

STATE OF NORTH CAROLINA
COUNTY OF DUPLIN

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16-CVS-462

SUE E. BROOKS, Executrix and Personal
Representative of and for the Estate of
Thomas F. Andrews,

Plaintiff,

vs.

SSC WALLACE OPERATING
COMPANY, LLC d/b/a Brian Center
Health & Rehabilitation/Wallace; BINDY
POWELL; TAKENYA LABRIADO;
MELANIE ROGERS; and JENNIFER
HENDERSON,

Defendants.

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

This Arbitration involves a medical negligence case against The Brian Center, a skilled nursing care facility (the "Facility") and several of its employees (collectively "the Defendants") in which Sue Brooks seeks damages for injuries and the wrongful death of her father, Thomas Andrews, allegedly suffered while her father was in the care of the Defendants. This claim was initiated by a detailed Complaint and was later converted by agreement of the parties to this Arbitration. Extensive and thorough discovery was conducted by the parties through interrogatories, document requests and depositions of both fact and expert witnesses.

Based upon the undisputed evidence, Mr. Andrews was admitted to this Facility for the rehabilitation of a lumbar burst fracture suffered in a fall at his home. This occurred in late July, 2013. Mr. Andrews' health issues upon coming to the Facility included dementia; a propensity for falling; and "compulsion" to constantly ambulate to the bathroom whether he needed "to go" or not.

Plaintiff claims that the Defendants failed to provide appropriate wound care in at least two instances; that Defendants failed to prevent Mr. Andrews from falling several times including a fall apparently witnessed by nobody which resulted in a right hip fracture; and that the Defendants either caused or permitted an infection to develop at the surgical site where the hardware used to repair the hip was inserted. This initial surgery took place in March, 2014 in a local hospital and Mr. Andrews thereafter returned to the Facility for continued rehabilitation and care. Mr. Andrews was re-hospitalized on April 4, 2014 where the hip hardware was removed because of infection. Mr. Andrews returned to the Facility for care and treatment, but his overall physical condition progressively worsened until he passed away on July 6, 2014. The death certificate identified dementia and "failure to thrive" as causes of his death at age 90. His daughter, Sue Brooks, based upon her own observations and daily attendance to her father, testified that dementia had a lot to do with his death; that he stopped eating and it got to the point that there really was nothing else that could be done. In her own words, Sue thought that "he just gave up . . . he was tired".

The Defendants have moved for Summary Judgment on the ground that the undisputed facts do not establish that there was any wrongful or substandard conduct on the part of the Defendants, that the Defendants' care and treatment of Mr. Andrews was not a proximate cause of his injuries or death and further, that there was no alleged substandard treatment that can be considered or characterized as aggravated, extreme, outrageous or malicious.

Plaintiff relies on various nursing records generated by the Facility relating to the care and treatment of Mr. Andrews; on her own testimony; the testimony of her siblings/family members; the testimony of employees of the Facility (some of who are Defendants themselves); and Robin Cunningham. Ms. Cunningham is a respected nurse retained by the Plaintiff's

attorneys to provide opinions on breaches of accepted nursing standards in connection with the care and treatment provided to Mr. Andrews at the Facility and the connection between the breaches of the standards of care she identified to the death of Mr. Andrews or any of the injuries he suffered prior to his passing, including the fractured hip and the post-surgery infection. Nurse Cunningham testified about the Facility records and how they reflected on the poor care provided by the Defendants during Mr. Andrews' time at the Facility. It is her opinion that the Defendants breached standards of care in their treatment of Mr. Andrews.

Both sides to the dispute have identified and defined the bases upon which they believe Summary Judgment can be entered and have cited several cases which state and explain the burden of proof which the moving and non-moving parties must meet. These cases establish that a properly qualified nurse can give opinions in proximate cause in cases of this nature. Establishing proximate cause in a nursing/medical case is an essential element to proving a medical negligence claim. While nurses may give properly grounded opinions of causation in order to create a question of fact for a jury or fact finder, non-expert opinions on the causal connection between substandard care and injuries or death are not sufficient to make a prima facie case by a Plaintiff against a skilled nursing facility.

My task in connection with The Defendants' Motion for Summary Judgment is to determine if there is a legal and factual basis to hold Defendants responsible in monetary damages for the death of Mr. Andrews and/or some of the injuries he suffered prior to his passing away, including the fractured hip and/or the infection that developed after surgery. The Defendants' motion has required me to review documents identified in depositions and to read and analyze the transcripts of numerous depositions of the Plaintiff, her family members, the Defendants and experts for both sides. I have reviewed all of their testimony carefully and in

much the same way as I would review the testimony presented during the hearing on the merits of this case. In other words, I have had the unrestricted opportunity to evaluate and weigh most of the evidence that I would be provided during a hearing with the exception of Doctors Compton and Hocker. I believe I have a sound understanding of the material facts and circumstances of this disputed claim and the attorneys have done an outstanding job of explaining their positions and the case law which they think supports them.

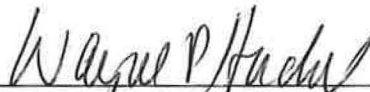
I have determined based upon the controlling case law, the undisputed facts established by the evidence and the testimony of Robin Cunningham that the Plaintiff has not met her burden of proving negligence against any Defendant and the Defendants are entitled to Summary Judgment in their favor and a dismissal of the claims against them. This conclusion results from the failure of the Plaintiff to provide an expert opinion that any breach of Defendants' standards of care was a proximate cause of injuries to Mr. Andrews or his death in July, 2014. The testimony of expert witness Robin Cunningham does not include specific opinions regarding the proximate cause connection. In fact, Nurse Cunningham testified that she was not a causation expert and she specifically deferred to the doctors involved in this case on opinions about the cause of the infection which developed post-surgery. Without a specific, direct expert opinion on causation Plaintiff's case against the Defendants cannot be sustained. Additionally, neither Nurse Robin Cunningham's general and non-specific testimony or the anecdotal evidence of the Plaintiff and her family members and other lay witnesses are sufficient to collectively establish proximate causation for any claims in this case.

Although not necessary to my decision that Plaintiff has failed to meet her burden of proof regarding causation in the medical malpractice/negligence, the punitive damages or the ordinary negligence claims, it is appropriate to acknowledge that the expert opinions on the

causation issue on the record from Defendants' experts support the conclusions that Mr. Andrews' fall was unavoidable and that the Facility did not contribute to the hip fracture or the infection which occurred following surgery.

For the foregoing reasons, it is hereby Ordered that the Summary Judgment Motion of the Defendants is granted and the claims of the Plaintiff in this Arbitration are dismissed on their merits. Each party is responsible for their own fees and costs and the arbitrator fees are to be paid on a 90% - 10% basis as provided in the Arbitration Agreement between the parties.

This the 31st day of July, 2019.



Wayne P. Huckel, Arbitrator