

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA14-877

Filed: 7 April 2015

ANNETTE M. HAWKINS,
As Administratrix of the Estate
of RICHARD V. HAWKINS, JR.,
deceased,
Plaintiff,

v.

Craven County

No. 11 CVS 1403

EMERGENCY MEDICINE
PHYSICIANS OF CRAVEN
COUNTY, PLLC, GARY H.
LAVINE, M.D., EAGLE
HOSPITALIST CONNECTIONS, LLC,
ANUBHI GOEL, M.D., CAROLINAEAST
HEALTH SYSTEM, doing business as
CarolinaEast Medical Center, also doing
business as Craven Regional Medical
Center, CAROLINAEAST PHYSICIANS,
WILLIAM H. BOBBITT, III, M.D.,
and JOHN A. WILLIAMS, III, M.D.
Defendants.

Appeal by plaintiff from order entered 2 April 2014 by Judge W. Allen Cobb,
Jr. in Craven County Superior Court. Heard in the Court of Appeals 3 February
2015.

*BUTLER DANIEL & ASSOCIATES, PLLC, by A. L. Butler Daniel and Erin
K. Pleasant, for plaintiff.*

*CRANFILL SUMNER & HARTZOG, LLP, by Jaye E. Bingham-Hinch and
Christopher M. Hinnant, for defendants.*

ELMORE, Judge.

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Annette M. Hawkins (“plaintiff”), executrix of the estate of Richard V. Hawkins, Jr., appeals the trial court’s order granting summary judgment in favor of Gary H. Lavine, M.D., and Emergency Medical Physicians of Craven County, PLLC (collectively “defendants”).

I. Background

The facts of this case are largely undisputed. In the early morning hours of 15 January 2011, Richard Hawkins (“Mr. Hawkins”) woke up to take a pill. However, upon swallowing it, he lost consciousness and fell to the floor, hitting his head on the way down. Mr. Hawkins’ wife called the Cove City Rescue Squad. The paramedics noticed a laceration on the back of Mr. Hawkins’ head that was one inch long and one-half an inch wide. Mr. Hawkins was transported by ambulance to the Emergency Department (“ED”) at CarolinaEast Medical Center at approximately 2:36 a.m.

Dr. Gary Lavine (“Dr. Lavine”) was the emergency physician on duty. Upon arrival, Dr. Lavine examined Mr. Hawkins. Mr. Hawkins stated that on a scale of one to ten, the pain in his head was a five, and he felt nauseated. Dr. Lavine ordered an echocardiogram (EKG), which revealed an improper heart rhythm known as atrial fibrillation, or atrial flutter. The danger from atrial fibrillation is a stroke. Dr. Lavine also ordered a CT scan of Mr. Hawkins’ brain, which was interpreted by the radiologist on duty as normal, showing no active intracranial bleed or acute abnormalities.

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Dr. Lavine consulted with Dr. William H. Bobbitt, III, the hospitalist on call, and arrangements were made to admit Mr. Hawkins to the medical center for monitoring and treatment of his atrial fibrillation. Out of concern for Mr. Hawkins' atrial fibrillation, Dr. Lavine ordered one dose of the anticoagulation medication Lovenox, which was administered to Mr. Hawkins in the ED at 6:21 a.m. on 15 January 2011. The purpose of Lovenox is to prevent the formation of blood clots. According to the testimony in this case, Lovenox is a fast-acting, but not long lasting, anticoagulation with a half-life of approximately four and a half hours. Therefore, the single dose ordered by Dr. Lavine normally would have lost its effectiveness by 6:30 p.m.—approximately twelve hours after it was administered.

Mr. Hawkins was admitted to the hospital at approximately 6:30 a.m. that same day. Because Dr. Lavine was employed by the hospital as an emergency physician only, he did not have privileges to practice inside the hospital. Therefore, Dr. Lavine was not responsible for Mr. Hawkins' medical care after Mr. Hawkins was admitted. Dr. Lavine's four-day shift ended on the morning of 15 January, and he did not return to the ED for another four days.

During Mr. Hawkins' stay in the medical center, subsequent treating physicians ordered additional doses of anticoagulation medications, including Coumadin and aspirin. In addition, Dr. Bobbit ordered a dose of Lovenox every twelve hours. In total, Mr. Hawkins received four doses of Lovenox while he was admitted, plus the one dose he received in the ED.

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Mr. Hawkins was scheduled to be discharged from CarolinaEast on 17 January 2011, after undergoing a cardioversion procedure that was intended to treat his atrial fibrillation. However, after the procedure was performed on the morning of 17 January, physicians had difficulty waking Mr. Hawkins from the anesthesia. Doctors ordered an MRI of Mr. Hawkins' brain, which showed that Mr. Hawkins had suffered an intracranial brain hemorrhage. In an attempt to best treat this condition, Mr. Hawkins was transferred to the University of North Carolina hospital, where he died from complications due to the intracranial hemorrhage on 20 January 2011.

On 2 September 2011, plaintiff filed suit against CarolinaEast Health System, Emergency Medicine Physicians of Craven County, PLLC; Dr. Gary H. Lavine; Eagle Hospitalist Connections, LLC; Dr. William H. Bobbit, III; Dr. Anubhi Goel; The Heart Center of Eastern Carolina, PLLC; and Dr. John A. Williams, III. On or about 18 November 2013, Dr. Lavine and Emergency Medical Physicians of Craven County, PLLC (collectively "defendants") moved for summary judgment on grounds that plaintiff failed to forecast sufficient evidence on the issue of causation. On 2 April 2014, Judge W. Allen Cobb, Jr., entered an order granting defendants' motion for summary judgment. Plaintiff appeals the summary judgment order entered in defendants' favor.

II. Interlocutory Order

First, we must consider whether this appeal is properly before this Court. In the case *sub judice*, summary judgment was granted as to one but not all of the

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defendants and the trial court did not certify that there was “no just reason for delay” as required by N.C. Gen. Stat. § 1A–1, Rule 54(b) (2013). However, N.C. Gen. Stat. § 1–277 (2013) and N.C. Gen. Stat. § 7A–27(b)(3)(a) and (b) (2013) allow this Court to consider an interlocutory appeal where the grant of summary judgment affects a substantial right. *Id.*

Our Supreme Court has held that a grant of summary judgment as to fewer than all of the defendants affects a substantial right when there is the possibility of inconsistent verdicts, stating that it is ‘the plaintiff’s right to have one jury decide whether the conduct of one, some, all or none of the defendants caused his injuries. This Court has created a two-part test to show that a substantial right is affected, requiring a party to show “(1) the same factual issues would be present in both trials and (2) the possibility of inconsistent verdicts on those issues exists.

Camp v. Leonard, 133 N.C. App. 554, 557–58, 515 S.E.2d 909, 912 (1999) (citations and internal quotations omitted).

This case involves multiple defendants but the same factual issues. Therefore, “different proceedings may bring about inconsistent verdicts on those issues.” *Burgess v. Campbell*, 182 N.C. App. 480, 483, 642 S.E.2d 478, 481 (2007). Because plaintiff’s suit alleges several overlapping acts of medical malpractice resulting in harm, we hold that it is best that one jury hears the case. *Id.* As such, we conclude that the trial court’s grant of summary judgment affects a substantial right, and this Court will hear the merits of plaintiff’s appeal.

III. Standard of Review

Plaintiff appeals from the order granting summary judgment in favor of defendants.

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that any party is entitled to a judgment as a matter of law.” N.C. Gen. Stat. § 1A–1, Rule 56(c) (2013). “On appeal, an order allowing summary judgment is reviewed *de novo*.” *Howerton v. Arai Helmet, Ltd.*, 358 N.C. 440, 470, 597 S.E.2d 674, 693 (2004).

Our Supreme Court has “emphasized that summary judgment is a drastic measure, and it should be used with caution. This is especially true in a negligence case[.]” *Williams v. Power & Light Co.*, 296 N.C. 400, 402, 250 S.E.2d 255, 257 (1979) (internal citation omitted). Upon a motion for summary judgment, “[t]he moving party carries the burden of establishing the lack of any triable issue . . . and may meet his or her burden by proving that an essential element of the opposing party’s claim is nonexistent[.]” *Lord v. Beerman*, 191 N.C. App. 290, 293, 664 S.E.2d 331, 334 (2008) (internal quotations and citations omitted). If met, the burden shifts to the nonmovant to produce a forecast of specific evidence of its ability to make a *prima facie* case, *Draughon v. Harnett Cty. Bd. of Educ.*, 158 N.C. App. 705, 708, 582 S.E.2d 343, 345 (2003), “which requires medical malpractice plaintiffs to prove, in part, that

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the treatment caused the injury. Not only must it meet our courts' definition of proximate cause, but evidence connecting medical negligence to injury also must be probable, not merely a remote possibility." *Cousart v. Charlotte-Mecklenburg Hosp. Auth.*, 209 N.C. App. 299, 302, 704 S.E.2d 540, 543 (2011) (quotation and citation omitted).

IV. Analysis

Plaintiff contends that the trial court erred when it allowed defendants' motion for summary judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 56. Specifically, plaintiff argues that a genuine issue of fact exists as to whether Dr. Lavine's negligence was the proximate cause of Mr. Hawkins' death. We disagree.

A plaintiff asserting medical negligence must offer evidence that establishes the following essential elements: "(1) the applicable standard of care; (2) a breach of such standard of care by the defendant; (3) the injuries suffered by the plaintiff were proximately caused by such breach; and (4) the damages resulting to the plaintiff." *Purvis v. Moses H. Cone Mem'l Hosp. Serv. Corp.*, 175 N.C. App. 474, 477, 624 S.E.2d 380, 383 (2006) (internal quotation marks and citation omitted). Proximate cause is defined as:

a cause which in natural and continuous sequence, unbroken by any new and independent cause, produced the plaintiff's injuries, and without which the injuries would not have occurred, and one from which a person of ordinary prudence could have reasonably foreseen that such a result, or consequences of a generally injurious nature, was probable under all the facts as they existed.

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Williamson v. Liptzin, 141 N.C. App. 1, 10, 539 S.E.2d 313, 319 (2000) (quoting *Hairston v. Alexander Tank & Equipment Co.*, 310 N.C. 227, 233, 311 S.E.2d 559, 565 (1984)).

A medical negligence plaintiff must rely on expert opinion testimony to establish proximate causation of the injury in a medical malpractice action. *Cousart*, 209 N.C. App. at 303, 704 S.E.2d at 543; *see also Smithers v. Collins*, 52 N.C. App. 255, 260, 278 S.E.2d 286, 289 (1981) (noting that expert testimony is generally necessary “when the standard of care and proximate cause are matters involving highly specialized knowledge beyond the ken of laymen”). “[A]n expert is not competent to testify as to a causal relation which rests upon mere speculation or possibility.” *Young v. Hickory Bus. Furn.*, 353 N.C. 227, 230, 538 S.E.2d 912, 915 (2000).

Plaintiffs are required to make a *prima facie* case of medical negligence during a summary judgment hearing, “which includes articulating proximate cause with specific facts couched in terms of probabilities.” *Cousart*, 209 N.C. App. at 303-04, 704 S.E.2d at 543. Importantly, “a party opposing a motion for summary judgment cannot create a genuine issue of material fact by filing an affidavit contradicting his prior sworn testimony.” *Pinczkowski v. Norfolk S. Ry. Co.*, 153 N.C. App. 435, 440, 571 S.E.2d 4, 7 (2002); *see also Carter v. West Am. Ins. Co.*, 190 N.C. App. 532, 539, 661 S.E.2d 264, 270 (2008) (“[A] non-moving party cannot create an issue of fact to

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defeat summary judgment simply by filing an affidavit contradicting his prior sworn testimony.”).

A. Admissibility of Affidavits

Plaintiff contends that the affidavits of expert witnesses Dr. John Meredith, Dr. Harry Shaw Strothers, and Dr. Robert Stark were sufficient to survive summary judgment on the issue of proximate cause. Further, assuming *arguendo* that the affidavits were inadmissible, plaintiff argues that the collective deposition testimony of the expert witnesses was sufficient to establish that Dr. Lavine’s negligence was a proximate cause of Mr. Hawkins’ death.

To the contrary, defendants argue that the trial court erred in admitting the affidavits executed by Drs. Meredith, Stark, and Strothers because the experts’ prior deposition testimony contradicted the statements made in their affidavits. Further, without the admission of the affidavits, defendants argue that plaintiff failed to establish the proximate cause necessary to survive summary judgment.

After careful review, we agree with defendants in that the expert opinions offered by plaintiff regarding causation—set forth in three affidavits—cannot be relied upon to establish proximate cause. In addition, we hold that without these affidavits, plaintiff has failed to put forth the requisite evidence to survive summary judgment on the issue of causation.

The record indicates that between February and May 2013, discovery depositions were taken by defense counsel, and the following testimony was elicited:

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Dr. Meredith:

Q. [W]ould you tell me how you believe Dr. Lavine breached the standard of care in his treatment of [Mr. Hawkins], please?

A. It's my professional opinion the standard of care was breached by Dr. Lavine when he provided anticoagulation to a patient—to this patient who had suffered a closed-head injury.

...

Q. Let me ask you this. Will you have any opinions on the issue of causation? Are you familiar with that term?

A. I am familiar with that term, and my response to that is no.

Dr. Strothers:

[Q. Was there a violation in the standard of care?]

A. [M]y understanding is that Dr. Bobbitt wrote the admission orders. So Dr. Lavine wouldn't have been responsible for the care afterwards, except that he placed him on the Lovenox. . . . I think since there had only been one dose of Lovenox, that [Mr. Hawkins'] odds would have improved, because he would have had what's thought to be a lesssant [sic] for anticoagulative dose of Lovenox. But I can't say what the change in those odds would have been.

Dr. Stark:

Q. [I]f I understand what you're saying, is that your opinions will focus on how the care that was rendered by Dr. Williams caused or contributed to the death of [Mr. Hawkins]?

A. Yes.

However, approximately one week before the calendared summary judgment

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hearing, Dr. Meredith, Dr. Strothers, and Dr. Stark executed separate affidavits in which each independently provided:

[I]n my opinion, starting this patient (Mr. Hawkins) on a course of Lovenox by Dr. Lavine was unquestionably a direct cause of his ultimate demise.

During the depositions, these expert witnesses did not opine on the issue of causation. Specifically, none suggested that Dr. Lavine’s conduct did cause or *probably* caused Mr. Hawkins’ death. In fact, when asked if he had an opinion on causation, Dr. Meredith expressly responded “no,” he did not have an opinion on the issue of causation. Despite this clear testimony, Dr. Meredith nevertheless testified in his affidavit that Dr. Lavine’s conduct “was unquestionably a direct cause of [Mr. Hawkins] ultimate demise.”

This statement plainly contradicted Dr. Meredith’s deposition testimony. Dr. Strothers opined that Mr. Hawkins’ odds would have “improved” had he only received one dose of Lovenox—a statement in stark contrast to his affidavit testimony. Dr. Stark would not opine on Dr. Lavine’s conduct; he addressed only the alleged negligence of Dr. Williams in the deposition. Yet, in his affidavit, he too provided that Dr. Lavine’s conduct “was unquestionably a direct cause of [Mr. Hawkins] ultimate demise.”

The experts’ affidavit testimony clearly contradicts the experts’ deposition testimony. In *Rohrbough v. Wyeth Labs., Inc.*, 916 F.2d 970, 974 (4th Cir. 1990), a Fourth Circuit case cited by this Court in *Cousart*, an expert witness testified during

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a deposition concerning the possible ways by which the DTP vaccine might have caused neurological damage to the plaintiff, but the expert declined to state that the defendant's DTP vaccine actually caused the plaintiff's specific injuries. The Fourth Circuit noted that summary judgment would have been "unproblematic" if limited to the deposition testimony. *Id.* at 974. However, attached to the plaintiff's motion for summary judgment was an affidavit wherein the expert stated: "It is my opinion that [defendant's] DPT vaccine administered to [the plaintiff] . . . caused the neurological injuries from which she has suffered and continues to suffer." *Id.* at 974-75. The Fourth Circuit recognized that "[t]his statement alone would appear to defeat defendant's motion for summary judgment," except that the expert's affidavit was "in such conflict with his earlier deposition testimony that the affidavit should be disregarded as a sham issue of fact." *Id.* at 975. The Fourth Circuit reasoned that "[a] genuine issue of material fact is not created where the only issue of fact is to determine which of the two conflicting versions of the [expert's] testimony is correct." *Id.* (citation and quotation omitted). Therefore the expert's affidavit testimony was excluded from the summary judgment evidence given that the expert avoided making a statement during the deposition that defendant's vaccine caused the injury.

Similarly, in *Cousart*, expert witness Dr. Allen did not opine during his deposition testimony that a causal link existed between the defendants' particular act or omission and the plaintiff's injuries. *Cousart*, 209 N.C. App. at 308, 704 S.E. 2d at 546. However, when faced with the defendants' motion for summary judgment,

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Dr. Allen stated by way of affidavit that “it was and always has been my opinion that the inappropriate prenatal care and management of labor and delivery by the Defendants more likely than not caused or contributed to the permanent brachial plexus injury[.]” *Id.* This Court opined that the “conflicts between Dr. Allen’s deposition and affidavits . . . leave the trial court with only a credibility issue, not a genuine issue of material fact.” *Id.* at 309, 704 S.E.2d at 547. As such, this Court held that it would be “improper” to consider the affidavit testimony given the contrary nature of the deposition testimony and the affidavit testimony. *Id.*

Here, it appears that in an effort to survive summary judgment, plaintiff filed the experts’ affidavits shortly before the summary judgment hearing in an attempt to create a genuine issue of material fact. However, the conflict between the experts’ deposition testimony and their affidavits has created a credibility issue, not a genuine issue of material fact. *See id.* As such, it is improper for this Court to consider the affidavit testimony of the expert witnesses in determining whether plaintiff raised a genuine issue of material fact on the issue of proximate cause. We must now discern whether plaintiff submitted other proximate cause evidence to create a genuine issue of material fact.

B. Proximate Causation

Plaintiff argues that she presented sufficient evidence to raise a genuine issue of material fact on causation even without the experts’ affidavit testimony. We disagree.

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Proximate causation is a cause “which produces the result in continuous sequence and without which it would not have occurred, and one from which any man of ordinary prudence could have foreseen that such a result was probable under all of the facts then existing.” *Kanoy v. Hinshaw*, 273 N.C. 418, 426, 160 S.E.2d 296, 302 (1968). There is a two-pronged formula for proximate cause, which consists of a cause-in-fact and reasonable foreseeability. If a plaintiff is unable to show a cause-in-fact nexus between the defendant’s conduct and any harm, our courts need not consider the separate proximate cause issue of foreseeability.

In arguing that she presented sufficient evidence of direct causation to raise a genuine issue of material fact concerning proximate cause, plaintiff directs this Court’s attention to the deposition testimony of Dr. Meredith, Dr. Kenneth Fischer, and Dr. Strothers. Specifically, plaintiff argues that these experts “testified in their discovery depositions that the Lovenox ordered by Dr. Lavine was a cause of Mr. Hawkins’ death.”

In his deposition, Dr. Meredith testified that “the starting of the anticoagulation is inappropriate in an elderly patient who has sustained a closed-head injury or a traumatic brain injury. . . . The risks greatly outweighed the benefit of starting anticoagulation.” When asked if the Lovenox ordered by Dr. Lavine and administered to Mr. Hawkins actually caused Mr. Hawkins’ death, Dr. Meredith responded, “Lovenox contributed significantly.” However, when asked, “[w]ill you have any opinions on the issue of causation? Are you familiar with that term?” Dr.

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Meredith answered, “I am familiar with that term, and my response to that is no.” In addition, when asked whether the dose of Lovenox ordered by Dr. Lavine in the ED caused Mr. Hawkins’ bleed which led to his death, Dr. Meredith stated, “I can’t answer that.”

Dr. Fischer testified that “certainly most importantly the four doses of Lovenox would have had a substantial effect on [Mr. Hawkins’] bleeding times and the progression of the bleeding in the interval.” Dr. Fischer also opined that “the Lovenox was the principal causative agent for the bleeding.”

When asked whether Dr. Lavine violated the standard of care, Dr. Strothers testified that “my understanding is that Dr. Bobbitt wrote the admission orders. So Dr. Lavine wouldn’t have been responsible for the care afterwards, except that he placed him on the Lovenox. . . . I think since there had only been one dose of Lovenox, that [Mr. Hawkins’] odds would have improved, because he would have had what’s thought to be a lesssant [sic] for anticoagulative dose of Lovenox. But I can’t say what the change in those odds would have been.”

Again, a medical negligence plaintiff must rely on expert opinion testimony to establish proximate causation of the injury in a medical malpractice action. *Cousart, supra*. Although plaintiff argues that this testimony was sufficient to survive summary judgment on the issue of proximate cause, we disagree. None of the experts opined that the dose of Lovenox ordered by Dr. Lavine in the ED was a reasonably probable cause of Mr. Hawkins’ death. Dr. Meredith specifically testified that he had

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no opinion on the issue of causation. In reviewing Dr. Fischer's testimony within the context of the deposition, Dr. Fischer's mention of the "four doses" of Lovenox appears to be in reference to the four doses administered to Mr. Hawkins once he was admitted, which is not inclusive of the dose Dr. Lavine ordered. Dr. Fischer never specified that Dr. Lavine probably caused Mr. Hawkins' death because he was responsible for starting him on Lovenox. Dr. Strothers' testimony suggested that Dr. Lavine did not cause Mr. Hawkins's death because, had Mr. Hawkins only received one dose of the drug, Mr. Hawkins' chances of survival would have "improved." Thus, none of the experts testified that Mr. Hawkins would not have or *probably* would not have died had Dr. Lavine not administered the dose of Lovenox to Mr. Hawkins in the ED. *Cf. Lord*, 191 N.C. App. at 300, 664 S.E.2d at 338 (finding insufficient evidence of proximate cause where neither of the plaintiff's expert witnesses were able to testify that the plaintiff's vision would *probably* be better today had the defendants initiated steroid treatment sooner).

In addition, and contrary to plaintiff's argument, plaintiff failed to show that Dr. Lavine's single order of Lovenox caused Mr. Hawkins' death because it induced the subsequent treating physicians to continue prescribing the drug. Unlike the plaintiff in *Burgess v. Campbell*, 182 N.C. App. 480, 642 S.E.2d 478 (2007), a case on which plaintiff relies, plaintiff in this case is unable to direct this Court to any testimony to show that Dr. Lavine's diagnosis misled the subsequent treating physicians or caused them to engage in a plan of treatment that caused Mr. Hawkins'

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death. In *Burgess*, Dr. Rosen, the physician who initially diagnosed the patient, misread the ultrasound films and failed to detect an intrauterine pregnancy. *Id.* at 484, 642 S.E.2d at 481. As such, there was a genuine issue of material fact as to whether the subsequent treating physicians may have relied in part on Dr. Rosen's misdiagnosis in proceeding with the patient's treatment. In the instant case, there is no evidence that Dr. Lavine misdiagnosed the patient or misread the MRI. The radiologist clearly interpreted Mr. Hawkins' MRI as showing no intracranial bleed, and Dr. Lavine likely relied on the radiologist's correct read of the MRI when ordering a single dose of Lovenox.

Moreover, the record evidence suggests that the subsequent treating physicians were at liberty to continue or cancel Dr. Lavine's order of Lovenox after completing an independent evaluation of Mr. Hawkins. When asked, "[a]re you telling me that Dr. Lavine only intended this patient to have one dose?", Dr. Stephen Colucciello responded, "[w]ell, that's all he had control over. In the ED you give the dose and then additional anticoagulation is given by the admitting team." Dr. Colucciello further explained that the subsequent physicians may have taken into account the fact that Dr. Lavine ordered Lovenox; however, he noted that physicians "usually make their own determination for in-hospital treatment."

Plaintiff is unable to direct this court to any testimony that suggests Dr. Lavine implemented a plan of care that he believed the subsequent treating physicians were likely to follow after Mr. Hawkins was admitted to the hospital. After careful review

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of the record, we conclude that plaintiff failed to establish the first prong of the proximate cause analysis—that Dr. Lavine’s conduct directly caused Mr. Hawkins’ death. As such, we need not address plaintiff’s arguments regarding foreseeability. Plaintiff has failed to show that she presented a genuine issue of material fact on the issue of causation against Dr. Lavine such that it was inappropriate for the trial court to grant summary judgment in favor of these defendants.

V. Conclusion

In sum, we conclude that plaintiff’s evidence was insufficient to establish the requisite causal connection between Dr. Lavine’s alleged negligence and Mr. Hawkins’ death. The trial court did not err in granting summary judgment in favor of these defendants. Accordingly, we affirm the trial court’s entry of summary judgment.

Affirmed.

Judges DAVIS and TYSON concur.