FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-441 / 88-1496

106

MARGARET M. DARRAH,

Appellant,

vs.

DES MOINES GENERAL HOSPITAL and DR. MARTIN S. ROSENFELD,

Appellees.

Appeal from the Iowa District Court for Polk County, Ray Hanrahan, Judge.

Appellant appeals the district court's granting of pretrial summary judgment to appellees. **AFFIRMED.**

Kim Ahern Fields, Des Moines, for the appellant.

Thomas Henderson and Benjamin B. Ullem of Whitfield, Musgrave & Eddy, Des Moines, for the appellee Des Moines General Hospital.

David H. Luginbill of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, Des Moines, and David S. Wiggins of LaMarca, Marcucci, Wiggins & Anderson, P.C., West Des Moines, for the appellee Rosenfeld.

Considered by Schlegel, P.J., and Sackett and Habhab Ji.

SCHLEGEL, P.J.

Appellant appeals the trial court's order dismissing her case after the defendants, Doctor Rosenfeld and Des Moines General Hospital, requested summary judgment. The trial court granted summary judgment based on the appellant's failure to provide expert testimony on the issue of negligence and informed consent. We affirm.

Appellant contends Doctor Rosenfeld was negligent in his care and treatment of her broken wrist. She also alleges that Doctor Rosenfeld failed to inform her of alternative methods of treatment and that he failed to obtain her informed consent. Appellant also contends the district court should have granted her motion for summary judgment on those parts of the petition alleging lack of informed consent.

On December 21, 1985, the appellant, Margaret J. Darrah, fell and broke her wrist. She was taken to Des Moines General Hospital where she signed a blank consent form provided by the hospital. She was treated by Doctor Rosenfeld, who explained that surgery was unnecessary in this situation and that a plaster splint was the proper method of treatment. Doctor Rosenfeld did not inform the appellant of an alternative method of treatment. Appellant saw Doctor Rosenfeld on several subsequent occasions for follow-up treatment. Appellant later placed herself under the care of Doctor Arnis Grundberg who treated her and eventually healed the fracture.

Prior to trial the appellant filed a motion for summary judgment. The district court denied this motion. The defendants also moved for summary judgment. The district court sustained these motions and dismissed appellant's case. The district court noted that appellant had no expert witnesses available to establish her case. There were no experts who would testify as to negligence on the part of Doctor Rosenfeld or that appellant should have been informed of alternative methods. Doctor Grundberg was listed as an expert witness by the appellant but was not prepared to testify to the standard of care. He would only testify as to his method of treatment.

On this appeal from summary judgment our task is to determine only whether a genuine issue of material fact exists and whether the trial court correctly applied the law. Adam v. Mount Pleasant Bank & Trust Co., 355 N.W.2d 868, 872 (Iowa 1984).

The only question on appeal is whether the district court correctly granted defendant's motions for summary judgment based on a lack of expert testimony. The decision in Buckroyd v. Bunten, 237 N.W.2d 808, 811 (Iowa 1976), held that only two exceptions exist to the general rule that negligence in a medical malpractice action must be proven by expert testimony. "One is a situation where the physician's lack of care is so obvious as to be within the comprehension of a layman and requires only common

knowledge and experience to understand. The other exception is really an example of the first situation. It arises when the physician injures a part of the body not being treated." Id. at 811-12. Just as in Buckroyd, there is no expert testimony available to suggest that Doctor Rosenfeld failed to follow the standard of care for the treatment of a person in the appellant's position. Under the record of this case a lay person, unaided by expert medical testimony, would have no basis to find that Doctor Rosenfeld breached the applicable standard of care.

The second portion of appellant's petition alleged that Doctor Rosenfeld failed to inform appellant as to alternative methods of treatment that were available. The elements to establishing a claim for failure to inform were set out in Pauscher v. Iowa Methodist Medical Center, 408 N.W.2d 355, 360 (Iowa 1987). The patient must generally establish the following: (1) the existence of a material risk unknown to the patient; (2) a failure to disclose that risk on the part of the physician; (3) disclosure of the risk would have led a reasonable patient in plaintiff's position to reject the medical procedure or choose a different course of treatment; (4) injury. There is no question that appellant has been injured. There is also no question that a jury must be allowed to determine what the reasonable person would have done. It is also clear that Doctor Rosenfeld only told her about one method of

treatment. The only questions that remain is whether the risk was material as a matter of law and whether certain defenses, set out in Pauscher, will apply to this situation.

The appellant's own expert, Doctor Grundberg, testified that Doctor Rosenfeld followed the only reasonable course of treatment. He stated that to use the alternative treatment would be a "significant deviation of what almost all physicians do with these particular circumstances." He also stated that over 96% of all physicians would have started off with a closed reduction in a cast. As a matter of law there was no reasonable alternative form of treatment available and there is certainly no expert testimony to support it. The treatise offered by the appellant to show that an alternative existed is not convincing. It merely discusses the alternative as a theory and offers no statistical support for the alternative method of treatment.

The testimony by Doctor Grundberg also conclusively establishes one of the defenses allowed against a claim of failure to inform. In Pauscher, the supreme court stated that a physician may establish a defense to action of failure to inform in "situations in which the procedure itself is simple and the danger remote and commonly appreciated to be remote." Id. The setting of a broken arm is fairly simple and, as the record shows, commonly

appreciated by 96% of all physicians to carry little risk. Appellant has set forth no expert testimony to establish the failure to inform her regarding an alternative form of treatment. Even if she is entitled to know about the 4% of physicians who might perform the alternative, the defendant has a complete defense to the action. The trial court was correct in dismissing the actions against Doctor Rosenfeld and therefore against the Hospital as well.

AFFIRMED.