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IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 7, 2023

LINDA C. BLACK as next of kin of ROBERT JUNIOUS BLACK v. STATE OF TENNESSEE

Appeal from the Tennessee Claims Commission
No. T20181997 James A. Haltom, Commissioner

No. M2022-00399-COA-R3-CV

This is a wrongful-death health care liability action against a skilled nursing facility, the Tennessee State Veterans' Home in Clarksville ("TSVH-Clarksville"), which is owned and operated by the State of Tennessee. The claimant, Linda Black ("Claimant"), is the surviving spouse of Robert Junious Black, deceased, who was a resident of TSVH-Clarksville from December 16, 2016, through January 9, 2017. Claimant asserted that TSVH-Clarksville proximately caused Mr. Black's death by failing to monitor and report his symptoms under the applicable standard of care. In particular, Claimant alleged that the staff at TSVH-Clarksville (1) failed to follow Mr. Black's care plan for risk of dehydration; (2) failed to prevent Mr. Black from developing a urinary tract infection; (3) failed to notify Mr. Black's physician of a significant changes in his clinical status; and (4) failed to properly assess Mr. Black. Following a two-day bench trial, the Claims Commissioner found that Claimant failed to establish a health care liability claim because, *inter alia*, the State complied with the applicable standards of care and Claimant failed to establish causation. This appeal followed. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Claims Commission Affirmed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the court, in which ANDY D. BENNETT and JEFFREY USMAN, JJ., joined.

Benjamin J. Miller and Sarah L. Martin, Nashville, Tennessee, for the appellant, Linda C. Black.

Jonathan Skrmetti, Attorney General and Reporter, Andree' Sophia Blumstein, Solicitor General, and Toni-Ann M. Dolan, Assistant Attorney General, for the appellee, the State of Tennessee.

OPINION

FACTS AND PROCEDURAL HISTORY

The Claimant, Linda Black, and Mr. Black were married for 42 years. Mrs. Black cared for her husband at home for approximately 10 years due to his Alzheimer's disease, until she could no longer care for him on her own. In February 2016, Mr. Black was admitted to Christian Care Center in Springfield, Tennessee where he resided until being admitted to Alvin C. York VA Medical Center for medical care. From there he was placed at TSVH-Murfreesboro on March 8, 2016, where Mr. Black remained until he was transferred to TSVH-Clarksville, at Claimant's request,[1] on December 19, 2016, for assistance with activities of daily living, physical therapy, and medical assistance. Mr. Black was admitted under the care of attending physician, Dr. Nikkalynn DeLaurentis.

When Mr. Black was admitted to TSVH-Clarksville, he was 84 years old and required assistance with daily activities, including mobility, toileting, and basic hygiene. The admission records reveal that he suffered from multiple chronic health conditions including Alzheimer's disease, dementia, hypothyroidism, Type 2 Diabetes, hyperlipidemia, major depressive disorder, hypertension, coronary artery disease, GERD, chronic kidney disease, dysphagia with a pacemaker, and a seizure disorder. His medications included Levothyroxine (for hypothyroidism), Clopidogrel (for heart disease), Tradjenta (for diabetes), Gemfibrozil (for triglycerides), Lamictal (for seizure disorder), Donepezil (for dementia), Nitroglycerin patch (for hypertension), and Lorazepam, Zyprexa2 and Sertraline (for anxiety and depression).

Claimant visited her husband almost every day while he was at TSVH-Clarksville. On December 29, 2016, she suspected that he was suffering from a Urinary Tract Infection ("UTI") and asked the staff to perform a urinalysis, which they did and the result was negative. On the same day, a Subjective, Objective, Assessment, and Plan Note ("SOAP") reported that Mr. Black's family had been concerned about him and that he was "out of it."

On December 30, 2016, the facility created care plans related to Mr. Black's risks of dehydration and UTIs. On January 3, 2017, TSVH-Clarksville staff conducted a comprehensive interdisciplinary assessment of Mr. Black and prepared an individualized plan of care. During his care plan conference, his treating physician, Dr. DeLaurentis, discussed with Claimant his prognosis, expected outcomes, and identified him as "appropriate and eligible for hospice care." Dr. DeLaurentis noted that the January 3 visit "was in conjunction with an advanced care planning visit. Will [follow-up] with specific palliative visit to discuss decreasing medications and making changes to care plan based on comfort and stated goals of care."

[1] Claimant requested this move so her husband could have a private room and bath.

As Mr. Black's condition worsened, Dr. DeLaurentis decided to send Mr. Black to the hospital. As a result, on January 8, 2017, Mr. Black was transported to Tennova Medical Center in Clarksville. Upon presentation to the emergency room, Mr. Black had a rectal temperature of 103, was tachycardic, and was hypotensive. Mr. Black was then intubated and placed on a ventilator and transferred to Saint Thomas Hospital in Nashville on January 9, 2017, where it was noted that he was suffering from septic shock and aspiration pneumonia.

On the day following his admission to St. Thomas Hospital, Mr. Black's physician noted that Mr. Black had a "grave prognosis." On January 19, 2017, his physician also noted that Mr. Black "is dying and I do not believe any intervention or further diagnostic testing is rational." Mr. Black died at St. Thomas Hospital on January 23, 2017. The contributing causes of death stated on the death certificate were septic shock (immediate), acute respiratory failure (secondary), and pneumonia (secondary).

This action was timely commenced on March 29, 2018. The complaint asserted a health care liability claim for compensatory damages, including pain and suffering, for Mr. Black's wrongful death. The case centered around four alleged breaches of the acceptable standards of professional practice: (1) failure to follow the care plan for risk of dehydration, (2) failure to prevent development of a UTI, (3) failure to notify the provider of a significant change in clinical status, and (4) failure to properly assess the patient.

In her case in chief, Claimant presented her own testimony, and that of Sandra Wyatt-Moore, TSVH-Clarksville's Director of Nursing; medical expert Timothy Klein, M.D.; and Kimberly Warmath (Mr. Black's daughter who is a registered nurse in Arkansas). Defendant presented the testimony of medical expert William Boger, M.D.; and Warren Jasper, the Administrator of TSVH-Clarksville. Defendant also relied on Nurse Wyatt-Moore's testimony.

In its final order following trial, the Claims Commissioner (hereinafter "the Tribunal")[2] credited Dr. Boger's testimony and found "that Mr. Black was at risk for dehydration, based on his health conditions, and not the care of TSVH-Clarksville. Mr. Black's risks revolved around his dementia, dysphagia, and difficulty swallowing. Mr. Black's diabetes also increased the risk of dehydration." The Tribunal also found Dr. Boger's opinion more credible than Dr. Klein that the standard of care was satisfied. Reciting the testimonial and record evidence, the Tribunal found that "the standard of care was satisfied."

The Tribunal found that "the staff of TSVH-Clarksville did not fail to properly assess Mr. Black." The Tribunal noted the evidence showing that Mr. Black "was being

[2] The Claims Commissioner functions as a trial judge. In its Trial Order and Memorandum, the Commissioner referred to himself as the Tribunal. We shall do the same.

closely monitored and attended to by a team of RNs, CNAs, LPNs, and a physical therapist, plus Mrs. Black was with Mr. Black during most of the daylight hours except January 8, 2017."

As for the claim that the staff failed to prevent the development of a UTI, the Tribunal noted that "Mr. Black had a history of UTIs." It found "Dr. Klein's testimony too speculative to establish causation," and it "specifically [found] Dr. Boger's testimony more credible that Mr. Black was at risk for a UTI based on his age, health care environment, and uncontrolled diabetes." The Tribunal credited Dr. Boger's opinion and found that "Mr. Black's UTI, and eventual sepsis, was not caused by any act or omission by the staff at TSVH-Clarksville."

With regard to the claim the staff failed to notify the medical providers regarding change in clinical status, the Tribunal found that the standard of care was satisfied. The Tribunal recited the evidence showing that Mr. Black's physician had been notified of changes in clinical status and/or condition.

The Tribunal further found:

> The Tribunal finds more credible Dr. Boger's opinion that Mr. Black's sepsis was not caused by any act or omission by the staff at TSVH-Clarksville. The standard of care was met. The sepsis was also likely a parallel issue from an aspiration event, which was probably the biggest driving force of his decompensation the night of his transfer to the ER. An aspiration event that causes pneumonia takes time to develop, and most of the time, the initial presentation is respiratory compromise related to aspirating stomach contents where acid causes damage to the lungs, causing more of a chemical pneumonitis; then there is a lull, and the infection risk comes afterwards. Mr. Black was not septic when he died. Mr. Black's aspirational pneumonia was not caused by any act or omission by the staff at TSVH-Clarksville.
>
> Mr. Black died on January 23, 2017. His initial acute septic shock had improved, but he had aspirational pneumonia. The Tribunal finds more credible Dr. Boger's testimony the proximate cause of Mr. Black's death was progressive end-stage dementia, and the staff at TSVH-Clarksville did not contribute to his death. The medical records do not reveal Mr. Black was abused or neglected. The Tribunal finds more credible Dr. Boger's testimony the standard of care was met. Any potential lack of certain documentation in the record did not contribute to Mr. Black's death. Moreover, Claimant cannot establish an infection contracted at TSVH-Clarksville, and not any other infection or condition while under the care of Tennova or St. Thomas

Hospitals, was the proximate cause of Mr. Black's death sixteen days after leaving its care on January 8, 2017. *See, e.g., Redick v. St. Thomas Midtown Hosp.*, 515 S.W.3d 853, 860 (Tenn. Ct. App. 2016). In his condition, as testified credibly by Dr. Boger, it was possible Mr. Black would have a massive aspiration event and die sooner at the facility.

This appeal followed.

ISSUES

The issues raised by Claimant, which we have consolidated and restated, are as follows[3]:

1. Whether the Tribunal erred when it disregarded documentary evidence that purportedly contained TSVH-Clarksville's official policies and procedures.

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[3] In her brief, Claimant raises seven issues:

1. Did the Claims Commission err when it allowed the Defendant to dispute the authenticity of policies and procedures that it produced in response to Claimant's discovery requests?
2. Did the Claims Commission conflate Robert Black's *risks* of dehydration and urinary tract infections with *inevitability of occurrence*, despite no expert testimony to a degree of medical certainty that those injuries were the inevitable result of Mr. Black's condition?
3. Was the Commission's determination that the Defendant complied with the standard of care regarding physician notification supported by the evidence, despite that the Defendant indisputably did not document proper physician notification and proffered no witness who claimed to have personal knowledge of such physician notification occurring?
4. Was the Commission's determination that the Defendant complied with the standard of care regarding proper assessment of Mr. Black supported by the evidence, despite that the Defendant indisputably did not document consistent assessments and proffered no witness who claimed to have personal knowledge of such assessments occurring?
5. Was the Commission's determination that Mr. Black's cause of death was progressive, end-stage dementia supported by the evidence, despite no medical expert testimony to a reasonable degree of medical certainty being proffered to that effect and despite septic shock hastening his death?
6. Was it plain error for the Commission to conclude that aspiration pneumonia was the "biggest driving force" of Mr. Black's decompensation the night of his transfer to the emergency room, despite no medical expert testimony to a reasonable degree of medical certainty being proffered to that effect?
7. Was it plain error for the Commission to conclude that another facility *could have* been the proximate cause of Mr. Black's death, despite the Defendant never asserting comparative fault or proffering any evidence to that effect?

2. Whether the Tribunal erred when it found that TSVH-Clarksville's staff acted within the applicable standards of care for monitoring and reporting Mr. Black's status.

3. Whether the Tribunal erred when it found that Mr. Black's death was not caused or hastened by the negligence of TSVH-Clarksville staff.

The issues as stated by Defendant are:

1. Whether the Tribunal abused its discretion in ruling on the admissibility of certain documents produced by Defendant during discovery?

2. Whether the evidence preponderates against the Tribunal's findings that Defendant satisfied the applicable standard of care and that Claimant failed to establish causation?

STANDARD OF REVIEW

In cases where the action is "tried upon the facts without a jury," Tennessee Rule of Civil Procedure 52.01 provides that the trial court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment. Specifically, the rule requires: "In all actions tried upon the facts without a jury, the court shall find the facts specially and shall state separately its conclusions of law and direct the entry of the appropriate judgment." Tenn. R. Civ. P. 52.01.

The underlying rationale for the Rule 52.01 mandate is that it facilitates appellate review by "affording a reviewing court a clear understanding of the basis of a trial court's decision," and enhances the authority of the trial court's decision. *Gooding v. Gooding*, 477 S.W.3d 774, 782 (Tenn. Ct. App. 2015) (citing *In re Est. of Oakley*, No. M2014-00341-COA-R3-CV, 2015 WL 572747, at *10 (Tenn. Ct. App. Feb. 10, 2015) (quoting *Lovlace v. Copley*, 418 S.W.3d 1, 34 (Tenn. 2013)). In the absence of findings of fact and conclusions of law, "this court is left to wonder on what basis the court reached its ultimate decision." *Id.* (quoting *In re Est. of Oakley* at *10). Moreover, compliance with the mandate of Rule 52.01 enhances the authority of the trial court's decision because it affords the reviewing court a clear understanding of the basis of the trial court's reasoning. *Id.* (quoting *In re Est. of Oakley*, 2015 WL 572747, at *10).

There is no bright-line test by which to assess the sufficiency of the trial court's factual findings. *Lovlace*, 418 S.W.3d at 35. The general rule is that "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *Id.*

If the trial court makes the required findings of fact, the trial court's factual findings are reviewed de novo, accompanied by a presumption of the correctness of the finding of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *see Boarman v. Jaynes*, 109 S.W.3d 286, 290 (Tenn. 2003). As is the case with trial courts, our review of the Claims Commission's factual findings is de novo upon the record, with a presumption of correctness, unless the preponderance of the evidence is otherwise. *See Cavaliere v. State*, No. M2021-00038-COA-R3-CV, 2022 WL 320241, at *2 (Tenn. Ct. App. Feb. 3, 2022); *see also Mathews v. State*, No. W2005-01042-COA-R3-CV, 2005 WL 3479318, at *3 (Tenn. Ct. App. Dec. 19, 2005). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assoc's.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). The presumption of correctness afforded to the Claims Commission's factual findings does not extend to its legal conclusions. *Bowman v. State*, 206 S.W.3d 467, 472 (Tenn. Ct. App. 2006).

"We accord great deference to the Claims Commission's determinations on matters of witness credibility and will not re-evaluate such determinations absent clear and convincing evidence to the contrary." *Skipper v. State*, No. M2009-00022-COA-R3-CV, 2009 WL 2365580, at *2 (Tenn. Ct. App. July 31, 2009).

ANALYSIS

We begin our analysis by noting that a plaintiff, such as Claimant, in a health care liability action must prove the following:

> (1) The recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which the defendant practices or in a similar community at the time the alleged injury or wrongful action occurred;
>
> (2) That the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with such standard; and
>
> (3) As a proximate result of the defendant's negligent act or omission, the [claimant] suffered injuries which would not otherwise have occurred.

Tenn. Code Ann. § 29-26-115(a). Thus, Claimant bore the burden at trial of proving (1) the applicable standard of care; (2) that Defendant, meaning TSVH-Clarksville or its agents, failed to act with ordinary and reasonable care in accordance with such standards; and (3) Mr. Black suffered injuries which would not otherwise have occurred as a proximate result of TSVH-Clarksville's negligent acts or omissions. *See Osunde v. Delta Med. Ctr.*, 505 S.W.3d 875, 885 (Tenn. Ct. App. 2016). We will address the issues raised by Plaintiff in relation to each of these three elements.

I. Standard of Care

To satisfy the first element of a health care liability claim, a plaintiff "must produce expert medical evidence to establish the standard of professional care in the community in which a defendant practices or in a similar community." *Robinson v. LeCorps*, 83 S.W.3d 718, 724 (Tenn. 2002); *see* Tenn. Code Ann. § 29-26-115(a)(1). Here, the Tribunal heard expert testimony from Nurse Wyatt-Moore, Dr. Klein, and Dr. Boger.

During Nurse Wyatt-Moore's testimony, Plaintiff proffered three documents that allegedly contained TSVH-Clarksville's internal policies and procedures for assessing, documenting, and reporting a patient's symptoms. Defendant produced these documents during discovery in response to Plaintiff's request for, *inter alia*, "documentation that was provided by [Defendant] to any nursing personnel of [TSVH-Clarksville] for purposes of demonstrating, describing or instructing employees on the proper care of residents during residency." Prior to trial, Defendant stipulated that these and other documents were "authentic and admissible."

Nurse Wyatt-Moore conceded that TSVH-Clarksville staff did not comply with all of the procedures listed in the documents; however, she denied any prior knowledge of the documents and insisted that they did not contain the official policies of TSVH-Clarksville.[4] Nonetheless, the Tribunal admitted the documents into evidence as Exhibits 18, 19, and 22 based on Defendant's pre-trial stipulation. But the Tribunal found their "probative value was pretty minimal" because it was not clear "where [the documents] came from." Accordingly, the Tribunal neither mentioned nor relied on these exhibits in reaching its decision that TSVH-Clarksville employees met the applicable standards of care.

Relying on *Jones v. Wal-Mart Stores East, L.P.*, No. 2:19-CV-2747-SHL-TMP, 2021 WL 784145 (W.D. Tenn. Feb. 1, 2021), Plaintiff insists that "documents produced in discovery . . . constitute the admissions of a party opponent." *See Id.* at *5. Based on this principle and the parties' pre-trial stipulation, Plaintiff argues that Exhibits 18, 19, and 22 were "admissions as to what [was] expected and what [was] required" of TSVH-Clarksville staff. Accordingly, Plaintiff argues that the Tribunal "erred when it allowed the Defendant," through the testimony of Nurse Wyatt-Moore, "to dispute the [documents'] authenticity of policies and procedures that [Defendant] produced in response to Claimant's discovery requests." We disagree for several reasons.

First, by producing the documents, Defendant neither admitted nor represented that they contained or constituted the facility's policies for patient care. Plaintiff's discovery request asked for all documents "provided . . . to any nursing personnel of said facility **for**

[4] Nurse Wyatt-Moore opined that the documents may have been old "canned" policies that the facility purchased in the past or that were used for educational purposes.

purposes of demonstrating, describing or instructing employees on the proper care of residents during the residency." Thus, to the extent that Defendant's response constituted an admission, it was an admission only that the documents were provided to TSVH-Clarksville nursing personnel for "demonstrating, describing or instructing employees on the proper care of residents during the residency." Naturally, any official written patient-care policies—to the extent they existed—would be encompassed within this broad request. But it does not follow that all responsive documents necessarily contained official TSVH-Clarksville policies.

Second, Defendant's stipulation that the documents were "authentic and admissible" was not a stipulation that the documents contained official policies, much less the applicable standard of care. "By definition a stipulation is an agreement 'which is entered into mutually and voluntarily by the parties.'" *Hyneman v. Hyneman*, 152 S.W.3d 549, 555 (Tenn. Ct. App. 2003) (*Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694, 701 (Tenn. Ct. App. 1999)). Like other written agreements, "a stipulation requires a mutual understanding between the parties as to the specific matter agreed upon." *Id.* Moreover, "to afford a proper basis for judicial decision," the stipulation must be written "in terms that are 'definite and certain.'" *Id.* (citing *Stumpenhorst v. Blurton*, No.W2000-02977-COA-R3-CV, 2002 WL 1751380, at * 4 (Tenn. Ct. App. Feb. 27, 2002)).

Here, the parties simply stipulated that the documents were "authentic and admissible." Subject to exceptions not at issue here, documentary evidence is admissible only if it has been "authenticated," *see* Tenn. R. Evid. 901, and relevant to the subject matter of the action, *see Payne v. CSX Transportation, Inc.*, 467 S.W.3d 413, 445 (Tenn. 2015) (citing Tenn. R. Evid. 401 and 403). Evidence is "authentic" when it "is what its proponent claims it to be." Neil P. Cohen et al., *Tennessee Law of Evidence*, § 901.1 (3d ed. 1995); *see also* Tenn. R. Evid. 901. But the stipulation in this case did not specify what Plaintiff "claim[ed the documents] to be." Consequently, there is no basis to support Plaintiff's contention that Defendant's stipulation constituted an admission that the documents were what Plaintiff later claimed them to be, which was official patient-care policies that established the standard of care for patient assessment and physician notification.

Third and finally, any error by the trial court in not giving the documents more weight was harmless because the facility's policies alone were insufficient to establish the applicable standard of care. *See Surber v. Mountain States Health All.*, No. E2019-01494-COA-R3-CV, 2020 WL 4803735, at *6 (Tenn. Ct. App. Aug. 18, 2020) (C.J., Swiney concurring) (observing the distinction between evidence that a "hospital's policies and procedures were consistent with and accurately **stated** the acceptable standard of care" and evidence "that those policies and procedures **established** the acceptable standard of care" (emphasis added)). Plaintiff failed to elicit expert testimony that the policies contained in the documents admitted as Exhibits 18, 19, and 22 were commensurate with the standard

of care at the time of Mr. Black's treatment. Consequently, Plaintiff suffered no prejudice from the Tribunal's failure to give those exhibits any weight in its decision.

II. Breach

Plaintiff contends the Tribunal erred by finding that TSVH-Clarksville's staff met the standard of care for patient assessment and physician notification. Plaintiff asserts that the Tribunal's decision was not supported by the evidence because the staff "indisputably did not consistently document assessments" and "indisputably did not document physician notification regarding signs and symptoms of dehydration, a UTI, or sepsis."

In particular, with regard to patient assessment, Plaintiff contends that Mr. Black's "vital signs were not consistently documented in the nursing notes" and there was no separate "vital sign log." Additionally, Plaintiff asserts that "several assessments were incomplete." In support, she points to one instance where Mr. Black's vital signs were documented without a contemporaneously documented "nursing assessment."

Similarly, with regard to physician notification, Plaintiff contends that TSVH-Clarksville staff "failed to document physician notification regarding Mr. Black's low fluid intake" and "failed to explicitly document physician notification regarding signs and symptoms of a UTI or sepsis." Thus, Plaintiff relies entirely on the alleged failure of TSVH-Clarksville to properly document assessments and physician notification.

But the applicable standards of care—as stated by Plaintiff—required "prompt recognition and treatment of infection" and "required facility staff to notify the physician of a significant change in a resident's condition." Neither of these standards address the level of documentation required. Instead, Plaintiff relies on language in Mr. Black's care plan as well as Defendant's job descriptions for nurses and the previously discussed policy documents, Exhibits 18, 19, and 22. Plaintiff maintains that "there is shockingly little documentation to indicate that nursing staff were appropriately monitoring and assessing Mr. Black in compliance with the standard of care, Mr. Black's care plan, and the Defendant's documented expectations of staff."

As stated earlier, the critical issue in a health care liability action is whether the defendant medical provider "acted with less than or failed to act with ordinary and reasonable care in accordance" with "[t]he recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which the defendant practices or in a similar community at the time the alleged injury or wrongful action occurred." Tenn. Code Ann. § 29-26-115(a). This must be established through expert testimony. Thus, the failure to comply with documentation requirements in Mr. Black's care plan and "documented expectations of staff" cannot establish professional negligence in the absence of expert testimony that those

requirements were commensurate with the standard of care. Plaintiff cites no such testimony in the record.

In essence, Plaintiff is asserting that the Tribunal should have presumed that the nursing staff were not acting in accordance with the applicable standards of care because there was "shockingly little documentation" of what the nurses were monitoring and communicating. But "[t]he law presumes a medical practitioner has discharged his full duty to a patient and will not presume negligence from the fact that the treatment was unsuccessful." *Roddy v. Volunteer Med. Clinic, Inc.*, 926 S.W.2d 572, 578 (Tenn. Ct. App. 1996) (citations omitted). It was incumbent on Claimant to establish the elements of her action. *See Osunde*, 505 S.W.3d at 885. Thus, the lack of documentary evidence cannot be held against Defendant in the absence of a properly established, objective standard establishing that such documentation is part of the standard of care. *See Bradley v. Bishop*, 538 S.W.3d 518, 531 (Tenn. Ct. App. 2017) (stating that jury's task is "to determine whether [the defendant] met the objective standard of care").

III. Causation

Plaintiff raises two additional issues that relate to the causation element of her claim: she contends that the Tribunal erroneously found that Mr. Black's death was caused by his risk of dehydration and UTIs rather than Defendant's negligence and she contends that the Tribunal erred in finding "that Mr. Black's cause of death was progressive, end-stage dementia." Because we agree with the Tribunal's finding that Plaintiff failed to establish a breach of the standards of care, we pretermit these issues.

IN CONCLUSION

For the foregoing reasons, the judgment of the Claims Commission is affirmed in all respects and costs of appeal are assessed against the appellant, Linda C. Black.

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FRANK G. CLEMENT JR., P.J., M.S.