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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0721**

Ludwig P. Samson, Trustee for the Heirs and Next of Kin of
Christine R. Samson, deceased,
Appellant,

vs.

Jack W. Gordon, M. D.,
Respondent,

Essentia Health d/b/a Virginia Convalescent Center and/or
f/k/a Virginia Regional Medical Center; et al.,
Respondents.

**Filed January 16, 2018
Affirmed
Smith, Tracy M., Judge**

St. Louis County District Court
File No. 69DU-CV-15-3179

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Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Ludwig Samson, son of 99-year-old decedent Christine Samson, contends that, in dismissing his medical-malpractice action for failure to comply with the expert-affidavit requirements in Minn. Stat. § 145.682 (2016), the district court (1) abused its discretion in determining that the expert affidavit did not sufficiently show a chain of causation and (2) applied an incorrect standard by requiring appellant to disprove all other causes of death. We affirm.

FACTS

In 2004, Ms. Samson, who suffered from Alzheimer's disease and dementia, was admitted to the Virginia Convalescent Center for long-term care. Four years later, Dr. Jack Gordon assumed Ms. Samson's care. In January 2010, Dr. Gordon diagnosed Ms. Samson with hypothyroidism.¹ Hypothyroidism is characterized by a high thyroid-stimulating-hormone (TSH) concentration. To treat Ms. Samson's hypothyroidism, Dr. Gordon started her on a 25 mcg dose of levothyroxine, a synthetic form of thyroid hormone commonly known as Synthroid.

In March 2010, based on Ms. Samson's TSH levels, Dr. Gordon increased her Synthroid dose to alternate between 25 mcg and 50 mcg per day. A few months later, Dr. Gordon increased her dose to 50 mcg per day. Ms. Samson's TSH levels subsequently normalized.

¹ Hypothyroidism occurs when there is insufficient production of thyroid hormones. *The American Heritage Dictionary* 891 (3d ed. 1992).

In June 2011, endocrinologist Dr. Robert Sjoberg evaluated Ms. Samson. Appellant expressed concern that his mother's Synthroid dosage was making her condition worse. After reviewing Ms. Samson's lab results, Dr. Sjoberg concluded that the 50 mcg daily dosage of Synthroid was appropriate and not harmful.

Eleven months later, Ms. Samson's family placed Ms. Samson on comfort measures and no further labs were taken. In October 2012, Ms. Samson passed away due to congestive heart failure.

Appellant commenced this medical-malpractice action against Dr. Gordon and Essentia Health (Essentia), which does business as Virginia Convalescent Center and was formerly known as Virginia Regional Medical Center, based on the allegedly negligent prescription of Synthroid and subsequent increase in dosage to Ms. Samson, claiming that this medication contributed to the degeneration of her health and ultimately caused her cardiac arrest. Appellant identified Barry Singer, M.D., as an expert witness and served Dr. Singer's affidavit on respondents.

Dr. Singer opined that Dr. Gordon did not comply with accepted standards of care when he prescribed Synthroid, which can carry an increased risk of adverse cardiovascular effects, to Ms. Samson, a woman approaching 100 years of age. Dr. Singer explained that "[e]lderly patients are more likely to develop arrhythmias and complications from doses greater than 25 micrograms."² Dr. Singer concluded that Ms. Samson was not a candidate for synthetic hormone treatment, and that "more likely than not the higher dose of thyroid

² An arrhythmia is an irregularity in the force or rhythm of the heartbeat. *The American Heritage Dictionary* 102 (3d ed. 1992).

replacement contributed to her overall deterioration of the cardiac status” and caused her to have congestive heart failure.

Respondents moved for dismissal of the action under Minn. Stat. § 145.682, subd. 6(c), on the ground that the expert affidavit failed to comply with the substantive requirements of the statute. Appellant responded with a supplemental affidavit from Dr. Singer to bolster his showing of violation of the duty of care and the chain of causation, including by describing recent medical studies that discussed the normalcy of elevated TSH levels in elderly populations and warned about the adverse effects from artificial hormone over-replacement. After a hearing, the district court granted respondents’ motion to dismiss. This appeal followed.³

D E C I S I O N

A plaintiff in a medical-malpractice case must submit two affidavits when expert testimony is required to establish a prima facie case. Minn. Stat. § 145.682, subd. 2. First, when serving the summons and complaint, a plaintiff must include an attorney affidavit stating that the plaintiff’s attorney has reviewed the facts of the case with “an expert whose qualifications provide a reasonable expectation that the expert’s opinions could be admissible at trial.” *Id.*, subds. 2(1), 3(a). Second, the plaintiff must, within 180 days after commencement of discovery, serve an affidavit, signed by each expert who is expected to

³In addition to its motion to dismiss, Essentia also moved for summary judgement. The district court did not find it necessary to rule on Essentia’s summary-judgment motion because appellant’s claim was dismissed. Because we conclude that the district court acted within its discretion in dismissing appellant’s medical-malpractice action for noncompliance with the statutory expert-disclosure requirements, we need not consider Essentia’s arguments for summary judgment.

testify, containing the substance of the facts and opinions to which the expert plans to testify, and summarizing the grounds for those opinions. *Id.*, subds. 2(2), 4(a). The expert affidavit must also include “specific details” about “the applicable standard of care, the acts or omissions that plaintiffs allege violated the standard of care and an outline of the chain of causation that allegedly resulted in damage to them.” *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 193 (Minn. 1990). If the plaintiff fails to satisfy these affidavit requirements, the plaintiff’s malpractice claim must be dismissed with prejudice. Minn. Stat. § 145.682, subd. 6(c).

We must resolve whether the district court abused its discretion when it determined that Dr. Singer’s expert affidavit failed to establish a sufficient chain of causation between the administration of Synthroid to Ms. Samson and her death. To establish causation, the expert affidavit must illustrate the “how” and “why” that connects the alleged malpractice to the injury. *Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 429 n.4 (Minn. 2002). Conclusory statements do not satisfy this requirement. *Stroud v. Hennepin Cty. Med. Ctr.*, 556 N.W.2d 552, 556 (Minn. 1996). It is not enough for the plaintiff to merely state “that the defendants ‘failed to properly evaluate’ and ‘failed to properly diagnose’” because such statements “are empty conclusions which, unless shown how they follow from the facts, can mask a frivolous claim.” *Sorenson*, 457 N.W.2d at 192-93 (citation omitted).

Dr. Singer’s overarching conclusion was that “the original administration of Synthroid and later the increased dosage led to [Ms. Samson’s] cardiac arrest resulting in her death.” To support this conclusion, appellant argues that he established, through his expert affidavit, the following chain of causation:

- [1] There was an administration of Synthroid to an elderly person approaching 100 years
- [2] Synthroid is known to cause cardiac arrest, heart failure and death
- [3] Synthroid caused cardiac arrest and heart failure
- [4] Cardiac arrest and heart failure caused the death of Christine R. Samson

To explain his theory regarding Ms. Samson's death, appellant directs us to Dr. Singer's opinions that (1) Synthroid is known to cause cardiac arrest and heart failure, (2) more likely than not the higher dose of thyroid replacement contributed to the overall deterioration of Ms. Samson's cardiac status, and (3) Synthroid caused deterioration of Ms. Samson's clinical status and eventually her death. Appellant also points to the affidavit's references to a number of studies on natural age-related increases in TSH and the adverse cardiovascular effects of synthetic thyroid over-replacement, as well as the manufacturer's warning label advising against giving a full hormone-replacement dose to the elderly due to the prevalence of cardiovascular disease in this population. Based on this cited information, appellant asserts:

Synthroid is known in the medical community to cause cardiac arrest and failure in the elderly . . . [and] the Respondent prescribed such medication for over two years when such was not indicated due to the TSH levels not being over 7.5, thus not having a diseased thyroid and that such medication, unindicated, more likely than not caused [Ms. Samson's] demise or death

(Emphasis removed.)

The district court found appellant's explanation deficient, stating, "There is nothing in Dr. Singer's expert affidavit that indicated Ms. Samson's heart failure was directly caused by the administration of Synthroid." The court observed:

Dr. Singer merely states Dr. Gordon breached the standard of care by prescribing and administering Synthroid to Ms. Samson and that as a result her cardiac status deteriorated. Dr. Singer's expert affidavit does not assert any opinions or discussion directly linking Ms. Samson's deterioration or death to Synthroid.

We agree with the district court that there is a missing link in appellant's theory of causation. Specifically, appellant fails to connect the second link in his chain—that “Synthroid is known to cause cardiac arrest, heart failure and death”—with the third link—that, in fact, “Synthroid caused cardiac arrest and heart failure” in this case. Appellant relies on the discussions in the manufacturer's warning and the *Physicians' Desk Reference* regarding prescribing Synthroid to elderly patients. As Dr. Gordon points out, however, neither the manufacturer's warning, nor the *Physicians' Desk Reference*, states that any specific dosage of Synthroid carries an increased probability of cardiac arrest in older patients. Rather, these sources advise physicians to prescribe lower doses of Synthroid to elderly patients, because this population has a greater likelihood of hidden heart disease, and warn about the possible adverse reactions related to hyperthyroidism⁴ due to therapeutic overdosage, including arrhythmias and cardiac arrest. Yet, there is no evidence that Ms. Samson ever suffered from hyperthyroidism, which is marked by a patient's TSH levels dropping below the normal reference range.

Appellant further appears to suggest that Ms. Samson was subject to synthetic hormone over-replacement because Dr. Gordon needlessly placed her on and continued to

⁴ Hyperthyroidism occurs from pathologically excessive production of thyroid hormones. *The American Heritage Dictionary* 889 (3d ed. 1992).

administer Synthroid, despite the fact that her TSH levels were in a normal, although elevated, range for someone of her age group based on recent medical studies. However, Dr. Singer's affidavit cites no evidence to support this alleged over-replacement theory. Dr. Sjoberg, an endocrinologist, reviewed Ms. Samson's dosage levels in 2011 and concluded that the 50-mcg dosage was appropriate and that her recorded TSH levels normalized on this dose. Dr. Singer opines that Ms. Samson was "not a candidate for thyroxine replacement" given her age and TSH levels. But his affidavit never states that Ms. Samson's TSH levels dropped below the normal range in the year and a half following Dr. Sjoberg's visit and before her death or that Ms. Samson's recorded levels were unacceptable or reflected any over-replacement of hormones that would give rise to concerns of adverse consequences.

Apart from TSH levels, there is no reference in the affidavit to Ms. Samson suffering any of the side effects associated with over-replacement, such as arrhythmia or toxic thyroid, during the nearly three years she was on Synthroid. In fact, Dr. Singer specifically notes in his affidavit that there is no evidence of this. And it is hyperthyroidism caused by over-replacement, and not the administration of Synthroid itself, that Dr. Singer claims would have put Ms. Samson at an elevated risk of adverse cardiovascular effects. Moreover, we note that the sources cited by Dr. Singer say nothing about an increased risk of Ms. Samson's specific cause of death: congestive heart failure.

In sum, while Dr. Singer's affidavit states that irregular heartbeat and cardiac arrest can be heightened risks in elderly people, and that these adverse side effects are more likely to occur with over-replacement of artificial thyroid hormone and resulting

hyperthyroidism, the affidavit does not show that Ms. Samson suffered from any such therapeutic overdosage. The expert affidavit is deficient because it never explains how the Synthroid dosage given to Ms. Samson directly (and most likely) caused her to suffer congestive heart failure. Therefore, as in *Stroud*, appellant's expert affidavit fails to set forth the complete chain of causation—specifically a chain that connects Dr. Gordon's administration of Synthroid to Ms. Samson with her death, as required by the statute. See 556 N.W.2d at 557. Because of this missing link, the affidavit fails to “set out a precise explanation of why respondents' failure to follow the applicable standard of care caused the death” of Ms. Samson. Cf. *Demgen v. Fairview Hosp.*, 621 N.W.2d 259, 263 (Minn. App. 2001), *review denied* (Minn. Apr. 17, 2001).

Appellant argues that an expert affidavit is fundamentally intended to provide “meaningful disclosure” and correctly observes, “This is not a situation where the Defendants are required to guess or search out for the Plaintiff[’s] theory of the case.” However, the Minnesota Supreme Court has made clear that “absence of prejudice to defendant, [or a] failure of defendant to prove plaintiff’s claim is frivolous . . . will not excuse or justify an affidavit of expert identification falling short of the substantive disclosure requirement.” *Lindberg v. Health Partners, Inc.*, 599 N.W.2d 572, 578 (Minn. 1999); see also *Broehm v. Mayo Clinic Rochester*, 690 N.W.2d 721, 726 (Minn. 2005) (“So as not to undermine the legislative aim of expert review and disclosure, we have stressed that plaintiffs must adhere to strict compliance with the requirements of Minn. Stat. § 145.682.”).

Finally, appellant argues that the district court, in evaluating the sufficiency of the expert affidavit, erroneously required him to “disprove all other [possible causes] of death.” This claim stems from the following language at the end of district court’s memorandum in its dismissal order: “While Dr. Singer certainly has provided evidence it is possible the Synthroid caused Ms. Samson’s death, there are also so many other possible causes for cardiac arrest in a 99 year old woman.”

A logical reading of the court’s statement, particularly when considered in context, is that the district court was referring to the fact that Dr. Singer failed to demonstrate the necessary causal link that it was more likely than not that it was Synthroid that caused Ms. Samson’s death. To explain its decision to dismiss appellant’s case, the district court stated:

Not only is there no detailed chain of causation linking the alleged negligence (Dr. Gordon’s administration of Synthroid) with the claimed injury (Ms. Samson’s death), but the conclusion drawn is a classic logical fallacy. While Dr. Singer certainly has provided evidence it is possible the Synthroid caused Ms. Samson’s death, there are also so many other possible causes for cardiac arrest in a 99 year old woman. There is no medical evidence to support the conclusion of Dr. Singer that Synthroid was more likely than not the cause in this case.

Based on this language, rather than improperly shifting the burden onto appellant to disprove all other possible causes of death, the district court appears to have been explaining how appellant’s chain of causation is missing a link that would permit the conclusion that Synthroid more likely than not caused Ms. Samson’s congestive heart failure.

Appellant asserts that, as in *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626 (Minn. App. 2014), *review denied* (Minn. Oct. 14, 2014), the district court improperly acted as a factfinder “when it made its decision that all other causes of death have not been ruled out when none have been brought forward by [respondents].” This argument is unavailing. To establish causation, a plaintiff must show that the “defendant’s action or inaction was a direct cause of the injury. . . . A mere possibility of causation is not enough to sustain a plaintiff’s burden of proof.” *McDonough v. Allina Health Sys.*, 685 N.W.2d 688, 697 (Minn. App. 2004) (citations omitted). Here the district court determined, within its discretion, that Dr. Singer’s affidavit failed to show how Ms. Samson’s congestive heart failure was directly caused by the artificial thyroid hormone she was given for nearly three years with no recorded adverse side effects and normalized TSH levels, as opposed to the result of preexisting maladies or old age. The district court did not erroneously require appellant to disprove all other causes of death.

In sum, we conclude that the district court did not abuse its discretion in dismissing appellant’s medical-malpractice claim.

Affirmed.