

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0905**

Peg Otte, et al.,
Appellants,

vs.

Allina Health System, et al.,
Respondents.

**Filed March 22, 2021
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-18-11072

Richard E. Bosse, Law Office of Richard E. Bosse, Chtd., Henning, Minnesota; and

Patrick R. Norha, Cloquet, Minnesota (for appellants)

Mark R. Bradford, David E. Camarotto, Bassford Remele, PA, Minneapolis, Minnesota
(for respondents)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from the denial of their motions for judgment as a matter of law (JMOL) and a new trial, appellants argue that the evidence did not support the jury's verdict, and that the district court abused its discretion by failing to give one jury instruction

requested by appellants and by giving another instruction over appellants' objection. Because the jury's verdict is supported by record evidence and the district court did not abuse its discretion in instructing the jury, we affirm.

FACTS

Patricia L. Klein (decedent) died on July 13, 2014. Her sisters, appellants Peg Otte and Kathy Rupp, as trustees and next of kin of decedent, sued respondents, Lizbet D. Ronning, M.D., decedent's family physician, and Allina Health System, Dr. Ronning's employer, for medical malpractice.

Decedent fell on ice and hit her head in February 2014, severely injuring herself. She became gravely ill and underwent multiple brain surgeries. As her recovery progressed, she remained under the care of the neurosurgeon who treated her injuries. He continued to manage decedent's neurological issues and postsurgical care until she died. After discharge from the hospital, decedent, who still needed skilled nursing care, moved to Oak Ridge, an assisted living facility, in Hastings, Minnesota.

On June 26, 2014, Otte took decedent to meet respondent Dr. Ronning because decedent needed a new family physician. Otte went with decedent because her short-term memory was impaired, but decedent was able to make her own decisions about medical care. Decedent and Otte gave Dr. Ronning the name of her neurosurgeon, but Dr. Ronning had not received decedent's medical records before her death.

Dr. Ronning described decedent as a "very difficult and complex patient." In addition to the recent complicated neurosurgical treatment, decedent had a history of abuse of pain medications. Dr. Ronning noted that decedent was taking pain medications,

including Dilaudid and OxyContin, which had been prescribed as part of her surgical treatment by her neurosurgeon. Decedent still had active pain-medication prescriptions from him. Dr. Ronning did not terminate these prescriptions, but told decedent that she was “not comfortable continuing to prescribe medication at this level” and urged her to consider a pain clinic if her neurosurgeon stopped prescribing them for her. Decedent had not yet been discharged by him from postsurgical care, and Dr. Ronning stated that typically a patient would return to the treating physician for questions about ongoing care. At trial, Dr. Ronning testified, “[T]he medications were being managed by her surgeon, it was important to follow the surgeon’s plan for the postoperative care.”

Decedent had a return visit with Dr. Ronning on July 10, 2014. Dr. Ronning again told decedent she was not comfortable prescribing Dilaudid, Oxycontin, and Xanax, and told her to talk to the neurosurgeon, with whom she had an upcoming appointment. Dr. Ronning told decedent that if the neurosurgeon stopped writing prescriptions for the pain and anxiety medications, she would “need to go to the pain clinic in the Twin Cities for management of this.”

On July 11, 2014, Oak Ridge called Dr. Ronning and left a message asking her to refill decedent’s pain medications, because she would run out of medication on July 13. Dr. Ronning told Oak Ridge she would not refill the prescriptions “because of the amount she is on and the patient’s history of abuse of narcotics and addiction,” and directed them to contact the neurosurgeon. On July 13, Oak Ridge personnel discovered decedent on the floor in her room, unresponsive and not breathing. Decedent was transported to United Hospital, where attempts to revive her failed, and she died.

Otte and Rupp sued respondents, alleging Dr. Ronning had committed medical malpractice by “negligently and carelessly terminat[ing] opioid drug administration” to decedent. After a three-day trial, a jury reached a special verdict, finding that Dr. Ronning had not been negligent. The district court issued findings of fact, conclusions of law, and an order for judgment in favor of respondents. Appellants moved for JMOL or a new trial, alleging that the evidence did not support the verdict and that the district court abused its discretion by refusing to give a requested jury instruction that Dr. Ronning should be held to a standard of care equivalent to a specialist for failing to refer decedent for withdrawal treatment and by giving an instruction that a patient must follow reasonable advice of a physician. The district court denied appellants’ motion for a JMOL or a new trial, and this appeal followed.

DECISION

I. Motion for JMOL

A district court may grant a party’s motion for JMOL when, in light of all the evidence, a verdict is “perverse and palpably contrary to the evidence.” *George v. Estate of Baker*, 724 N.W.2d 1, 6 (Minn. 2006). When considering a JMOL motion, a district court “must view the evidence in the light most favorable to the nonmoving party and determine whether the verdict is manifestly against the entire evidence.” *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (quoting *Navarre v. S. Washington County Schs.*, 652 N.W.2d 9, 21 (Minn. 2002). “The jury’s verdict will not be set aside if it can be sustained on any reasonable theory of the evidence.” *Id.* (quotation omitted)). We review the denial of JMOL de novo. *Navarre*, 652 N.W.2d at 21.

Appellants alleged a case of medical malpractice against respondents. The elements of medical malpractice are (1) a standard of care recognized by medical practitioners in the community as applicable to the defendant's conduct; (2) a breach of the standard of care; and (3) direct causation of the patient's injuries by the breach. *McRae v. Group Health Plan, Inc.*, 753 N.W.2d 711, 717 (Minn. 2008). Appellants argue that the standard of care required Dr. Ronning to treat decedent's withdrawal symptoms and that Dr. Ronning breached that standard by refusing to fill her prescriptions, taper the medication in an appropriate fashion, or refer her to a withdrawal specialist, which led to decedent's death. Appellants argue that the refusal to refer decedent to a specialist should mandate holding Dr. Ronning to a higher specialist standard of care.

Viewing the evidence in the light most favorable to Dr. Ronning, as we must under JMOL standards, the following is supported by the record: (1) Dr. Ronning did not refuse to refill the prescriptions nor did she terminate the prescriptions; (2) decedent had active prescriptions with her neurosurgeon, who was in charge of her postsurgical care; (3) Dr. Ronning advised decedent at both appointments that she should contact the neurosurgeon if she had questions or concerns about her pain medications; (4) decedent had a continuing doctor-patient relationship with her neurosurgeon and had a scheduled appointment with him; (5) decedent had no withdrawal symptoms during her appointments with Dr. Ronning; (6) decedent had pain medication until the day she died; (7) Dr. Ronning told decedent that if the neurosurgeon would not continue the medication, she would refer decedent to a pain clinic; and (8) two expert witnesses testified that Dr. Ronning had not

breached a standard of care and that no referral was necessary because decedent was already under the care of the prescribing physician.

This evidence supports the jury's verdict. We note that some of appellants' arguments are not supported by the record: decedent had not run out of medication on July 10, Dr. Ronning did not terminate the prescriptions, and decedent still had active prescriptions with her neurosurgeon. *See Longbehn*, 727 N.W.2d at 159 (evidence must be viewed in light most favorable to nonmoving party). The district court did not err by denying appellants' JMOL motion.

II. Motion for a new trial

An appellate court reviews the district court's decision on a motion for a new trial for an abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018). A motion for a new trial may be based on "errors of law occurring at the trial" or a "verdict . . . is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01. This includes erroneous jury instructions, if the error was prejudicial to the moving party. *Christie*, 911 N.W.2d at 838. The district court has broad discretion in its choice of instructions, so long as they fairly and accurately reflect the applicable law. *Daly v. McFarland*, 812 N.W.2d 113, 122 (Minn. 2012). We review the district court's jury instructions for an abuse of discretion. *Id.* A party is entitled to an instruction if the record evidence supports the requested instruction. *Id.*

At issue are two instructions. Appellants requested the instruction "Duty of a Doctor to Refer," 4A *Minnesota Practice*, CIVJIG 80.19 (2014). This instruction states

A physician has a duty to refer a patient to a specialist if the physician discovers or should discover that a patient's condition is beyond his or her ability or skill to treat with reasonable success.

If the physician does not refer the patient to a specialist, he or she is held to the same standard of care that a specialist in (*name of field*) would use in similar circumstances.

The district court gave the first sentence of this instruction, concluding that it reflected appellants' theory of the case, but refused to give the second sentence. The district court noted that all of the expert witnesses agreed that "the same standard of care would apply to Dr. Ronning as to the unspecified physician" to whom appellants argued she should have referred decedent. Further, Dr. Ronning had no need to refer decedent because she was still under the care of the prescribing physician, and Dr. Ronning believed she should defer to his management of the pain medications. Thus, the second part of the instruction was not supported by evidence, and the district court's decision was not an abuse of discretion. *Daly*, 812 N.W.2d at 122.

Respondents requested, and the district court gave, the instruction "Patient's Duty to Follow Instructions," 4A *Minnesota Practice*, CIVJIG 80.28 (2014), which states that "[a] patient must follow reasonable advice and take reasonable treatment prescribed by the [doctor]." The district court reasoned that this reflected respondents' theory of the case—that decedent had been told to consult her neurosurgeon but had failed to do so. The record evidence supports this reasoning. The district court's decision to give this instruction was not an abuse of discretion. *Id.*

Because the jury instructions fairly and correctly stated the law, the district court did not abuse its discretion by denying appellants' motion for a new trial.

Affirmed.