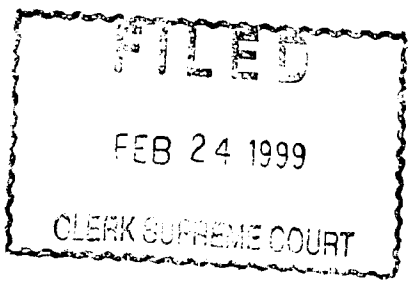
IN THE COURT OF APPEALS OF IOWA

No. 8-705 / 97-2116
Filed February 24, 1999



KEITH A. HOELZEN,
Appellant,

vs.

STATE OF IOWA,
Appellee.

Appeal from the Iowa District Court for Johnson County, L. Vern Robinson, Judge.

Keith Hoelzen appeals from the district court judgment entered following a jury verdict in favor of defendant on plaintiff's medical malpractice claim, which was predicated on lack of informed consent. **AFFIRMED.**

David Lesz and Brian T. Dailey of Brian Dailey Law Firm, Farmington Hills, Michigan, for appellant.

Maggie P. Winegarden and Andrew B. Chappell of Phelan, Tucker, Mullen, Walker, Tucker & Gelman, L.L.P., Iowa City, and Joanne Moeller, Assistant Attorney General, for appellee.

Heard by Sackett, C.J., and Streit and Mahan, JJ.

STREIT, J.

A medical-malpractice plaintiff complains the trial court precluded him from presenting a theory of recovery that unfolded just before trial. Keith Hoelzen appeals the trial court's denial of his motion to amend his petition and his motion for new trial. Because we find the trial court did not abuse its discretion in denying the motion to amend the petition, which inserted new issues into the litigation three weeks prior to trial, or in its denial of expert testimony irrelevant to the issue to be litigated, we affirm.

I. Background Facts & Proceedings.

Keith Hoelzen, the plaintiff, underwent an operation on his shoulder in April 1993 at the University of Iowa Hospitals. The operation was performed by Drs. Noonan and Nepola. According to Hoelzen, he gave the doctors his consent to perform an arthroplasty, or total shoulder replacement. Rather than performing the arthroplasty, the operating physicians performed a hemiarthroplasty, or partial shoulder replacement. According to the physicians, they chose not to perform the arthroplasty because of the good condition of Hoelzen's glenoid, or shoulder socket. During the operation, Hoelzen's humerus sustained a fracture.

In April 1995, Hoelzen sued the University of Iowa Hospitals and Clinics for medical negligence and lack of informed consent. He later amended his petition to add the State as a defendant. Following the deposition of Dr. Baydin, Hoelzen's retained expert, in which Dr. Baydin testified Drs. Nepola and Noonan did not

commit malpractice, Hoelzen stipulated to the entry of a partial summary judgment on the medical negligence claim. In early August 1997, the trial court granted summary judgment on this issue.

In late August 1997, the parties took the video-tape deposition of Dr. Baydin for use at trial. In that deposition, he said Dr. Nepola and Dr. Noonan had deviated from their standard of care. The plaintiffs brought a motion to amend their petition to assert negligence. The trial court denied the motion.

The case proceeded to trial on September 8, 1997. During trial, the court excluded Dr. Baydin's testimony regarding breach of standard of care. The jury returned a verdict for the State. Based on the trial court's denial of Hoelzen's motion to amend, and the evidentiary ruling on Dr. Baydin's testimony, Hoelzen moved for a new trial. The court denied the motion. Hoelzen appeals.

II. Denial of Hoelzen's Motion to Amend its Petition to Assert an Additional Cause of Action.

Hoelzen's first claim is the district court erred in denying the motion to amend his petition to add a cause of action for medical negligence. Summary judgment had already been granted on this issue. The court further concluded the proposed amendment injected new issues into the litigation that had been pending for some time and unduly delayed its completion.

We review the district court's denial of a motion to amend for abuse of discretion. *Wooldridge v. Central United Life Ins. Co.*, 568 N.W.2d 44, 48 (Iowa

1997). The cause of action sought to be asserted in the proposed amended petition was based on the testimony of Dr. Baydin, who in May 1997, had limited his criticism to the informed consent issue. By August 1997, he had changed his testimony, offering the opinion the doctors had breached their standard of care. This testimony was taken in an "evidentiary deposition" by the plaintiff a mere three weeks before the scheduled trial. Hoelzen retained Dr. Baydin as an expert no later than May 1997.

Under these circumstances, we conclude the trial court did not abuse its discretion in denying Hoelzen's application to amend its petition. *See Wooldridge*, 568 N.W.2d at 49 (denial of motion to amend to file counterclaim when defendant had known about potential cause of action but did not seek to amend until weeks before trial); *Bennett v. City of Redfield*, 446 N.W.2d 467, 474-75 (Iowa 1989) (denying motion to amend filed sixteen months after suit was commenced, twenty days before trial date, and after deadlines set by the court).

III. Denial of Motion for New Trial Based on Exclusion of Expert Testimony.

We review the granting or denial of a motion for new trial for abuse of discretion. *Lane v. College*, 581 N.W.2d 214 (Iowa App. 1998). When evaluating the exclusion of expert testimony, we give great deference to the decision of the trial court and will not interfere with the decision unless a clear abuse is shown. *Bell v. Community Ambulance Service Agency for Northern Des Moines County*, 579

N.W.2d 330, 338 (Iowa 1998). Even if the trial court abused its discretion, we will not reverse unless prejudice is shown to the complaining party. *See id.*

Hoelzen contends he should have been allowed to present Dr. Baydin's testimony regarding standard of care because the defendant questioned Dr. Nepola regarding the standard of care used in determining if Hoelzen needed a partial rather than total shoulder replacement. Hoelzen argues these questions "opened the door" to testimony regarding whether the doctors breached their standard of care in performing the procedure.

We have carefully considered the testimony upon which this claim is made within its context and find no basis for concluding it opened the door for evidence regarding whether the doctors breached their standard of care in performing a partial shoulder replacement. The defendants presented no evidence of the appropriate standard of care in their case in chief. The defendants questioned Dr. Nepola regarding the necessity of resurfacing Hoelzen's glenoid during cross-examination of Dr. Nepola after the plaintiff had called Dr. Nepola as a witness during his case in chief and introduced the line of questioning. The cross-examination questions were not outside the scope of the Hoelzen's direct examination. Under these circumstances, the trial court did not abuse its discretion in excluding the testimony. *See Grodt v. Darling*, 472 N.W.2d 845, 848 (Iowa App. 1991). Even if Hoelzen had been able to establish an abuse of discretion, he cannot establish prejudice. Testimony regarding whether or not Dr. Nepola breached the standard of care was

irrelevant to the only issue in this case: whether the doctors obtained informed consent from Hoelzen to do the operation. For these reasons, the trial court's denial of Hoelzen's new trial is affirmed.

AFFIRMED.