

'BUT FOR THE ACT', THE HARM WOULD NOT HAVE OCCURRED-CAUSATION ANALYSIS

Fact Pattern:

Mrs. Adams filled a prescription for Danocrine at her local pharmacy. The prescription incorrectly instructed her to take 1600 milligrams of Danocrine per day, or twice the recommended daily dosage. While taking Danocrine, Mrs. Adams experienced abnormal weight gain, bloating, edema, hot flashes, night sweats, a racing heart, chest pains, dizziness, headaches, acne, and fatigue. She was examined by an OB/GYN who told her to stop taking the drug. Shortly thereafter, she was diagnosed with primary pulmonary hypertension (PPH). She was expected to live two and a half more years. She was on the waiting list for a heart lung transplant when she became pregnant. Because she was

pregnant, she was ineligible for a heart lung transplant. She gave birth to her son and died a month later. Mrs. Adams' expert witness testified that he was confident that the prescribed overdose caused her illness and testified 'more likely than not' Danocrine caused her illness. Expert testimony also ruled out all previously known drug related causes of PPH and that the progression and timing of Plaintiff's disease in relation to her overdose supported a finding of drug-induced PPH.

Question:

Did the action for which the defendant is responsible cause, in a legal sense, the harm which the plaintiff suffered?

Rule

Where a negligent act increases the chances that a particular type of result would occur, and such a result does in fact occur, a court may conclude that the negligent conduct was the cause of the injury. The evidentiary standard is that it must support the proposition by a 'more likely than not' standard.

Discussion

While it was not possible to eliminate all other possible causes of pulmonary hypertension, the evidence presented showed that the experts had not only excluded all causes of secondary pulmonary hypertension, but had also ruled out all the previously known drug-related causes of PPH. In addition, based on the expert testimony the progression and timing of Mrs. Adam's illness in relationship to the timing of her overdose supported a finding of drug-induced PPH to a reasonable medical certainty.



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Courts have held that where a negligent act was deemed wrongful because the act increased the chances that a particular type of accident would occur, and such an accident did in fact happen this negligent conduct caused the injury. Then the burden shifts to the negligent party to show evidence rebutting such but for cause and showing that the wrongful conduct was not a substantial factor. When a person is injured due to another person's or entity's negligence, he or she can recover economic and noneconomic damages that flow from the negligence. Among the elements that the plaintiff suing for negligence will have to prove is that the defendant's violation of a duty was the actual and proximate cause of his or her injuries. He or she will also have to prove duty, breach of duty, and damages.

Cause in fact is sometimes called the "but-for" cause. "But-for" cause means that if we could go back in time and remove the defendant's behavior from the sequence of events, would the plaintiff 'more likely than not' still have been injured? If the answer is no, the defendant's behavior is considered the "cause in fact" of the plaintiff's injuries.