Affirmed and Opinion filed June 15, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00994-CV

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BURNECE BRANTNER, Appellant

V.

MICHAEL MIHALICK, M.D.; ST. LUKE'S EPISCOPAL HOSPITAL; TEXAS HEART INSTITUTE; AND CARDIAC CATHETERIZATION TECHNOLOGIES , Appellees

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On Appeal from the 165th District Court
Harris County, Texas
Trial Court Cause No. 95-44126

O P I N I O N

This is an appeal from the trial court's grant of a no-evidence summary judgment in favor of Michael Mihalick, M.D. (Mihalick) and St Luke's Episcopal Hospital, The Texas Heart Institute, and Cardiac Catheterization Technologies (collectively referred to as "St. Luke's"). Branter contends that summary judgment was improper because she produced more than a scintilla of evidence on each element of her cause of action challenged by Mihalick and St. Luke's. Because we find that summary judgment was properly granted to Mihalick and St. Luke's, however, we affirm the trial court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The lawsuit underlying this appeal was a medical malpractice action arising from events alleged to have occurred during Brantner's stay at St. Luke's. According to Brantner, she was admitted to St. Luke's to undergo a PTCA procedure, a form of angioplasty. Prior to the surgery, she was administered two drugs to which she had previously had allergic reactions. Brantner claimed that she had informed hospital staff of her allergies during her admission, the hospital records clearly reflected these allergies, and she was wearing a bracelet listing these allergies. Despite these precautions, Brantner claims she was administered these drugs, suffered lacerations to her coronary artery during the angioplasty procedure, and consequently had open-heart bypass surgery to correct the injury to her artery. She filed suit against Mihalick, her cardiologist, as well as St. Luke's and others not parties to this appeal.[1]

In her petition, Brantner alleged that Mihalick was negligent in failing to note or chart her medical history and in failing to follow the appropriate standard of care during her treatment. She also alleged that St. Luke's was negligent in failing to institute and enforce appropriate procedures which would have prevented her from being administered drugs to which she had known allergies. She also alleged St. Luke's was responsible for its nurses' negligence in administering the drugs to her when they were clearly informed of her allergic reactions to the medication

Three years after Brantner filed suit, St. Luke's and Mihalick moved for no-evidence summary judgments, alleging that Brantner had no proof of breach of the standard of care or causation. Brantner filed a response which incorporated the affidavit of Sharon VanRiper, a registered nurse. Brantner also filed an amended petition alleging *res ipsa loquitur*.

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[1] In her Third Amended Petition, filed in response to Mihalick's and St. Luke's motions for summary judgment, Brantner only named the parties to this appeal, apparently dismissing her claims against the other defendants named in her earlier petition. *See J. M. Huber Corp. v. Santa Fe Energy Resources, Inc.*, 871 S.W.2d 842, 844 (Tex. App.–Houston[14th Dist.] 1994, no writ) (holding that an amended petition serves to dismiss parties and claims omitted from it).

The trial court granted Mihalick's and St Luke's motions in two general orders, and Brantner instituted this appeal.

STANDARD OF REVIEW

When reviewing a no-evidence summary judgment, we apply the same legal sufficiency standard that we apply in reviewing a directed verdict. *See Moore v. K Mart Corp.*, 981 S.W.2d 266, 269 (Tex. App.–San Antonio 1998, pet. denied); *see also* Judge David Hittner & Lynne Liberato, *No-Evidence Summary Judgments Under the New Rule*, in STATE BAR OF TEXAS PROF. DEV. PROGRAM, 20 ADVANCED CIVIL TRIAL COURSE D, D-5 (1997). We look at the proof in the light most favorable to the non-movant, disregarding all contrary proof and inferences. *See Merrell Dow Pharmaceuticals, Inc. v. Havner*, 953 S.W.2d 706, 711 (Tex.1997), cert. denied, 118 S.Ct. 1799 (1998); *see also Lampasas v. Spring Center, Inc.*, 988 S.W.2d 428, 432 (Tex. App.–Houston [14th Dist.] 1999, no pet.). A trial court cannot grant a no-evidence summary judgment if the respondent brings forth more than a scintilla of proof to raise a genuine issue of material fact. *Moore*, 981 S.W.2d at 26; TEX. R. CIV. P. 166a(i). Proof that is so weak that it only creates a mere surmise or suspicion of a fact is less than a scintilla. *See Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex.1983). On the other hand, when the proof "rises to a level that would enable reasonable and fair-minded people to differ in their conclusions," the respondent has provided more than a scintilla of proof and survives summary judgment. *Havner*, 953 S.W.2d at 711.

ANALYSIS

Before we address the merits of the grant of summary judgment in favor of the appellees, we must first address a procedural issue raised by Brantner. She asserts that there has not been enough time for discovery, making the grant of summary judgment untimely under TEX. R. CIV. P. 166a(i). We disagree since Brantner raises this complaint for the first time on appeal. Accordingly, she has waived this point of error under TEX. R. APP. P. 33.1(a).

We now turn to address the merits of Brantner's complaint that the trial court erred by granting summary judgment in favor of St. Luke's and Mihalick. When a trial court enters a

general order granting summary judgment, we must uphold the grant of summary judgment on any ground raised in appellees' motions. *See State Farm Fire & Cas. Co. v. S.S.*, 858 S.W.2d 374, 380 (Tex.1993).

We find that the trial court did not err in granting summary judgment in favor of Mihalick and St. Luke's. Van Riper's affidavit fails to establish that she was familiar with the standard of care to be followed by nurses or doctors in the catheterization procedure, nor does it set forth the standards of care. Her affidavit likewise fails to establish the standard of care to be followed by hospitals in such procedures, nor does it establish her familiarity with the procedures hospitals follow.

Moreover, her affidavit regarding causation is conclusory. It states:

> The conduct on the part of the nurses at St. Luke's Episcopal Hospital fell below the standard of care. The nurses administered medications to the patient which should not have been given because of prior, charted adverse reactions. Indeed, it appears Mrs. Brantner had an adverse reaction during the PTCA and procedures. Such an adverse reaction may have caused or contributed to cause the injuries and damages, including the artery injury, dissection, and ultimate bypass surgery.

Such conclusory statements are insufficient to establish more than a scintilla of proof on any of the elements challenged by St. Luke's and Mihalick. *See Wadewitz v. Montgomery*, 951 S.W.2d 464, 466 (Tex. 1997); *see also Blan v. Ali*, 7 S.W.3d 741, 748 (Tex. App.–Houston [14th Dist.] 1999, no pet. h.) (holding that, in a summary judgment proceeding, an expert must explain how his conclusion is linked to the facts of the case). VanRiper's affidavit fails to state how or why the adverse reaction might have caused the injury, and her statement that the adverse reaction "may have caused" the injury sustained by Brantner only constitutes surmise or suspicion on that issue. Finally, her affidavit fails to link the injury to any acts by Dr. Mihalick. Thus, the trial court did not err by granting summary judgment to Mihalick and St. Luke's.

We finally turn to Brantner's argument that summary judgment was inappropriate because she amended her petition to allege *res ipsa loquitur* between the time that appellants filed their motions for summary judgment and the time the trial court entered the order. Without addressing the applicability of *res ipsa loquitur* to this case, we note that *res ipsa loquitur* is only an evidentiary rule and does not alleviate the requirement of proving causation. *See Schorlemer v. Rogers*, 974 S.W.2d 141 (Tex. App.–San Antonio 1998, pet. denied); *see also Kalteyer v. Sneed*, 837 S.W.2d 848, 853 (Tex. App–Austin 1992, no writ). Based on our disposition of the causation element above, we find the trial court did not err in granting summary judgment on that issue, as well, since causation must also be alleged to sustain a claim under the *res ipsa loquitur* doctrine.

The judgment of the trial court is affirmed.

/s/ Paul C. Murphy
Chief Justice

Judgment rendered and Opinion filed June 15, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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