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STATE OF MICHIGAN

COURT OF APPEALS

WADE R. RAGSDALE and JULIE A. RAGSDALE, Plaintiffs-Appellants, v DAVID ANTONIO MACHADO-ARANDA, M.D., NEIL BLOK, M.D., and AMY ELIZABETH FELSTED, M.D., Defendants-Appellees.	UNPUBLISHED November 19, 2026 9:20 AM No. 376057 Washtenaw Circuit Court LC No. 23-000960-NH

Before: CAMERON, P.J., and MALDONADO and WALLACE, JJ.

CAMERON, P.J. (*dissenting*).

In my view, the trial court properly granted summary disposition to defendants because plaintiffs failed to present admissible expert testimony establishing a causal connection between defendants' alleged negligence and Wade Ragsdale's injuries. The majority reaches the opposite conclusion by pointing to disputed factual assumptions underlying the opinions of plaintiffs' experts as questions for the jury. But before an expert's opinion may be presented to a jury, it must be grounded in facts supported by the record. See *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 495; 668 NW2d 402 (2003) ("an expert's opinion is objectionable where it is based on assumptions that are not in accord with the established facts.") (Quotation marks and citation omitted); see also MRE 703. Here, plaintiffs' experts based their causation opinions on the premise that Wade fell from the operating table and struck his head on the floor, an assertion from Wade himself, who was unconscious and under anesthesia at the time. Because there was absolutely no evidence in the record that supports this factual premise, and, in fact, the record evidence explicitly contradicts Wade's version of the incident, the experts' opinions do not establish a genuine issue of material fact concerning causation.

I therefore respectfully dissent.

I. NO GENUINE ISSUE OF MATERIAL FACT

A party that moves for summary disposition under MCR 2.116(C)(10) must support its motion with documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d

314 (1996). Once the moving party does so, the burden shifts to the nonmoving party to establish a genuine issue of material fact. *Id*. A nonmoving party cannot satisfy this burden by relying on mere allegations or a promise to establish a factual dispute later at trial. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). "The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial." *Id*.

Here, defendants met their initial burden by submitting deposition testimony from the physicians and CRNA who witnessed the incident. That testimony established that Wade did not fall from the table but was lowered in a controlled manner to the floor. It further established that his head never struck the floor. In fact, CRNA Wang specifically testified that she maintained control of Wade's head and neck while he was lowered to the floor. Plaintiffs offered no evidence to contradict this testimony. Instead, they submitted the opinions of experts that were based on their entirely contrary and unsupported contention that Wade fell from the table and struck his head on the floor. This was insufficient to establish a genuine issue for trial because the opinions were not based on the facts as they were established in the record. *Wiley*, 257 Mich App at 495. None of plaintiffs' experts offered any opinion as to whether Wade's injuries could have been caused by the incident *as it was described by the eyewitnesses*.

For instance, Dr. Abraham opined that Wade's injuries resulted from "a traumatic fall where he fell off the operating table onto his left side." Dr. Weiss's report similarly attributed Wade's injuries to a fall in which he suffered a head injury. Dr. Franck's report described Wade as having apparently been "flipped off" the operating table and attributed his cervical injuries to the "fall." Indeed, Dr. Franck acknowledged during his deposition that his opinion was based on "limited knowledge, basically [Wade] Ragsdale's relation to it[,]" yet plaintiffs' counsel still chose not to provide their own experts with the eyewitness testimony. Consequently, none of these experts provided causation opinions as to how Wade's injuries could have resulted from the incident *as it was established in the record*.

This is not simply a question of credibility or weight. Even accepting the experts' opinions at face value, plaintiffs still failed to establish causation based on the evidence actually presented to the trial court. Even Dr. Abraham's statement that he was 95% confident in his opinion is entirely based on his reliance on a factual scenario that was not supported by the record. The issue is not the degree of confidence in the opinion itself, but the sufficiency of the underlying factual premise on which it relies. An expert cannot establish causation by expressing confidence in a theory based on an event that the record does not support occurred—and, in fact, actually shows is wrong. I suppose it is possible that plaintiffs could have created a factual dispute by offering evidence that contradicted defendants' account, or by having their experts amend their opinions to take the actual admitted evidence into consideration, but they chose to do neither.

The majority asserts that plaintiffs' allegation in their second amended complaint that the slide off the table required conversion to an open procedure, together with their further allegation that the slide caused "serious and permanent injuries when [Wade's] upper body impacted the floor after sliding off the table," is sufficient to create a genuine issue of material fact to survive summary disposition. I disagree. The conversion to an open procedure was not an injury for which Wade sought damages. It is undisputed that the slide was the but-for cause of the conversion and that plaintiffs allege the slide was the result of negligence. But that does not establish that the slide caused any of the injuries at issue in this case. Moreover, the possibility of converting the

laparoscopic procedure to an open procedure was a known risk of which Wade was aware.[1] Rather, the injuries at issue are instead the alleged injuries to Wade's head, neck, and spine, which plaintiffs attributed to his upper body striking the floor.[2] Thus, to establish causation, the evidence must demonstrate that the slide was the but-for cause of those injuries. It does not. Every expert opinion provided by plaintiffs attributed Wade's injuries to a fall from the operating table in which he struck his head on the floor. But the record does not establish that defendants' alleged negligence is the but-for cause of Wade's claimed injuries.

The majority identifies no competing expert opinions that establish causation on the basis of the actual, verified facts in the record. Multiple depositions under oath established a specific factual timeline. By contrast, the only evidence of plaintiffs' version of events is Wade's unsworn description, as summarized in his medical records, of an event he did not actually witness because he was unconscious. Plaintiffs provided no sworn testimony or other evidence to challenge defendants' version of events, let alone to support Wade's factual scenario. Thus, the undisputed facts in the record were that Wade was slowly lowered to the floor and that his head never hit the floor. But there are no expert opinions in the record that address causation under these facts. As a result, the majority has created the missing factual dispute by inferring a causal mechanism that plaintiffs' experts never supplied, and on which they never relied. It is well recognized that expert testimony is necessary for plaintiffs in medical malpractice cases to establish causation. *Kalaj v Khan*, 295 Mich App 420, 429; 820 NW2d 223 (2012). Because plaintiffs provided no *expert testimony* to establish causation based on the events *as they were set forth in the record*, *Wiley*, 257 Mich App at 495, summary disposition was proper.

II. CIRCUMSTANTIAL EVIDENCE

The majority relies heavily on the temporal relationship between the incident and Wade's subsequent symptoms, citing *Kalaj* for the proposition that circumstantial evidence may provide a sufficient basis to support an expert's opinion. In *Kalaj*, this Court held that "[w]hile there must be facts in evidence to support the opinion testimony of an expert, circumstantial proof that enables reasonable inferences is sufficient." *Kalaj*, 295 Mich App at 429 (quotation marks and citations omitted). But the majority overlooks an important distinction. *Kalaj* permits an expert to draw reasonable inferences from circumstantial evidence in forming an opinion; it does not permit a court or counsel to draw those inferences on the expert's behalf to supply a factual basis for an

[1] During his deposition, Dr. Blok was asked whether the possibility of converting the laparoscopic procedure to an open procedure had been "something that was even considered before the surgery and discussed with [Wade] Ragsdale prior to his surgery[.]" Dr. Block explained: "So that is always a risk of any laparoscopic procedure and is one of the standard things we discussed on our consent. In this case, it was so [sic] of a higher likelihood even than that. So we'd actually separately reconsented him for an open operation. . . . Knowing that there was a reasonable chance that would occur."

[2] For this reason, I disagree with the majority's conclusion that the conversion of the procedure creates a genuine issue of material fact. The fact that the slide necessitated conversion is undisputed, and, more importantly, immaterial to the claims at issue because the conversion itself is not an injury for which plaintiffs sought damages.

opinion that the expert never expressed.[3] In other words, although circumstantial evidence may be used by an expert to support his or her opinion on causation, it cannot be used by nonexperts to retroactively connect the actual facts established in the record to the injuries alleged when the expert never made such a connection him- or herself.

As already explained, there was no evidence in the record that supported the theory on which plaintiffs' experts all relied: that Wade fell off the table and hit his head on the floor. In fact, this version of the incident was provided to plaintiffs' experts by Wade himself, who, as noted, was unconscious at the time, and the eyewitness testimony actually indicated the opposite. The only evidence in the record describing the events that took place indicates that Wade was lowered in a controlled manner and that his head never hit the floor. Plaintiffs' experts could have evaluated the facts as they stand in the record to conclude, as the majority seems to do, that the eyewitnesses were mistaken, or that the force involved in the controlled lowering were sufficient to cause Wade's injuries. But they did not do so, likely because plaintiffs withheld this evidence from their own experts.

Nor does the fact that Wade's symptoms appeared after surgery, alone, establish causation. Temporal proximity, by itself, cannot establish a causal connection. See *Teal v Prasad*, 283 Mich App 384, 392; 772 NW2d 57 (2008) ("[T]estimony that only establishes a correlation between conduct and injury is not sufficient to establish cause in fact"); *West v Gen Motors Corp*, 469 Mich 177, 186 n 12; 665 NW2d 468 (2003) ("Relying merely on a temporal relationship is a form of

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[3] *Kalaj* involved a plaintiff-patient who suffered a spinal fracture after a motor vehicle accident. *Kalaj*, 295 Mich at 422. The defendant-radiologist reviewed the plaintiff-patient's x-rays and concluded there was no fracture. *Id*. After the plaintiff-patient's symptoms worsened, however, he underwent another x-ray eight days later that revealed a spinal fracture. *Id*. The plaintiffs' expert provided an affidavit of merit stating that he had relied on various medical records, including the x-rays allegedly misinterpreted by the defendant-radiologist (referred to in the case as the Basha films). *Id*. When it was discovered that the expert had not actually reviewed those films, the trial court struck the affidavit and dismissed the case, despite the expert submitting a revised affidavit attesting that the missing films did not change his opinion. *Id*. at 424-425. This Court reversed, concluding that the affidavit satisfied the statutory requirements and that the circumstantial evidence available to the expert provided a sufficient basis for his opinion. *Id*. at 429.

Kalaj is distinguishable in two important respects. First, it involved the sufficiency of an affidavit of merit at the pleading stage, before the plaintiffs had access to discovery. *Id*. at 428. By contrast, this case involves the admissibility of expert testimony at trial, which *Kalaj* itself notes is distinct from the admissibility of an affidavit of merit at the outset of a case. See *id*. at 428-429 ("the evaluation to be made at this initial stage of the proceedings, as opposed to the evaluation of expert testimony at trial, is simply whether the affidavit of merit contains each of the elements set forth in MCL 600.2912d."). Second, and more importantly, the expert in *Kalaj* expressly reaffirmed his opinion after learning that he had not reviewed the Basha films. *Id*. at 424-425. Unlike in *Kalaj*, plaintiffs' experts in this case were never informed of the factual deficiency on which their opinions were based nor were they provided with any additional testimony to support their theories of causation on the basis of the facts that were actually in evidence. While the expert in *Kalaj* could reasonably infer his opinion from the known facts, the same cannot be said here.

engaging in the logical fallacy of post hoc ergo propter hoc (after this, therefore in consequence of this) reasoning.") (Quotation marks and citation omitted).

III. THE REMAINING EVIDENCE IS INSUFFICIENT

The majority also relies on Wade's postoperative complaints of jaw pain and swelling, facial discoloration, and the medical team's decision to monitor him for possible trauma.[4] But the record only establishes that Wade experienced symptoms that the physicians investigated, not that they were caused by defendants' alleged negligence. Moreover, these are not the injuries for which plaintiffs sought damages, and there is no *expert testimony* that links any of these minor postoperative complaints to the more severe cervical, neurological, and disabling conditions plaintiffs alleged in their complaint. The majority's layman circumstantial inference simply cannot substitute for the required expert opinion in a medical malpractice case. We are an error-correcting court, meaning our review "is generally limited to matters actually decided by the lower court." *Jawad A. Shah, M.D., PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 210; 920 NW2d 148 (2018) (citation omitted). Respectfully, it is not our role as an appellate court to create a new theory of injury or causation in order to salvage a claim that plaintiffs failed to support in response to defendants' motion for summary disposition.[5]

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[4] In fact, Dr. Machado-Aranda explained that the medical team chose to treat Wade as a trauma case at first because they did not know the extent of his movement during the incident, and subsequent imaging ruled out major traumatic injuries. The fact that physicians exercised due diligence in investigating a patient's possible injury does not establish that the injury actually occurred or that defendants caused it.

[5] This is not a position unique to Michigan's appellate system. This year, the United States Supreme Court chastised the Fourth Circuit Court of Appeals for violating its party presentation principle in *Margolin v Nat'l Assoc of Immigration Judges*, 608 US 339, 342-343; 146 S Ct 1285; 224 L Ed 2d 817 (2026). The party presentation principle states that "points not argued will not be considered[,]" which "distinguishes our adversarial system of justice from an inquisitorial one." *Id*. at 342 (quotation marks and citation omitted). It explained that "[b]ecause courts are essentially passive instruments of government, we rely on the parties to frame the issues for decision and decide only the questions presented." *Id*. (quotation marks and citation omitted).

The Court criticized the Fourth Circuit for supplying a theory that the party seeking relief had never advanced, and, in doing so, depriving the parties of the opportunity to address the new theory. *Id*. at 342-343. The Court concluded its opinion by reminding the Fourth Circuit that "courts are not roving commissions licensed to sally forth each day looking for wrongs to right." *Id*. at 343 (quotation marks and citations omitted). This principle is analogous to our position as an error-correcting court. *Shah*, 324 Mich App at 210. If this Court were permitted to consider issues that were not raised by the parties in the underlying case, this Court would cease to be an appellate court and would simply become a secondary trial court. Straying from our role as an error-corrector would result in this Court becoming nothing more than a mechanism for dissatisfied litigants to claim a second bite at the apple. Such a result would undermine the finality of judgments as well as judicial efficiency.

IV. CONCLUSION

This case does not involve expert opinions based on competing versions of facts *in the record*. Plaintiffs, for whatever reason, told their experts one version of the incident (that Wade fell from the table and hit his head), and the experts based their opinions on this version. They were never asked for, and therefore never provided, any opinion as to whether Wade's injuries could have resulted from the actual uncontested facts in the record.

This distinction cannot be overcome by labelling the problem as being one of credibility or weight. Plaintiffs bore the burden of producing evidence establishing a genuine issue of material fact with respect to causation. They could have challenged the eyewitness testimony or supplied expert opinions that analyzed Wade's injuries through the lens of the facts as they were presented in the record, but they did neither. The majority effectively supplies that missing evidence by drawing inferences that plaintiffs' experts never drew themselves. Because expert testimony is required to establish causation in medical malpractice cases, *Kalaj*, 295 Mich App at 429, no argument by this Court, plaintiffs' counsel, or any other nonexpert can suffice to survive summary disposition.[6]

I would therefore affirm the trial court's order granting defendants' motion for summary disposition.

/s/ Thomas C. Cameron

[6] Indeed, by reversing the trial court, this Court sends the message that, contrary to our longstanding recognition that "[t]rial courts are not the research assistants of the litigants[,]" *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008), a trial court can be reversed for failing to explore every possible avenue to save a claim a litigant fails to support. That approach is fundamentally at odds with our adversarial system, undermines judicial efficiency, and places an unwarranted burden on trial courts to develop arguments that the parties themselves are supposed to present, all to avoid the prospect of reversal.