

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2005 CA 2064

ALVIN MILLET AND ROLAND MILLET

VERSUS

ACADIAN AMBULANCE SERVICE, INC., ET AL.

DATE OF JUDGMENT: SEP 15 2006

ON APPEAL FROM THE TWENTY-THIRD JUDICIAL DISTRICT COURT
(NUMBER 75,245) PARISH OF ASCENSION,
STATE OF LOUISIANA

HONORABLE PEGRAM MIRE, JUDGE

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Acadian Ambulance Service, Inc.,
Kenneth Deshazo

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

DISPOSITION: Reversed

KUHN, J.

On May 31, 2002, Acadian Ambulance Service, Inc. (Acadian) was transporting Mrs. Delia Hebert from her home to St. Elizabeth Hospital after complaints of “near syncope” (almost fainting). At the time she was 96 years old and caring for her terminally ill husband. During the transport, the ambulance driver rear-ended another vehicle. It is disputed whether the paramedic monitoring Mrs. Hebert was thrown onto her upon impact. After an approximately 20-minute delay, a second ambulance arrived and transported Mrs. Hebert to the hospital’s emergency room. Sometime during the late evening and early morning hours of June 5-6, 2002, while in the hospital, Mrs. Hebert had a heart attack. She had a second heart attack on October 13, 2002. Mrs. Hebert died at St. Elizabeth Hospital on October 28, 2002.

Her sons, Alvin and Roland Millet (plaintiffs), brought this action against Acadian and the ambulance driver, Kenneth Deshazo (defendants). The trial court found the accident that occurred en route to the hospital was the cause of Mrs. Hebert’s heart attacks and subsequent death. The trial court awarded plaintiffs damages. Defendants appeal.

In tort cases and other ordinary civil actions, the plaintiff, in general, has the burden of proving every essential element of his case, including the cause-in-fact of his damage, by a preponderance of the evidence. Proof by direct or circumstantial evidence is sufficient to constitute a preponderance, when, taking the evidence as a whole, such proof shows that the fact or causation sought to be proved is more probable than not. *Lasha v. Olin Corp.*, 625 So.2d 1002, 1005 (La. 1993).

Essential to the plaintiffs’ case was that defendants’ negligence was a cause-in-fact of Mrs. Hebert’s subsequent injuries and death. *Perkins v. Entergy Corp.*, 98-2081, 2082, 2083 (La. App. 1 Cir. 12/28/99), 756 So.2d 388, 403, *aff’d*, 2000-

1372, 1387, 1440 (La. 3/23/01), 782 So.2d 606. Conduct is a cause-in-fact of an injury if it is a substantial factor in bringing about the injury. *Dixie Drive It Yourself System New Orleans Co., Inc. v. American Beverage Co.*, 242 La. 471, 482, 137 So.2d 298, 302 (La. 1962). It has also been stated that defendant's conduct is a cause-in-fact of harm to another if but for its conduct the accident would not have occurred. *See Bonin v. Ferrellgas, Inc.*, 2003-3024 (La. 7/2/04), 877 So.2d 89, 94.

A plaintiff may be assisted in meeting the burden of proof required to establish that an injury was caused by an accident by a legal presumption articulated in *Housley v. Cerise*, 579 So.2d 973 (La. 1991). The Louisiana Supreme Court, quoting from an earlier case, *Lucas v. Insurance Company of North America*, 342 So.2d 591, 596 (La. 1977), stated, “[a] claimant's disability is presumed to have resulted from an accident, if before the accident the injured person was in good health, but commencing with the accident the symptoms of the disabling condition appear and continuously manifest themselves afterwards, providing that the medical evidence shows there to be a reasonable possibility of causal connection between the accident and the disabling condition.” *Housley*, 579 So.2d at 980.

However, under any definition of causation, even with the application of the *Housley* presumption, we conclude that plaintiffs did not carry their burden of proof as to causation. At trial, the deposition testimony of Mrs. Hebert's doctors was offered into evidence. Dr. Brent Mazoch was the emergency room physician who first attended Mrs. Hebert on May 31. Dr. Mazoch testified in his deposition that Mrs. Hebert presented with no apparent distress, she did not indicate she was in pain, and she showed no acute injury. In fact, Dr. Mazoch's progress notes from the emergency room describe Ms. Hebert as “cooperative” and “pleasant.” X-rays revealed Mrs. Hebert had an enlarged heart, chronic obstructive pulmonary

disease (COPD), and “elevation of the right humerus consistent with a right rotator cuff tear.” The laboratory tests Dr. Mazoch ordered revealed an elevated troponin level of 8.8.¹ Based on that result, Dr. Mazoch stated further evaluation would be needed to determine whether Mrs. Hebert in fact had a heart attack.

Dr. Evens Rodney, a board certified cardiologist, testified in his deposition that he saw Mrs. Hebert on June 1, and her heart and lung examination was normal. An EKG did not reveal any acute injury. Mrs. Hebert’s troponin level was elevated; however, her other heart enzyme levels were within normal limits. Based on all the tests results, Dr. Rodney stated it was impossible to tell whether Mrs. Hebert had had a heart attack on June 1, and with all but one test result being normal, he classified the elevated troponin level as “nonspecific.” Dr. Rodney stated it was unlikely the accident contributed to Mrs. Hebert’s June 5-6 heart attack.

Dr. Rao Narra, an Internist, testified in his deposition that he first saw Mrs. Hebert on June 1. Dr. Narra found the only thing of significance from a cardiology standpoint was the increased troponin level. Based on Mrs. Hebert’s 8.8 troponin level, Dr. Narra agreed his primary impression on June 1 would have been a mild heart attack that did not show up on the EKG. However, Dr. Narra opined that regardless of the accident or whether the paramedic fell onto Mrs. Hebert, the May 31 accident did not cause her subsequent heart problems.

Dr. Ben Hwa Hu, board certified in Family Practice, testified in his deposition that he also saw Mrs. Hebert on June 1. Based on the results of his examination and Mrs. Hebert’s test results, Dr. Hu’s impression was Mrs. Hebert had a “GI bleed,” “gastritis,” and “elevated cardiac enzymes.” Dr. Hu did not see Mrs. Hebert after June 1 and, therefore, deferred to her other doctors regarding the course of her care and condition after that date.

¹ Troponin is one of the heart enzymes measured to determine if someone has had a heart attack. A normal troponin level is less than 2.0.

The trial court issued reasons for judgment, wherein it stated, “the Court has not been offered any other reasonable explanation other than that Ms. Hebert had a mild heart attack because of the stress and trauma brought on by the accident.” The trial court found the accident led to Mrs. Hebert’s subsequent heart problems and declining health, and ultimately to her death.

Whether the accident caused Mrs. Hebert’s injuries and subsequent death are factual questions that should not be reversed on appeal absent manifest error. *Perkins*, 756 So.2d at 406. Reversal is warranted only if the appellate court finds that a reasonable factual basis for the trial court's finding does not exist in the record and that the finding is clearly wrong on the record. *Stobart v. State, Through DOTD*, 617 So.2d 880, 882-83 (La. 1993). The reviewing court must give great weight to factual conclusions of the trier of fact; where there is conflict in the testimony, reasonable evaluations of credibility and reasonable inferences of fact should not be disturbed upon review. *Canter v. Koehring Co.*, 283 So.2d 716, 724 (La. 1973).

The only expert testimony offered concerning causation favored the defendants, wherein Drs. Narra and Rodney stated it was unlikely the accident caused the June 5-6 heart attack. Dr. Narra opined that the May 31 accident did not cause Mrs. Hebert’s June 5-6 heart attack. Moreover, Dr. Rodney, her cardiologist, opined that her elevated enzyme count was nonspecific. Dr. Rodney did state it was not impossible to associate the trauma of the accident with her heart attack, if in fact Mrs. Hebert was physically and emotionally traumatized, overheated, and “in a very strange environment.” However, Mrs. Hebert’s medical record in no way suggests that she experienced shock, anxiety, or distress as a result of the May 31 accident. The first notation of Mrs. Hebert experiencing anxiety was almost a week after her June 5-6 heart attack.

Plaintiffs failed to present testimony or evidence to establish a causal relationship between the accident and Mrs. Hebert's injuries and death. After a thorough review of the entire record in this matter, we find the evidence as a whole does not establish that the causation for Mrs. Hebert's injuries and death was more probable than not the result of the accident en route to the hospital. Moreover, we find that the trial court was clearly wrong in its factual findings relating to the cause of Mrs. Hebert's medical problems.

For the foregoing reasons, the judgment of the trial court is reversed, and judgment is rendered dismissing plaintiffs' claims against Acadian Ambulance Service, Inc. and Kenneth Deshazo. All costs are assessed to Alvin and Roland Millet.²

REVERSED.

² This memorandum opinion is issued in compliance with Uniform Rules – Courts of Appeal Rule 2-16.1.B.