FILED
MAY 28 1987
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

287

DOLORES SPIEGLER, as Administrator of the Estate of Dennis E. Spiegler, Deceased,	)	Filed May 28, 1987
Plaintiff-Appellant,	)	
vs.	)	
STATE OF IOWA,	)	7-76 86-774
Defendant-Appellee.	)	

Appeal from the Iowa District Court for Johnson County (47132) - L. Vern Robinson, Judge.

Plaintiff appeals the trial court's judgment for defendant in a lawsuit arising from the suicide of her son. **AFFIRMED.**

Lawrence L. Marcucci of LaMarca, Marcucci, Wiggins & Anderson, West Des Moines, for plaintiff-appellant.

Thomas J. Miller, Attorney General of Iowa, and Joanne Mackusick, Assistant Attorney General, for defendant-appellee.

Heard by Snell, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Plaintiff appeals the trial court's judgment for defendant in a lawsuit arising from the suicide of her son. We affirm.

Dennis Spiegler was born in 1951. In 1969, he commenced studies at the University of Iowa on an engineering scholarship. In the fall of that year, he sought help from a counseling service at the University of Iowa, and was referred by that service to the Psychopathic Hospital. Dr. Irving C. Ringdahl saw Dennis at that hospital and diagnosed Dennis as having an obsessive-compulsive neurosis. Dr. Ringdahl treated Dennis with the drugs Haldol and Cogentin to deal with the diagnosed problem and Noludar to help Dennis sleep.

During his first year at the University of Iowa, Dennis joined a religious group called the Navigators. Dennis became deeply involved with this group over the next few years. By February 1972, Dennis's parents had become so alarmed at his mental condition that they committed him to the Psychopathic Hospital. Dennis was diagnosed as schizophrenic. Dennis remained in the Psychopathic Hospital for several months during which time he was treated with drug therapy to which he and his father had consented. Dennis was released from the hospital in May 1972. He was subsequently seen by a psychiatrist at the Northeast Iowa Mental Health Center in Decorah, Iowa.

Dennis was able to return to the University of Iowa and finish his engineering degree. After graduation, he accepted employment in Colorado as an engineer. He apparently reestablished ties with the Navigators while in Colorado. He was hospitalized in Colorado for his illness and was treated with drug therapy. He then returned to Iowa and his parents took him back to the Northeast Iowa Medical Health Center where he was hospitalized. He returned to Colorado and apparently underwent further treatment, including drug therapy. In April 1979, Dennis committed suicide.

On September 11, 1981, Dennis's mother, Dolores Spiegler, as the administrator of her son's estate, filed a tort claim with the State Appeal Board. She contended that the negligent diagnosis, examination, and treatment of her son by the University Hospitals and Clinics led to his suicide. On October 27, 1981, the State Appeal Board denied Mrs. Spiegler's claim.

On April 27, 1982, Mrs. Spiegler filed a petition at law naming the State of Iowa as defendant. She alleged substantially the same claims as filed in the tort claim action. This lawsuit was subject to dismissal on January 1, 1984, because no action had been taken on it. The court continued the case through December 31, 1984. In August 1984, Mrs. Spiegler's attorney withdrew from the case. The case was then continued again, to again avoid automatic dismissal under Iowa Rule of Civil Procedure 215.1. Trial was set for September 3, 1985. On this date, Mrs. Spiegler appeared and told the court she was looking for a new lawyer. The court, over the objection of the defendant, continued the case until April 14, 1986. The court continually reviewed the file and entered two memorandum orders advising Mrs. Spiegler that this case would not be continued again. In the memorandum orders dated October 30, 1985 and February 14, 1986, the court warned Mrs. Spiegler that she would have to appear pro se if she could not find a lawyer by the April 14th trial date.

On April 14, 1986, Mrs. Spiegler presented her case. She stated she had only picked up the files on the case that day. Mrs. Spiegler presented her case with the full assistance of the court. She did not ask the court for a continuance on April 14th nor did she make any objection to presenting her case. The court was not asked to make a ruling on any continuance issue and did not make any ruling on that issue. Mrs. Spiegler did not present any expert medical testimony.

On May 2, 1986, the court found for the State of Iowa on three grounds. The court found Mrs. Spiegler's claim was barred by the statute of limitations,

that she failed to show lack of reasonable care on the part of University of Iowa physicians during the 1969 and 1972 treatments of Dennis, and that she failed to show that the defendant's acts were a proximate cause of Dennis's injuries. Mrs. Spiegler filed her notice of appeal on May 30, 1986.

Our scope of review is for correction of errors at law. Iowa R. App. P. 4. When the trial court in a law action tried to the court denies recovery because of a party's failure to carry his burden on an issue, we will not interfere on appeal unless we find the party carried his burden as a matter of law. Whiteaker v. State, 382 N.W.2d 112, 114 (Iowa 1986); see also Bebensee v. Ives, ___ N.W.2d ___ (Iowa App. 1987).

The first issue raised on appeal is that the trial court abused its discretion in proceeding to trial on April 14, 1986. We will ordinarily not review an issue not raised in district court. Nelson v. Ludovissy, 368 N.W.2d 141, 144 (Iowa 1985). Questions not presented to and not passed on by the trial court cannot be raised or reviewed on appeal. Shill v. Careage Corp., 353 N.W.2d 416, 420 (Iowa 1984). Mrs. Spiegler did not make an objection to presenting her case on April 14, 1986, nor did she ask the court for another continuance. The court did not, and was not asked to, rule on the issue. In these circumstances we are presented with no continuance issue to review.

However, even if we were to find the issue preserved, we note that continuances are left to the sound discretion of the trial court. Countryman v. McMains, 381 N.W.2d 638, 640 (Iowa 1986). We will not interfere with these decisions absent a clear abuse of discretion. Hawkeye Bank & Trust Co. v. Michel, 373 N.W.2d 127, 129 (Iowa 1985). In this case, the court had already granted several continuances and had twice warned Mrs. Spiegler that no further continuance would be granted for her lawsuit which had been pending for approximately four years. Mrs. Spiegler had failed to find suitable counsel during that time.

The court had no reason to think that Mrs. Spiegler would be able to find suitable counsel even if a continuance were granted. The trial court acted well within its discretion in proceeding to trial on the date assigned. At trial, the court made a diligent effort to afford Mrs. Spiegler a full opportunity to litigate her case.

We also agree with the trial court that the lawsuit was barred under the statute of limitations as set out in Iowa Code section 25A.13 (1985). This statute provides:

> Every claim and suit permitted under this chapter shall be forever barred, unless within two years after such claim accrued, the claim is made in writing to the state appeal board under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the state appeal board as to the final disposition of the claim or from the date of withdrawal of the claim from the state appeal board under section 25A.5, if the time to begin suit would otherwise expire before the end of such period.
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> If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the time to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would otherwise expire before the end of such period. The time to begin a suit under this chapter may be further extended as provided in the preceding paragraph.
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> This section is the only statute of limitations applicable to claims as defined in this chapter.

The cause of action in this case accrued when Dennis committed suicide on April 3, 1979. The claim was filed September 21, 1981. Applying the discovery rule, see Franzen v. Deere & Co., 334 N.W.2d 730, 732 (Iowa 1983), the statute does not begin to run until the party discovers, or with reasonable diligence should have discovered, his or her cause of action against a party. The parties in this case dispute the date on which Mrs. Spiegler knew, or with the exercise of reasonable diligence should have discovered, what the treatment program

entailed at the University of Iowa Hospitals. We believe there is ample evidence in the record to support the court's finding that this action was barred by statute. The trial court found that the letter sent by Mrs. Spiegler to the Iowa Hospitals and Clinics on August 31, 1979, indicated that by that date she was aware of the general scope of the treatment given her son. Even if she were not fully aware by that time of the precise treatment given her son, through the exercise of due diligence, she could have discovered the exact details of such treatment. Prior to that date she knew that her son had been treated at the hospital, that she and her husband had committed Dennis to the hospital, and that drug therapy had been authorized by her husband. We believe that there is ample evidence in the record to support the court's finding that the claim was barred under section 25A.13 since it was filed more than two years after the plaintiff knew or should have known of the cause of action.

The trial court also held that, even assuming that Mrs. Spiegler's claim was not barred by the statute of limitations, she did not carry her burden of proof that the University Hospital was negligent in the examination, diagnosis, and treatment of Dennis. We agree. In order to prove negligent medical treatment, the plaintiff must show that the hospital failed to provide the proper standard of care. Clites v. State, 322 N.W.2d 917, 919 (Iowa App. 1982). The general rule is that plaintiff must produce expert testimony as to the breach of this standard of care. Grosjean v. Spencer, 258 Iowa 685, 691, 140 N.W.2d 139, 143 (1966). Mrs. Spiegler did not produce expert medical evidence to establish that the standard of care had been breached. She did produce a letter by a psychologist, Edwin Morse, stating that Dennis's suicide was related to his involvement with the Navigators. This report did not address the Hospitals' duty of care nor breach thereof. We do not think the evidence presented establishes that the lack of care was so obvious as to be within the comprehension

of a lay person's common knowledge. See Forsmark v. State, 349 N.W.2d 763, 768 (Iowa 1984). There was simply no credible evidence presented that established the negligent examination, diagnosis, or treatment of Dennis by the University Hospital.

The trial court also found that even if the plaintiff were able to establish a breach of duty, no showing was made that defendant's acts or omissions were the proximate cause of Dennis's suicide. The plaintiff has the burden of proof to show by a preponderance of the evidence that defendant's negligence was the proximate cause of the plaintiff's injuries. Sponsler v. Clarke Electric Cooperative, Inc., 329 N.W.2d 663, 665 (Iowa 1983). Dennis had not been seen at the University Hospital since May 1972. His suicide occurred in April 1979. In that period, Dennis had been treated by several different doctors in several different medical facilities. Mrs. Spiegler did not bear her burden of proof in showing the link between the University Hospital's treatment of Dennis and his subsequent suicide.

The further arguments raised in Mrs. Spiegler's appeal, the issue of informed consent and the issue of the violation of the privacy and confidentiality of Mrs. Spiegler, were not litigated in the trial court—no ruling was requested by Mrs. Spiegler, no ruling was made by the trial court. Hence, these issues have not been preserved for appeal. See Nelson v. Ludovissy, 368 N.W.2d at 144. Had these issues been preserved, however, and even if it could be shown that there was no informed consent, we have already noted that no evidence was presented at trial establishing that any treatment by the hospital was the proximate cause of Dennis's suicide. Similarly, we find no basis to support Mrs. Spiegler's assertion on appeal that her right to privacy was violated when she was asked if she would be willing to permit her son's medical records to be included in a medical research project.

We sympathize with the mother's attempt to understand the reasons for the death of her son. She has failed to show that it was the negligent acts or omissions of defendant which were responsible for his death.

AFFIRMED.