SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2208-16T1

SEAN TURANICZA, deceased by
NANCY TURANICZA, Administrator
Ad Prosequendum of the ESTATE
OF SEAN TURANICZA,

Plaintiff-Appellant,

v.

CLAUDIA KERMAN, and ELLEN
KERMAN-GILBERT,

Defendants-Respondents.

Submitted January 30, 2018 – Decided February 15, 2018

Before Judges Reisner and Hoffman.

On appeal from Superior Court of New Jersey, Law Division, Ocean County, Docket No. L-0963-14.

Mazraani & Liguori, LLP, attorneys for appellant (Joseph C. Liguori and Jeffrey S. Farmer, on the brief).

Ronan, Tuzzio & Giannone, PC, attorneys for respondent Claudia Kerman (Michael B. Kelly, of counsel; Jilian L. McLeer, on the brief).

Leyden, Capotorto, Ritacco & Corrigan, PC, attorneys for respondent Ellen Kerman-Gilbert

(Robert J. Ritacco, of counsel; Kevin F. Sheehy, on the brief).

PER CURIAM

On April 7, 2012, nineteen-year old Sean Turanicza (Sean)[1] tragically passed away from a methadone overdose with a contributing factor of bronchopneumonia. In this appeal, plaintiff Nancy Turanicza, the administratrix ad prosequendum of her son Sean's estate, appeals from a December 21, 2016 Law Division order granting the summary judgment dismissal of the complaint she filed against defendants, Claudia Kerman and her mother, Ellen Kerman-Gilbert. Having considered the parties' arguments in light of the record and applicable legal standards, we affirm.

I

We derive the following facts from the summary judgment record, viewed in the "light most favorable to plaintiff[], the non-movant[] . . . ." Schiavo v. Marina Dist. Dev. Co., 442 N.J. Super. 346, 366 (App. Div. 2015) (citation omitted).

On April 6, 2012 at approximately 11:30 p.m., Claudia received a phone call from her friend asking if Sean could sleep at Claudia's home because his parents had "kicked [him] out." Ellen

[1] For ease of reference, we refer to Sean and defendants by their first names; we refer to Sean's mother as plaintiff.

granted permission for the sleepover, and Sean arrived at defendants' home around midnight on April 7, 2012.

Following his arrival, Sean and Claudia entered Claudia's bedroom and "watch[ed] some TV" until they fell asleep soon thereafter — between 12:30 a.m. and 1:00 a.m. At around 2:30 a.m., Sean's "loud snoring" woke up Claudia. Claudia called out Sean's name "a few times to try and wake him up," and then tried "shov[ing] him a little bit, like [a] nudge;" nevertheless, Sean continued to sleep. Assuming he was "in a deep sleep," Claudia returned to sleep herself.

Claudia testified she next awoke at noon. At that time, Sean was "faint[ly] breathing," but unresponsive. Claudia tried to wake Sean by "nudging him," "calling out [to] him," and "spill[ing] some water" on his face; however, these efforts proved unsuccessful, so she called out for her mother. Ellen then attempted CPR for five to ten minutes;[2] she called 9-1-1 after Sean failed to respond and began "foaming at the mouth."

Contrary to her deposition testimony, on the day of the incident, Claudia told police she awoke at approximately 11:00

[2] Ellen had been previously licensed as a certified nursing assistant and had also studied towards becoming a registered nurse. Prior to this incident, however, she had never performed CPR outside of her training.

a.m.; at that time, plaintiff "was making noises. . . . [and he] was not cold or clammy, [but] his hair and head were sweaty." Claudia further told police that, after calling out for her mother, she and her mother then "tried to get [Sean] into the bathroom," prior to Ellen calling 9-1-1.

Upon arrival, emergency personnel performed life-saving efforts but terminated those efforts after approximately fifteen minutes. They transported Sean to Beth Israel Hospital, where he was pronounced dead at 12:58 p.m. A doctor discovered a prescription bottle that contained methadone pills inside plaintiff's underwear waistband. The medical examiner determined plaintiff's death was an accident caused by the "adverse effect of methadone and THC, [with] a contributory factor [of] acute bronchopneumonia."

Following Sean's death, a detective with the Jackson Township Police Department interviewed Sean's brother's girlfriend. She reported that prior to his death, Sean told her he was going to try to sell the methadone pills, but if he was unsuccessful, he was going to "do" them himself.

In February 2015, plaintiff filed an amended complaint alleging that defendants were negligent "in providing controlled dangerous substances" (CDS) to Sean, and Ellen "was negligent in . . . permitting the use of [CDS] within her home." Additionally,

plaintiff alleged defendants negligently "failed to timely contact" emergency personnel, thus resulting in Sean's death.

Defendants, represented by separate counsel, denied all claims of wrongdoing. Following discovery, both defendants filed motions for summary judgment, arguing plaintiff failed to produce evidence to support her claims. After oral argument, the motion judge granted defendants' motions and set forth his reasons in a written opinion. The judge concluded, "[T]he factual record is completely devoid of any inferences or proofs" that defendants provided any drugs to Sean. The judge further concluded the factual record does not support plaintiff's claim that defendants "'wasted time' before calling for emergency personnel." Moreover, the judge concluded, "The actions or omissions by either or both [d]efendants are not proximately linked to [Sean's] death from overdosing on methadone pills." This appeal followed.

II

We review a ruling on summary judgment de novo, applying the same standard governing the trial court. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014). Thus, we consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational [fact-finder] to resolve the alleged disputed issue in favor of the non-moving party." Id. at 406 (quoting

Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). If there is no genuine issue of material fact, we must then "decide whether the trial court correctly interpreted the law." DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (citation omitted). We review issues of law de novo and accord no deference to the trial judge's conclusions on issues of law. Nicholas v. Mynster, 213 N.J. 463, 478 (2013).

"To sustain a cause of action for negligence, a plaintiff must establish four elements: (1) a duty of care, (2) a breach of that duty, (3) proximate cause, and (4) actual damages." Townsend v. Pierre, 221 N.J. 36, 51 (2015) (internal quotations and citation omitted). "It is generally plaintiff's burden to prove not only that defendant[s were] negligent, but also that defendant[s'] negligence was a proximate cause of the injuries and damages suffered." O'Brien (Newark) Cogeneration, Inc. v. Automatic Sprinkler Corp. of Am., 361 N.J. Super. 264, 274 (App. Div. 2003) (citing Paxton v. Misiuk, 34 N.J. 453, 463 (1961)).

On appeal plaintiff argues the motion judge erred in granting summary judgment "because there exist genuine issues of material fact as to whether defendants acted negligently." To wit: plaintiff argues defendants breached the heightened standard of care they owed Sean because he was a social guest. See Endre v.

Arnold, 300 N.J. Super. 136, 139, 144 (App. Div.) ("[A] host . . . has a duty to exercise reasonable care to render aid to a social guest who the host knows or has reason to know has seriously injured himself or herself. . . . [even if] the injury was sustained through no fault of the host."), certif. denied, 150 N.J. 27 (1997).

Here, even assuming defendants breached this heighted duty of care by negligently "fail[ing] to timely contact" emergency personnel,[3] plaintiff fails to demonstrate this alleged breach proximately caused his death. Plaintiff's evidence supporting proximate cause relies solely on the expert opinion of Dr. William L. Manion, a pathologist.

Pursuant to N.J.R.E. 703, an expert opinion must be based on "facts or data derived from (1) the expert's personal observations or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." Townsend, 221 N.J. at 53. Moreover, "an expert's opinion must be based on a proper factual foundation," meaning "[e]xpert testimony should not be received if it appears the witness is not in

[3] On appeal, plaintiff essentially abandoned the claim that defendants negligently supplied CDS to Sean or otherwise permitted him to use CDS. Regardless, the record lacks any credible evidence to support the claim.

possession of such facts as will enable him [or her] to express a reasonably accurate conclusion as distinguished from a mere guess or conjecture." Endre, 300 N.J. Super. at 147 (alteration in original) (quoting Dawson v. Bunker Hill Plaza Assocs., 289 N.J. Super. 309, 322-23 (App. Div. 1996)). Under the net opinion doctrine, "expert testimony is excluded if it is based merely on unfounded speculation and unquantified possibilities." Id. at 147-48.

In his report, Dr. Manion opines that:

> [I]f rescue personnel had been called at 2:00 [a.m.] or at 11:00 [a.m.], [Sean] could certainly have been resuscitated. It is well known in the state of New Jersey that police and emergency personnel carry Narcan[4] in order to inject into drug overdose patients so that they can rapidly reverse the effects of the opiates. Unfortunately, [Sean] was never given the chance to have Narcan administered to him. Thus, the failure to contact emergency personnel in a timely fashion was the most significant contributing factor to his death from methadone overdose."

Plaintiff failed to carry her burden to produce evidence of the facts on which her expert relied. Neither plaintiff nor her expert produced any evidence or cited any authority to establish that the "rescue personnel" who attended to Sean carried Narcan at

[4] Narcan is a brand of naloxone, a narcotic blocker; common parlance often uses these terms interchangeably.

the time of this incident.[5] As such, the opinion of plaintiff's expert that Sean would have been revived with Narcan if rescue personnel had been called earlier clearly constitutes a net opinion. See Townsend, 221 N.J. at 55 (holding plaintiff may not prove an element of his claim using an expert opinion "that is unsupported by the factual record.").

Accordingly, we affirm the Law Division's order on the basis that the record lacks sufficient evidence from which a reasonable fact-finder could conclude defendants' alleged delay in calling emergency personnel proximately resulted in Sean's death.[6] In so holding, we decline to address Ellen's argument that New Jersey's Good Samaritan Act, N.J.S.A. 2A:62A-1, applies here and immunizes her from liability.

Affirmed.

[5] In fact, defendants cite to an article from the Ocean County Prosecutor's Office stating that law enforcement agencies in that county became equipped with Narcan in April 2014 – two years after Sean's death. Although this article is not competent evidence in itself, it illustrates why plaintiff's expert was unreasonable in assuming all rescue personnel carried Narcan at the time of the incident under review.

[6] Notably, "we review orders and not, strictly speaking, reasons that support them. We have held, in other contexts, that a correct result, even if predicated on an erroneous basis in fact or in law, will not be overturned on appeal." El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 169 (App. Div. 2005).