IN THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT

MARGERY L. GEDDES, NORMAN, D. GEDDES, TINA GEDDES, JANET FULTON, GLEN GEDDES, and GARY GEDDES, THE WRONGFUL DEATH BENEFICIARIES OF WILBERT GEDDES, DECEASED, and THE ESTATE OF WILBUR GEDDES **PLAINTIFFS**

VERSUS **NO. A2401-07-142**

MEMORIAL HOSPITAL AT GULFPORT and NURSES JOHN AND/OR JANE DOE **DEFENDANTS**

JUDGMENT

THIS MATTER is before the Court pursuant to the Mississippi Tort Claims Act, §11-46-1 *et seq*. **Miss. Code Ann**. The bench trial began September 13, 2016, and ended September 16, 2016. At the trial's conclusion the parties were instructed to submit proposed findings of facts and conclusions of law in lieu of closing arguments. The Court, having now received the proposed findings and conclusions, having heard and reviewed the evidence, and having considered the arguments of the parties and the law, finds and orders as follows.

On January 5, 2006, Wilbert Geddes, Plaintiffs' decedent, was admitted to the cardiac floor at Memorial Hospital at Gulfport with complaints of heart flutter and shortness of breath. Mr. Geddes was 80 years old and had a significant medical history including a recent battle with lymphoma, including chemotherapy, cardiac issues and bypass surgery. At the time his pulse was in the 200's, his blood pressure was high and, by history, he had fallen. Upon admission an Adult Needs Assessment Screen was conducted. Mr. Geddes received a two out of three and was classified as a moderate fall risk patient.

Case: 24CI1:07-cv-00142 Document #: 67 Filed: 04/11/2017 Page 1 of 11

Over the next two days Mr. Geddes was informed not to ambulate without assistance when he was found walking back to his room from the hallway, and to call for assistance after he became short of breath while using his urinal. On January 7, 2006, following a respiratory crisis, Mr. Geddes was transferred from the telemetry unit to ICU on a ventilator. He remained in ICU until Saturday, January 14, 2006, when he was transferred back to the telemetry unit, arriving there at 1750 hours.

Upon transfer to the telemetry unit, Nurse Mary Rowlette took over Mr. Geddes' care around 1855. At 1925 she completed his vital signs sheet. At 1932 she charted Mr. Geddes "head to toe" Daily Assessment. Mr. Geddes was able to move all extremities, could bear partial weight, was able to pivot but unable to ambulate without assistance. She noted that he was a little hard of hearing but understood her instructions. He was continent and had a Foley catheter which was functioning properly. He was awake, alert, oriented times three to person, place, and situation. He was forgetful of events leading to his time in the ICU, something she described as not unusual. The head to toe assessment included assessing his fall risk, something she did throughout her shift which did not require completing a specific form for each assessment. Pursuant to hospital guidelines nurses had eight hours to complete an Adult Needs Screening Form. Following Nurse Rowlette's assessment of Mr. Geddes she put the bed at the lowest position, the bed rails in the upright position times three, and the call light and personal articles within his reach. In Nurse Rowlette's opinion Mr. Geddes did not appear to need a 24-hour sitter or anyone to stay with him. She offered to allow the family members to stay if they wanted.

At 2146 hours, Nurse Rowlette administered Haldol orally, Lasix by IV, and Lovenox by subcutaneous injection into Mr. Geddes' lower abdomen. No note appears in the chart regarding the bed rails' positions since the policy is to chart by exception. Nurse Rowlette did not normally lower the bed rails to administer a subcutaneous injection. At 2215 Nurse Rowlette heard a noise

and Mr. Geddes' call for help. Upon entering his room she found him lying on the floor, bleeding from the forehead. He told Nurse Rowlette that he had fallen because he felt like his catheter was leaking and wanted to see if he was wet. She examined the catheter, which was functioning properly, and the bed, which was dry. She did not chart the position of the bed rails because there was no change from the earlier position. She did chart that the bed rails were up times three after she lowered them to get Mr. Geddes back into bed, and then raised them again. Nurse Rowlette conceded that if an Adult Needs Screening Form had been completed earlier, it would have yielded a score requiring the use of the Spot-the-Dot program, however, the eight hours allowed to complete an Adult Needs Screening Form had not expired.

GEDDES FAMILY MEMBERS. Mrs. Geddes died prior to the trial and her deposition was entered into evidence. Neither she nor any of the five Geddes children witnessed the fall. They all testified that they would have provided someone to stay with Mr. Geddes overnight if they had been asked. Norman Geddes testified that his father was coherent and embarrassed after the fall. They all spoke fondly of their parents, their father's strength and personality, the sadness of his last days, and of their sorrow and loss.

The remaining witnesses were all experts who were qualified to testify within their areas of expertise and each testified based on their review of the records, their training and experience and gave opinions to a reasonable degree of medical or nursing probability. The expert opinions were based in part on the standard of care as it existed in 2006.

MARY ROWLETTE, RN, was called adversely by the Plaintiffs and the factual statement above is taken primarily from her testimony. She also testified as an expert for the Defendant.

At the time of this incident Mary Rowlette had been a staff nurse at Memorial Hospital at Gulfport since 1994. As set out above she was the nurse caring for Mr. Geddes on January 14, 2006.

She did what she described as a head to toe assessment of his systems, his ability to move and ambulate (noting that he needed assistance), and found his speech and ability to follow commands age appropriate. He was also described as awake, alert and oriented times three to person, place, and situation. Her assessment included assessing him for fall risks. She then implemented appropriate fall interventions; putting the bed at the lowest position, the bed rails in the upright position time three, and the call light and personal articles within reach. He did not appear to need a 24-hour sitter or anyone to stay with him. At 2215, after hearing him fall and his call for help, she found him lying on the floor. He was conscious and told her he thought his catheter was leaking. His bed was dry and the catheter was working properly. She did not chart the position of the bed rails because there was no change.

Nurse Rowlette testified that she was not required by hospital policy to use the Adult Needs Screening Form every time she assessed a patient. She acknowledged the "Spot-the-Dot" program and its use to alert staff to a patient that is a high risk for falls. All "Spot-the-Dot" precautions were taken with the exception of the yellow dot on his door and chart and a yellow wristband on his wrist. Nurse Rowlette testified that, in her opinion, to a reasonable degree of nursing probability, she did not breach the standard of care in the treatment she provided to Mr. Geddes.

Nurse Rowlette testified that the standard of care for fall interventions for a high fall risk patient such as Mr. Geddes would require the bed rails up times three and that having four bed rails up is not the standard. It was her testimony that all precautions required were taken. She acknowledged that the "Spot-the-Dot" program was not implemented to the extent that no yellow dot was placed on his door and chart nor was a yellow wristband placed on his wrist as a way of identifying him as a high fall risk. Those markings are to alert the staff, but here, according to Nurse Rowlette, the staff was already aware of his risk.

Plaintiffs contend that the failure to implement the "Spot-the-Dot" program was a contributing factor to Mr. Geddes' fall on January 14, 2006, and that the fall caused an injury that resulted in his death on January 18, 2006.

RACHAEL ROSENWEIG, Director of nursing at Ochsner Hospital in New Orleans, testified for the plaintiffs. In her opinion the standard of care in 2006 required assessment of a patient for fall risks upon admission and upon any change in status, *i.e.,* transfer to the telemetry unit from ICU. Therefore, in her opinion the standard of care was breached when only one documented fall risk assessment form was completed during the January 5, 2006, admission. She also opined that Mr. Geddes was not properly assessed or identified at admission as to his fall risk, and that he was not a moderate fall risk but, rather, a high risk for falls.

Nurse Rosenweig opined that the assessment performed by Nurse Rowlette was complete but stated that the fall risk assessment form should have been completed at the time. It was her opinion that if this had been done, along with placing a yellow dot on the patient's door, his chart and wristband, the fall would have been prevented. It was also her opinion that if the family had been requested to sit with Mr. Geddes, he would not have fallen out of the bed. And, finally, she speculated that all three of the bed rails were not in the upright position or Mr. Geddes would not have fallen. She believed Nurse Rowlette must have lowered the rails while administering her patient's medication at 2146 hours. Despite this, she agreed that steps like "Spot-the-Dot" do not actually prevent falls. The Court finds Nurse Rozenwig's testimony is based primarily on speculation and her opinions are not persuasive.

MICHAEL CHRISTOPHER TOWNSEND, M.D., Plaintiff's medical expert, is Medical Director of the Surgical Intensive Care Unit and Acute Care Surgery Section at Ochsner Foundation Hospital. Dr. Townsend expressed his opinion that Mr. Geddes died as a result of a large right-sided

Case: 24CI1:07-cv-00142 Document #: 67 Filed: 04/11/2017 Page 5 of 11

subdural hematoma caused by blunt head trauma which was temporally related to the fall on January 14, 2006. His opinion that the subdural hematoma was caused by the fall was based on the radiologist's characterization of the subdural hematoma and the medical examiner's findings of shearing and tearing of the bridging veins, which, in his opinion, was consistent with traumatic injury. Dr. Townsend did not offer an opinion of how the fall occurred. He conceded that Mr. Geddes did not have a focal, significant neurologic deficit in the days between the fall and when he was found unresponsive on January 18, 2006.

RITA WRAY, RN, testified for the defense. Nurse Wray had been involved in developing and implementing nursing policies and procedures to maintain current and best practices. It was her opinion that pursuant to the hospital's policies the Adult Needs Screening Form completed at admission was sufficient and it was not required that a second form be completed upon transfers. In Nurse Wray's opinion a thorough assessment was conducted in the telemetry unit and appropriate safety precautions were in place at the time of Mr. Geddes fall. She also testified that hospital policy did not require a sitter be provided for Mr. Geddes or that the family be asked to stay in his room at all times.

SUSAN BAJUS-MUSGROVE, RN testified for the defense as a nursing expert. It was her opinion that the standard of care owed by the hospital was provided to Mr. Geddes at all times during his hospitalization. Nurse Bajus-Musgrove had worked in 2005-2007 as a compliance director at a hospital where she had to establish the new fall prevention program. It was her opinion that the staff at Memorial met the requirements of the Adult Needs Screening for falls by completing the form on the day of Mr. Geddes admission. Nurse Bajus-Musgrove pointed out that the "Spot-the-Dot" program is a way to identify patients at risk for fall. It is not an act of intervention. In this case appropriate interventions were taken by having the bed in the lowest position, having the side rails

up, and the call light within reach. She agreed with other experts that the use of four side rails would be considered a restraint, and that the nurses took appropriate steps to prevent a fall and documented those steps. In her opinion, in 2006 it was not the standard of care to require the hospital to provide a sitter for patients. She also confirmed that charting by exception was the standard for nursing documentation. Fall precautions were not noted in the chart at 2146 when routine medications were given because the safety precautions were in place and had not changed.

ROBERT CHRISTOPHER PELTIER, M.D. was the defense expert in the field of internal medicine and hospital patient safety policies and procedures. It was his opinion that the nursing staff met the 2006 standard of care with respect to the care rendered to Mr. Geddes. In his opinion, the safety interventions implemented were appropriate for this patient. He also opined that four bed rails in the upright position constitute a restraint. It was Dr. Peltier's opinion that the fact a patient fell in the hospital does not establish negligence or a breach of the standard of care. Further, the 2006 standard did not require a family member be requested to stay the night, or the attendance of a hospital employee sitter. The "Spot-the-Dot" program is one devised to make people aware that a particular patient may be at higher risk for falls and that universal precautions should be in place. The MHG nursing staff employed the universal precautions for Mr. Geddes and his fall was not the result of any breach of the standard of care.

HAYNES LOUIS HARKEY, III, M.D. testified as a defense expert in the field of neurosurgery. It was Dr. Harkey's opinion that the fall suffered by Mr. Geddes on January 14, 2006, did not cause an injury that subsequently led to his death on January 18, 2006. Additionally, he was of the opinion that the fall was not the cause of the subdural hematoma. These opinions were based, in part, upon the fact that Mr. Geddes did not fit the clinical picture of a patient whose fall results in a subdural hematoma which increases in size and subsequently causes death. Mr. Geddes exhibited

no symptoms that indicated a neurological problem up until January 18, some 72 hours after the fall. The autopsy report also confirmed a massive bleed according to Dr. Harkey. He explained that in his opinion the tear of the bridging veins is actually a secondary injury to the venous structures because of the rapid expansion of the mass within the skull. In his opinion, all signs point to an acute and spontaneous hemorrhage. He, therefore, disagreed with Dr. Townsend's opinions as to the relationship between the fall and subdural hematoma. In his opinion the fall of January 14, 2006, did not cause the hematoma found on the CT scan and autopsy, and there was no reasonable temporal relationship between the clot and the fall. The Court finds Dr. Harkey's opinions persuasive as to causation.

CONCLUSIONS OF LAW

This action was brought pursuant to the Mississippi Tort Claims Act, ***Miss. Code Ann***. §11-46-1. " [T]he judge shall hear and determine, without a jury, a suit filed under the provisions of this chapter." ***Miss. Code Ann***. §11-46-13(1) The trial judge, as the trier of fact, has the sole authority for determining the credibility of the witnesses. ***City of Jackson v. Lipsey***, 834 So. 2d 687, 691 (Miss. 2003) (citing ***Rice Researchers, Inc. v. Hiter***, 512 So.2d 1259, 1265 (Miss.1987)). It is the trial judge's prerogative to give weight or credibility to one witness's testimony versus another. ***University Medical Center v. Johnson***, 977 So. 2d 1145, 1150 (Miss. App. Ct. 2007) The trial court's findings must be supported by substantial, credible, and reasonable evidence. Its findings are accorded deferential treatment, such that "[f]indings of fact by a trial judge after a bench trial are subject only to a limited scope of review if the trial judge applied the appropriate legal standard. If the record contains substantial supporting evidence, this Court will not reverse a trial court's findings, even if this Court disagrees with those findings. Moreover, conflicting testimony is to be resolved by the trier of fact, the judge in a bench trial. The trial judge in a bench trial must also

determine questions of weight and credibility of testimony, including that of experts. ***Tabitha Prayer v. Greenwood Leflore Hosp.***, 183 So. 3d 877, 883 (Miss. 2016)

A governmental entity can be liable for the misconduct of its employee if that misconduct occurred while the employee was "acting within the course and scope of employment." ***Miss. Code Ann.*** § 11-46-5(1). Here, the allegations are that Memorial Hospital nursing staff, within the course and scope of their employment, violated standards of care, *i.e.,* committed nursing malpractice in their treatment of Mr. Geddes.

To prevail in a medical malpractice action, a plaintiff must establish the standard of acceptable professional practice; that the defendant deviated from that standard; and that the deviation from the standard was the proximate cause of the plaintiffs' injury. ***Delta Regional Medical Center v. Taylor***, 112 So.3d 11 (Miss. Ct. App. 2012)

Medical negligence is established by expert medical testimony, with an "exception for instances where a layman can observe and understand the negligence as a matter of common sense and practical experience." ***Vaughn v. Mississippi Baptist Medical Center***, 20 So. 3d 645, 650 (Miss. 2009). The experts must articulate the objective standard of care, the breach, and "establish that the failure was the **proximate cause, or proximate contributing cause**, of the alleged injuries." ***McGee v.River Region Medical Center***, 59 So. 3d 575, 578 (Miss. 2009). An expert witness must be qualified to render his opinion, and the testimony must be relevant and reliable. It must also be established that the expert based his conclusions not on speculation but, rather, on scientific methods and procedures. ***Tunica County v. Matthews***, 926 So.2d 209, 213 (Miss. 2006).

Under Mississippi law, a "hospital is under a duty to exercise reasonable care to safeguard a patient from any known or reasonably apprehensible danger from [himself] and to exercise such reasonable care for [his] safety as [his] mental and physical condition, if known, may require."

Mississippi Dept. of Mental Health v. Hall, 935 So. 2d 917, 923 (Miss. 2006). The standard of care "is flexible in that the duty owed to patients may increase depending on the physical or mental condition of the patient." *Id.*

The Court finds that Memorial established the requisite standard of care through the testimony of its experts. Memorial's fall risk assessment tools met the standard of care for fall prevention in 2006 and were appropriate for use by the hospital. Further, the care by Memorial's nursing staff of Mr. Geddes did not deviate from the applicable standard of care for fall risk assessments or implementation of appropriate safeguards.

The evidence demonstrates that Memorial implemented, followed, and adhered to its policies and procedures for fall risk assessment, which met the appropriate standard of care. Nurse Rowlette did not complete a Fall Risk Assessment Form after her intake on January 15, 2006, but she did do a "head to toe" examination which was part of the ongoing assessment of Mr. Geddes. Appropriate safety interventions were in place throughout his stay, and there is no evidence that they were abandoned or neglected at any time. The failure to institute the ""Spot-the-Dot"" program, used to advise others of a patient's high fall risk, did not cause or contribute to Mr. Geddes' fall. It is not enough to indicate a "possibility of the cause of the injury." ***Burnham v. Tabb***, 508 So.2d 1072, 1074 (Miss. 1987). No one witnessed Mr. Geddes' fall. Plaintiff's expert Nurse Rosenzweig's opinion that the fall is evidence of a breach of the standard of care is simply conjecture and is inadequate to meet Plaintiffs' burden of proof.

The Court has considered all of the evidence and testimony presented on the issue of liability and finds that the Plaintiffs failed to establish by a preponderance of the evidence a violation of any standard of care with Memorial's treatment and evaluation of Mr. Geddes with respect to his fall risk. In addition, the use or non-use of fall prevention measures was adequately documented and

charted. The only way to reach the conclusion that a breach of some standard of care resulted in Mr. Geddes fall is to indulge in speculation and conjecture. Over a hundred years ago the Mississippi Supreme Court noted, "Possibilities will not sustain a verdict. It must have a better foundation. . ." ***Illinois Central R. R. Co. v. Cathey, Adm'r.***, 70 Miss. 332, 12 So. 253 (Miss. 1893). Plaintiffs are unable to establish their claim against Memorial Hospital.

A great deal of time and testimony was spent in an effort to establish, or not, that the fall led to the subdural hematoma which resulted in Mr. Geddes' death. Since the Court has already found that the hospital's nurses did not deviate from the standard of care for treatment of Mr. Geddes, causation for the death of Mr. Geddes is moot. However, the Court further finds that Plaintiffs failed to establish that the subdural hematoma was proximately caused by the fall from the bed as explained by the testimony of Dr. Harkey. In light of these findings the Court finds no need to discuss damages. It is, therefore,

ORDERED AND ADJUDGED that the employees of Memorial Hospital at Gulfport were not negligent, they did not breach any applicable standard of care, and the Plaintiffs did not meet their burden of proof as to causation.

SO ORDERED AND ADJUDGED this the 11 day of April, 2017.

FILED
APR 11 2017
CONNIE LADNER
CIRCUIT CLERK
BY D.C.

ROGER T. CLARK
CIRCUIT COURT JUDGE