STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0044

Ken Bellicot, as Trustee for the next of kin of Sallie Bellicot, deceased,
Appellant,

vs.

Bonnie P. Fines, MD, et al.,
Respondents.

Filed September 15, 2025
Reversed and remanded
Schmidt, Judge

Stearns County District Court
File No. 73-CV-20-4532

Peter A. Schmit, Morgan Voight, Greta Wiessner, Robins Kaplan LLP, Minneapolis, Minnesota (for appellant)

Mark R. Bradford, Elizabeth Euller, Bradford Andresen Norrie & Camarotto, Bloomington, Minnesota; and

Steven R. Schwegman, Chad A. Staul, Quinlivan & Hughes, P.A., St. Cloud, Minnesota (for respondents)

Considered and decided by Connolly, Presiding Judge; Schmidt, Judge; and Florey, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this medical-malpractice case, appellant Ken Bellicot[1]—in his capacity as the trustee for his deceased wife Sallie Bellicot's next of kin—challenges the district court's decision to grant respondents' motion for judgment as a matter of law (JMOL). Because there is sufficient evidence on the issue of causation to present a fact issue that requires resolution by a jury, we reverse and remand for a new trial.

FACTS

In October 2018, Sallie noticed a lump on her left breast while pregnant. Sallie went to the doctor, received an ultrasound on her breast, and respondent Bonnie P. Fines, M.D., evaluated the results of the ultrasound. Dr. Fines identified the lump "at the 6 o'clock position of [Sallie's] left breast," and classified the lump as "Probably Benign." Dr. Fines did not order a biopsy and instead recommended that Sallie receive another ultrasound in six months or when she discontinued breast-feeding.

In April 2019, six-weeks post-partum, Sallie reported to a separate doctor that the same lump on her breast felt larger. Sallie underwent another ultrasound, which showed a lump at "the 6 o'clock position" along with "enlarged axillary lymph nodes." The doctor ordered a same-day biopsy, which detected metastatic disease in the axillary lymph nodes. The biopsy did not detect malignancy in the lump at the 6 o'clock position.

[1] Given the shared last name, this opinion uses first names to distinguish Ken and Sallie.

A few days later, an MRI on Sallie's left breast resulted in findings that were "suspicious for malignancy." The doctor ordered another biopsy to collect tissue samples from "adjacent smaller masses [that were] directly contiguous with the larger mass" at the 6 o'clock position. The tissue collected was positive for cancer. Sallie later received a diagnosis for stage IV triple negative breast cancer, with metastases on both lungs.

In July 2020, Sallie and Ken sued for medical malpractice. The complaint alleged that Dr. Fines negligently failed to order a biopsy in October 2018 and, because of Dr. Fines' negligence, Sallie "suffered significant harm" due to the delay in her cancer diagnosis. The complaint alleged that Dr. Fines' employer, respondent Regional Diagnostic Radiology, P.A., was "vicariously or contractually liable" for her negligence.

In January 2021, Sallie died from breast cancer. The district court appointed Ken as trustee to continue the medical-malpractice action. The following month, Ken filed an amended complaint with himself as the sole plaintiff in his capacity as trustee for Sallie's next of kin. The amended complaint reasserted the medical malpractice claim but now alleged that respondents' negligence led to Sallie's death.

The case proceeded to a jury trial. Ken called an expert radiologist who had reviewed images from Sallie's 2018 ultrasound. The radiologist testified that the 2018 images showed no abnormalities in Sallie's axillary lymph nodes, but did show "an irregular mass with microlobulated borders and microcalcifications." The radiologist testified that these malignant characteristics required a biopsy. She testified:

> Q. What are the potential results of a tissue biopsy of a mass that has malignant tendencies?

A. Cancer.

Q. Are there any other options?

A. Very rarely they can be other things. Whenever—if something is inconclusive and it has malignant characteristics on ultrasound, then it needs to be reevaluated with either another biopsy or an excisional biopsy.

The radiologist opined that Dr. Fines's decision to label the growth as probably benign and to not order a biopsy failed to meet the standard of care.

Ken also called an expert oncologist who testified that when Sallie received the ultrasound in October 2018 her cancer was likely at "stage I or stage II." According to the oncologist, the average survival rate after being diagnosed with triple negative breast cancer varies in accordance with the stage of the disease at the time of the diagnosis: 91% for stage I; 66% for stage II; and 12% for stage IV. The oncologist testified that triple negative breast cancer is aggressive and grows quickly.

The oncologist also testified that if Sallie had been diagnosed with stage II cancer in October 2018 and had begun treatment, she would have had an "over 50 percent chance" of survival. The oncologist testified that Sallie had virtually no chance of survival after being diagnosed with stage IV cancer in April 2019. The oncologist testified that Dr. Fines' failure to order a biopsy in October 2018 played a substantial part in Sallie's death.

After Ken presented his case-in-chief, respondents moved for JMOL under Minnesota Rules of Civil Procedure 50.01. Respondents argued that JMOL was warranted because plaintiff failed to provide sufficient evidence of causation. Specifically, respondents argued that plaintiff's experts had not sufficiently shown that a biopsy on the

lump in October 2018 would have prevented stage IV cancer when a biopsy on the same lump in April 2019 did not test positive for cancer.

The district court granted respondents' motion for JMOL. The district court reasoned that a jury could not reasonably conclude that respondents caused Sallie's death. The district court found that "[i]n April 2019 a biopsy was performed on the mass located at the 6 o'clock position of [Sallie's] left breast, which pathologic testing indicated was negative for cancer." Therefore, the district court stated, "[t]here is no evidence a biopsy performed at the same location on October 10, 2018, would have detected cancer" and "[t]here is no evidence the cancer detected in April of 2019 was present on October 10, 2018." "To conclude otherwise," the district court noted, "would be mere speculation [and] legally insufficient to permit a jury to conclude Dr. Fines' actions caused [Sallie's] death."

Ken appeals.

DECISION

Ken argues that the district court erred by granting JMOL because he presented sufficient evidence for a jury to conclude that the failure to order a biopsy delayed Sallie's cancer diagnosis and thereby played a substantial role in her death. We review de novo a decision granting JMOL. *650 N. Main Ass'n v. Frauenshuh, Inc.*, 885 N.W.2d 478, 486 (Minn. App. 2016), *rev. denied* (Minn. Nov. 23, 2016). We must view the evidence in a light most favorable to the nonmoving party and make "an independent determination of whether there is sufficient evidence to present an issue of fact for the jury." *Jerry's Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 816 (Minn. 2006).

Under Minnesota Rule of Civil Procedure 50.01(a), once a party fully presents an issue to a jury, "and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may decide the issue against that party and may grant [JMOL]." For JMOL to be appropriate, the evidence must be "so overwhelming on one side that reasonable minds cannot differ as to the proper outcome." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019) (quotation omitted). When a court rules on a motion for JMOL, it "*must* ignore all the evidence that points in favor of the moving party and focus solely on the evidence supporting the nonmoving party's position." *Peterson v. W. Nat'l Mut. Ins. Co.*, 946 N.W.2d 903, 911 (Minn. 2020) (emphasis in original). If any inference exists "upon which the factfinder could decide for the nonmoving party," the decision must be left to the jury. *Id.*

For medical malpractice, a plaintiff must show, with support from expert testimony, "(1) the standard of care recognized by the medical community as applicable to the particular defendant's conduct, (2) that the defendant in fact departed from that standard, and (3) that the defendant's departure from the standard was a direct cause of the patient's injuries." *Dickhoff v. Green*, 836 N.W.2d 321, 329 (Minn. 2013) (quotation omitted). For causation, "a plaintiff must show that it is more likely than not that the defendant's conduct was a substantial factor in bringing about the result." *Rygwall as Tr. for Rygwall v. ACR Homes, Inc.*, 6 N.W.3d 416, 429 (Minn. 2024). Causation "generally is a question of fact for the jury." *Jepsen as Tr. for Dean v. County of Pope*, 966 N.W.2d 472, 491 (Minn. 2021) (quotation omitted). JMOL is inappropriate on the issue of causation so "long as the jury can reasonably infer from the evidence, without speculation, that the defendant caused

the plaintiff's injury[.]" *Rygwall*, 6 N.W.3d at 430. A jury engages in speculation when it resolves fact issues involving "obscure and abstruse medical factors" without support from expert testimony. *Id.* (quotation omitted).

Here, the district court granted respondents' motion for JMOL based solely on the issue of causation. But Ken's experts provided testimony that could allow a jury to reasonably conclude that respondents' negligence substantially diminished Sallie's chances of survival and made her death more likely. In reviewing Sallie's October 2018 ultrasound, Ken's radiologist expert testified that the lump on Sallie's left breast had multiple malignant characteristics that necessitated a biopsy. The radiologist stated that it is rare for a mass with malignant characteristics to not test positive for cancer.

Based on the 2018 ultrasound, Ken's oncologist expert testified that it was more likely than not that Sallie's cancer was at stage I or II in 2018, which has average survival rates after five years of 91% and 66% respectively. The oncologist opined that had Sallie begun treatment for stage II cancer in October 2018 she would likely still be alive. However, upon diagnosis in April 2019, Sallie's cancer was at stage IV, which has a survival rate after five years of 12%. Accordingly, the oncologist opined that respondents' failure to order a breast tissue biopsy in October 2018 played a substantial part in bringing about Sallie's death.

The district court and respondents correctly note that the biopsy on the lump in April 2019 did not show cancer. Nevertheless, in October 2018 the lump had malignant characteristics that were consistent with cancer. The evidence demonstrated that when tissue from "adjacent smaller masses [that were] *directly contiguous*" with the lump were

later tested in April 2019, they were positive for cancer. (Emphasis added.) There was also testimony that had a biopsy been performed in October 2018 of the lump in Sally's breast, a biopsy of the adjacent lymph nodes would have also been performed even though those lymph nodes showed no abnormalities at that time. This evidence, viewed in the light most favorable to Ken, demonstrates there is an issue of fact for a jury. *Jerry's Enters.*, 711 N.W.2d at 816.

Again, JMOL is appropriate only when "reasonable minds cannot differ as to the proper outcome," *Kedrowski*, 933 N.W.2d at 55 (quotation omitted), and a court "*must ignore* all the evidence that points in favor of the moving party and focus solely on the evidence supporting the nonmoving party's position," *Peterson*, 946 N.W.2d at 911 (emphasis in original). Under similar circumstances, the Minnesota Supreme Court acknowledged that plaintiffs faced an uphill battle in proving causation in a failure-to-timely-diagnose claim where the expert based his opinions on an analysis of the "particular characteristics of [the] cancer and its progression." *Dickhoff*, 836 N.W.2d at 337-38 & n.17. But, the supreme court determined—"consistent with [its] longstanding approach to tort law"—that plaintiffs should have an opportunity to do so nonetheless. *Id.* at 338 n.17.

Because Ken presented facts that could lead reasonable minds to conclude that respondents substantially contributed to Sallie's death—and because the legal standard for JMOL heavily favors the nonmoving party—we conclude that the district court erred when it granted respondents' motion for JMOL. Under these circumstances, the issue of causation must be resolved by a jury. Thus, we reverse and remand for a new trial. *See*

PMH Properties v. Nichols, 263 N.W.2d 799, 800 (Minn. 1978) ("Because the trial court erred in taking the case away from the jury, we reverse and remand for trial.").[2]

Reversed and remanded.

[2] On appeal, Ken raised other issues related to the district court denying his motion for a new trial, excluding certain expert testimony, and taxing costs against plaintiff. We decline to address those issues because we reverse and remand for a new trial on the basis of the JMOL ruling.