IN THE COURT OF APPEALS OF IOWA

No. 0-271 / 99-1534
Filed December 13, 2000

RICHARD D. KLINE, LINDA K. KLINE, BRYAN T. KLINE, RICHARD D. KLINE, JAIME L. KLINE, KIMBERLY K. KLINE, AARON D. KLINE, and MICHELLE M. LAW,
Plaintiffs-Appellants,

FILED
DEC 13 2000
CLERK SUPREME COURT

vs.

DANIEL J. MCGUIRE, M.D., DES MOINES ORTHOPEDIC SURGEONS, P.C., and CENTRAL IOWA HOSPITAL CORPORATION, d/b/a IOWA METHODIST MEDICAL CENTER,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Gary G. Kimes, Judge.

On appeal following the dismissal of their case on summary judgment, plaintiffs contend their case was not barred by the statute of limitations. **AFFIRMED.**

Lawrence L. Marcucci and John C. Conger of Pingel & Templer, P.C., West Des Moines, for appellants.

Thomas A. Finley and Kerry A. Finley of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee-Central Iowa Hospital Corporation.

Michael H. Figenshaw and Matthew J. Haindfield of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellees-Daniel J. McGuire, M.D., and Des Moines Orthopedic Surgeons.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

HECHT, J.

Plaintiffs appeal the decision of the district court granting summary judgment to defendants in this medical malpractice action on the ground the action was barred by the statute of limitations. Plaintiffs claim the court erred in finding they either knew or should have known of an injury to Richard Kline in June of 1995. We affirm.

The summary judgment record contains substantial evidence tending to prove the following facts. Richard Kline had back surgery on May 30, 1995, performed by Dr. Daniel McGuire. Dr. McGuire was a partner in Des Moines Orthopedic Surgeons, P.C. (DMOS). On May 31, 1995, while Richard was a patient at Iowa Methodist Medical Center (IMMC), he stopped breathing due to an accidental overdose of painkillers. He was resuscitated. Dr. McGuire told Richard's wife, Linda Kline, her husband would be "okay." Richard was discharged from the hospital on June 5, 1995.

Linda soon noticed a difference in Richard's personality. His behavior was lethargic, and his ability to concentrate was diminished. Linda asked the family's doctor about the situation, and was told Richard might be suffering from postoperative depression. Richard did not believe there was anything wrong with him.

Richard had a neurological examination in September of 1996, which reported "essentially normal" findings. In March of 1997, he underwent a neuropsychological evaluation, which disclosed a possible frontal lobe syndrome. In June of 1997, further tests indicated bilateral symmetric lesions in Richard's brain. He received a medical report on July 17, 1997, suggesting the lesions

could have been caused by the lack of oxygen to his brain during the hospitalization in May of 1995.

Richard, Linda, and their children filed suit against Dr. McGuire, DMOS and IMMC on June 2, 1998. The district court granted defendants' motion for summary judgment, finding the action was barred by the statute of limitations found in Iowa Code section 614.1(9) (1997). Under this section, medical malpractice actions should be brought:

> within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action. . . .

Iowa Code § 614.1(9). The court found the statute of limitations began to run shortly after Richard was released from the hospital in June of 1995, and plaintiffs failed to file suit within two years of the date when they knew or should have known of Richard's injury. Plaintiffs appealed.

We review a summary judgment ruling for corrections of errors of law. *Howell v. Merritt Co.,* 585 N.W.2d 278, 280 (Iowa 1998). Under Iowa Rule of Civil Procedure 237, summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* The facts are reviewed in the light most favorable to the nonmoving party. *Shriver v. City of Okoboji,* 567 N.W.2d 397, 400 (Iowa 1997).

Plaintiffs claim they were not aware Richard had an injury to his brain until July of 1997, when tests revealed organic brain damage. They assert their earlier knowledge of Richard's post-surgical depression must be distinguished from knowledge of the brain injury. They contend the statute of limitations did not begin to run until July of 1997, when Richard was informed of the brain lesion.

Moreover, they assert a genuine issue of material fact exists on the issue of when a reasonable person would have been put on inquiry notice to further investigate whether Richard's personality change was an "injury."

The common law discovery rule provides the statute of limitations does not begin to run until the plaintiff knows, or in the exercise of reasonable care should know, both the facts of the injury and its cause. *Borchard v. Anderson,* 542 N.W.2d 247, 250 (Iowa 1996). This rule specifically requires a plaintiff to know of the causal connection between an injury and a defendant's negligent act or omission before the limitations period begins to run. *Frideres v. Schiltz,* 540 N.W.2d 261, 268 (Iowa 1995).

In section 614.1(9), the legislature adopted a different discovery rule for medical malpractice actions due to the "high cost and impending unavailability of medical malpractice insurance." *Farnum v. G.D. Searle & Co.*, 339 N.W.2d 392, 395 (Iowa 1983). Our supreme court has upheld the constitutionality of the special limitation provision for such claims, finding the deferential treatment accorded health care providers was reasonably related to the legislature's goal of reducing malpractice premiums. *Koppes v. Pearson,* 384 N.W.2d 381, 384 (Iowa 1986).

This case requires an analysis of the meaning of the word "injury" within the statute. We must determine whether the word "injury" within section 614.1(9) dictates the period of limitations began to run as soon as plaintiffs knew, or in the exercise of reasonable diligence should have known, of Richard's depression and personality change. The uncontroverted record demonstrates the Kline family was aware of these symptoms shortly after Richard was discharged from

the hospital in 1995. Richard's employer's records document Richard's sister, Pam Thompson, expressed concerns to the company in September of 1995 about her brother being "withdrawn and depressed since having surgery." Pam informed the employer at that time she had discussed the matter "with the family and they [were] concerned."

The question presented here is whether the word "injury" within the statute requires something more than mere knowledge of symptoms to put plaintiffs on inquiry notice. Plaintiffs contend their mere awareness of symptoms was insufficient to put them on inquiry notice because they had no reason before July of 1997, to believe the depression and personality change were related in any way to the medical treatment provided by the defendants.[1]

Our supreme court has made it clear "[t]he statute begins to run even though the patient does not know the physician . . . *negligently* caused the injury." *Langner v. Simpson,* 533 N.W.2d 511, 517 (Iowa 1995). The period of limitations does not begin to run until a patient knows or has reason to believe his injury was caused by a medical care provider's failure to meet the applicable standard of care. Plaintiffs do not contend, however, in this case the limitations period did not begin to run until they knew or should have known the defendants *negligently* treated Richard. They assert, instead, the period of limitations did not begin to run under section 614.1(9) until they knew or should have known the symptoms (depression and personality change) constituted an "injury." This requires, the plaintiffs contend, they must have at least known or had reason to know, of *a causal connection between the symptoms (Richard's depression and*

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[1] Plaintiffs filed this suit on June 2, 1998. If the statute of limitations began to run before June 2, 1996, plaintiffs' action is untimely.

personality change) and the 1995 medical treatment. Plaintiffs contend, moreover, awareness of depression and personality change after back surgery would not lead a reasonable person to immediately investigate whether such symptoms were caused by the medical treatment related to the surgery.

Defendants cite *Langner v. Simpson,* 533 N.W.2d 511 (Iowa 1995), to support the district court's finding plaintiffs' awareness of Richard's symptoms soon after discharge from the hospital was sufficient to trigger the commencement of the period of limitations. In *Langner,* the plaintiffs sued mental health care providers in September 1991, claiming Mrs. Langner suffered post-traumatic stress disorder as a result of inappropriate statements made to her by a psychiatrist during a 1988 hospitalization. Mrs. Langner admitted she "knew something was wrong" immediately after the hospitalization, but claimed she did not realize the "extent" of the abuse until she underwent further mental health treatment in March 1991. The district court concluded the plaintiff's' claims were barred by section 614.1(9) and granted defendants' motion for summary judgment. *Langner,* 533 N.W.2d at 524. In affirming the district court's decision, our supreme court observed:

> the statute begins to run when a person gains knowledge sufficient to put the person on inquiry. On that date, the person is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. Moreover, once a person is aware that *a problem exists,* the person has a duty to investigate even though the person may not have knowledge of the nature of the problem that caused the injury.

Id. at 518 (emphasis added). The court concluded a reasonable person could only conclude Mrs. Langner "was aware [the psychiatrist's] statements were inappropriate and that they caused her emotional and mental stress" in 1988. *Id.*

The court further noted it was of no moment Mrs. Langner did not know medically why and how the psychiatrist's statements affected her. *Id.* "[T]he law does not require such knowledge; the law only requires that [plaintiff] be aware that a problem exists." *Id.*

Plaintiffs contend *Langner* does not mandate summary judgment in this case. They assert a fact question remains as to whether they should have known prior to June 2, 1996, the symptoms of depression and personality change were related to the medical treatment provided by the defendants. Unlike the plaintiffs in *Langner,* plaintiffs contend they had no reason to immediately know of the injury caused by the alleged negligence of the defendants, and could not have known of the brain lesions until the diagnostic procedure documented them in June of 1997. Defendants contend plaintiffs had sufficient knowledge prior to June 2, 1996, to put them on inquiry notice as a matter of law. *See Franzen v. Deere & Co.,* 377 N.W.2d 660, 662 (Iowa 1985).

Although section 614.1(9) expressly focuses on when the plaintiff knew or should have known of the "injury," *Langner* suggests a plaintiff's awareness of a "problem" will cause the limitation period to begin to run. *Langner,* 533 N.W.2d at 518. In *McClendon v. Beck,* 569 N.W.2d 382, 386 (Iowa 1997), our supreme court affirmed the district court's finding a plaintiff's constant low back pain following surgery was sufficient to put her on notice of the injury for which she sought compensation. We understand *McClendon* to require us to hold knowledge of mere symptoms, such as depression and personality change, is knowledge of "a problem" sufficient to put the plaintiff on inquiry notice. *See McClendon,* 569 N.W.2d at 386.

In the present case, the summary judgment record shows plaintiffs were informed immediately after surgery Richard had stopped breathing and had been resuscitated. Plaintiffs were aware of Richard's symptoms soon after he was released from the hospital in June of 1995. Even if Richard did not believe anything was wrong with him, he was told of the problems by family members during 1995. We believe our supreme court's holdings in *McClendon* and *Langner* require us to conclude plaintiffs' awareness of Richard's symptoms in 1995 was sufficient to cause the period of limitations to begin to run whether or not plaintiffs then knew or should have known the symptoms were causally related to medical care provided by defendants. Once they were aware of the symptoms, they were obligated to investigate the nature, extent, and cause of the problem. Plaintiffs were charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation when they were aware of Richard's symptoms in 1995. *See Langner,* 533 N.W.2d at 518. There is no evidence in the record tending to prove the brain lesions could not have been discovered had the MRI scan been administered more than two years prior to the date plaintiffs commenced their action.

We therefore affirm the district court's determination the statute of limitations in this case began to run in 1995, and plaintiffs' suit, filed in June of 1998, was barred by section 614.1(9). Costs of this appeal are assessed to plaintiffs.

AFFIRMED.