

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 2004

DOROTHY M. TURNER

VERSUS

GENERAL HEALTH SYSTEM D/B/A BATON ROUGE
GENERAL MEDICAL CENTER, CASEY DEATON AND
MARK FAY

Judgment Rendered: May 3, 2012.

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On Appeal from the
19th Judicial District Court,
In and for the Parish of East Baton Rouge,
State of Louisiana
Trial Court No. 529,839

The Honorable Timothy E. Kelley, Judge Presiding

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BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

CARTER, C.J.

Plaintiff/Appellant, Dorothy M. Turner, appeals the district court judgment dismissing her claim for damages against Defendant/Appellee, General Health System, Inc. d/b/a Baton Rouge General Medical Center, with prejudice. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

On July 18, 2001, Dorothy M. Turner was receiving physical therapy for her shoulder at the Baton Rouge General Medical Center (“the General”). Her therapist that day was Casey Deaton. During the therapy session, in preparation for a shoulder exercise, Turner stood in front of a soma bench, which is slightly narrower than a regular chair, while Deaton adjusted the weights on a pulley system. As Turner attempted to sit, she slid off of the right side of the bench onto the floor, landing on her right knee and side. At that time, employees of the General helped Turner get back on her feet and asked if she was injured. She stated that she was fine and continued her physical therapy session. Turner alleges that she began to feel pain in her right knee and the right side of her torso on the evening of July 18.

On March 2, 2005, Turner filed a petition for damages against the General, alleging she was injured after falling during the July 18 physical therapy session.^{1,2} In her petition, Turner contends the General failed to exercise “the standard of good and acceptable care and practice” and

¹ Turner also named Deaton and Mark Fay, Turner’s primary physical therapist at the General, as defendants. On June 14, 2005, the district court signed Turner’s “Motion for and Judgment of Dismissal” dismissing Deaton and Fay from this lawsuit with prejudice.

² Although a medical review panel was requested and empanelled, it expired by operation of law without a decision.

breached that standard of care in her treatment by failing to properly monitor and assist her, failing to properly assess her need for assistance, and failing to follow instructions with regard to patient assistance.

After a bench trial held on April 7, 2011, the district court ruled in favor of the General. In oral reasons for judgment, the district court stated that it found that there was no breach of the standard of care and that the General's expert witness was "much more credible" than Turner's expert witness.

On appeal, Turner argues, among other things, that the district court erred in finding that there was no breach of the standard of care and that the General's expert witness was more credible than her expert witness.

DISCUSSION

A district court's finding of fact may not be reversed absent manifest error or unless clearly wrong. *Lasyone v. Kansas City Southern Railroad*, 00-2628 (La. 4/3/01), 786 So. 2d 682, 688. The reviewing court must do more than just simply review the record for some evidence that supports or controverts the district court's findings; it must instead review the record in its entirety to determine whether the district court's finding was clearly wrong or manifestly erroneous. *Lasyone*, 786 So. 2d at 688. The issue to be resolved by a reviewing court is not whether the trier of fact was right or wrong, but whether the factfinder's conclusion was a reasonable one. *Id.* The reviewing court must always keep in mind that if the district court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse, even if convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. *Id.*

Standard of Care

It is well-established that a hospital can be liable for the negligence of its employees under the doctrine of *respondeat superior*. *Grimes v. Louisiana Medical Mutual Insurance Company*, 09-0292 (La. App. 1 Cir. 9/11/09), 29 So. 3d 505, 508. In a medical malpractice claim against a hospital, the plaintiff is required to prove by a preponderance of the evidence that the hospital owed the plaintiff a duty to protect against the risk involved (or the applicable standard of care), that it breached that duty (or the applicable standard of care), and that the breach caused plaintiff's injury. *Grimes*, 29 So. 3d at 508. Expert testimony is generally required to establish the applicable standard of care and whether that standard of care was breached. *Williams v. Our Lady of the Lake Hospital, Inc.*, 09-0267 (La. App. 1 Cir. 9/11/09), 22 So. 3d 997, 999.

Both Turner and the General offered expert testimony on the standard of care required of a physical therapist and whether Deaton breached this standard of care. Both experts testified that a physical therapist must constantly assess the patient and change the level of assistance given accordingly. Physical therapists provide patients with different levels of assistance including independent, stand-by assist, minimum assist, moderate assist, maximal assist, and dependent.

Deaton testified that he was providing stand-by assist to Turner when she was exercising on the soma bench. Turner's expert witness, Ruth Niedrich, defined stand-by assist as standing close to and giving attention to the patient, being ready to assist the patient as needed, and possibly giving verbal cues and coaxing. The General's expert witness, James Welsh, Jr.,

defined stand-by assist as being attentive to the patient and stated that being attentive could mean setting up equipment in the correct way.

Turner argues that Deaton was not providing stand-by assist while she was being seated because his attention was not on her and because he told her to sit while he was looking away and unable to provide assistance. According to Deaton's testimony, while Turner was in a standing position, he adjusted the soma bench in order for her to perform the next exercise. He then went to adjust the weight on the pulley system. After adjusting the weight on the pulley system, he turned to have Turner back in his full sight and was surprised to see her down on the bench and more surprised when he saw her sliding off of the bench. Deaton could not remember whether he instructed Turner to sit, but judging from his surprise, testified that he does not think he did. Deaton prepared a written summary of the July 18 session wherein he stated that Turner was instructed to be seated on the soma bench with stand-by assist. Based on this summary, Turner argues that Deaton did tell her to sit while he was unable to provide assistance to her. When asked about his statements in the summary, Deaton testified that he was not as specific in his documentation of the fall as he should have been, and he thinks what he meant in his summary is that he told Turner where she was going to be seated for the next exercise, but not that he told Turner to be seated.

Turner's expert, Niedrich, testified that she heard Deaton's testimony, reviewed depositions, and reviewed medical records from the General in making her decision that Deaton breached the standard of care because he was not providing appropriate stand-by assist to Turner. In her opinion,

Deaton's actions at the time of Turner's fall did not qualify as stand-by assist, even though that is the type of assistance he documented that he was providing. She testified that Deaton breached the standard of care because his attention was turned away from Turner when she attempted to sit. According to Niedrich, if Deaton would have been paying attention, he may not have been able to prevent the fall, but could have helped ease Turner to the ground. On cross examination, Niedrich agreed that Turner had done the same exercise nine times before the July 18 session and stated that she did not see any documentation in the records that Turner needed assistance before July 18, besides a July 6 note written by a physical therapist assistant. The July 6 note states, "[p]atient requires assistance to transfer from chair and total gym." However, Niedrich agreed that there was no indication that Turner needed assistance at her next session.

The General's expert witness, Welsh, testified that he reviewed the depositions of Fay, Deaton, Niedrich, and Turner as well as medical records from the General. After his review, Welsh testified that, in his opinion, Deaton did not breach the standard of care because nothing in the patient notes indicated Turner was having problems getting up and down or standing and that it appeared that after she fell, she was able to rise to and from out of a chair. He also stated that it was appropriate for Deaton to have angled the soma bench and that it was within the standard of care for Deaton to have Turner in a standing position while he adjusted the weight on the pulley system. In his opinion, stand-by assist includes arranging the weights and adjusting the pulleys, and it was within the standard of care for Deaton to have his attention on the weights and pulleys while adjusting them instead

of on Turner. He testified that there was no indication that Turner had trouble understanding instructions and that she had performed this exercise nine times before her fall. With regard to the July 6 note, Welsh stated that it did not necessarily indicate to him that Turner needed help getting up and down all the time, and that getting off of a total gym was like getting off of a bed. In his opinion, the fall was an accident and there was no breach of the standard of care.

Expert Testimony

When findings are based on determinations regarding the credibility of witnesses, the manifest error/clearly wrong standard demands great deference to the trier of fact's findings; for only the fact finder can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding and belief in what is said. *Lasyone*, 786 So. 2d at 693. The rule that questions of credibility are for the trier of fact applies to the evaluation of expert testimony, unless the stated reasons of the expert are patently unsound. *Id.* Credibility determinations, including the evaluation of and resolution of conflicts in expert testimony, are factual issues to be resolved by the trier of fact, which should not be disturbed on appeal in the absence of manifest error. *Id.*

Turner argues that the district court's reliance on the General's expert testimony was manifestly erroneous because his testimony was patently unsound. In support of this argument, Turner points out alleged inconsistencies in Welsh's testimony. In addition to the alleged inconsistencies, Turner argues Welsh's testimony was flawed because it was based solely on medical records from the General. While Welsh did testify

that he based his opinion on the medical records, he also testified that he reviewed the depositions of Fay, Deaton, Turner, and Niedrich in order to give his opinion. The district court heard this testimony, reviewed all of the evidence presented at trial, and chose to credit Welsh's expert opinion.

Applying the above standards to the facts before us, we find no manifest error in the district court's decision to credit the testimony of one expert over the other or its determination that there was no breach of the standard of care. The medical records corroborate the General's expert testimony that nothing in the patient notes indicates Turner was having problems getting up and down or standing before the July 18 session except the July 6 note. Moreover, Deaton testified that because the July 18 session was his first encounter with Turner, he checked her exercise flowchart and did not see any indication that she needed additional assistance of any type. The record shows that Welsh's expert opinion was not patently unsound and that there was a sufficient basis for the district court to resolve the experts' conflicting conclusions in favor of the General. Having reviewed the record as a whole and having accepted the district court's decision to credit the expert opinion of Welsh, we do not find the district court was clearly wrong in rejecting Turner's claim. Therefore, we affirm the judgment of the district court.

CONCLUSION

For the above-stated reasons, we affirm the judgment of the district court dismissing Turner's suit against the General with prejudice. Costs of this appeal are assessed to Plaintiff/Appellant, Dorothy M. Turner.³

AFFIRMED.

³ Turner also argues that the district court committed manifest error in finding that she needed right knee replacement surgery before her fall. Because we agree with the district court that there was no breach of the standard of care, we do not reach the issue of causation.