FIRST DIVISION
BARNES, P. J.,
MARKLE and HODGES, JJ.

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November 3, 2026

In the Court of Appeals of Georgia

A26A1503. HOPKINS et al. v. THE HOSPITAL AUTHORITY OF LIBERTY COUNTY et al.

MARKLE, Judge.

In this medical malpractice action, the jury returned a verdict in favor of Jill Hopkins, the wife of Stephen Gerber ("Gerber"), and Gerald Gerber, as the administrator of Gerber's estate (collectively, "Hopkins"). Hopkins appeals from the trial court's judgment notwithstanding the verdict on motion from The Hospital Authority of Liberty County d/b/a Liberty Regional Medical Center, Dr. Aaron Ward, and nurse Nicole Stuckey, contending, among other things that the trial court erred in concluding the evidence was insufficient to establish proximate causation. For the reasons that follow, we affirm.

As we have explained,

> [t]he standard for granting motions for directed verdict and for j.n.o.v. is the same. They may be granted only when no conflict exists in the evidence and the evidence presented, with all reasonable inferences therefrom, demands a particular verdict. On appeal, the standard of review is any evidence. This court must therefore view the evidence presented at trial and determine whether some evidence supported the jury's verdict.

Wynn v. City of Warner Robins, 279 Ga. App. 42, 43(1) (630 SE2d 574) (2006).

So viewed, the record shows that Jill had taken out a temporary protective order against her husband, Gerber. Nevertheless, Gerber burst into Jill's house one night, inebriated and defecating all over himself and the house. Jill observed that there was blood in Gerber's stool. She called 911, and, upon arrival, a Sheriff's deputy then requested emergency medical services for a patient check after he observed that Gerber had been unsteady on his feet, and was incapable of engaging in conversation. The responding EMT determined that Gerber was disoriented as he could not correctly identify the year, and therefore needed to be transported to the hospital. She also observed that Gerber was unsteady, and could not walk on his own. EMS transported Gerber to Liberty Regional Medical Center in an ambulance without

turning on the lights and siren because they had assessed Gerber at the lowest level of acuity, indicating he was breathing and speaking normally.

Upon arriving at the hospital emergency room, Gerber was directed to a shower room because he was covered in feces. Gerber needed assistance to stand in the shower room. The responding paramedic advised Dr. Ward, the attending ER physician, that Gerber was confused, and had dark stool. Both the paramedic and EMT heard Ward laugh after observing Gerber's condition, and state that Gerber would "be discharged before you all ever leave the hospital." Shortly thereafter, the EMT noticed that Ward was typing up Gerber's discharge papers.

Nurse Stuckey examined Gerber after he had showered, and found him "a little disoriented to time," and triaged him at the "least concerning" level. Stuckey took Gerber's blood pressure reading, which was hypertensive at 188/118. She was not able to get a second reading, which she was delaying for 15 to 30 minutes to give Gerber an opportunity to relax, because Gerber removed the cuff, and walked to the nurses' station.

Gerber told Stuckey that he had recurring nausea, vomiting, and diarrhea in the past weeks, but that he was being treated by his physician, and did not need additional

treatment. Additionally, Gerber reported that he had been drinking beer, and was drinking "more than normal." Gerber originally stated the year incorrectly, but when Stuckey corrected him, Gerber knew that it was an election year.

In his clinical report, Ward noted that Gerber was alert and wanted to go home, and that there was "no reason to admit" him. Gerber received no further medical treatment at the time. Gerber asked Stuckey to call Jill to have her come pick him up, but Jill refused due to the protection order; although she stated that she had concerns about him being released due to his medical condition. Jill was unable to refer Stuckey to anyone else that could pick Gerber up. Stuckey tried to reach a taxi service, but it did not answer and, when she called the Sheriff's Department, they also refused to pick him up.

Gerber, who had been in the ER for approximately 70 minutes, put his soiled clothes on, and left, without shoes, late at night. While crossing the street outside the hospital, Gerber was struck by a car, and killed.

Hopkins sued the hospital, Ward and Stuckey for medical malpractice and wrongful death. Following a trial, the jury returned a verdict, apportioning 40% of the fault to Ward, 40% to Stuckey and the hospital, and 20% to Gerber, and awarding

Hopkins $7.5 million in damages.[1] Defendants moved for JNOV or a new trial, which the trial court granted. This appeal followed.

1. Hopkins argues that the trial court erred because Gerber's death was a foreseeable consequence of Defendants' negligence. Because the evidence was insufficient to establish that Defendants' failure to treat and admit Gerber proximately caused his death, we conclude the trial court correctly granted the JNOV.

To prevail on a medical malpractice claim, a plaintiff must show: "(1) a legal duty to conform to a standard of conduct; (2) a breach of this duty; (3) a causal connection between the conduct and the resulting injury; and (4) damage to the plaintiff." *Pattman v. Mann*, 307 Ga. App. 413, 417 (701 SE2d 232) (2010) (quotation marks omitted).[2]

As we have explained, the plaintiff

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[1] Prior to trial, Defendants moved for summary judgment, which the trial court denied. We denied Defendants' motion for interlocutory appeal.

[2] Pursuant to OCGA § 51-1-29.5(c), medical malpractice claims involving emergency medical care in a hospital emergency room must be "proven by clear and convincing evidence that the physician or health care provider's actions showed gross negligence." The parties do not raise any issues regarding this burden of proof in this appeal.

must show not only a violation of the applicable medical standard of care but also that the purported violation or deviation from the proper standard of care is the proximate cause of the injury sustained.[3]... Causation is established through expert testimony because the question of whether the alleged professional negligence caused the plaintiff's injury is generally one for specialized expert knowledge. The expert must state his or her opinion regarding proximate causation in terms stronger than that of medical possibility — e.g., a reasonable degree of medical certainty or reasonable medical probability. This means that [Hopkins] was required to present expert testimony that showed to a reasonable degree of medical certainty that the medical staff's alleged failure to adhere to the applicable standard of care caused [Gerber's] death.

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[3] Proximate causation is defined as "that which in the natural and continuous sequence, unbroken by other causes, produces an event, and without which the event would not have occurred." *Zwiren v. Thompson*, 276 Ga. 498, 500 (578 SE2d 862) (2003) (quotation marks omitted). In other words,

> [t]o show that defendants' conduct was the cause in fact of a plaintiff's injuries, the plaintiff ordinarily must prove that, but for this conduct, he or she would not have sustained the injury. To show proximate cause, on the other hand, the question is not whether the defendants' conduct caused the injury, but whether the causal connection between the defendants' conduct and the injury resulting therefrom is too remote to be the basis of a recovery.

Clark v. Ashley, 377 Ga. App. 646, 650-51(2) (923 SE2d 207) (2025) (citation modified).

Arnold v. Turbow, 357 Ga. App. 533, 536-37(1) (848 SE2d 698) (2020) (quotation marks omitted). See also *Beasley v. Northside Hosp.*, 289 Ga. App. 685, 688-89 (658 SE2d 233) (2008); *City of Richmond Hill v. Maia*, 301 Ga. 257, 258(1) (800 SE2d 573) (2017) ("Inextricably entwined with concepts of negligence and proximate cause is a notion of foreseeability." (quotation marks omitted)). "The requirement of proximate cause constitutes a limit on legal liability; it is a policy decision that, for a variety of reasons the defendants' conduct and the plaintiff's injury are too remote for the law to countenance recovery." *Clark v. Ashley*, 377 Ga. App. 646, 651(2) (923 SE2d 207) (2025).

Additionally, a plaintiff fails to establish proximate causation "where there has intervened between the act of the defendant and the injury to the plaintiff, an independent, intervening, act of someone other than the defendant, which was not foreseeable by defendant, was not triggered by defendant's acts, and which was sufficient of itself to cause the injury." *Walker v. Giles*, 276 Ga. App. 632, 643(2) (624 SE2d 191) (2005) (quotation marks omitted). Although proximate cause is typically a matter for the jury, it may be decided as a matter of law in "plain and

palpable" cases. See *Maia*, 301 Ga. at 261(2); *Miranda v. Fulton DeKalb Hosp. Auth.*, 284 Ga. App. 203, 206(1) (644 SE2d 164) (2007).

Here, the trial court determined that the evidence at trial was too remote to prove proximate causation because it merely showed that any negligence on Defendants' part only "furnished the occasion" for Gerber's injury; in other words, the evidence showed only that, had Defendants properly triaged and treated Gerber, explained his condition to him, and had Gerber *agreed* to be admitted, he would not have been struck by the car. We agree that the evidence of a causal link between Defendants' breach and Gerber's death was speculative at best. See *Walker*, 276 Ga. App. at 638 ("[A] plaintiff must prove that the defendants' negligence was both the cause in fact *and* the proximate cause of his injury." (emphasis added)).

To show that there was sufficient evidence of proximate causation, Hopkins points to Dr. Meisel's trial testimony. This expert opined that Defendants breached the standard of care by failing to assess and treat Gerber and by, thus, failing to inform him of the medical risks involved in leaving the hospital.[4] Implicit in this opinion,

[4] Dr. Meisel was qualified as an expert in the area of emergency medicine, and testified to the standard of care applicable to both Ward and Stuckey.

however, is the assumption that Gerber would have remained at the hospital had Defendants wholly performed within the attested standard of care.

Yet, this expert admitted that there is a possibility a patient would refuse to be admitted even after a medical examination and an explanation of his medical condition. Specifically, Dr. Meisel testified that "[i]n general, with patients who are alert, awake, not a harm to themselves, not a harm to others, who understands what I'm saying, who understands the risk associated with it, in general, I would say to the 95th degree, those patients accept the admission."

Plainly, this testimony fails to establish, to a reasonable degree of medical certainty or even probability, that Gerber would have remained had his condition been properly assessed and explained to him. See *Zwiren v. Thompson*, 276 Ga. 498, 504 (578 SE2d 862) (2003) (suggesting jury charge to clarify that the medical provider's liability is premised on expert testimony "based on reasonable medical probability *or* reasonable medical certainty" (emphasis added)). "[I]n presenting an opinion on causation, the expert is required to express some basis for both the confidence with which his conclusion is formed, and the probability that his conclusion is accurate." *Arnold*, 357 Ga. App. at 537(1) (citation modified); *Zwiren*, 276Ga. at 501. But, here,

unlike an opinion on the likelihood of the progression of a disease, for example, the expert testimony is based on an assumption or a guess as to how Gerber would react — which, on this record, is an unknown variable. See *Arnold*, 357 Ga. App. at 538(1) ("Merely stating that causation exists is not sufficient ... if the undisputed facts show that such a statement is overly speculative or conclusory."); *Beasley*, 289 Ga. App. at 690 ("While expert testimony may state a 'possibility' of causation, it suffices only when it is accompanied by other evidence that, in totality, shows causation."). Moreover, the expert admitted that he could not offer an opinion as to Gerber's mental status at the time he left the hospital.[5]

As we have explained,

> [w]hile perhaps nothing in medicine is absolutely certain, the law intends that if the plaintiff's medical expert cannot form an opinion with sufficient certainty so as to make a medical judgment, there is nothing on the record with which a jury can make a decision with sufficient certainty so as to make a legal judgment. The expert testimony must provide a causal connection that is more than mere chance or speculation.

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[5] Hopkins points to Dr. Meisel's testimony that, given Gerber's post mortem blood alcohol level, Gerber was impaired at the time he left the hospital. However, the expert proffered no opinion as to Gerber's subjective level of impairment at that time. See *Shaheed v. State*, 270 Ga. App. 709, 710(1) (607 SE2d 897) (2004) (noting that "individual responses to alcohol vary").

Beasley, 289 Ga. App. at 688. See also *Zwiren*, 276 Ga. at 503-04 ("An expert's opinion on the issue of whether the defendant's alleged negligence caused the plaintiff's injury cannot be based on speculation or possibility."). Because "the expert testimony indicates that the causal connection is something less than reasonable medical probability," Hopkins failed to establish liability as a matter of law. *Beasley*, 289 Ga. App. at 690.

Nevertheless, Hopkins contends that the car accident was a reasonably foreseeable result of Defendants' failure to treat and to attempt to admit Gerber. However, the malpractice cases Hopkins relies on to support this position are easily distinguished. In *Brandvain v. Ridgeview Institute*, 188 Ga. App. 106, 108-11 (372 SE2d 265) (1988), unlike the case of hand, the patient was undergoing prolonged drug abuse treatment at an addiction facility, where he made a suicide attempt prior to successfully committing suicide. We thus concluded that any issues regarding proximate causation remained with the jury. Id. at 115-16(3)(b) (evidence raised question of fact as to whether causal link was broken by intervening act of suicide). Similarly, in *Purcell v. Breese*, 250 Ga. App. 472, 473-74, 475(1) (552 SE2d 865) (2001), we concluded there was a question of fact as to proximate causation where a patient

with known suicidal tendencies, and who had been treated for days in a hospital psychiatric ward, was released without further examination from the attending physician and later committed suicide. And, in *Swofford v. Cooper*, 184 Ga. App. 50, 51, 54(3) (360 SE2d 624) (1987), we concluded that there was a question of fact as to proximate causation where a mental health patient killed his father after the attending psychiatrist issued a two-week pass to the patient, despite knowing of his aggressive behavior and threats to kill his family.

The common theme running through these cases is that the harm that ultimately occurred was inextricably related to the condition requiring medical treatment. There is no such relation, here. In other words, getting struck by a car is obviously an intervening act that is not a foreseeable consequence of Defendants' failure to treat Gerber's medical issues. See *Strickland v. DeKalb Hosp. Auth.*, 197 Ga. App. 63, 67(1)(d) (397 SE2d 576) (1990) ("The natural and probable consequences are those which human foresight can foresee, because they happen so frequently that they may be expected to happen again. The possible consequences are those which happen so infrequently that they are not expected to happen again." (quotation marks omitted)). See also OCGA § 51-12-9 ("Damages which are the legal and natural result

of the act done, though contingent to some extent, are not too remote to be recovered. However, damages traceable to the act, but which are not its legal and natural consequence, are too remote and contingent to be recovered.").

Finally, there is no evidence that Ward or Stuckey directed Gerber to leave the hospital, regardless of the fact that he had been officially discharged. To the contrary, there is overwhelming evidence that Stuckey attempted to find someone to pick Gerber up, although unsuccessfully. And Hopkins points to no expert testimony that Defendants breached the applicable standard of care by failing to restrain or sedate Gerber in order to prevent him from leaving.[6]

Because Hopkins failed to prove Defendants' breach of the applicable standard of care was the proximate cause of Gerber's death, the trial court correctly granted the JNOV.

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[6] For this reason, Hopkins' argument that Gerber was incapable of making an informed decision to terminate treatment due to inebriation or other mental incapacity is unpersuasive. To the extent Hopkins points to OCGA §§ 37-7-1(13) and 37-3-1 to establish a duty of care owed to Gerber, we fail to see how these statutes are relevant to the facts of this case.

2. In light of our disposition in Division 1, we do not reach Hopkins' remaining arguments.

Judgment affirmed. Hodges, J., concurs. Barnes, P. J., concurs in judgment only.