

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHERYL TYNER, Individually and as the Administrator of the Estate of Jan Tyler, deceased,	:	APPEAL NO. C-180423 TRIAL NOS. A-1202248 A-1605343
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
RAYMOND NOSCHANG, M.D.,	:	
Defendant,	:	
and	:	
WALGREEN COMPANY, d.b.a. WALGREENS PHARMACY,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Cheryl Tyner, individually and as the administrator of the estate of her late husband, Jan, appeals the trial court's granting of Walgreens Pharmacy's motion for summary judgment. The operative order being appealed was initially entered in A-1202248, a case subsequently dismissed, but the order was reentered in this case on March 15, 2017.

In one assignment of error, Tyner contends summary judgment was granted erroneously, and she seeks a reversal and a remand to the trial court for consideration

upon the merits of her wrongful-death claim. We review the grant of summary judgment de novo, applying the standards set forth in Civ.R. 56.

The record discloses that on September 20, 2011, Jan worked his usual nightshift. Upon his arrival home at 7:30 a.m. on the morning of September 21, Jan was met in the driveway by Tyner. She spoke to him for about an hour at that time and did not notice anything wrong with Jan. When she left for work, Jan entered the house and later died in his sleep around 3:00 p.m. The cause of death was acute Oxycodone, Fentanyl, and Alprazolam intoxication.

Prior to his death, Walgreens Pharmacy's pharmacist had filled prescriptions for Fentanyl patches, as ordered by Raymond Noschang, M.D., Jan's treating physician. Tyner claimed that Walgreens had violated the standard of care to be expected of a reasonably competent pharmacist under the circumstances by filling the prescription knowing that Jan worked in a high heat environment, and that Jan had succumbed to an increased level of Fentanyl due to heat exposure at work. Tyner did not, however, produce evidence on Jan's working conditions on the day of his death, nor any admissible evidence tying Jan's cause of death to any failure by Walgreens Pharmacy.

Tyner retained James Bartling, PharmD., to testify as an expert witness with respect to the wrongful-death claim against Walgreens Pharmacy, and the deposition containing his opinions was filed in the proceedings below. But the trial court, in an order not challenged on appeal, limited the scope of Dr. Bartling's testimony. Specifically, the court prohibited him from testifying that Jan had succumbed to an increased level of Fentanyl due to heat exposure and, further, specified that Dr. Bartling "could not discuss the factual circumstances surrounding [Jan's] use of the patch while at work," because he did not know specific details regarding Jan's job. The court also struck the two affidavits

of Dr. Bartling filed by Tyner in an effort to defeat summary judgment. This order, too, is not challenged on appeal.

Tyner argues that the record contains substantial evidence that creates a genuine issue of material fact as to the pharmacy's liability. We have thoroughly examined the record, and we conclude that there are no admissible facts to support Tyner's claim that the cause of death was tied to a duty Walgreens Pharmacy had breached by filling Jan's prescription for the Fentanyl patch.

Accordingly, we overrule the assignment of error, and affirm the trial court's grant of summary judgment for Walgreens Pharmacy.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on October 16, 2019
per order of the court _____.
Presiding Judge