

IN THE COURT OF APPEALS OF IOWA

FILED

DEC 22 1988

CLERK SUPREME COURT

FLORENCE GOODWIN and ESTHER)
ANDERSON, Administrators of)
the Estate of Terry Timblin,)

Plaintiffs-Appellants,)

vs.)

DR. JOHN J. DOUGHERTY,)
Individually; ORTHOPAEDIC)
ASSOCIATES OF SIOUX CITY,)
P.C.,)

Defendants-Appellees.

8-229
87-1258

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Appeal from the Iowa District Court for Woodbury County
(No. 91147), Phillip S. Dandos, Judge.

In this medical malpractice case, the plaintiffs have
appealed from judgment on a verdict for the defendant
doctor. **REVERSED AND REMANDED FOR A NEW TRIAL.**

J. Allen Orr, Sioux City, for plaintiffs-appellants.

Gregg E. Williams and Marvin F. Heidman, Sioux City,
for the defendants-appellees.

Heard by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J.

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Plaintiffs appeal from judgment on a verdict for the defendant doctor in this medical malpractice action. The plaintiffs contend on appeal that the trial court erred in failing to submit the issue of pain and suffering to the jury. Our scope of review is for the correction of errors at law. We reverse and remand for a new trial.

Dr. John Dougherty treated Terry Timblin several times over the course of a year for a severe finger laceration. Timblin was unhappy with the continued pain and loss of function in his finger, hand and arm, and the doctor-patient relationship became strained.

Timblin later filed the present medical malpractice action against Dougherty and his professional corporation, alleging negligent treatment of the finger. Shortly after the lawsuit was filed, Timblin committed suicide. His administrators were substituted as plaintiffs. The administrators were also permitted to add a division to the petition alleging that humiliating verbal abuse by Dr. Dougherty during the treatment of the laceration was a proximate cause of Timblin's suicide.

The suit was tried to a jury. At the close of the evidence defendant moved for a directed verdict and a motion to strike. The court held the following claim would be submitted to the jury: (1) the defendant doctor was negligent in his attitude and (sic) doctor/patient relationship toward Terry Timblin.

The issue in this appeal is did the trial court err in sustaining defendant's motion to strike plaintiff's claim that the defendant doctor negligently treated Terry Timblin's finger injury?

The plaintiffs claim Wayne Sands, M.D. testified that the defendant doctor failed to exercise a reasonable degree of care in not taking x-rays of plaintiff's finger.

The defendant states Dr. Sands did not express an opinion that a failure to take x-rays affected the medical condition of plaintiff's finger. The defendant claims the implication of Dr. Sand's testimony that these practices would have enhanced the patient's perception of the doctor-patient relationship.

The following is part of the record concerning Dr. Sand's testimony about x-ray and antibiotics.

Q. Do you have an opinion, Doctor, within a degree of medical certainty, as to whether or not you have an opinion as to whether the failure to use x-ray immediately upon observing a cut of this kind where there is a history of a metal glove that has been cut, and the wound appears to be deep -- do you have an opinion as to whether or not that would be carelessness or negligence on the part of the doctor, the failure to use x-ray in helping his diagnosis of the condition. Do you have an opinion? A. I would consider taking an x-ray if it had not gone through a metal glove. I would particularly have felt that most prudent and necessary if it had.

Q. And would you go further to say that failure to do so would constitute negligence on the part of that doctor as a failure to follow the standard and approved practice of the average physician and doctor in the Sioux City community at that time? A. I'd have the opinion that this would be medical imprudence.

Q. And would you say the failure to do so would be carelessness or negligence on the part of the doctor. A. I would consider it a medical mistake.

Q. Would you say the failure to take x-rays would be contrary to the standard and approved practice that was in effect on the date of Mr. Timblin's injury? A. Yes sir.

We find the above evidence sufficient to require submission to the jury of the issue of defendant doctor's negligent treatment of Timblin's finger injury. The trial court was in error in sustaining defendant's motion for directed verdict on the issue of the defendant's negligent treatment of Timblin's finger injury.

REVERSED AND REMANDED FOR A NEW TRIAL.