IN THE COURT OF APPEALS OF IOWA

No. 2-569 / 92-595

FILED
DEC 29 1992
CLERK SUPREME COURT

GEORGE GEROT and MICHELE GEROT,

Appellants,

vs.

WASHINGTON VETERINARIAN CLINIC and RICHARD LEAZENBY, D.V.M.,

Appellees.

Appeal from the Iowa District Court for Washington County, James P. Reilly, Judge.

Plaintiffs appeal the district court sustaining of a motion for summary judgment. **AFFIRMED.**

Dennis S. Clark, Iowa City, for appellant.

Kevin H. Collins and Christine M. Liu of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for appellee.

Heard by Oxberger, C.J., and Hayden, J., and Keefe, S.J.* Schlegel, J., takes no part.

*Senior Judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

OXBERGER, C.J.

On June 11, 1991, George and Michele Gerot filed suit against the Washington Veterinary Clinic and Richard Leazenby, D.V.M., seeking damages for alleged medical malpractice in the diagnosis and treatment of the Gerots' swine herd. After the Gerots failed to disclose their expert witnesses as required by Iowa Code section 668.11, Leazenby filed a motion for summary judgment with an accompanying affidavit from his medical expert. Leazenby claimed that without expert testimony, it could not be established that malpractice occurred. The Gerots did not file a resistance.

The district court heard arguments concerning the motion for summary judgment. There was no record of the hearing. The trial court declined to exercise its discretion under section 668.11 to extend the time for disclosure of experts and determined that the plaintiffs could not prevail without expert medical testimony. Therefore, the court sustained the motion for summary judgment. The Gerots appeal.

Iowa Rule of Appellate Procedure 14(a)(5) (1990) requires appellants to provide the reviewing court with a statement indicating "how the issue was preserved for review, with references to the places in the record where the issue was raised and decided in each division." It is axiomatic that we will not ordinarily consider issues

raised for the first time on appeal. Kroblin v. RDR Motels, Inc., 347 N.W.2d 430, 434 (Iowa 1984). While this principle may appear to place excessive emphasis on technicalities, we are convinced the rule of error preservation is decidedly in the public interest. Air Host Cedar Rapids v. Airport Comm'n, 464 N.W.2d 450, 454 (Iowa 1990).

In this case, not only do the Gerots fail to comply with Iowa Rule of Appellate Procedure 14(a)(5), they also actually failed to preserve the issues for appeal. On appeal, Gerots claim the clinic waived rights under Iowa Code section 668.11 (1991), allege Leazenby is not a licensed professional, argue the application of res ipsa loquitur, claim George Gerot's experience provided sufficient evidence for a professional malpractice suit, and claim Leazenby's affidavits provide an insufficient basis from which to sustain the motion for summary judgment. However, the Gerots failed to file a resistance to the clinic's motion for summary judgment as required by Iowa Rule of Civil Procedure 237 (1989). No affidavits, statements of disputed facts, nor a memorandum of supporting authority were filed. In addition, they did not request the hearing on the motion for summary judgment be recorded. There is no record indicating the issues presented on appeal were raised to the trial court. We hold the Gerots failed to preserve any issues for appeal.

Accordingly, the decision of the trial court sustaining the clinic's motion for summary judgment must stand.

AFFIRMED.