

1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

Court of Appeals of New Mexico
Filed 1/17/2023 9:25 AM

2 **HELEN WALKER,**

3 Plaintiff-Appellant,



Mark Reynolds

4 v.

No. A-1-CA-40662

5 **CARLSBAD MEDICAL**
6 **CENTER, LLC,**

7 Defendant-Appellee,

8 and

9 **INDRAPRASAD R. PERAM, M.D.;**
10 **ROBERT RIPPNER, M.D.; STACY**
11 **STONE, CNP; JOHN DOES and**
12 **JANE DOES I-X; BLACK AND**
13 **WHITE CORPORATIONS I-X; and**
14 **ABC ORGANIZATIONS I-X,**

15 Defendants.

16 **APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY**
17 **Eileen P. Riordan, District Court Judge**

18 Durham, Pittard & Spalding, L.L.P.
19 Caren Ilene Friedman
20 Rosalind Bienvenu
21 Joseph M. Zebas
22 Santa Fe, NM

23 for Appellant

1 Serpe Andrews PLLC
2 John S. Serpe
3 Melanie L. Frassanito
4 Christina L. G. Brennan
5 Santa Fe, NM

6 for Appellee

7 **MEMORANDUM OPINION**

8 **HANISEE, Chief Judge.**

9 {1} The memorandum opinion filed January 11, 2023, is hereby withdrawn and is
10 replaced with this filing, based upon the granting of Appellant's unopposed motion
11 to correct. Appellant appeals from the district court's orders granting summary
12 judgment in favor of Appellee and dismissing the action. Persuaded that Appellant's
13 docketing statement demonstrated error, we issued a notice proposing to reverse
14 summary judgment. Appellee Carlsbad Medical Center has responded with a
15 memorandum opposing our notice. We remain persuaded that summary judgment
16 was in error and reverse.

17 {2} In response to our notice, Appellee's memorandum in opposition quotes the
18 deposition testimony of Appellant's expert, Dr. Fitzgibbons, and the district court's
19 statements of concern that none of Dr. Fitzgibbons' testimony stated to the
20 reasonable degree of medical probability that the mistakenly administered blood
21 pressure medication caused Appellant's drop in blood pressure and her harm. [MIO
22 3-5, 8-10] Appellee's response to our notice also contends that, to the extent we view

1 any portion of Dr. Fitzgibbons' testimony as in conflict, Appellant cannot create a
2 material fact issue by citing to internally inconsistent testimony of the same witness,
3 pursuant to *Radobenko v. Automated Equipment Corp.*, 520 F.2d 540, 543-44 (9th
4 Cir. 1975). [MIO 11]

5 {3} We are not persuaded by Appellee's contention that Dr. Fitzgibbons provided
6 clear testimony that it was only *possible* that the blood pressure medication caused
7 Appellant to decompensate. Dr. Fitzgibbons' testimony does not express any clear,
8 definitive, or concise view of causation. Our case law requires us to view Appellant's
9 testimony as a whole, in the light most favorable to nonmoving party, and indulge
10 all reasonable inferences that support a trial on the merits. *See Hernandez v. Reuter*,
11 ___-NMCA-___, ¶¶ 27-30, ___ P.3d ___ (A-1-CA-38333, Oct. 18, 2022). In doing
12 so, we understand Dr. Fitzgibbons' answers to refuse to rule out sepsis as a potential
13 contributing cause, in addition to the wrongfully administered blood pressure
14 medications, [3 RP 540-541] given that Dr. Fitzgibbons' testimony also suggested
15 Appellant identified a clear cause and effect between the blood pressure medications
16 and Appellant's dangerous drop in blood pressure and need for emergency treatment.
17 [3 RP 537-38]

18 {4} As stated in our notice, Dr. Fitzgibbons' testimony need only permit a
19 reasonable inference that Appellant's decompensation and need for emergency
20 treatment was proximately caused to a reasonable medical probability by the

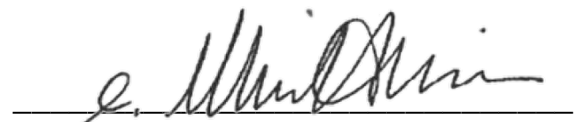
1 wrongful administration of blood pressure medications. *See Trujillo v. Los Alamos*
2 *Nat'l Lab'y*, 2016-NMCA-041, ¶ 17, 368 P.3d 1259. A proximate cause, in turn,
3 only needs to contribute to bringing about an injury; it need not be the only cause.
4 *See Talbott v. Roswell Hosp. Corp.*, 2005-NMCA-109, ¶ 34, 138 N.M. 189, 118 P.3d
5 194.

6 {5} Viewing the evidence as a whole in the light most favorable to Appellant and
7 in support of a trial on the merits, as we are required to do, we conclude that Dr.
8 Fitzgibbons' testimony permits a reasonable inference that the wrongful
9 administration of high blood pressure medications was a contributing factor to a
10 reasonable medical probability of Appellant's decompensation and need for
11 emergency treatment for low blood pressure.

12 {6} We are not persuaded by Appellee's contention that summary judgment
13 should be affirmed because a genuine factual issue cannot arise from the testimony
14 of a single witness for Appellant. [MIO 10-12] The cases upon which Appellee relies
15 are not factually similar and do not compel summary judgment in this case.


16 {7} For the reasons provided above and in our notice, we reverse the district
17 court's order granting summary judgment and remand for further proceedings.

18 {8} **IT IS SO ORDERED.**

19
20 
J. MILES HANISEE, Chief Judge

1 **WE CONCUR:**

2 
3 **KRISTINA BOGARDUS, Judge**

4 
5 **JANE B. YOHALEM, Judge**