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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0379**

Audra J Olson,
Appellant,

vs.

St. Luke's Hospital of Duluth,
d/b/a St. Luke's,
Respondent.

**Filed December 16, 2024
Reversed and remanded
Connolly, Judge**

St. Louis County District Court
File No. 69DU-CV-22-1849

Mathew R. Korte, Robert J. King, Jr., Rachel L. Barrett, Ciresi Conlin LLP, Minneapolis,
Minnesota (for appellant)

Christine W. Chambers, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis,
Minnesota; and

Troy L. Booher (pro hac vice) Zimmerman Booher, Salt Lake City, Utah (for respondent)

Taylor Brandt Cunningham, Conlin Law Firm, LLC, Minneapolis, Minnesota (for amicus
curiae Minnesota Association for Justice)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant, a widow, challenges the grant of summary judgment to respondent, a medical care provider, on appellant's medical-malpractice/wrongful-death claim, on the ground that the district court erred in determining that appellant cannot prove that respondent's delayed diagnosis and treatment caused her husband's death. Because there is a genuine issue of material fact regarding causation, we reverse and remand.

FACTS

During the night of July 19-20, 2019, Scott Olson (Olson), then 49, the husband of appellant Audra Olson, was admitted to respondent St. Luke's Hospital of Duluth with breathing difficulties. He was discharged on July 22, but readmitted on July 28, because his condition had deteriorated. On the evening of July 31, Olson was given an antifungal medication. On August 1, he received a diagnostic bronchoscopy, which revealed a fungal infection and blastomycosis. Olson was then transferred to the University of Minnesota Medical Center (UMMC). On August 4, 2019, he died at UMMC. His death certificate listed multisystem organ failure as the immediate cause of death, with underlying causes of perforated colon, disseminated blastomycosis, and gastrointestinal hemorrhage, with bacterial pneumonia as a contributing condition.

Appellant, in her capacity as trustee for her children, Olson's next of kin, filed a complaint against respondent in a medical-malpractice/wrongful-death action. Respondent moved for summary judgment, arguing that appellant failed to present sufficient evidence to show that respondent's alleged breach of the standard of care caused Olson's injuries

and death. Specifically, respondent argued that appellant's expert's opinion that Olson would not have died if he had received the antifungal medication on the morning of July 31 was not sufficiently detailed to create a factual issue on causation for a jury.

In December 2023, the district court granted respondent's summary-judgment motion, relying on *Maudsley v. Pederson*, 676 N.W.2d 8, 14 (Minn. App. 2004) (affirming dismissal with prejudice of medical-malpractice case "because [the appellant's] expert affidavit failed to set forth a detailed chain of causation explaining how and why [the respondent's] delay in treatment resulted in [the appellant's] loss of vision"). The dismissal was also in accord with a more recent case from this court, *Rygwall, as Tr. for Rygwall v. ACR Homes, Inc.*, No. A22-1376, 2023 WL 3701358, at *6 (Minn. App. May 30, 2023) (affirming grant of summary judgment to a medical-care provider) (*Rygwall I*), *rev'd*, 6 N.W.3d 416 (Minn. 2024). *Rygwall I* noted that the district court had relied on *Maudsley* to conclude that the expert's "affidavit did not explain 'how' and 'why' the alleged malpractice caused the injury." *Rygwall I*, 2023 WL 3701358, at *4. Finally, *Rygwall I* concluded that the "record [was] inadequate to enable a reasonable person to conclude--without speculation--that the delay in providing [the appellant's] medical care was a substantial factor in bringing about [the decedent's] untimely death" and did not "establish a genuine issue of material fact regarding causation." *Id.* at *6.

On appeal, appellant challenges the grant of summary judgment, arguing that the record, particularly the expert's affidavit, precludes summary judgment because there is a genuine issue of material fact as to respondent's causation of Olson's death. Two days after the filing of appellant's brief, the Minnesota Supreme Court filed *Rygwall as Tr. For*

Rygwall v. ACR Homes, Inc., 6 N.W.3d 416, 437 (Minn. 2024) (*Rygwall II*), which reversed *Rygwall I* and held that there was a material-fact issue as to whether a care provider that did not take a patient for emergency treatment immediately after learning about the patient's aspiration event caused the patient's death.

DECISION

The standard of review and the procedural posture relevant to this case have been set out in *Rygwall II*.

This case comes to us from the district court's order granting summary judgment to [the respondent, a medical care provider]. This procedural posture is important for three reasons. First, our review is de novo. Second, summary judgment is only proper if no genuine issue of material fact exists. A genuine issue of material fact exists when reasonable minds can draw different conclusions from the evidence presented. We review all the evidence in the record as a whole to determine if there is an issue of material fact. Third, we view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving party.

Rygwall II, 6 N.W.3d at 427 (citations and quotation omitted).

Rygwall II also noted that:

[I]n common-law negligence cases, . . . the question of whether a defendant's negligence is a cause of the plaintiff's injuries is generally an issue of fact for the jury to decide; it is for the jury, not the court, to draw inferences about causation. As long as the jury can reasonably infer from the evidence, without speculation, that the defendant caused the plaintiff's injury (including death), summary judgment is not appropriate. These principles apply with equal force in medical malpractice cases as they do in ordinary negligence cases.

Id. at 429-30 (citation omitted).

[T]o support a summary judgment motion in a medical malpractice case where expert testimony is needed, the expert must provide an opinion with proper foundation and enough information about the specific case to reassure the court that the jury will have sufficient information to draw a reasonable inference—without speculating—that the provider’s conduct caused the plaintiff’s injury. . . .

. . . .

. . . A plaintiff must provide evidence that, if the evidence and inferences to be drawn from the evidence are accepted as true, it is more probable than not that the plaintiff’s injury was a result of the defendant’s negligence. . . . The “outline of the chain of causation” need not be any more detailed than is required in an ordinary negligence claim involving expert testimony.

Id. at 434-35. *Rygwall II* rejected the view of both the district court and this court that the expert’s affidavit in *Rygwall* “[did] not explain how [the appellant’s] treatment would have progressed had she been seen sooner or how immediate treatment would have prevented her condition from becoming fatal.” *Id.* (quoting *Rygwall I*, 2023 WL 3701358, at *5).

In this case, the district court also said the expert’s affidavit “never gets to the crucial question here: How did the delay from morning until evening of July 31 cause [Olson’s] illness and death?” The district court therefore granted summary judgment to respondent on that basis.

A comparison of the expert testimony found sufficient by the supreme court in *Rygwall II* to the expert testimony offered by appellant here persuades us that the district court erred in granting summary judgment. The supreme court in *Rygwall II* recognized that the expert stated in his affidavit that:

My opinion, formed to a reasonable degree of medical certainty is that the delay in obtaining emergency care for [the patient] and failure to provide all relevant medical information to other decision-makers and medical personnel caused or contributed to [the patient's] rapid clinical deterioration and subsequent ARDS [acute respiratory distress syndrome], septic shock, multi-system organ failure, and death.

Had [the patient's] change in clinical status been immediately acted on with rapid evaluation and treatment, there is a reasonable degree of medical certainty her condition never would have deteriorated to ARDS, septic shock, multi-system organ failure, and ultimately her death.

Id. at 425. *Rygwall II* reversed the summary judgment granted to the respondent after

conclud[ing] that there is sufficient evidence in the record to allow a reasonable jury to conclude, without speculation, that had [the respondent] taken [the patient] for emergency treatment immediately after [the respondent] learned about the aspiration event . . . , she would have been timely treated with [the requisite medication], and her condition would not have deteriorated into the sepsis, organ failure, and ARDS that resulted in her death.

Id. at 439.

The expert here addressed why the required care would have prevented Olson's death; how the required care would have prevented the causes of death listed on the death certificate; why Olson would have recovered with the required care; when Olson would have recovered with the required care; and what and how much treatment would have been needed, if the blastomycosis had been timely diagnosed; as well as "[w]hy [respondent's] delay, as opposed to the underlying blastomycosis, was a cause of death." The affidavit said:

[The expert] will testify that the medical literature and his own clinical experience have established that the risk of

blastomycosis death is low when the infection is timely diagnosed and treated. In . . . Olson's case, [respondent's] delay in timely diagnosing and treating . . . Olson's blastomycosis led directly to the infection's consolidation and spread, to the point that . . . Olson developed [ARDS], sepsis, and other conditions that [were] a substantially contributing factor causing his death, all of which were avoidable.

. . . .

In addition, [the expert] specifies . . . the morning of July 31, 2019, as a critical time for survival as that precede[d] the development of ARDS. Multiple studies show that ARDS is associated with higher overall mortality rates (14.3 – 89.9%) Hence any treatment which would have aborted [Olson's] progression towards ARDS would more likely than not have prevented [his] outcome.

Like the affidavit of the expert in *Rygwall II*, this raises a genuine issue of material fact because, from it, a jury could conclude without speculating that Olson's death was a result of respondent's failure to provide timely and appropriate care. We therefore reverse the summary judgment and remand the case to the district court.

Reversed and remanded.