FILED
JAN 27 1988
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

GREGG A. TALLMAN,

Plaintiff-Appellant,

vs.

NORTHWEST ACUTE CARE CORP., d/b/a **NORTHWEST HOSPITAL,**

Defendant-Appellee.

Filed January 27, 1988

279

7-589
87-88

Appeal from the Iowa District Court for Polk County (No. 35158), Gene L. Needles, Judge.

Plaintiff appeals from district court orders sustaining defendant hospital's motion for directed verdict and overruling his motion for new trial in a negligence and res ipsa loquitur action. **AFFIRMED.**

Gregg A. Tallman, Des Moines, pro se, for plaintiff-appellant.

Dorothy L. Kelley of Jones, Hoffman & Davison, Des Moines, for defendant-appellee.

Considered by Donielson, P.J., and Hayden and Sackett, JJ. Schlegel, J., takes no part.

PER CURIAM 289

The plaintiff appeals from district court orders sustaining defendant hospital's motion for directed verdict and overruling his motion for new trial in a negligence and res ipsa loquitur action. We affirm.

Gregg A. Tallman allegedly chipped his lower left molar while eating ground veal at Northwest Community Hospital on or about April 3, 1983. On February 8, 1985, Tallman filed a petition sounding in negligence and res ipsa loquitur against defendant hospital. The defendant filed an answer denying any negligence and the applicability of the res ipsa loquitur doctrine. The district court granted a joint motion for withdrawal of counsel for plaintiff, and Tallman proceeded pro se. The district court advised Tallman on several occasions that he would do well to seek the advice of new counsel.

Tallman's jury trial commenced on December 17, 1986. Tallman called his family physician, Dr. James Dolan, who testified regarding the reason for Tallman's hospitalization and the treatment rendered. Dr. Dolan further testified concerning an entry he had made in Tallman's hospital record which stated, ". . . .(chipped a lower molar on veal) Sat." Tallman then rested without presenting any other witnesses or testifying himself. The district court granted the defendant's motion for directed verdict and denied the plaintiff's subsequent motion for new trial. Plaintiff now appeals, contending that (1) the district court erred in granting the defendant's motion for directed verdict; and (2) the court's grant of directed verdict denied him his right to a jury trial.

Our scope of review is for the correction of errors at law. Iowa R. App. P. 4.

In considering the propriety of a motion for directed verdict, the court views the evidence in a light most favorable to the party against whom the motion was made. Iowa R. App. P. 14(f)(2). The burden of proof on an issue

is upon the party who would suffer loss if the issue were not established. Iowa R. App. P. 14(f)(5). The party who alleges must prove negligence and proximate cause by a preponderance of the evidence. Iowa R. App. P. 14(f)(8).

In examining this issue in a light most favorable to plaintiff, we find the district court properly sustained defendant's motion for directed verdict since the evidence adduced by plaintiff, consisting solely of plaintiff's attending physician, did not establish by a preponderance of the evidence the elements for his claim of negligence; i.e., a duty to conform to an applicable standard of care, a breach thereof, a causal connection between the conduct involving the breach of the duty and the harm resulting and actual damage. Haafke v. Mitchell, 347 N.W.2d 381, 385 (Iowa 1984). Since plaintiff failed to meet his burden to establish the elements of his claim, there was no error in granting defendant's motion for directed verdict. Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986). Additionally, we find the doctrine of res ipsa loquitur was not appropriately pleaded. We also find there was no encroachment on plaintiff's right to a jury trial by granting a directed verdict for want of sufficient evidence to state a claim. See Iowa R. Civ. P. 216 (dismissal of plaintiff's case is appropriate upon defendant's motion when plaintiff has shown no right to relief).

We affirm the district court.

AFFIRMED.