No. WD 58290
Missouri Court of Appeals, Western District

Robinson v. Health Midwest Development

Decided Mar 6, 2001

No. WD 58290

Opinion Filed: March 6, 2001

APPEAL FROM CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, THE HONORABLE DAVID W. SHINN, JUDGE

Stephen K. Nordyke, Butler, MO, Attorney for Appellant,

William L. Yocum, J. Calvin Downing, and Richard M. Paul, III, Kansas City, MO, Attorneys for Respondent.

Before Spinden, C.J., and Ulrich and Smith, JJ.

: EDWIN H. SMITH, Judge

Felicia N. Robinson appeals the summary judgment of the circuit court for the respondent, Health Midwest Development Group, on her negligence claim against it for damages for the personal injuries she sustained in an automobile accident on November 17, 1993. In her petition, the appellant alleged that the respondent was negligent based on various acts and omissions of its medical staff in providing treatment of and care for Verlea Rosemary Schmidt,[1] who, after being given a prescription drug that was known to the staff to cause drowsiness and dizziness, drove from the respondent's facility, crossed the center line of the roadway, and collided head-on with the appellant's vehicle, causing her injury.

[1] Although she identified herself as Verlea Rosemary Schmidt, the court would note throughout the record she is also referred to as Rosemary V. Schmidt.

The appellant raises two points on appeal. In Point I, she claims that the trial court erred in granting the respondent's motion for summary judgment on her negligence claim against it based on there being no duty of care owed by the respondent because, as a matter of law, on the undisputed material facts alleged by the respondent and the facts still in dispute, a reasonable fact finder could find such a duty existed. In Point II, she claims that the trial court erred in granting the respondent's motion for summary judgment on her negligence claim for lack of causation because, as a matter of law, on the undisputed material facts alleged by the respondent and the facts still in dispute, a fact finder could reasonably find that the respondent's acts or omissions in its treatment and care of Schmidt were the direct and proximate cause of the appellant's personal injuries sustained in the accident.

We reverse and remand.

Facts

On November 17, 1993, at approximately 12:42 p.m., Rosemary V. Schmidt presented herself at the emergency room of the Lafayette Regional Health Center (LRHC) located in Jackson County, Missouri, requesting medication for her nerves. Roxanne Nordsieck, the staff nurse on duty, questioned Schmidt about her symptoms and complaints, and checked her vital signs. Thereafter, Nordsieck referred Schmidt to a staff physician, Dr. Timothy Ryan, for examination and evaluation. During his examination of Schmidt, Dr. Ryan determined that she was coherent, not impaired in any way, and neither homicidal nor suicidal. Following the examination, Dr. Ryan

directed Nordsieck to give Schmidt an injection of five milligrams of Compazine, a drug known to medical personnel to cause drowsiness, dizziness, and the lowering of blood pressure.

At approximately 1:10 p.m., Nordsieck intravenously administered five milligrams of Compazine to Schmidt. Neither Dr. Ryan nor Nordsieck warned Schmidt, either before or after administering the drug, that she might experience certain side effects, including drowsiness, dizziness, or a lowering of her blood pressure, as a consequence of having taken the Compazine, and that therefore, she should not drive. Nordsieck only advised Schmidt that she was "receiving something for her headache." Thereafter, at approximately 1:45 p.m., without being formally discharged from the LRHC, Schmidt left and proceeded to drive herself home. At 1:55 p.m., ten minutes after leaving the emergency room at LRHC, some seven miles away from the facility, Schmidt's vehicle crossed the center line of Missouri Highway 13 and collided with a vehicle being driven by the appellant on a straightaway portion of the road. The appellant sustained serious physical injuries from the accident.

The appellant tried to avoid the accident by braking, downshifting, and swerving her vehicle to the right almost completely onto the shoulder, but was unable to avoid the accident. A subsequent investigation by the Missouri Highway Patrol (MHP) revealed that there were 21 feet of braking tire marks leading off the roadway from the appellant's car, but none from Schmidt's car. The investigation by the MHP did not disclose defects in either vehicle that could have contributed to or caused the accident. An investigating police officer, however, did find an empty beer container in Schmidt's car after the accident, and Schmidt admitted to drinking before the accident.

On February 14, 1997, the appellant filed a petition for damages against the respondent, a Missouri corporation doing business as the LRHC, wherein she alleged, *inter alia*, that the respondent's medical staff negligently failed to warn Schmidt not to drive while under the influence of the Compazine, and that the failure to so warn was the direct and proximate cause of her injuries. On April 2, 1997, the respondent filed its answer denying liability. In July 1999, the case went to trial, but the jury was unable to reach a verdict and the court declared a mistrial.

Before the retrial of the case, the respondent filed a motion for summary judgment on December 16, 1999, wherein it alleged that it was entitled to judgment as a matter of law in that the appellant could not establish at trial that the respondent owed a duty of care to her or that one or more of the specifications of negligence was the direct and proximate cause of her injuries. The appellant filed her response to the respondent's motion on January 18, 2000, wherein she stipulated to the seven material facts alleged by the respondent not to be in dispute and alleged numerous additional material facts she claimed were still in dispute. On February 15, 2000, the trial court sustained the respondent's motion for summary judgment and entered judgment accordingly.

This appeal follows.

Standard of Review

In reviewing the trial court's grant of summary judgment to the respondent:

> [o]ur review is essentially *de novo*. The criteria on appeal for testing the propriety of summary judgment are no different from those which should be employed by the trial court to determine the propriety of sustaining the motion initially. The propriety of summary judgment is purely an issue of law. As the trial court's judgment is founded on the record submitted and the law, an appellate court need not defer to the trial court's order granting summary judgment.

ITT Commercial Fin. Corp. v. Mid-America Marine Supply Corp. **,** **854 S.W.2d 371, 376** **(Mo. *banc* 1993)** (citations omitted). Summary judgment will be upheld on appeal if: (1) there is no genuine dispute of material fact, and (2) the movant is entitled to judgment as a matter of law. ***Id.*** **at 377**.

In considering an appeal from a summary judgment, we are to:

> review the record in the light most favorable to the party against whom judgment was entered. Facts set forth by affidavit or otherwise in support of a party's motion are taken as true unless contradicted by the non-moving party's response to the summary judgment motion. We accord the non-movant the benefit of all reasonable inferences from the record.

Id **. at 376** (citations omitted).

I.

In Point I, the appellant claims that the trial court erred in granting the respondent's motion for summary judgment on her negligence claim against it based on there being no duty of care owed by the respondent because, as a matter of law, on the undisputed material facts alleged by the respondent and the facts still in dispute, a reasonable fact finder could find such a duty. We agree.

To be entitled to summary judgment under **Rule 74.04**,[2] the respondent, as the movant, was required to show that: (1) there was no genuine dispute as to the material facts on which it relied for summary judgment; and (2) on these undisputed facts, it was entitled to judgment as a matter of law. ***Robinson v. State Highway Transp. Comm'n*** **,** **24 S.W.3d 67, 74** **(Mo.App. 2000)** (*citing* **Rule 74.04;** ***ITT Commercial Fin. Corp.*** **,** **854 S.W.2d at 380-81**). If the movant is a defending party, as here,

> a *prima facie* case for summary judgment may be established by one or more of the following means: (1) showing undisputed facts that negate any one of the [claimant's] required proof elements; (2) showing that the [claimant], after an adequate period of discovery, [has] not produced and would not be able to produce evidence sufficient to allow the trier of fact to find the existence of any one of the [claimant's] required proof elements; or (3) showing that there is no genuine dispute as to the existence of each of the facts necessary to support an affirmative defense properly pleaded by the movant. 'Regardless of which of these three means is employed by the "defending party," each establishes a right to judgment as a matter of law.'

Id **.** (citations omitted).

In her petition, the appellant alleged that the respondent was negligent in the following respects:

> 10. At the time that Verlea R. Schmidt presented herself to the Defendant's hospital, the Defendant's employees and/or servants and/or agents and/or others with whom they were acting in concert failed to exercise that degree of care in the providing of medical care that a health care provider and/or hospital would ordinarily use under the same or similar circumstances, and the Defendant, through the actions of its employees and/or servants and/or agents and/or others with whom they were acting in concert, was negligent in the medical treatment provided or in failing to provide appropriate medical care including, but not limited, to the following particulars:

2 All rule references are to the **Missouri Rules of Civil Procedure (2000)**, unless otherwise indicated.

a. Defendant carelessly and negligently failed to obtain proper and necessary information from Verlea Schmidt prior to medical care being rendered to her;

b. Defendant carelessly and negligently provided medication and other care without proper assessment of her current physical condition;

c. Defendant carelessly and negligently failed to maintain proper supervision and/or monitoring of Verlea R. Schmidt after medical care was rendered to her to ascertain her condition;

d. Defendant carelessly and negligently failed to maintain proper supervision and/or monitoring of Verlea R. Schmidt after she received medical treatment and failed to inform Verlea Schmidt that she was not to operate a motor vehicle after leaving Defendant's facility when it knew or should have known that she was a hazard to herself and others, including this Plaintiff;

e. Defendant carelessly and negligently failed to maintain proper supervision and/or monitoring of Verlea R. Schmidt after she received treatment and take appropriate steps to avoid [sic] her from leaving the hospital and be [sic] in a position to operate a [sic] automobile when it knew or should have known that she was a hazard to herself and others, including this Plaintiff;

f. Defendant carelessly and negligently failed to maintain proper supervision and/or monitoring and to provide further treatment to Verlea R. Schmidt when it knew or should have known that she could have been a hazard to herself and others, including this Plaintiff without such further care and treatment;

g. Defendant carelessly and negligently failed to take adequate precautions to avoid Verlea R. Schmidt leaving the hospital and to be in a position to operate the motor vehicle when her ability was impaired due to medical treatment rendered at the Defendants [*sic*] facility, when it knew or should have known that she was a hazard to herself and others, including this Plaintiff;

h. Defendant carelessly and negligently failed to notify any police authorities or take any other actions concerning Verlea R. Schmidt's leaving the hospital thereby allowing her to be in a position to operate the motor vehicle when it knew or should have known that her ability was impaired, making her a hazard to herself and others, including this Plaintiff.

With respect to these allegations of negligence, the respondent asserted in its motion for summary judgment that the appellant was attempting to recover against it for medical malpractice, requiring: "(1) proof that defendant's act or omission failed to meet the requisite standard of care; (2) proof that the act or omission was performed negligently; and (3) proof of a causal connection between the act or omission and the injury sustained by the plaintiff." ***Super v. White*** **, 18 S.W.3d 511, 516 (Mo.App. 2000)** (citation omitted). As to these elements of required proof, the respondent further asserted in its motion that the appellant would never be able to establish the elements of duty and causation, which, employing the second means available to a defending party for establishing a *prima facie* case for summary judgment, entitled it to summary judgment on the appellant's claim against it. In support of its assertion that the appellant would not be able to show at trial the requisite duty owed, the issue in this point, the respondent alleged that it was undisputed that the appellant was not a patient of

the medical staff of the respondent, which is a required element of proof in establishing a medical malpractice claim against it.[3]

[3] In support of its motion, the respondent alleged that it was undisputed that:

1. [Appellant's] Petition for Damages alleges negligence against Lafayette Regional Health Center in connection with treatment rendered to a non-party, Rosemary Schmidt. (Petition, Ex. 1.)

2. On November 17, 1993, Rosemary V. Schmidt was seen at the Lafayette Regional Health Center Emergency Department. (Ex. 1.)

3. After receiving medication for complaints of headache, Schmidt left the emergency department without being discharged. (Deposition testimony of Roxane Nordsieck, RN at pp. 20 and 54, attached as ex. 2.)

4. Following Schmidt's departure from the hospital, she was driving southbound on Missouri Highway 13, when her vehicle crossed the centerline and struck the vehicle being driven by the [appellant]. (Exhibit 1.)

5. Schmidt claims not to recall anything about the accident. (Trial testimony of Rosemary Schmidt, p. 77, attached as Ex. 3.)

6. An investigating police officer found an empty beer container in Schmidt's car after the accident. (Trial testimony of Trooper David Holt, p. 49-50, attached as Ex. 4.)

7. Schmidt admitted to drinking prior to the accident. (Ex. 3, at p. 64.)

The appellant concedes, as she did below, that she cannot make a medical malpractice claim against the respondent because she was not a patient of the respondent's medical staff. Nonetheless, she asserts that summary judgment for the respondent was improper in that, on the undisputed and disputed facts, she could establish her claim for damages against the respondent under a theory of general negligence. The respondent, however, contends on appeal, as it did below, that as a matter of law the appellant could not establish a general negligence claim against it because the appellant, as the non-movant, based on the facts on which she was entitled to rely, could never demonstrate the requisite elements of a duty of care and causation for such a claim. Inasmuch as summary judgment for the respondent would have been improper unless it demonstrated that the appellant was not entitled to recover as a matter of law under any theory pled, **Rule 74.04(c); *Moreland v. Farren-Davis* , 995 S.W.2d 512, 516 (Mo.App. 1999)** (citations omitted) (holding that to be entitled to summary judgment on the entire claim of a plaintiff, a defendant/movant "must demonstrate that [it] is entitled to judgment as a matter of law on any theory of recovery within the scope of the plaintiff's petition"), the question then for us to decide is whether on the material facts not in dispute and those facts still in dispute, the appellant, as the non-movant, could have established the requisite proof elements of a *general* negligence claim against the respondent, specifically in this point, whether she could establish that the respondent owed her a duty of care.

To succeed on a claim of general negligence against the respondent, the appellant was required to plead and prove: (1) a duty owed by the respondent; (2) a breach of that duty; and (3) an injury directly and proximately caused by the breach. ***Bond v. Cal. Comp. Fire Co.*** **, 963 S.W.2d 692, 697 (Mo.App. 1998)**. As noted, *supra*, in her petition, the appellant alleged various negligent acts and omissions on the part of the respondent. On appeal, she argues that, based upon the allegations of her petition, and the undisputed facts and those facts still in dispute, a reasonable fact finder could find the existence of a duty owed. If she is correct in her assertion, then, of course, summary judgment for the respondent, based on the trial court's finding that the appellant could not establish at trial a duty owed, was improper. For the reasons discussed, *infra*, we find that on the summary judgment record before us, a reasonable fact finder could find that the respondent's medical staff owed a duty to the general public to warn its patient, Schmidt, not to drive while under the influence of the Compazine she had been prescribed. As such, the trial court erred in granting summary judgment to the respondent based on a finding that the appellant could not establish at trial a duty owed to support her negligence claim against the respondent.

"Duty is an obligation imposed by law [on a party] to conform to a standard of conduct toward another to protect others against unreasonable, foreseeable risks," ***Horner v. Spalitto*** **, 1 S.W.3d 519, 522 (Mo.App. 1999)** (citation omitted), which can be created by statute or common law. ***Strickland v. Taco Bell Corp.*** **, 849 S.W.2d 127, 132 (Mo.App. 1993)**. A common law duty may be imposed under the circumstances of a given case based on public policy considerations. ***Hoover's Dairy, Inc. v. Mid-America Dairymen, Inc./Special Products, Inc.*** **, 700 S.W.2d 426, 431-32 (Mo.** ***banc*** **1985);** ***Millard v. Corrado*** **, 14 S.W.3d 42, 47 (Mo.App. 1999);** ***Bradley v. Ray*** **, 904 S.W.2d 302, 310 (Mo.App. 1995)**. In determining whether a duty of care should be imposed based upon public policy, several factors are to be considered:

> (1) the social consensus that the interest is worth protecting, (2) the foreseeability of harm and the degree of certainty that the protected person suffered the injury, (3) the moral blame society attaches to the conduct, (4) the prevention of future harm, (5) the consideration of cost and ability to spread the risk of loss, and (6) the economic burden upon the actor and the community.

Millard **, 14 S.W.3d at 47** (*citing* ***Hoover's Dairy, Inc.*** **, 700 S.W.2d at 432**).

In some cases, public policy is such that a common law duty arises simply because of the special relationship that exists between the parties. ***Hoover's Dairy, Inc.*** **, 700 S.W.2d at 432** . As stated by the Missouri Supreme Court in ***Hoover's Dairy, Inc.*** : "When the existence of a duty to use due care rests on a relationship between persons, the law has simply placed the actor under obligation for the benefit of another person — the plaintiff in the given circumstances." ***Id*** **.** (citations omitted). Such a relationship is the physician-patient relationship. ***Richardson v. Rohrbaugh*** **, 857 S.W.2d 415, 418 (Mo.App. 1993)**. Thus, as the respondent argued in its motion for summary judgment, absent the appellant's being able to establish that a physician-patient relationship existed between her and the respondent's medical staff, the respondent, as a matter of law, did not owe her a duty of care on which to base a medical malpractice claim against it for damages.

Although, as discussed, *supra*, the appellant concedes that she could not establish a duty of care based on a physician-patient relationship necessary to support a medical malpractice claim, she contends that she could produce sufficient evidence at trial for the fact finder to find a general duty owed by the respondent to her with respect to its medical staff's treatment and care of

Schmidt. The question then is whether, absent a special relationship between the parties, the public policy factors enunciated in ***Hoover's Dairy*** could be applied to one or more of the specifications of negligence alleged by the appellant in her petition such that a reasonable fact finder could find that the respondent owed a duty to the appellant on which to predicate liability under a theory of general negligence. In this regard, the appellant alleged, *inter alia*:

> [Respondent] carelessly and negligently failed to maintain proper supervision and/or monitoring of Verlea R. Schmidt after she received medical treatment and failed to inform Verlea Schmidt that she was not to operate a motor vehicle after leaving [Respondent's] facility when it knew or should have known that she was a hazard to herself and others, including this Plaintiff [the appellant].

We read this specification of negligence as alleging that the respondent's medical staff owed a duty not only to Schmidt, but to the general public, to warn Schmidt not to drive while under the influence of Compazine. Applying the ***Hoover's Dairy*** public policy factors to this specification, we find that, on the undisputed and disputed facts, the appellant could conceivably establish at trial a duty owed to her as a member of the general public by the respondent's medical staff. As such, because summary judgment would not lie if the appellant could succeed on any specification of negligence, ***Moreland*** , **995 S.W.2d at 516** , the trial court erred in granting summary judgment to the respondent based on a finding that the appellant could not establish a duty owed.

Although no Missouri cases have decided the precise issue presented in our case, our appellate courts have on several occasions addressed the issue of whether a health care provider could ever be found to owe a duty of care to the general public. *See* ***Sherrill v. Wilson*** , **653 S.W.2d 661, 666-67 (Mo. *banc* 1983); *Millard* , 14 S.W.3d at 46-48; *Young v. Wadsworth* , 916 S.W.2d 877, 878-79 (Mo.App. 1996); *Bradley* , 904 S.W.2d at 306-312; *Matt v. Burrell, Inc.* , 892 S.W.2d 796, 801 (Mo.App. 1995)**. In ***Sherrill*** , the Missouri Supreme Court addressed the issue of whether the treating physicians of a state mental institution owed a duty to the general public in deciding whether to grant a release to an involuntary patient. 653 S.W.2d at 664. There a state mental patient had been released and while on release murdered the plaintiff's son, prompting her to file a wrongful death action against the state hospital, its administrators, and its treating physicians. ***Id.* at 662**. In holding that there was no duty owed by the treating physicians to the mother of the victim, as a member of the general public, on which to base liability, the court stated, "[T]he defendant physicians should not be held liable for even foreseeable civil damages simply because they might be found to have exercised negligent professional judgment in permitting [the patient] to leave the premises." ***Id.* at 667**.

We do not read ***Sherrill*** as being an absolute bar to a suit by a member of the general public against a physician for negligence in the treatment and care of a patient. We believe that any fair reading of ***Sherrill*** would indicate that it is limited in scope to medical decisions by a treating physician employed by the state concerning whether to release an involuntary patient from a state hospital. It is clear to us that the holding in ***Sherrill*** was predicated on public policy considerations not found in cases involving the treatment and care of a private patient. Specifically, the court, analogizing the role of a treating physician for the state in determining whether to release an involuntary patient as judicial in nature, stated:

> Judges are immune from civil liability for damages. It would be cynical to say that they are favored only because the rules have been made by fellow judges. The reason, rather, is one of policy. Every obstacle to a judicial officer's detached and unencumbered judgment must be removed. There must be protection not only against what might be proved but also against what might be claimed. Decisions about temporary or permanent release of involuntary detainees should be likewise unencumbered and unfettered, at least against negligence claims.

***Id* . at 665**.[4] Obviously, a private physician is not performing a quasi-judicial function when he or she is determining and providing the appropriate treatment and care for a patient.

> [4] *See* ***Matt v. Burrell, Inc.*** **, 892 S.W.2d 796, 801 (Mo.App. 1995)** in which the Southern District, in holding that the treating physician in question did not owe a duty of care to the general public with respect to the release of a *voluntary* mental patient, read ***Sherrill*** as holding as a general proposition that a treating physician did not owe a duty of care to the general public. As noted in our discussion, ***Sherrill*** cannot be read as standing for that proposition.

In ***Young*** , the Eastern District of this court was confronted with the issue of whether a physician owed a duty of care to the plaintiffs who were injured as a result of an accident involving a motor vehicle driven by a patient of the defendant-physician, where the patient had blacked out while driving. **916 S.W.3d at 878**. The plaintiffs alleged that the physician was negligent and was liable to them in damages in that he had a duty to warn the patient not to drive, which he breached, resulting in their injuries. ***Id.*** On appeal, the court affirmed the trial court's dismissal of the plaintiffs' petition for failure to state a cause of action. ***Id* . at 879**. In doing so, the court did not decide the issue of whether the plaintiffs had pled sufficient facts, which if true, would have established a duty owed by the physician to the plaintiffs as members of the general public. ***Id* . at 878**. Instead, its holding was based on the insufficiency of the pleadings alleging that the failure of the physician to warn the patient not to drive was the proximate cause of the plaintiffs' injuries. ***Id* . at 878-79**. As to this issue, the court found that because there is no duty to warn of dangers which are open and obvious or which are commonly known, the physician's failure to warn the patient not to drive because of the blackouts he was experiencing, which were found to be well known to the patient, was not the proximate cause of the plaintiffs' injuries. ***Id* .** Rather, the court found that it was the patient's act of driving, when he *knew* he was subject to blackouts, that was the proximate cause of the plaintiffs' injuries. ***Id* . at 878**. In the case at bar, the summary judgment record would indicate that the issue of whether Schmidt was aware or should have been aware of the dangers of driving after receiving an injection of Compazine was in dispute such that ***Young*** would not support the trial court's award of summary judgment in our case on the issue of duty.

In ***Bradley*** , this court addressed the issue of whether a psychologist owed a common-law duty to warn the appropriate authorities that a client presented a serious danger of future abuse to a readily ascertainable victim. 904 S.W.2d at 306. In that case, a minor child that had been sexually abused by her stepfather sought damages, through her next friend, from the psychologists who had been treating the stepfather for their negligent failure to warn the appropriate authorities that he presented a serious danger of future harm to her in that he had admitted to prior acts of abuse. ***Id.* at 305-06**. After looking at decisions from other jurisdictions that favored a duty to warn and after applying the ***Hoover's Dairy*** factors, this court recognized that "the relationship between psychologists and their patients is the kind of

'special' relationship on which liability can be based for failure to warn." ***Id.*** **at 311**. We went on to hold that:

> [W]hen a psychologist or other health care professional knows or pursuant to the standards of his profession should have known that a patient presents a serious danger of future violence to a readily identifiable victim the psychologist has a duty under Missouri common law to warn the intended victim or communicate the existence of such danger to those likely to warn the victim including notifying appropriate enforcement authorities.

Id **. at 312**.

Although in ***Millard*** the court was not confronted with whether a physician could be liable to a third party for the *negligent medical care or treatment of a patient*, as in this case, it did address the general issue of a physician's liability to a member of the general public. **14 S.W.3d at 47**. In ***Millard*** , the plaintiff sought damages from the surgeon who was scheduled to be on call at the hospital for emergencies, but who was not on call the night she was transported there for treatment of serious injuries she had sustained as a result of a motor vehicle accident. ***Id.*** **at 45-46**. Although not a patient, the plaintiff alleged that the surgeon was liable to her in negligence for the damages she sustained as a result of the delay in her treatment and care. ***Id.*** **at 46**. In this regard, she further alleged that, had the defendant notified the hospital that he would not be on call as scheduled, either a substitute surgeon would have been available or the plaintiff would have been transported to a different facility, such that her treatment and care would have not been delayed and her injuries would not have been exacerbated. ***Id.*** **at 48**. In reversing the trial court's summary judgment for the defendant physician based on a lack of a duty owed to the plaintiff, the court in ***Millard*** held that a duty from a physician to the general public could be found by a reasonable fact finder based on the public policy considerations enunciated in ***Hoover's Dairy*** . ***Id.*** **at 47**. ***Millard*** teaches us then that the liability of a physician does not depend solely on a physician-patient relationship being established, but that a duty to the general public can be found based on the public policy considerations enunciated in ***Hoover's Dairy*** . ***Id*** **.**

Based on our reading of the foregoing cases, we believe that the issue of whether a health care provider, specifically a physician, has a duty to the general public to warn a patient not to drive while impaired due to taking a prescribed medication is an open question. In addressing this question, we think it is instructive to first discuss whether such a duty is owed to the patient, since the two are logically intertwined. It is well-settled in this state that a physician has a duty to exercise that degree of skill and learning toward his patient which other physicians use under the same or similar circumstances, and which, if breached, forms the basis for a medical malpractice claim. ***Sheffler*** **, 950 S.W.2d at 267**. Thus, it can be said that our appellate courts have recognized that, as a matter of public policy, the special relationship existing between a physician and patient gives rise to a duty of care from the physician to the patient. The question is whether that duty of care includes a duty to a patient to warn the patient of the risks associated with certain activities while under the influence of a prescription drug. Although our courts have not expressly decided this issue, they have impliedly recognized such a duty in related circumstances. For example, Missouri courts adhere to the "learned intermediary doctrine," which provides that a manufacturer of prescription drugs discharges its duty to warn about the unknown risks associated with its products by providing the information to the physician, which is deemed a warning to the patient. ***Doe v. Alpha Therapeutic Corp.*** **, 3 S.W.3d 404, 419 (Mo.App. 1999)** (citations omitted). Logically, in our view, the doctrine is based, at least in part, on the recognition by our courts of a duty of the

physician to a patient to warn the patient of the risks associated with a drug prescribed by the physician.

Another factual situation in which our appellate courts have impliedly recognized that a physician has a duty to a patient to warn the patient about the risks associated with taking a prescription drug can be found in the "informed consent" cases. Our courts recognize a cause of action by a patient against a physician for the lack of informed consent to medical treatment. ***Wilkerson v. Mid-America Cardiology*** **, 908 S.W.2d 691, 696 (Mo.App. 1995)**. The three basic elements of such a cause of action are: "1) nondisclosure, 2) causation, and 3) injury. To prove nondisclosure, the plaintiff is required to produce expert testimony to show what disclosures a reasonable medical practitioner would have made under the same or similar circumstances." ***Id.*** In holding that "[a] decision as to medical treatment must be informed," the Missouri Supreme Court in ***Cruzan, by Cruzan v. Harmon*** **, 760 S.W.2d 408, 417 (Mo. *banc* 1988)** stated:

> There are three basic prerequisites for informed consent: the patient must have the capacity to reason and make judgments, the decision must be made voluntarily and without coercion, and the patient must have a clear understanding of the *risks and benefits* of the proposed treatment alternatives or nontreatment, along with a full understanding of the nature of the disease and the prognosis.

(Emphasis added.) Logically, medical treatment would include the prescribing of medication such that with respect thereto, a physician would have a duty to a patient to insure that the patient had a clear understanding of risks and benefits associated with taking the medication, and the risks and benefits of treatment alternatives or of nontreatment. As such, in our view, the informed consent cases recognize that a physician in this state owes a duty to a patient to inform or warn the patient about the risks and dangers associated with the taking of a prescribed drug, including not engaging in certain activities because of the related side effects.

Consistent with our view as to the duty of a physician to warn a patient about the risks associated with taking a prescribed medication is this court's decision in ***Horner*** **, 1 S.W.3d at 522-23** , holding that a pharmacist, who like a physician is a "health care provider" by definition, § 538.205(4),[5] has a duty to warn a patron of the risks associated with the taking of a drug prescribed by a physician. In so holding, the court stated:

[5] All statutory references are to **RSMo 1994**, unless otherwise indicated.

> [A] pharmacist's education and expertise will require that he or she do more to help protect their patrons from risks which pharmacists can reasonably foresee. . . . [A] pharmacist, as is the case with every other professional, must exercise the care and prudence which a reasonably careful and prudent pharmacist would exercise.

Id. **at 522**. Logically, this same duty to warn should extend to other health care providers, such as a physician who, based on his or her medical education and expertise, knew of a danger associated with the taking of a drug prescribed for a patient.

Having determined that, under a given set of circumstances, a physician can be found to have a duty to a patient to warn the patient of the risks and dangers associated with the taking of a prescribed drug, including not engaging in certain activities after doing so, such as driving, because of the drug's known side effects, we now turn to the issue of whether a physician could be found to owe the same duty to the general public.

Unlike the special relationship of physician-patient, on which the duty to the patient to warn is predicated, there obviously does not exist a special

relationship between a physician and the general public on which to base such a duty. However, as our colleagues in the Eastern District held in ***Millard*** , a duty can still arise absent a special relationship based on applying the public policy factors cited by the Missouri Supreme Court in ***Hoover's Dairy*** . ***Millard*** **, 14 S.W.3d at 47**. Thus, the question for us to decide is whether public policy favors extending to the general public the duty of a physician to warn a patient about the risks associated with taking a prescription drug and engaging in certain activities while under the influence of the drug, such as driving a motor vehicle.

As noted, *supra*, in considering whether to impose a duty based on public policy, the Missouri Supreme Court in ***Hoover's Dairy*** enunciated the following factors for consideration:

> (1) the social consensus that the interest is worth protecting, (2) the foreseeability of harm and the degree of certainty that the protected person suffered the injury, (3) the moral blame society attaches to the conduct, (4) the prevention of future harm, (5) the consideration of cost and ability to spread the risk of loss, and (6) the economic burden upon the actor and the community.

Millard **, 14 S.W.3d at 47**. As to the first factor, whether there is a social consensus that there is an interest worth protecting, one need not look any further than to the fact that in this state, as well as in the country, there presently exists an all-encompassing effort to eradicate from our roadways drivers who are impaired by drugs or alcohol, in order to protect the safety and welfare of the motoring public. Drivers under the influence of drugs or alcohol have caused thousands of deaths on our highways as well as millions of dollars in property damage. Society's resulting outrage can be seen in our criminal statutes, making it a crime to drive a motor vehicle while under the influence of drugs or alcohol, **§§ 577.010, 577.012, RSMo Supp. 1996**, and by the fact that civil tort actions are allowed against such drivers to recover the damages they have caused. ***Stojkovic v. Weller*** **, 802 S.W.2d 152, 154-55 (Mo. *banc* 1991)**. Thus, in our view, there is a clear social consensus in this state that the law, both criminal and civil, should do everything reasonable to prevent impaired drivers from threatening the health and welfare of the motoring public. As such, it would seem to us that there would be a social consensus in this state that, in order to protect the safety and welfare of the motoring public, as well as the patient, a duty should be imposed on a physician to the general public to warn a patient not to drive due to the side effects caused by a prescribed drug impairing the patient's ability to drive safely.

The second factor for consideration is the foreseeability or the likelihood of harm and injury. As to this factor, it goes without saying that a physician should reasonably anticipate that a patient who has taken a prescription drug known to the physician to cause drowsiness and dizziness, impairing the patient's ability to safely operate a motor vehicle, is likely to cause harm and injury to himself or herself, and/or the motoring public, if the patient, unaware of the dangers, chooses to drive. This factor then would favor imposing a duty on a physician to the general public to warn a patient not to drive due to the side effects of a drug prescribed by the physician.

As to the third factor to consider in determining whether public policy favors the imposition of the duty in question, "the moral blame society attaches to the conduct," we also think it favors imposing the duty in question. By virtue of a physician's education and expertise, a patient submits to and relies on the physician's directives with respect to treatment and care such that the physician occupies a certain position of control over a patient with respect to the patient's treatment and care. As such, when a physician prescribes a drug with associated side effects

known to the physician but unknown to the patient, creating a potential danger not only to the patient if he or she drives under the influence of the drug but to the general public, there is no doubt in our minds that society would find fault with a physician who fails to warn the patient not to drive, in order to protect not only the patient but the general public.

Consideration of the fourth factor, "the prevention of future harm," would also favor the imposition of a duty. It is reasonable to assume that a warning to a patient not to drive a motor vehicle while taking a prescribed medication would greatly increase the likelihood that the patient would not drive. ***Arnold v. Ingersoll-Rand Co.*** **, 834 S.W.2d 192, 194 (Mo. *banc* 1992)**. One can assume that a reasonable person would not want to endanger his or her life by driving when he or she has been advised by a chosen and trusted physician not to do so because of the potential danger involved. ***Id.*** Moreover, simply because there is a possibility that a warning might be ignored should not relieve the actor of giving it. Hence, the potential danger and harm to a patient and the general public caused by a patient driving while being impaired by a prescribed medication could in many cases be averted simply by a warning from the physician to the patient not to drive while under the influence of the medication.

As to factor five, "the consideration of cost and ability to spread the risk of loss," and factor six, "the economic burden upon the actor and the community," we believe that they also cut in favor of imposing a duty. Although there may be some added cost in the way of increased premiums for extending coverage as to existing professional liability insurance, such insurance would allow the physician to spread the risk of loss. As to any added burden, we see none in that the required warning to the patient necessary to satisfy the physician's duty owed to the *patient* to warn would necessarily satisfy the duty owed to the *general public* to warn. In other words, the warning to the patient not to drive while taking the medication would not only serve to protect the health and safety of the patient but of the motoring public as well.

In addition to the six public policy factors favoring a duty of a physician to the general public to warn a patient not to drive a motor vehicle while taking a medication known to the physician to cause side effects impairing the patient's ability to do so, we find further support for such a duty in the dramshop cases governed by § 537.053. In that regard, § 537.053 permits a tort action by a party injured by an intoxicated person against a party who served the intoxicated person intoxicants, provided the intoxicated person was under twenty-one years or was obviously intoxicated at the time. *See* ***Kilmer v. Mun*** **, 17 S.W.3d 545, 545 (Mo. *banc* 2000)**. In enacting § 537.053, the legislature recognized that the absence of a special relationship between the injured party and the offending actor would not prevent the imposition of a duty on the actor to the general public not to serve intoxicants to a person under twenty-one years or who is obviously intoxicated. In effect, the legislature codified the public policy of this state. Consistent with this policy and the underlying logic for it, it seems reasonable to suggest that the public policy of this state is to hold individuals, in certain circumstances, accountable to the general public when they act in a careless and imprudent manner such that it is foreseeable that their acts will likely result in injury or harm to members of the general public. It makes no sense to us to suggest that public policy would favor exposing a mere bartender to liability from a member of the general public for serving intoxicants to an underage or obviously intoxicated patron, but not a highly educated and trained physician for creating a foreseeable, dangerous situation by failing to warn a patient of the dangers associated with driving and taking a prescription drug known to the physician to cause side effects which would impair the patient's ability to drive.

In ***Gooden v. Tips*** **,** **651 S.W.2d 364** **(Tex.App. 1983)**, the Texas Court of Appeals was confronted with a set of facts that are quite similar to those in the instant case. There, the plaintiff was injured when the vehicle he was driving was struck by a vehicle being driven by a patient who was under the influence of Quaalude, which had been prescribed by her physician, the defendant. ***Id.*** **at 365**. The plaintiff sued the defendant physician for his negligent care and treatment of the driver in failing to warn the patient not to drive. ***Id.*** The trial court granted summary judgment in favor of the defendant, who alleged, *inter alia*, in support of his motion that he did not owe a duty to the plaintiff because a physician-patient relationship did not exist between them. ***Id.*** On appeal, the court framed the issue thus:

> When a physician prescribes a drug for his patient which the physician knows or should know has an intoxicating effect, does the physician have a duty to the public to warn that patient not to drive while under the influence of said drug? Or, stated another way, is the physician under a duty to take whatever steps are reasonable under the circumstances to reduce the likelihood of injury to third parties who may be injured by that patient because said patient is under the influence of an intoxicating drug prescribed by the physician?

Id **. at 366**. Persuaded by the numerous holdings in other jurisdictions finding a duty to the general public to warn, ***Kaiser v. Suburban Transp. Sys.*** **,** **398 P.2d 14** **(Wash. 1965);** ***Freese v. Lemmon*** **,** **210 N.W.2d 576** **(Iowa 1973);** ***Wharton Transport Corp. v. Bridges*** **,** **606 S.W.2d 521** **(Tenn. 1980)**, and the fact that the "harm resulting to the plaintiffs was a reasonably foreseeable consequence of the physician's failure to warn his patient not to drive," ***Gordon*** **,** **651 S.W.2d at 369** , the Texas appellate court reversed, holding, "it is apparent that, under proper facts, a physician can owe a duty to use reasonable care to protect the driving public where the physician's negligence in diagnosis or treatment of his patient contributes to plaintiff's injuries," ***id*** **.**, and that, as such, the physician "may have had a duty to *warn* his patient not to drive." ***Id*** **. at 370** (emphasis in original). In so holding, the court pointed out that the respondent did not have a duty "to *prevent* her from driving, if she so desired." ***Id*** **.** (emphasis in original). *See also* ***Helms v. Gonzalez*** **,** **885 S.W.2d 535** **(Tex.App. 1994)** (*citing* ***Gooden*** with approval).

Based upon our public policy analysis, and our consideration of Missouri case law and case law from other jurisdictions, we find that, under a given set of circumstances, a fact finder could find that a physician owed a duty of care to a member of the general public to warn a patient not to drive while under the influence of an intoxicating drug prescribed by the physician. As to our case, the summary judgment record would support the fact that the appellant could have conceivably established at trial that the respondent's medical staff had a duty not only to its patient, Schmidt, but to the general public to warn Schmidt not to drive while under the influence of Compazine, which, unbeknownst to her, caused drowsiness and dizziness. In this regard, the summary judgment record on which the appellant was entitled to rely to defeat the respondent's motion for summary judgment reflects that Schmidt received an injection of Compazine from the respondent's medical staff for complaints of a headache, which drug was known to the medical staff, but not Schmidt, to cause drowsiness and dizziness which would impair her ability to drive. The record favorable to the appellant would further reflect that the staff did not warn Schmidt not to drive due to the side effects associated with taking Compazine, which she proceeded to do shortly thereafter, resulting in the accident with the appellant.[6]

> [6] In holding as we do, we recognize that the respondent's medical staff did not have a duty to restrain Schmidt from leaving the

hospital and driving. *See* ***Sherrill*** , **653 S.W.2d at 666-67**; ***Matt*** , **892 S.W.2d at 801-02** .

As noted, *supra*, summary judgment will not lie for the defendant, if the appellant could succeed on her claim on any theory. ***Moreland*** , **995 S.W.2d at 516** . As such, despite the fact that she could not maintain a medical malpractice claim against the respondent, because we find that the appellant could conceivably establish at trial a duty of the respondent to the appellant to warn Schmidt not to drive while under the influence of the Compazine, summary judgment for the respondent on the ground that she could not establish at trial a duty on which to predicate a claim against the respondent for negligence of its medical staff was error.

II.

In Point II, the appellant claims that the trial court erred in granting the respondent's motion for summary judgment on her negligence claim based on a lack of causation because, as a matter of law, on the undisputed material facts alleged by the respondent and admitted to by the appellant, and the facts still in dispute, a reasonable fact finder could find that the respondent's alleged negligent acts or omissions in its treatment and care of Schmidt were the direct and proximate cause of the appellant's injuries sustained in the accident. The respondent contends that even if we were to find in Point I that the appellant could conceivably establish at trial a duty from the respondent's medical staff, which was breached, that the appellant's claim still must fail as a matter of law in that such a breach was not the direct and proximate cause of the appellant's injuries. We disagree.

The respondent contends that the undisputed facts alleged in its motion established as a matter of law that any breach of duty on its part as to the care and treatment of Schmidt was not the direct and proximate cause of the appellant's injuries such that summary judgment for it was proper in that causation, as discussed, *supra*, is, in fact, a necessary element of proof of the appellant's negligence claim. ***Robinson*** , **24 S.W.3d at 77** . Specifically, it contends that Schmidt's decision to drive after receiving an injection of Compazine was an intervening cause that broke any causal link between any alleged act of negligence by the respondent's medical staff and the injuries sustained by the appellant. In Point I, we determined that the appellant, on the summary judgment record before us, could conceivably establish at trial a duty to her from the respondent's medical staff to warn Schmidt not to drive under the influence of the Compazine and a breach of that duty. Thus, if the summary judgment record here is sufficient for us to conclude that a reasonable fact finder could find that this breach was the direct and proximate cause of the appellant's injuries, then summary judgment for the respondent based on a finding that the appellant could not establish at trial the causation element of her negligence claim was error. This then is the issue we must determine in this point.

To succeed at trial on her claim of negligence against the respondent as to a breach of a duty to warn, the appellant would be required to show, *inter alia*, that the respondent's medical staff's failure to warn Schmidt not to drive was not only the cause in fact, but the proximate cause of her injuries. ***Esmond v. Bituminous Cas. Corp.*** , **23 S.W.3d 748, 752 (Mo.App. 2000)**. "The trier of fact normally decides causation, especially where reasonable minds could differ as to causation on the facts of the case." ***Robinson*** , **24 S.W.3d at 77** (citations omitted). "Absolute certainty is not required in proving a causal connection between a negligent defendant's actions and the plaintiff's injury. This connection can be proven by reasonable inferences from proven facts or by circumstantial evidence." ***Derrick v. Norton*** , **983 S.W.2d 529, 532 (Mo.App. 1998)** (citations omitted).

The test for cause in fact is the "but for" test: Would the injuries claimed by the plaintiff have occurred "but for" the alleged negligent conduct of the defendant? ***Robinson*** **, 24 S.W.3d at 77** . Here, the argument as to satisfying the "but for" test would be that the summary judgment record would not foreclose a fact finder from finding that the appellant's injuries would not have resulted but for the failure of the respondent's medical staff to warn Schmidt not to drive in that the record would indicate that the appellant could produce evidence at trial from which a reasonable fact finder could infer that if Schmidt had been warned not to drive because of the danger she posed to herself and others if she drove under the influence of the Compazine, she would have chosen, as a matter of self-preservation and out of her consideration for the safety of others, not to drive. *See* ***Arnold*** **, 834 S.W.2d at 194** (holding that there is a presumption that a plaintiff will heed a warning if given adequate information). Further, nothing in the undisputed facts alleged by the respondent in its motion would establish that the dangers of taking Compazine and driving were known to Schmidt. In addition, we believe that the appellant could also produce evidence at trial from which a fact finder could reasonably infer that as a result of receiving the injection of Compazine from the respondent's medical staff, Schmidt became drowsy and dozed off while driving from the respondent's facility, causing her to cross the center line of the road and hit the appellant's vehicle, resulting in the appellant's injuries. Consistent with this fact is the evidence which the appellant argues would show that Schmidt took no evasive action whatsoever to avoid the collision. As such, we find that the appellant could conceivably satisfy the "but for" test that the injuries complained of would not have occurred but for the failure to warn. The issue then is whether the summary judgment record would support a finding of proximate cause.

Proximate cause is not causation in fact:

> Proximate cause requires something in addition to a 'but for' causation test because the 'but for' causation test serves only to exclude items that are not causal in fact; it will include items that are causal in fact but that would be unreasonable to base liability upon because they are too far removed from the ultimate injury or damage.
>
> ***Callahan v. Cardinal Glennon Hosp.*** **, 863 S.W.2d 852, 865 (Mo. *banc* 1993)**.
>
> Proximate cause is not causation in fact, but is a limitation the law imposes upon the right to recover for the consequences of a negligent act. The requirement of proving proximate cause absolves those actors whom it would be 'unfair' to punish because of the attenuated relation which their conduct bears to the plaintiff's injury. . . .

> The general test of proximate cause is whether an injury is the natural and probable consequence of the defendant's negligence. This is determined by looking back, after the occurrence, and examining whether the injury appears to be a reasonable and probable consequence of the conduct. [F]rom the essential meaning of proximate cause arises the principle that in order for an act to constitute the proximate cause of an injury, *some* injury, if not the precise one in question, must have been reasonably foreseeable. Foreseeability is not a matter of mathematical certainty. No event is entirely foreseeable. As such, the test for proximate cause is not whether a reasonably prudent person would have foreseen the particular injury, but whether, after the occurrences, the injury appears to be the reasonable and probable consequence of the act or omission of the defendant. It is only necessary that the party charged knew or should have known there was an appreciable chance some injury would result.

Robinson **, 24 S.W.3d at 77-78** (citations omitted) (emphasis in original).

Applying the foregoing standard of proximate cause, we would first note that for the same public policy considerations discussed in Point I as to duty, we do not view it as being unfair to hold a physician responsible for an injury to a member of the general public for the physician's failure to warn a patient not to drive under the influence of an intoxicating drug which the physician prescribed. As to the appellant's injuries being the natural and probable consequence of the respondent's medical staff's failure to warn Schmidt not to drive, it appears to us that a fact finder at trial could so find. Obviously, a physician would or should know that unless warned not to drive, there is an appreciable chance that a patient under his or her care, which patient is unaware of the intoxicating side effects of a drug which the physician has prescribed, would drive under the influence thereof, presenting a likelihood of harm to others as well as herself. Further, as noted, *supra*, the record would support a possible finding that the Compazine caused Schmidt to doze off while driving, causing her to cross the center line and hit the appellant's vehicle. As such, injuries resulting from the patient's driving under the influence could be found to be the natural, reasonable and probable consequence of the failure of the physician to warn the patient not to drive.

The respondent argues that the undisputed facts would demonstrate that Schmidt's act of driving constituted an intervening cause that cut off any liability of the respondent. In this regard, the respondent argues that any causal link between the respondent's medical staff's failure to warn and the appellant's injuries was broken because Schmidt "chose to drive, *may or may not* have known of her impaired condition, *may* have consumed sufficient alcohol to independently be in an impaired condition, and *may* have caused the crash intentionally or negligently for some reason unrelated to drowsiness." (Emphasis added.) We disagree.

"An intervening cause is a new and independent force which so interrupts the chain of events that it becomes the responsible, direct, proximate, and immediate cause of the injury, but it may not consist of an act of concurring or contributory negligence." ***Simonian v. Gevers Heating Air Conditioning, Inc.*** **, 957 S.W.2d 472, 475 (Mo.App. 1997)** (citation omitted). "However, the mere existence of an intervening act is not decisive. The intervening act must be a superseding cause that is independent of the original actor's negligence and severs the connection between the original actor's conduct and the plaintiff's injury as a matter of law." ***Buchholz v. Mosby-Year Book, Inc.*** **, 969 S.W.2d 860, 862 (Mo.App. 1998)** (citation omitted). Here, a fact finder could reasonably find that Schmidt's

act of driving her vehicle over the center line of the roadway and colliding with the appellant's vehicle was not independent of the respondent's medical staff's failure to warn her in that a fact finder could find that she chose to drive under the influence of Compazine, unaware of its intoxicating side effects and the danger she posed thereby to herself and the motoring public, which resulted in her driving across the center line in the road and hitting the appellant's vehicle. The mere act of choosing to drive would not be an intervening cause. As discussed in ***Young*** **,** **916 S.W.2d at 878** , it is the choice of driving when the driver *knows* of the associated dangers that cuts off causation. Although the fact finder at trial might well infer, as the respondent contends, that Schmidt was aware of the dangers of driving under the influence of Compazine, the summary judgment record before us indicates that the contrary might be found. "[W]here the record contains competent evidence of 'two plausible, but contradictory, accounts of the essential facts,'" a genuine issue of fact exists which would defeat summary judgment based on such an account. ***Williams v. Mo. Highway and Transp. Comm'n*** **,** **16 S.W.3d 605, 613** **(Mo.App. 2000)** (citation omitted). Because we believe that a fact finder could find either way on the issue of whether Schmidt was aware of the dangers in driving while under the influence of Compazine, for purposes of summary judgment, her choice in driving would not be an intervening cause.

As to the other "possible" causes for the accident intervening to cut off any causal link for a failure to warn, as asserted by the respondent, they are just that — possibilities, which would be fact issues for a fact finder at trial. By couching its argument in terms of "may," the respondent, in effect, concedes on appeal that based on the summary judgment record before us, a fact finder *may* find that the accident was caused by an impairment not associated with the taking of the Compazine, specifically that the accident was caused by Schmidt's consumption of alcohol or by an attempt at suicide. As such, summary judgment would not lie in that a genuine issue of a material fact would exist as to what caused Schmidt to drive across the center line of the road. ***Id*** **.** Of course, the possibility also exists that a fact finder might find that the accident had multiple causes, for example, impairment due to drinking in combination with taking Compazine. Under such circumstance, Schmidt's drinking would not necessarily be an intervening cause:

> The general rule is that if a defendant is negligent and his negligence combines with that of another, or with any other independent, intervening cause, he is liable, although his negligence was not the sole negligence or the sole proximate cause, and although his negligence, without such other independent, intervening cause, would not have produced the injury.

Carlson v. K-Mart Corp. **,** **979 S.W.2d 145, 147** **(Mo.** ***banc*** **1998)** (*quoting* ***Gaines v. Prop. Serv. Co.*** **,** **276 S.W.2d 169, 173-74** **(Mo. 1955)**). As such, the respondent would not be entitled to summary judgment in reliance on its alleged undisputed facts that are susceptible to more than one interpretation, which are contradictory, as to what caused Schmidt to drive across the center line. ***Williams*** **,** **16 S.W.3d at 613** .

> For the reasons stated, we find that the trial court erred in granting summary judgment to the respondent on the basis that the appellant could not establish at trial the requisite causal link between at least one of the specifications of negligence alleged by the appellant as to the respondent's medical staff. **Conclusion**

The circuit court's summary judgment for the respondent on the appellant's claim of negligence is reversed and the cause is remanded for further proceedings consistent with this opinion.

Edwin H. Smith, Judge

Spinden, C.J., and Ulrich, J., concur.