

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

2023 Spring Term

No. 22-ICA-159

FILED

June 15, 2023

released at 3:00 p.m.
EDYTHE NASH GAISER, CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

MICHELLE STOUDT,
Plaintiff Below, Petitioner

v.

KRISTEN P. EADS, M.D.,
Defendant Below, Respondent

Appeal from the Circuit Court of Kanawha County
Honorable Jennifer F. Bailey, Judge
Civil Action No. 20-C-874

AFFIRMED

Submitted: May 16, 2023

Filed: June 15, 2023

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JUDGE LORENSEN delivered the Opinion of the Court.

LORENSEN, JUDGE:

Petitioner, Michelle Stoudt appeals the Circuit Court of Kanawha County's August 29, 2022, order granting summary judgment in favor of Respondent, Kristen P. Eads, M.D. The circuit court found that Ms. Stoudt failed to offer evidence sufficient to establish a prima facie case of medical professional liability under West Virginia Code § 55-7B-3 (2003). The circuit court found that Ms. Stoudt's expert was unable to state to a reasonable degree of medical probability that any alleged acts of Dr. Eads proximately caused Ms. Stoudt's alleged injuries. Ms. Stoudt argues that the circuit court erred: 1) in deciding that she did not meet her burden of proof on the issue of proximate cause; and 2) in determining that Ms. Stoudt had to prove proximate cause to a reasonable degree of medical probability, because the Medical Professional Liability Act does not require it.

Upon careful review of the briefs, the appendix record, the arguments of the parties, and the applicable legal authority, we agree that Ms. Stoudt failed to produce sufficient evidence to preclude summary judgment and we therefore affirm the circuit court's entry of summary judgment on behalf of Dr. Eads.

I. Facts and Procedural History

This is a medical malpractice action brought by Ms. Stoudt, alleging that Dr. Eads negligently left a medical device called an Endo Catch bag in her abdomen, among other things, during a surgical procedure. On December 13, 2016, Ms. Stoudt underwent

an ovarian cystectomy and appendectomy due to right lower quadrant abdominal pain.¹ Three physicians were responsible for the surgical procedures. Osterman Cotes, M.D. and Bassam N. Shamma, M.D. were responsible for the ovarian cystectomy.² Dr. Eads was responsible for the appendectomy. Approximately one and a half years later, on July 2, 2018, Ms. Stoudt underwent a cesarean section by Randall Hill, M.D., who, during the procedure, discovered a foreign object in Ms. Stoudt's abdomen that he characterized as an "Endopouch bag³ that had been left inside the patient in an unrolled manner."⁴ Ms. Stoudt brought this civil action, alleging that Dr. Eads, Dr. Cotes and/or Dr. Shamma deviated from the standard of care by leaving the foreign object in her abdomen, and that by deviating from the standard of care, the doctor(s) proximately caused Ms. Stoudt's subsequent abdominal pain.

The December 13, 2016, surgery was not Ms. Stoudt's first surgical procedure. On January 13, 2012, Ms. Stoudt underwent her first cesarean section. Dr. Cotes performed the surgery. According to Ms. Stoudt's deposition testimony, she

¹ The preoperative and postoperative diagnoses in Dr. Eads' operative report state Ms. Stoudt had right lower quadrant pain. However, the "Indication for Procedure" section of the operative report states that Ms. Stoudt had right upper quadrant pain.

² Ms. Stoudt's complaint also alleges that Drs. Cotes and Shamma were negligent for leaving the Endo Catch bag in her abdomen. However, the circuit court found that the claims made against them were time barred and dismissed the doctors from this case.

³ An Endopouch bag is another name for an Endo Catch bag.

⁴ A pathological report dated July 2, 2018, by William E. Mangano, M.D., describes the foreign object as a "roll of plastic film."

developed abdominal symptoms after the 2012 surgery that she described as intermittent, and sometimes daily, sharp lower abdominal pain. Ms. Stoudt's testimony and that of her medical expert, Wanda Kaniewski, M.D., indicate Ms. Stoudt was treated in several emergency departments for abdominal symptoms after her 2012 surgery but before the 2016 surgery. Approximately a month before Ms. Stoudt's December 13, 2016, surgeries, she was treated at Charleston Area Medical Center's Women and Children's Hospital for lower abdominal pain, which was thought to be gallstones.

Ms. Stoudt underwent the December 13, 2016, surgery due to right lower quadrant pain. Dr. Eads' surgical note for that procedure states Ms. Stoudt had an elevated white blood cell count, and that the tip of her appendix was mildly dilated. Dr. Eads performed a laparoscopic appendectomy wherein he used an Endo Catch bag when removing Ms. Stoudt's appendix.⁵

Ms. Stoudt continued to have abdominal pain after the December 13, 2016, surgery. In 2017, Ms. Stoudt was treated at Roane General Hospital for nauseating, central abdominal pain. She was diagnosed with gallstones, Hepatitis-C, and pancreatitis. Ms. Stoudt was also treated at Family Medical Center in Spencer, West Virginia on October 31, 2017, for anxiety, depression, and anxiety attacks. According to Ms. Stoudt's

⁵ According to Dr. Kaniewski's testimony, an Endo Catch bag is a small plastic bag in which the appendix specimen is placed during a laparoscopic procedure. Dr. Kaniewski testified that Endo Catch bags are initially coiled or rolled-up before the appendix is placed in it.

deposition transcript, she complained of abdominal pain at the visit, and she was diagnosed with acute hepatitis.

Subsequently, Ms. Stoudt became pregnant with a second child. Her second pregnancy was considered high risk due to Hepatitis-C, pancreatitis, and cholelithiasis (gallstones). Ms. Stoudt underwent her second cesarean section by Dr. Hill on July 2, 2018. The preoperative diagnosis was term pregnancy, previous cesarean section, and Hepatitis-C. As is mentioned above, Dr. Hill discovered a foreign object in Ms. Stoudt's abdomen that he described as an Endopouch bag that had been left inside the patient in an unrolled manner.⁶

Ms. Stoudt testified that her abdominal pain subsided "a couple months" after the July 2, 2018, cesarean section. However, a treatment note by David Ghaphery, M.D., dated October 2, 2019 states that Ms. Stoudt had epigastric (or upper abdominal) pain for the previous three years. As a result, Dr. Ghaphery performed a fourth surgery on October 10, 2019, for "symptomatic cholecystolithiasis with chronic cholecystitis."⁷

⁶ The parties dispute whether the rolled-up plastic found in Ms. Stoudt's abdomen was an Endo Catch bag. The plastic specimen was not saved for future identification. However, the identity of the plastic bag is not material to this decision.

⁷ Gallstones with swelling and irritation of the gallbladder.

Ms. Stoudt also has a history of illicit drug use. According to Ms. Stoudt's testimony, she used narcotic pain medication and methamphetamine and admitted to intravenous drug use. Ms. Stoudt had encounters with law enforcement due to her drug use and eventually sought care at a drug rehabilitation facility. Ms. Stoudt's testimony indicates she was recovering from her drug addiction at the time of her deposition.

Dr. Kaniewski, Ms. Stoudt's expert, testified that she believes the coiled plastic foreign object discovered by Dr. Hill in Ms. Stoudt's abdomen was an Endo Catch bag used by Dr. Eads in the 2016 appendectomy. Dr. Kaniewski testified that Dr. Eads' operative report states he used an Endo Catch bag, and that neither Dr. Cotes nor Dr. Shamma used an Endo Catch bag during their 2016 surgery. According to Dr. Kaniewski, Dr. Eads deviated from the standard of care by leaving a foreign object in Ms. Stoudt's abdomen.

In her deposition, Dr. Kaniewski was asked if leaving the Endo Catch bag in Ms. Stoudt's abdomen caused her any harm. Dr. Kaniewski gave the following responses:

Q. All right. And, in fact, when we - - when we look back to your affidavit that you signed - - if I can find my notes here - - that you signed in 2020, you agree that the cause of some of the patient's pain over the last several years may have been related to the missed foreign body in her abdomen, but you cannot be certain of which pain is related because the medical records are not consistently reporting the location. Do you agree with that statement?

A. So when it comes to foreign bodies, because it's plastic, and because it was at the - - it was attached to the omentum,

and omentum is more superficial, if she had pain connected to that plastic bag then it's probably because it's rubbing against the abdominal wall. It's irritating the peritoneal lining. . . .

Q. That it's your opinion that the cause of some of the patient's pain over the last several years may have been related to the missed foreign body - -

A. Yes.

Q. - - but you cannot be certain of which pain is related as the medical records are not consistently reporting the location of it. Do you agree with that statement?

A. Yes.

Q. Yes?

A. Yes.

Q. All right. And you hold that - - and you agree to that statement to a reasonable degree of medical probability, right?

A. Yeah. There's a lot of - - a lot going on with this patient.

Q. Right. In other words, what you're saying here, under proximate cause, is you can't be certain of which pain is due to a foreign body or other multiple causes because of how the records describe different locations. That's what you're saying, right?

A. I guess, putting it one way, yes. . . .

Q. Okay. And you've told me how you believe the Endo Catch bag, as you put it, that was left in the patient's abdomen, as you believe - - how that has caused her harm, right?

A. How that has what?

Q. How that has resulted in harm to Mrs. Stoudt. You've told me how that has happened, right?

A. So the only harm that I can come up with is, is the abdominal pain, potentially, but - -

Q. Right.

A. - - it's very - - it's trickier to tell why because she has had a - - a lot going on in the abdomen.

Dr. Kaniewski also testified that cholecystolithiasis with chronic cholecystitis, Hepatitis-C, pancreatitis, and illicit drug use can cause abdominal pain.

Dr. Eads's medical expert, Kurt Stahlfield, M.D. testified that if the foreign object found in Ms. Stoudt's abdomen was an Endo Catch bag, that the surgeon who failed to remove it deviated from the standard of care. However, Dr. Stahlfield was not convinced the foreign object was an Endo Catch bag, and he testified that the foreign object was likely left in Ms. Stoudt's abdomen during her 2012 cesarean section. Dr. Stahlfield also testified that Ms. Stoudt had multiple comorbidities which could have caused abdominal pain, including multiple ovarian cysts, gallstones, pancreatitis, substance abuse, and constipation. Moreover, Dr. Stahlfield stated that not all foreign objects accidentally left in bodies cause pain, and that he did not know if the foreign object found in Ms. Stoudt's abdomen caused her pain.

Dr. Eads subsequently moved for summary judgment and argued that Ms. Stoudt failed to establish that he deviated from the standard of care because Ms. Stoudt did not establish that the rolled-up plastic was an Endo Catch bag, and because the foreign object was likely left in Ms. Stoudt's abdomen during her 2012 cesarean section. Dr. Eads also argued that even if the foreign object was an Endo Catch bag, that the same could have been used by Dr. Cotes and Dr. Shamma during their portion of the 2016 surgery.

Dr. Eads further argued that Ms. Stoudt could not prove that Dr. Eads proximately caused her damages. Dr. Eads emphasized Dr. Kaniewski's deposition testimony wherein she stated that Ms. Stoudt had multiple comorbidities which could have caused abdominal pain, and that Dr. Kaniewski could not be certain which of Ms. Stoudt's complaints of abdominal pain could be attributed to the foreign body as opposed to other potential causes.

On August 29, 2022, the Circuit Court of Kanawha County granted Dr. Eads summary judgment. The circuit court held that Ms. Stoudt could not establish that the foreign object proximately caused her abdominal pain. The circuit court noted that Ms. Stoudt had numerous medical conditions which could cause abdominal pain, and that Dr. Kaniewski testified "that she could not be certain of whether or which instances of [Ms. Stoudt's] abdominal pain were due to a foreign body or multiple other causes." The circuit court believed Dr. Kaniewski was merely speculating regarding the proximate cause of Ms. Stoudt's abdominal pain, which is insufficient to survive summary judgment pursuant to *Dellinger v. Pediatrix Medical Group*, 232 W. Va. 115, 750 S.E.2d 668 (2013). Ms. Stoudt now appeals the circuit court's August 29, 2022, order.

II. Standard of Review

"A circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). "A motion for summary

judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of law.” *Id.* at Syl. Pt. 2. Moreover, “[s]ummary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.” Syl. Pt. 2, *Williams v. Precision Coil Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995).

III. Discussion

Ms. Stoudt argues two assignments of error which we reformulate for ease of reference: 1) the circuit court erred by requiring Ms. Stoudt to prove by a reasonable degree of medical probability the proximate cause of her injury through expert testimony; and 2) the circuit court erred by determining that Ms. Stoudt did not meet her burden of proof on the issue of proximate cause.

The “necessary elements of proof” a plaintiff must satisfy in a Medical Professional Liability Act claim are outlined in West Virginia Code § 55-7B-3(a):

- (1) The health care provider failed to exercise that degree of care, skill and learning required or expected of a reasonable, prudent health care provider in the profession or class to which the health care provider belongs acting in the same or similar circumstances; and
- (2) Such failure was a proximate cause of the injury or death.

Furthermore, the “applicable standard of care and the defendant’s failure to meet the standard of care, . . . shall be established . . . by the plaintiff by testimony of one or more knowledgeable, competent expert witnesses if required by the court.” W. Va. Code § 55-7B-7(a) (2015).

“In a malpractice case, the plaintiff must not only prove negligence but must also show that such negligence was the proximate cause of the injury.” *Dellinger*, at Syl. Pt. 4 (citations omitted). “‘Proximate cause’ must be understood to be that cause which in actual sequence, unbroken by any independent cause, produced the wrong complained of, without which the wrong would not have occurred.” Syl. Pt. 4, *Stewart v. George*, 216 W. Va. 288, 607 S.E.2d 394 (2004) (quoting Syl. Pt. 3, *Webb v. Sessier*, 135 W. Va. 341, 63 S.E.2d 65 (1950)). However, “[a] party in a tort action is not required to prove that the negligence . . . was the sole proximate cause of an injury.” *Stewart*, at Syl. Pt. 6 (citations omitted).

“Questions of . . . proximate cause . . . present issues of fact for jury determination when the evidence pertaining to such issues is conflicting or where the facts, even though undisputed, are such that reasonable men may draw different conclusions from them.” *Stewart*, at Syl. Pt. 7 (citations omitted). “All that is required to render . . . [medical] testimony admissible and sufficient to carry it to the jury is that it should be of such character as would warrant a reasonable inference by the jury that the injury in question

was caused by the negligent act or conduct of the defendant.” Syl. Pt. 1, *Pygman v. Helton*, 148 W. Va. 281, 134 S.E.2d 717 (1964). On the other hand,

unsupported speculation is not sufficient to defeat a summary judgment motion . . . To that end, while it is true that the nonmoving party is entitled to the most favorable inferences that may reasonably be drawn from the evidence, such evidence cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another. Further, the evidence illustrating the factual controversy cannot be conjectural or problematic.

Dellinger, 232 W. Va. at 122, 750 S.E.2d at 675 (cleaned up). As a general rule, proximate cause in a medical malpractice claim is a determination for the factfinder which should be premised upon reasonable inferences drawn from expert testimony based on a reasonable degree of probability.

Ms. Stoudt argues that the circuit court erroneously required her to prove proximate cause to a reasonable degree of medical probability at the summary judgment stage.⁸ We disagree. Ms. Stoudt is correct that proximate cause is a determination for the jury. However, Ms. Stoudt failed to produce expert testimony connecting the alleged

⁸ Ms. Stoudt argues that there is a material difference between a reasonable degree of *medical* probability and a reasonable degree of probability with respect to the standard required to defeat a motion for summary judgment on the issue of proximate cause. West Virginia Code §55-7B-7 (2015) does require testimony from an expert witness in a MPLA case on the issue of standard of care to be offered “with reasonable medical probability.” However, with respect to the standard required to defeat a motion for summary judgment on the issue of proximate cause we find that courts have used the terms “reasonable probability” and “reasonable medical probability” interchangeably and we find no material distinction between the terms.

negligence and her damages. Without such expert testimony, no jury could reasonably infer a causal connection in this case.

The circuit court correctly determined that Dr. Kaniewski was merely speculating regarding whether the foreign object caused Ms. Stoudt's abdominal pain. For instance, the circuit court wrote that Dr. Kaniewski "could not be certain of whether or which instances of [Ms. Stoudt's] abdominal pain were due to a foreign body or other multiple causes," and that "[w]ithout expert testimony to prove proximate cause, [Ms. Stoudt] cannot prove an essential element of her claim." The circuit court also quoted *Dellinger* and stated that "proximate cause cannot be based on speculation" The record clearly shows that Ms. Stoudt failed to establish an essential element of her cause of action and therefore summary judgment was appropriate.

The second issue is whether Ms. Stoudt provided sufficient evidence, in a light most favorable to her, that a genuine issue of material fact remained whether the foreign object caused her abdominal pain. According to Ms. Stoudt, her testimony and the testimonies of Dr. Kaniewski and Dr. Stahlfield support a reasonable inference that her abdominal pain was caused by the foreign object and create a genuine issue of material fact, precluding summary judgment.

In her deposition, Ms. Stoudt described her abdominal pain before and during the period in which the foreign object was in her abdomen. Ms. Stoudt's testimony, while

relevant to the issue of abdominal pain in general, is not sufficient to establish that the foreign object was the cause of her abdominal pain.

In many cases the cause of injury is reasonably direct or obvious, thereby removing the need for medical testimony linking the negligence with the injury. Additionally, direct testimony, expert or otherwise, is not always necessary to prove the causal connection between the negligence or wrong of a tortfeasor and the injury suffered by the victim. Circumstantial evidence may be sufficient . . . In other instances, medical testimony is warranted to establish the proximate cause link between the claimed negligence and injury.

Totten v. Adongay, 175 W. Va. 634, 639-640, 337 S.E.2d 2, 8 (1985) (cleaned up).

The record reflects that during the time the foreign object was in Ms. Stoudt's abdomen, she had multiple conditions present simultaneously which could cause abdominal pain. Moreover, Ms. Stoudt had abdominal pain before her 2016 surgery and after the foreign object was removed from her abdomen in 2018. As a result, this case is not one where "the cause of injury is reasonably direct or obvious, thereby removing the need for medical testimony linking the negligence with the injury." *Id.* Quite the opposite, this is a case that requires expert testimony to establish proximate cause of the injury. Ms. Stoudt's lay testimony regarding the specific areas of abdominal pain is helpful to formulate medical opinions; however, Ms. Stoudt's testimony regarding the cause of her abdominal pain is not enough to establish proximate cause in this case.

Ms. Stoudt also emphasizes that Dr. Stahlfield “was not going to testify that the Endo Catch bag did not cause [her] pain.” However, a more accurate description of Dr. Stahlfield’s testimony is that he did not know whether the Endo Catch bag caused any of Ms. Stoudt’s abdominal pain. Dr. Stahlfield testified that there are times when foreign objects negligently left in patients cause pain, but he also testified that not all negligently placed foreign objects cause pain. As a result, Dr. Stahlfield’s testimony is not helpful to Ms. Stoudt’s arguments.

Finally, Ms. Stoudt states in her brief that Dr. Kaniewski testified “about the pathophysiology of the pain caused by the foreign body to a reasonable degree of probability” and that Dr. Kaniewski testified “that it was more likely than not, that some of the pain [Ms. Stoudt] was experiencing was caused by the Endo Catch bag.” Ms. Stoudt refers this Court to Dr. Kaniewski’s deposition testimony. However, the closest Dr. Kaniewski testified to a reasonable degree of probability was that the foreign object “may” have caused pain.

Other statements by Dr. Kaniewski further demonstrate that she was speculating whether the foreign object caused abdominal pain. Dr. Kaniewski testified that “*if [Ms. Stoudt] had pain connected to that plastic bag then it’s probably because it’s rubbing against the abdominal wall.*” (Emphasis added). Furthermore, Dr. Kaniewski was asked directly what harm was caused to Ms. Stoudt from the foreign object. Dr. Kaniewski responded, “[s]o *the only harm that I can come up with is, is the abdominal pain,*

potentially, but . . . it's trickier to tell why because she has had . . . a lot going on in the abdomen.” (Emphasis added).

These statements by Dr. Kaniewski demonstrate that she was merely speculating regarding possible causes of abdominal pain. Her testimony does not provide the basis for a *reasoned* inference concerning the cause of abdominal pain. In other words, Dr. Kaniewski's testimony would require a jury to speculate or guess whether the foreign object caused any harm.

Dellinger is a case with similarly ambiguous expert testimony. In *Dellinger*, the plaintiff's expert testified that the alleged medical negligence contributed “somewhat” to the decedent's death, and that the expert could not quantify “any worsening” by the alleged medical negligence. *Dellinger*, 232 W. Va. at 118, 750 S.E.2d at 671. The Supreme Court of Appeals determined that the circuit court's granting of summary judgment was appropriate because the expert could only speculate regarding causation and was asking a jury to “‘fill in the gaps’ in her evidence and her expert's testimony.” *Id.*, 232 W. Va. at 122, 750 S.E.2d at 675. Similarly, Kaniewski's testimony, taken as a whole, indicates she simply did not know if the foreign object caused harm to Ms. Stoudt. Therefore, Dr. Kaniewski could not support any “reasonable inferences” to determine the issue of proximate cause as required by *Dellinger* and *Pygman*.

Ms. Stoudt contends that *Dellinger* is a “troublesome” decision and is “by no means the sole model for any court to follow in deciding the issues before the Court in this manner.” However, *Dellinger* is West Virginia precedent, the expert testimony in *Dellinger* was similarly ambiguous as the opinions in this case, and *Dellinger* found the plaintiff’s expert testimony impermissibly speculative. We see no valid reason to disregard *Dellinger*’s reasoning and precedential value.

Moreover, *Dellinger* is not the only West Virginia case describing expert testimony that is not a proper basis for the jury to find proximate cause. For instance, in *Tolley v. ACF Industries*, 212 W. Va. 548, 558, 575 S.E.2d 158, 168 (2002) (per curiam), the Supreme Court of Appeals of West Virginia held that an expert’s opinion testimony that “there were three potential causes for the plaintiff’s” injury was insufficient for a jury to establish proximate cause. In *Serbin v. Newsome*, 157 W. Va. 71, 76, 198 S.E.2d 140, 143 (1973) (per curiam), our highest Court determined that expert testimony stating an injury was “possibly” caused by negligence was “purely speculative and insufficient on causation for jury consideration.” In *Spencer v. McClure*, 217 W. Va. 442, 447, 618 S.E.2d 451, 456 (2005) (per curiam), the Court held that an expert’s opinion that negligence “could have” caused an injury “does not provide a sufficient evidentiary basis from which a reasonable jury could find” that the alleged injury was caused by the defendant’s negligence.⁹

⁹ Similarly, in *Hagy v. Equitable Production Co.*, No. 2:10 cv 01372, 2012 WL 2562856, at *5 (S.D. W. Va. June 29, 2012), the United States District Court for the Southern District of West Virginia found that an expert’s testimony that negligence “may”

Ms. Stoudt relies on *Sexton v. Grieco*, 216 W. Va. 714, 613 S.E.2d 81 (2005) and argues that it is reversible error to grant summary judgment “when a jury can reasonably infer causation from an expert’s testimony.” However, *Sexton* is distinguishable from the facts of this case. In *Sexton*, the plaintiff’s expert excluded all other possibilities, except the alleged negligence, as the cause of the plaintiff’s injury. *See Id.* at 719, 613 S.E.2d 86. In this case, Dr. Kaniewski was unable to exclude other reasons for Ms. Stoudt’s harm, and she could only say that the foreign object *potentially* caused pain.

Ms. Stoudt also cites *Stewart v. George*, 216 W. Va. 288, 607 S.E.2d 394 (2004) and suggests that Dr. Kaniewski’s testimony clearly reflected her opinion that the Endo Catch bag caused Ms. Stoudt’s abdominal pain. In *Stewart*, the Supreme Court of Appeals ruled that granting summary judgment in favor of the defendant medical provider was improper when the plaintiff’s expert testified that the alleged malpractice added a risk factor that contributed to the plaintiff’s injury. *See Id.* at 292-293, 607 S.E.2d 398-399. However, in this case, Dr. Kaniewski was unable to go that far. She could only testify that the alleged negligence *potentially* caused harm.

have caused an injury was “mere speculation” and insufficient for a jury to determine proximate cause.

In summary, Ms. Stoudt discounts her required burden of proof and attempts to avoid the significant deficiencies in Dr. Kaniewski's testimony. However, "the law is clear that the mere possibility of causation is not sufficient to allow a reasonable jury to find causation." *Tolley v. ACF Industries*, 212 W. Va. 548, 558, 575 S.E.2d 158, 168 (2002). "While [Ms. Stoudt] urges that the jury may nonetheless infer proximate cause notwithstanding the lack of medical testimony on this issue, we find there is quite simply nothing upon which a jury may make such an inference beyond abject speculation." *Dellinger*, 232 W. Va. at 124, 750 S.E.2d at 677.

The expert testimony upon which Ms. Stoudt relies is speculative and does not provide the jury with a reasonable inference that the alleged medical negligence proximately caused her harm. As a result, Ms. Stoudt was unable to make a sufficient showing on an essential element of the case, namely that the alleged acts of Dr. Eads proximately caused her injury. W.Va. Code § 55-7B-3(a)(2) (2003).

IV. Conclusion

For the foregoing reasons, the August 29, 2022, order of the Circuit Court of Kanawha County is affirmed.

Affirmed.