at Alton Memorial at 4:35 p.m. She was attended by

emergency room physician Rebekka Christie and nurses Helen Long and Sally Day, each of whom are named defendants in this case. Although Midden was responsive when she first arrived, within minutes she became unresponsive due to an apparent myocardial infarction. A code was called, and Dr. Christie and the nurses used a defibrillator and administered CPR. Midden was revived and conscious a few minutes later.

¶ 5 At 5 p.m., Dr. Christie spoke with the Midden's daughter, Boehler, in the waiting room. She informed Boehler that she had consulted with Midden's primary care physician, Dr. Christopher Green, and a cardiologist, Dr. Bharat Shah, about whether to administer thrombolytics. Thrombolytic therapy is a drug therapy, and it is one option available to revascularize or improve the blood circulation of a patient suffering from myocardial infarction. The plaintiff's expert witnesses testified that the standard of care is that unless contraindicated, thrombolytics should be given within 30 minutes from when the patient arrives in the emergency room and can be beneficial if given up to 6 hours after onset of cardiac symptoms. The other option of revascularization at issue here is cardiac catheterization, which is a surgical procedure.[2] The plaintiff's expert witnesses testified that the standard of care is that

[2]The parties and witnesses use the following medical terms interchangeably when speaking about two treatment options used to revascularize a patient following a myocardial infarction. One of the treatment options used to improve blood circulation is variously described as thrombolytic, tPA, TPA, and fibrinolytic. The other treatment option is variously described as cardiac catheterization or coronary arteriography. For the sake of clarity, we have chosen to consistently use the term thrombolytic to describe the one treatment option and the term cardiac catheterization to describe the other treatment option. Any differences in the meanings of these words are not at issue in this case.

cardiac catheterization should be started within 90 minutes of the patient's hospital arrival.

¶ 6 The defendants and their expert witnesses generally agreed with these time lines, but referred to them as guidelines rather than the standard of care. All the physician witnesses, including defendant Dr. Christie, testified that time is of the essence in revascularizing a patient following a myocardial infarction. Alton Memorial Hospital did not have the capability at that time to perform cardiac catheterization. The key issues in this case are Dr. Christie's decision not to administer thrombolytics at Alton Memorial and the failure to effectuate a timely transfer of Midden to a different facility for cardiac catheterization.

¶ 7 Dr. Christie ultimately decided to transfer Midden to Christian Northeast Hospital for cardiac catheterization. However, Dr. Christie's testimony is less than clear on the timing of this decision and the actions taken to effectuate the transfer. The only hospital record indicating times are two nurse's entries. The first, at 6:08 p.m., states: "Plan to transfer for Christian Northeast for cath. Will call back after verifies bed available and they can do it." The second entry, at 6:17 p.m., states, "Christian Northeast has bed 25 available and Arch notified." There is also an entry by Dr. Christie made on the ACLS (advanced cardiac life support) cardiac resuscitation sheet, which states: "Green–call St. Louis Cardiology; Shaw–will try to find a bed at Christian. Shaw spoke with him again. Has bed. Transfer for cath." Dr. Christie testified that she would have made the decision to transfer Midden to Christian Northeast after speaking with the on-call cardiologist, Dr. Shah. Dr. Christie said that Dr. Shah told her that he could perform the cardiac catheterization at Christian Northeast Hospital. It is unclear when this call took place. Dr. Christie testified that although she could not remember when the first call was made, it would

be very unusual for a bed to become available in so short a time. She therefore believed someone must have called earlier.

¶ 8 At 7:25 p.m., Midden left Alton Memorial for transfer to Christian Northeast. The cardiac catheterization procedure began at 8:40 p.m. Midden died the following day. The plaintiff's expert opined that the cardiac catheterization was not successful because Midden's heart tissue had died before the procedure even began. The cardiac catheterization had begun more than four hours after Midden had arrived at Alton Memorial Hospital.

¶ 9 The plaintiff filed her original complaint in this matter on December 19, 2003. The only defendant named in the original complaint was Dr. Christopher Green. On September 24, 2004, the plaintiff filed her first amended complaint, naming Dr. Christie, Alton Memorial Hospital, and the two nurses as defendants. Dr. Green was dismissed in 2007.

¶ 10 Most of the discovery in this case was completed before the plaintiff filed a motion for leave to file her third amended complaint on July 13, 2009. The court granted the motion over the defendants' objections on August 21, 2009. In her third amended complaint, the plaintiff alleged that nurses Day and Long were negligent in failing to recommend thrombolytics to Dr. Christie and take the matter up the chain of command if necessary to ensure that Midden got proper care. The plaintiff also alleged that Day and Long were negligent because they failed to assist Dr. Christie by not understanding and informing her about delays in the patient's transfer to a different hospital where she could receive a timely catheterization. Although both parties conducted additional discovery relevant to the new allegations, the plaintiff did not depose nurse Day or Long again.

¶ 11 In July 2010, the defendants filed a motion for summary judgment on the

negligence counts against the nurses, Day and Long. At that time, depositions were on file from the plaintiff, Margaret Boehler, R.N. (also disclosed as a nursing expert), and the plaintiff's trial experts–Michelle Miller, R.N. (nursing); Dr. Parag Madhani (cardiology); Dr. Bruce Waller (cardiac pathology); and Dr. Frank Baker (emergency medicine). Depositions also were on file from defendants Dr. Christie; Sally Day, R.N.; and Helen Long, R.N.; and the defendants' trial experts–Dr. James Wessley (emergency medicine); Dr. Zia Ahmad (cardiology); Mary Lou Jones, R.N. (nursing); and Diana Kaminsky, R.N. (nursing, also an emergency room nurse at Alton Memorial Hospital).

¶ 12 The court granted summary judgment in favor of the nurses. The plaintiff now appeals that ruling.

¶ 13 Summary judgment is appropriate only if the pleadings, depositions, and affidavits leave no genuine issues of material fact to be resolved and the moving party is entitled to judgment as a matter of law. *Thompson v. Gordon*, 241 Ill. 2d 428, 438, 948 N.E.2d 39, 48 (2011). Because summary judgment is a drastic measure, we must view the factual record in the light most favorable to the nonmoving party. *United National Insurance Co. v. Faure Brothers Corp.*, 409 Ill. App. 3d 711, 716, 949 N.E.2d 1185, 1190 (2011). In addition, summary judgment is not appropriate unless the moving party's right to judgment is "clear and free from doubt." Our review of the trial court's ruling is *de novo*. *United National Insurance Co.*, 409 Ill. App. 3d at 716, 949 N.E.2d at 1190.

¶ 14 In order to prevail in a medical malpractice case, a plaintiff must provide expert testimony to establish (1) the applicable standard of care, (2) a violation of the standard of care, and (3) that the violation of the standard of care is the proximate cause of the plaintiff's injury or decedent's death. *Snelson v. Kamm*, 204 Ill. 2d 1, 42,

787 N.E.2d 796, 819 (2003). A plaintiff need not prove her case to survive a motion for summary judgment; however, she must put forth at least some evidence of each of these elements. *Gyllin v. College Craft Enterprises, Ltd.*, 260 Ill. App. 3d 707, 710-11, 633 N.E.2d 111, 115 (1994). The defendants' arguments in this appeal focus on whether the plaintiff has presented enough evidence that the alleged negligence by nurses Day and Long proximately caused the death of Marilee Midden. We will therefore focus our discussion on the issue of proximate cause as well.

¶ 15 The plaintiff first argues that the evidence on record shows that there is a genuine issue of material fact as to whether the nurses' failure to recommend thrombolytics and take the matter up the chain of command was a proximate cause of Midden's death. We note that, as the defendants point out, the ultimate decision as to whether to give thrombolytic therapy is a medical decision to be made by a doctor, not a nurse. The issue here is whether the doctor's allegedly negligent decision would have been altered had the nurses made the recommendation or taken the matter up the chain of command. The defendants contend that uncontroverted deposition testimony shows that Dr. Christie considered and rejected thrombolytics, which establishes that nothing the nurses did would have influenced her decision. They further contend that the plaintiff did not present any evidence to suggest that anything different would have happened had the two nurses taken the matter up the chain of command.

¶ 16 The defendants contend that the case before us is analogous to *Snelson v. Kamm* and *Gill v. Foster*, 157 Ill. 2d 304, 626 N.E.2d 190 (1993), both of which involved allegations that nurses were negligent for failing to inform doctors of their patients' symptoms. At issue in each case was whether the nurses' failure to communicate the symptoms to the doctors contributed to the doctors' delay in properly diagnosing the patient's conditions.

¶ 17 In *Gill*, the plaintiff suffered an injury when a nasal gastric tube punctured his stomach during a surgery. *Gill*, 157 Ill. 2d at 307-08, 626 N.E.2d at 192. Further surgery was required to correct the problem. *Gill*, 157 Ill. 2d at 308, 626 N.E.2d at 192. The plaintiff was examined by a nurse just prior to being discharged from the hospital. He complained to the nurse of chest pain. *Gill*, 157 Ill. 2d at 309, 626 N.E.2d at 192. Rather than informing the treating physician of this complaint, the nurse advised the plaintiff to see his family doctor. *Gill*, 157 Ill. 2d at 309, 626 N.E.2d at 192-93. One count of the plaintiff's complaint alleged that the discharge nurse was negligent in failing to relate these symptoms to the nursing supervisor or the plaintiff's treating physician. The complaint further alleged that this contributed to a delay in diagnosing the plaintiff's injury, which in turn led to a more complicated surgery to fix the problem. *Gill*, 157 Ill. 2d at 310, 626 N.E.2d at 193.

¶ 18 The trial court granted the defendant hospital's motion for summary judgment as to the count of the complaint premised on the negligence of the discharge nurse. *Gill*, 157 Ill. 2d at 310, 626 N.E.2d at 193. On appeal, the supreme court noted that the patient had been complaining of chest pain for three days prior to his release from the hospital. During those three days, his treating physician examined him several times–including once on the morning he was discharged–and was aware that the plaintiff was experiencing chest pain. *Gill*, 157 Ill. 2d at 310, 626 N.E.2d at 193. In affirming the summary judgment order, the supreme court explained that because the doctor failed to diagnose the plaintiff's condition in spite of knowing about his complaints of chest pain, the nurse's failure to inform him that the plaintiff had complained to her that he was still experiencing chest pain could not have been a proximate cause of the doctor's failure to diagnose the problem. *Gill*, 157 Ill. 2d at 311, 626 N.E.2d at 193.

¶ 19 *Snelson*, likewise, involved a claim that a hospital nurse's failure to inform a doctor of a patient's complaints led to a delay in diagnosing his condition. There, the plaintiff underwent a procedure called a translumbar arteriogram. *Snelson*, 204 Ill. 2d at 10, 787 N.E.2d at 801. Due to a complication in the procedure, he experienced a blood clot, which ultimately caused much of the tissue in his large and small intestines to die due to lack of blood flow to the intestines. *Snelson*, 204 Ill. 2d at 14-15, 787 N.E.2d at 803-04. Immediately after the procedure, the plaintiff complained of abdominal pain. However, the plaintiff's treating physician did not diagnose the problem until the following day. *Snelson*, 204 Ill. 2d at 11, 787 N.E.2d at 802. The plaintiff's expert witness at trial opined that this delay was the proximate cause of the loss of so much tissue. *Snelson*, 204 Ill. 2d at 15, 787 N.E.2d at 804.

¶ 20 While the plaintiff was recovering, nurses charted his vital signs and complaints of abdominal pain, and generally kept his treating physician informed of the plaintiff's condition. *Snelson*, 204 Ill. 2d at 11-12, 787 N.E.2d at 802. However, they failed to tell the physician that (1) they had placed a catheter in the patient at 3 o'clock in the afternoon and (2) the plaintiff continued to complain of abdominal pain after the doctor left for the day at 6 p.m. The plaintiff alleged that these omissions constituted a breach of the standard of care applicable to the nurses. *Snelson*, 204 Ill. 2d at 43, 787 N.E.2d at 819.

¶ 21 The trial court granted a judgment notwithstanding the verdict in favor of the nurses. On appeal, the supreme court noted that the doctor had access to the nurses' notes on their care of the patient. He was thus aware, when he examined the patient in the evening, that the catheter had been placed at 3 p.m. *Snelson*, 204 Ill. 2d at 43, 787 N.E.2d at 819. Moreover, the doctor testified that the nurses had provided him with all the information that he needed. *Snelson*, 204 Ill. 2d at 15, 787 N.E.2d at 804. The

supreme court emphasized the fact that the doctor was aware that the plaintiff was experiencing pain and "clearly anticipated" that the plaintiff's pain would continue through the night because he increased the dosage of pain medication the plaintiff was receiving. *Snelson*, 204 Ill. 2d at 44, 787 N.E.2d at 820. The court explained that the fact that the doctor was aware of the plaintiff's pain "and yet was unconcerned about it beyond his ordering of [pain medication] means that the nurses' conduct on this matter could not have been the proximate cause" of the plaintiff's injury. *Snelson*, 204 Ill. 2d at 44, 787 N.E.2d at 820.

¶ 22 In arguing that the instant case is analogous to both *Gill* and *Snelson*, the defendants point out that there is uncontroverted deposition testimony that Dr. Christie actually considered administering thrombolytics but decided against it. The plaintiff testified that Dr. Christie spoke with her at about 5 p.m. and told her that she had conferred with Dr. Green and Dr. Shah and that Dr. Shah wanted thrombolytics administered and Dr. Green did not. Dr. Christie testified that she did remember consulting with both doctors about Midden's care, but she did not recall whether she specifically discussed administering thrombolytics. Dr. Christie testified that by about 6:08 p.m., she had decided not to administer thrombolytics, believing it to be relatively contraindicated. The defendants argue that, just as in *Gill* and *Snelson*, the fact that Dr. Christie actually considered thrombolytics shows that she would not have followed a different course of action had the nurses suggested it to her. Indeed, the plaintiff's own expert, Dr. Baker, testified that he believed that Dr. Christie's decision would not have been impacted by anything the nurses suggested.

¶ 23 We agree with the defendants that *Gill* and *Snelson* are controlling on this point. There is no reason to believe that Dr. Christie would have acted any differently had nurse Day or Long recommended thrombolytics since Dr. Christie had already

considered and rejected thrombolytics. Assuming, *arguendo*, that the nurses breached the standard of care in that regard, their breach could not have been a proximate cause of Midden's injury because once Dr. Christie considered and rejected thrombolytics, the causal link between their negligence and the injury was broken. See *Snelson*, 204 Ill. 2d at 44, 787 N.E.2d at 820; *Gill*, 157 Ill. 2d at 311, 626 N.E.2d at 193.

¶ 24 However, we disagree with the defendants' contention that the plaintiff did not provide any evidence to support her allegation that the nurses' failure to take the matter up the chain of command would have had any impact on Dr. Christie's decision to give thrombolytics. *Gill* and *Snelson* are inapposite to the case at bar on this point as neither case involved a chain-of-command allegation. Here, there is still a factual issue as to whether Dr. Christie would have undertaken a different course of treatment if the nurses had gone up the chain of command and someone other than the nurses had consulted with her or directed her to administer thrombolytics under the circumstances. We believe that there was sufficient evidence to support a finding that a reasonable physician would have given thrombolytics under the circumstances.

¶ 25 Upon diagnosis of a myocardial infarction, the American Heart Association's Advanced Cardiac Life Support (ACLS) guidelines require thrombolytic therapy be given within 30 minutes after arrival at a hospital, unless contraindicated. This was acknowledged by Dr. Christie and essentially all of the medical and nursing witnesses. We also note that the record indicates that Alton Memorial Hospital has an ACLS written protocol for thrombolytic administration along with a checklist. Dr. Christie testified that she was aware of the protocol and the checklist, but did not fill it out. When asked whether she went through the checklist, Dr. Christie testified that she believed that she went through a mental checklist instead.

¶ 26 Dr. Christie testified that she did not begin thrombolytics immediately after

reviving Midden because she needed more information about Midden's medical history in order to determine whether there were contraindications to giving a thrombolytic. Dr. Christie testified that she made the decision not to administer thrombolytics by 6:08 p.m., approximately an hour and a half after Midden's arrival at the hospital. She testified that by that time, she had determined that thrombolytics were relatively contraindicated in Midden's case because she believed that the CPR administered to Midden had been traumatic. Dr. Christie believed that she made the decision to transfer Midden to another hospital for cardiac catheterization much earlier than 6:08 p.m., but admitted that there is no record of this. She also remembered speaking with Dr. Green, Midden's primary care doctor, and Dr. Shah, a cardiologist, sometime before then. We emphasize, however, that she testified that she did not remember whether or not she spoke with either doctor specifically about administering thrombolytic therapy.

¶ 27 The plaintiff and nursing expert, Boehler, testified that nurses are part of the cardiac team and they have a shared responsibility to understand and implement ACLS protocol for a myocardial infarction patient. She testified that the time frame for administering thrombolytics is within 30 minutes after arrival and within 6 hours after the onset of symptoms, which is part of a standard written protocol available in all hospitals. Boehler acknowledged that the decision as to whether to administer thrombolytics is ultimately a medical decision. She testified, however, that because there is a standard protocol for making the determination, an emergency room nurse should know when the protocol prescribes thrombolytic therapy and bring it to the doctor's attention, and if the doctor does not follow the protocol, the nurse should take the matter up the chain of command in order to ensure that the patient receives appropriate care. She specifically testified that in this case a competent nurse should

have recognized the need for thrombolytics within 30 minutes of Midden arriving at the hospital and gone through the chain of command once Dr. Christie did not give Midden thrombolytics within the time frame.

¶ 28 The plaintiff's cardiology expert, Dr. Parag Madhani, testified that the cause of Marilee Midden's death was acute myocardial infarction. He opined that her death occurred as a result of failure to revascularize her in a timely manner. He explained that any patient presenting with Midden's symptoms required immediate revascularization, either through thrombolytic therapy or cardiac catheterization. In order to be of optimum benefit, thrombolytic therapy should be administered within 30 minutes of the patient presenting with symptoms and within 6 hours of the onset of symptoms. Cardiac catheterization must begin within 90 minutes of arrival to the hospital. Dr. Madhani testified that because Alton Memorial did not have the capability to perform cardiac catheterization, any patient presenting with Marilee Midden's symptoms should have been given thrombolytic therapy as a matter of course. He testified that Dr. Christie should have begun giving thrombolytics immediately after Midden was revived through defibrillation and CPR–approximately five minutes after the code was called upon her arrival at the hospital. He further testified that, although there are contraindications to the administration of thrombolytics, Midden's medical records showed that none were present. Finally, Dr. Madhani opined that, had thrombolytics been given, Midden would most likely have survived.

¶ 29 Dr. Baker, an internist and emergency room physician disclosed as the plaintiff's expert, testified that Dr. Christie deviated from the standard of care for an emergency room doctor by failing to begin thrombolytics immediately after Midden was defibrillated. He further testified that Dr. Christie should have been able to make

this decision immediately without having to consult with a cardiologist. Dr. Baker testified that in a hospital that is not equipped to provide cardiac catheterization, thrombolytics are always the preferable method of revascularization. He explained that this is because transferring a patient to another facility for cardiac catheterization involves the risk of delay.

¶ 30 Dr. Baker also testified about the collaborative nature of emergency medicine. He explained that emergency room doctors do indeed rely on nurses to suggest therapies they may have overlooked even though the ultimate decision rests with the doctor. He noted, however, that Dr. Christie actually considered thrombolytics, so he did not believe the nurses were required to suggest it.

¶ 31 Nurse Boehler's testimony established the deviation from a nursing standard of care, while both Dr. Baker and Dr. Madhani established that a reasonable physician would have provided thombolytic treatment to Midden. Dr. Madhani's testimony established that the delay in treatment–*i.e.*, the failure to revascularize in a timely manner–was the proximate cause of Midden's death. See *Holton v. Memorial Hospital*, 176 Ill. 2d 95, 115, 679 N.E.2d 1202, 1211 (1997) (negligent delay in diagnosis or treatment which lessens the effectiveness of treatment is sufficient to establish proximate cause (quoting *Northern Trust Co. v. Louis A. Weiss Memorial Hospital*, 143 Ill. App. 3d 479, 487, 493 N.E.2d 6, 12 (1986))). The duty to acquire timely revascularization was a shared responsibility among the members of the cardiac team. Assuming, *arguendo*, that nurses Day and Long were negligent in failing to go up the chain of command, their negligence could have contributed to the delay in revascularizing Midden which led to her death. "[Proximate cause] need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury." Illinois Pattern Jury Instructions Civil, No.

15.01 (Supp. 2009).

¶ 32 The record is sufficient to establish that someone in the chain of command might have directed Dr. Christie to provide thrombolytic treatment to Midden if they had been made aware of the situation by the nurses. That is a question of fact for the jury to determine. *Aguilera v. Mount Sinai Hospital Medical Center*, 293 Ill. App. 3d 967, 971, 691 N.E.2d 1, 4 (1997). We reiterate that in order to survive a motion for summary judgment, a plaintiff need only demonstrate that a genuine fact remains to be resolved about a material issue. The pleadings, regulations, hospital policies, and deposition testimony in the record here meet that standard.

¶ 33 The plaintiff next contends that the evidence is sufficient to survive summary judgment on the issue of the nurses' alleged failure to understand and inform Dr. Christie about delays in transferring Midden to another hospital for cardiac catheterization. The defendants respond by arguing that the plaintiff has failed to provide any support for her allegation that the nurses did not know the amount of time needed to transfer Midden and that any failure in this regard was not the proximate cause of Midden's death.

¶ 34 We believe that the focus of the defendants' argument is too narrow and does not include the broader context of the plaintiff's allegations against the nurses. The crux of the plaintiff's allegations is that the nurses failed to determine how long a transfer for cardiac catheterization would take and were therefore unable to inform Dr. Christie about the potential for delay in transfer, which in turn compromised Dr. Christie's ability to assess treatment options and contributed to the delay in revascularization.

¶ 35 The defendants' nursing expert and Alton Memorial Hospital supervising nurse, Diana Kaminsky, testified about the role nurses play in transferring a patient

to another facility. She testified that Alton Memorial Hospital has written and oral policies in place and the charge nurse and the patient's nurse have shared responsibilities to make sure that there is a receiving hospital, a receiving doctor, and a bed before the transfer can be made.

¶ 36 The defendants' medical expert, Dr. Wessely, testified that the nurses had a duty to assist in expediting the transfer as reasonably as possible. Dr. Wessely also testified that in deciding not to administer thrombolytics and instead to transfer a patient for cardiac catheterization, the doctor has to know roughly how long the transfer will take.

¶ 37 It is important to emphasize that the two issues of providing thrombolytic therapy or transferring for a cardiac catheterization are closely intertwined. As Dr. Madhani testified, if cardiac catheterization cannot be performed within the 90-minute window, then the treating physician must proceed to provide thrombolytic therapy. This opinion is particularly significant here because by 6:08 p.m.–when the first documented entry regarding the transfer plan was made–the ACLS guidelines for a cardiac catheterization (90 minutes after arrival at the hospital) had already been exceeded. Had Dr. Christie been made aware of the potential delay in transferring Midden, she might have decided, despite her initial reservations, to administer thrombolytics, or someone up the chain of command may have directed Dr. Christie to administer thrombolytics. We also note that Dr. Christie admitted that the contraindications were relative and not absolute in Midden's case.

¶ 38 It is undisputed that the transfer was not effectuated until 7:25. The first charted nurse's note regarding the transfer is 6:08, despite the fact that Dr. Christie testified that she made the decision to transfer Midden almost an hour before that. If in fact Dr. Christie did make the decision to transfer Midden an hour before the first

notation, there is no record that the nurses did anything to facilitate the transfer during that one-hour period of time. In addition, there has been no testimony by any party or witness that the nurses communicated to Dr. Christie any information about how long the transfer would take. From the testimony of both the plaintiff's and defendants' witnesses, it is clear that nurses play an important role in the transfer process and therefore must understand and assist in a timely transfer under the circumstances of the medical condition warranting transfer.

¶ 39 Witness testimony, ACLS guidelines, and Alton Memorial's own policies established standards for Midden's revascularization following her myocardial infarction. These standards include timeliness for the administration of thrombolytics or cardiac catheterization, none of which were met here. It is undisputed that Midden left Alton Memorial Hospital without being revascularized almost three hours after her arrival. There are many unanswered questions of fact regarding the transfer.

¶ 40 We reiterate that the only issue before us is whether the plaintiff has presented enough evidence to raise a genuine issue of material fact. We find that she has met this standard through pleadings, depositions, admissions, and written policies and regulations on file. *Hall v Henn*, 208 Ill. 2d 325, 328, 802 N.E.2d 797, 798 (2003). This evidence leaves open the question of whether the nurses fell short of their duties regarding the transfer, thereby contributing to the delay in her revascularization. "If reasonable persons could draw different inferences from undisputed facts, summary judgment should be denied." *Illinois State Bar Ass'n Mutual Insurance Co. v. Mondo*, 392 Ill. App. 3d 1032, 1036, 911 N.E.2d 1144, 1148 (2009).

¶ 41 As discussed earlier, the plaintiff has presented expert testimony supporting her contention that the delay in revascularization was a proximate cause of Midden's death. See *Holton*, 176 Ill. 2d at 115, 679 N.E.2d at 1211 (negligent delay in

diagnosis or treatment which lessens the effectiveness of treatment is sufficient to establish proximate cause). This, coupled with the evidence supporting her allegation that the nurses' actions contributed to the delay, is sufficient to raise a genuine question of fact as to whether the nurses' alleged negligence was a proximate cause of Marilee Midden's death.

¶ 42 For the foregoing reasons, we reverse the trial court's order granting summary judgment in favor of the defendant nurses, Long and Day.

¶ 43 Reversed.