No. COA25-693 17th District

NORTH CAROLINA COURT OF APPEALS

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ESTATE OF HENRY WYER, by and Through the Administrators of the Estate Of BENITA WYER and LAMONT WYER,	)	
Plaintiff,	)	
v.	)	From Alamance County
	)	No. 20 CVS 002215-000
ALAMANCE REGIONAL MEDICAL CENTER, INC. d/b/a CONE HEALTH ALAMANCE REGIONAL MEDICAL CENTER,	)	
Defendants.	)	

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PLAINTIFF-APPELLANTS BRIEF

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PLAINTIFF-APPELLANTS BRIEF

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ISSUES PRESENTED

I. Whether the trial court erred in granting summary judgment where there existed genuine issues of material fact as to whether the DNR order entered into Mr. Wyer's medical record reflected his wishes.

II. Whether the trial court erred in holding that the doctrine of res ipsa loquitur was inapplicable despite unresolved factual disputes over how the DNR order came to be entered.

III. Whether the trial court erred in granting summary judgment on the grounds of causation where the hospital's unilateral entry of a DNR order ensured that CPR was never administered, thus eliminating any opportunity to determine whether resuscitation could have saved Mr. Wyer's life.

STATEMENT OF THE CASE

This is an appeal from a final judgment entered by the Honorable R. Stuart Albright, Superior Court Judge for Alamance County, on January 30, 2025, granting Defendant-Appellee Alamance Regional Medical Center's Motion for Summary Judgment. The case arises from the wrongful placement of a Do Not Resuscitate (DNR) order in the medical records of Henry Wyer, which the Plaintiff-Appellants—his children and court-appointed administrators—allege was placed without Mr. Wyer's or his family's consent.

Plaintiffs brought this medical malpractice and negligence action pursuant to N.C. Gen. Stat. § 90-21.12, supported by both expert and lay testimony, and invoking the doctrine of res ipsa loquitur. Defendant moved for summary judgment, arguing that the DNR order was properly entered based on clinical judgment and purported consent by the family.

On January 27, 2025, the trial court held a hearing on Defendant's Motion for Summary Judgment. Plaintiffs argued that there were genuine issues of material fact as to whether Mr. Wyer consented to the DNR order, whether the DNR order was contrary to valid medical directives previously executed by Mr. Wyer, and whether the standard of care had been breached. The trial court granted summary judgment on January 30, 2025. Plaintiffs filed notice of appeal on February 11, 2025. The record was settled by stipulation on July 9, 2025, filed in the Court of Appeals on July 10, 2025 and docketed on August 4, 2025. This appeal timely follows.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

This appeal is taken as of right pursuant to Rule 3 of the North Carolina Rules of Appellate Procedure. The order of the Superior Court granting summary judgment in favor of Defendant-Appellee Alamance Regional Medical Center, Inc., entered on January 30, 2025, constitutes a final judgment that disposes of all claims asserted by the Plaintiff-Appellants in this civil action.

Pursuant to N.C. Gen. Stat. § 7A-27(b), parties have the right to appeal final judgments of the Superior Court to the North Carolina Court of Appeals. Plaintiff-Appellants timely filed written notice of appeal on February 11, 2025, within thirty (30) days of the entry of final judgment, as required by N.C. R. App. P. 3(c). The trial court's ruling on a motion for summary judgment is immediately appealable when it disposes of all claims and parties. Accordingly, this Court has jurisdiction over this appeal as a matter of right.

STATEMENT OF THE FACTS

Henry Wyer, a 75-year-old man with multiple comorbidities, was admitted to Alamance Regional Medical Center (ARMC) on June 13, 2018, presenting with vomiting, small bowel obstruction, constipation, and hematuria. (R S, p. 242) At the time of admission and prior to this date, Mr. Wyer had expressly indicated his desire for life-preserving treatment on at least two occasions:

1. On April 5, 2018, he executed a "Choose Your Health Care Agent" form and named his daughter, Benita Wyer, as his healthcare agent. He clearly stated that his life was worth living regardless of how sick he became, and that he desired all life-supporting measures except dialysis and permanent mechanical ventilation. (Rec. Ex. G, pgs. 188-194)
2. On May 11, 2018, Mr. Wyer and Benita Wyer, acting in her authorized capacity, signed a Medical Orders for Scope of Treatment (MOST) form. The MOST form confirmed Mr. Wyer's desire for CPR and full medical intervention in the event of a life-threatening situation. (Rec. Ex. A)

The treating providers at ARMC were made aware of this form during his hospitalization, and it was acknowledged in his chart. (R S, pgs. 266, 271, 310)

Despite this, on June 14, 2018, Nurse Practitioner Megan Mason went in to discuss Mr. Wyer's prognosis and need for palliative and hospice care. During that discussion, Ms. Mason entered a DNR/DNI order in Mr. Wyer's chart, citing that Benita Wyer agreed to allow Mr. Wyer to die a natural death. (R S, pg. 280) Benita Wyer disputes this, asserting she reiterated the prior directives and presented the MOST form again during the encounter with Ms. Mason. (Rec. Ex. G, pg. 184) The medical record also documents that, the day prior to the meeting with Ms. Mason, Dr. Sona Patel also discussed Mr. Wyer's poor prognosis and referral for palliative and hospice care. Dr. Patel further discussed code status with Mr. Wyer in light of this status. Mr. Wyer explicitly reaffirmed that he wanted to be a Full Code. (R S, pg 271).

On June 18, 2018, Mr. Wyer went into cardiac arrest. No CPR was administered due to the DNR order that had been entered four days prior. He was pronounced dead. (R S, pgs. 326, 341) Benita Wyer immediately protested, informing staff that neither she nor her father had consented to a DNR order. She again presented the MOST form,

which remained consistent with Mr. Wyer's previously documented wishes. (Rec. Ex. G, pg. 184) (R S, pg. 293)

The medical record, deposition testimony of Benita Wyer, and the hospital's own documentation collectively indicate a factual dispute about whether the DNR order was appropriate and authorized. This dispute lies at the core of the claims for negligence and medical malpractice, including the application of res ipsa loquitur.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review for a trial court's grant of summary judgment is de novo. Summary judgment is appropriate only where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c); see also *Draughon v. Harnett Cnty. Bd. of Educ.*, 158 N.C. App. 208, 211, 580 S.E.2d 732, 735 (2003). All inferences must be drawn in the light most favorable to the non-moving party. The appellate court reviews the record to determine whether a genuine factual dispute exists that should have been submitted to a jury.

To the extent this appeal raises issues of **res ipsa loquitur**, those too are subject to **de novo** review where the facts are undisputed and the only question is whether the doctrine applies. See *Robinson v. Duke Univ. Health Sys., Inc.*, 229 N.C. App. 215, 748 S.E.2d 319 (2013).

Causation, particularly proximate cause, is generally a question of fact for the jury unless only one inference may be drawn from the evidence. *Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 233–34, 311 S.E.2d 559, 564 (1984). When a defendant's negligence gives rise to uncertainty in causation, courts must not resolve that uncertainty in the defendant's favor at summary judgment.

II. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE GENUINE ISSUES OF MATERIAL FACT EXIST AS TO WHETHER THE DNR ORDER REFLECTED THE INTENTIONS OF HENRY WYER OR HIS HEALTHCARE AGENT.

Summary judgment is appropriate only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c); *Moore v. Proper*, 366

N.C. 25, 30, 726 S.E.2d 812, 817 (2012). The trial court must consider the record in the light most favorable to the non-moving party, and if conflicting evidence raises questions of fact for the jury, summary judgment is improper.

There is ample evidence that Mr. Wyer and his healthcare agent, Benita Wyer, clearly expressed a desire for full medical intervention. The April 5, 2018 "Choose Your Health Care Agent" form and the May 11, 2018 Medical Orders for Scope of Treatment (MOST) form both indicate Mr. Wyer's wish to receive CPR and aggressive treatment. Dr. Patel discussed Mr. Wyer's failure to thrive prognosis, and referral to palliative care, with both Mr. Wyer and his daughter on June 13, 2018. Mr. Wyer and Ms. Wyer again indicated their desire for a Full Code after this discussion.

There is no record of any revocation of these directives except for the notes placed in the record by Meghan Mason. Nevertheless, a DNR order was entered on June 14, 2018, without proper documentation of consent. Benita Wyer has consistently denied agreeing to the entry of a DNR, and she reaffirmed her father's code status verbally and in writing during the admission.

Whether the DNR was entered in accordance with the family's wishes and lawful medical directives is plainly a material fact in dispute. This question should have been presented to a jury.

III. THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S CLAIMS UNDER THE DOCTRINE OF RES IPSA LOQUITUR WHERE DEFENDANTS EXCLUSIVELY CONTROLLED THE CIRCUMSTANCES THAT LED TO THE UNAUTHORIZED DNR ORDER.

North Carolina recognizes the doctrine of res ipsa loquitur in medical malpractice cases where "(1) the injury is of a type that does not ordinarily occur in the absence of negligence; (2) the instrumentality is within the exclusive control of the defendant; and (3) the injury was not due to any voluntary action or contribution by the plaintiff." *Howie v. Walsh*, 168 N.C. App. 694, 698, 609 S.E.2d 249, 252 (2005).

An unauthorized DNR order entered into a patient's chart—contrary to existing, valid directives and family statements—does not ordinarily occur in the absence of negligence. The electronic medical record was within the exclusive control of ARMC and its providers. Mr.

Wyer was cognitively competent and had affirmatively stated his treatment preferences. The DNR order was entered based on a purported part of a conversation with Benita Wyer that she unequivocally denies. These circumstances raise a prima facie case for application of res ipsa loquitur.

Defendant argues that res ipsa loquitur is inapplicable because the identity of the person who entered the DNR order is known. This misconstrues the doctrine. As held in *Robinson v. Duke Univ. Health Sys.*, 229 N.C. App. 215, 747 S.E.2d 321 (2013), the mere fact that the act causing injury is identified does not preclude the application of res ipsa where the nature of that act—whether negligent or not—remains in dispute. Id. at 226, 747 S.E.2d at 329.

Here, the entry of the DNR order was contrary to a valid MOST form and repeated family statements. The act of entering a DNR order—particularly in the face of medical directives to the contrary—is not an event that occurs absent negligence. That the identity of the nurse practitioner is known does not resolve whether her conduct breached the standard of care. The key question—whether ARMC

negligently overrode the patient's and his agent's express wishes—remains a factual dispute for the jury.

Thus, even under a known-actor scenario, res ipsa loquitur supports the inference of negligence arising from circumstances exclusively within Defendant's control.

The trial court erred in holding this doctrine inapplicable at the summary judgment stage where the evidence, when viewed in the light most favorable to Plaintiffs, supports its application.

IV. THE TRIAL COURT ERRED IN CONCLUDING THAT PLAINTIFFS FAILED TO PROVE CAUSATION WHERE DEFENDANTS' CONDUCT ELIMINATED ANY OPPORTUNITY TO ASSESS WHETHER CPR WOULD HAVE SAVED MR. WYER'S LIFE.

Defendants contend that Plaintiffs cannot establish that Mr. Wyer would have survived even if CPR had been administered. However, this argument misrepresents North Carolina's proximate cause standard. Under established law, a plaintiff need not prove that the defendant's conduct was the sole cause of harm, nor must causation be proven with

absolute certainty. Rather, it is sufficient that the defendant's negligence was a proximate cause—i.e., a cause that in a natural and continuous sequence, unbroken by a new and independent cause, produced the injury. See *Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 236, 311 S.E.2d 559, 566 (1984).

Defendant-Appellee's placement of an unauthorized DNR order in Mr. Wyer's chart, contrary to his known wishes and without lawful authority, directly resulted in the failure to perform CPR when he was found unresponsive. The hospital's own actions created an evidentiary gap—there is no way to determine whether CPR might have succeeded because the hospital unilaterally deprived Mr. Wyer of that opportunity. This gap is not due to a lack of diligence or evidence from Plaintiff; it is the direct consequence of Defendant's breach of duty. The hospital's conduct precluded any assessment of whether prompt medical intervention would have altered the outcome. Defendant should not be permitted to benefit from the evidentiary uncertainty that its own negligence created.

The fact that Mr. Wyer was under hospice care does not alter the legal significance of the hospital's actions. He had not consented to a Do

Not Resuscitate order and was documented as a full code. Regardless of his underlying health status, Mr. Wyer retained the right to request—and receive—life-sustaining treatment, including CPR. It is not for the hospital to substitute its judgment for the patient's express directives.

Under North Carolina law, proximate cause exists where a negligent act results in a foreseeable injury in a natural and continuous sequence. See *Hairston v. Alexander Tank & Equip. Co.*, 310 N.C. 227, 233–34, 311 S.E.2d 559, 564 (1984). A jury could reasonably find that failing to perform CPR on a patient who had expressly elected full-code status—due to an improperly placed DNR order—foreseeably resulted in his death. The question of whether the hospital's breach of duty proximately caused Mr. Wyer's death cannot be resolved as a matter of law. It is a question that belongs to the jury, particularly where the hospital's actions foreclosed the ability to observe whether Mr. Wyer would have responded to life-saving efforts.

Accordingly, the question of causation remains one for the jury. The trial court erred in resolving this factual dispute through summary judgment.

Taken together, the evidentiary record presents triable issues of material fact concerning whether Defendant-Appellee violated the applicable standard of care by placing an unauthorized DNR order and whether that act directly resulted in the failure to resuscitate Mr. Wyer. The existence of expert affidavits, chart discrepancies, and conflicting factual inferences precludes judgment as a matter of law. Defendant-Appellee's actions not only breached the standard of care, but also foreclosed the opportunity to determine whether CPR might have prolonged Mr. Wyer's life, creating an evidentiary gap that only a jury may evaluate. Where reasonable minds could differ, as they surely could here, summary judgment must be reversed. This case must be remanded for trial so that a jury—not the court—may weigh the facts, assess credibility, and resolve the profound issues at stake.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant respectfully requests that this Court reverse the trial court's Order granting summary judgment in favor of Defendant-Appellee and remand this case for trial on the merits. The record contains genuine issues of

material fact as to whether the DNR order was properly authorized, whether the Defendant-Appellee breached the applicable standard of care, and whether that breach proximately caused the death of Mr. Wyer. These are matters that must be decided by a jury.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, counsel for Plaintiff certifies that the foregoing brief, which was prepared using a 14-point proportionally spaced font with serifs, is less than 8750 words (excluding covers, captions, indexes, tables of authorities, counsel's signature block, certificates of service, and this certificate of compliance, as reported by the word-processing software.

Kya Johnson
NC Bar No.: 33444
KENNETH M. JOHNSON, P.A.
701 East Market Street
PO Box 21247
Greensboro, NC 27420
(336) 272-8273 Office
(336) 285-8579 Facsimile
kyajjohnsonlaw@gmail.com

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CERTIFICATE OF SERVICE
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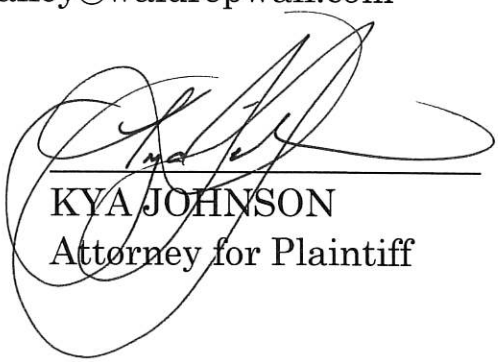
I hereby certify that a copy of the foregoing PLAINTIFF APPELLANT'S BRIEF was served upon all counsel of record, by electronic and first class mail addressed to:

J. Dennis Bailey
WALDREP WALL
370 Knollwood Street

Suite 600
Winston-Salem, NC 27103
(336) 714-1222 Office
(336) 722-1993 Facsimile
dbailey@waldrepwall.com

This the 6th day of August, 2025.



KYA JOHNSON
Attorney for Plaintiff

OF COUNSEL:

KENNETH M. JOHNSON, P.A.
701 East Market Street
PO Box 21247
Greensboro, NC 27420
(336) 272-8273 Office
(336) 285-8579 Facsimile