

IN THE COURT OF APPEALS OF IOWA

ELLA MAE WINDELOW,)

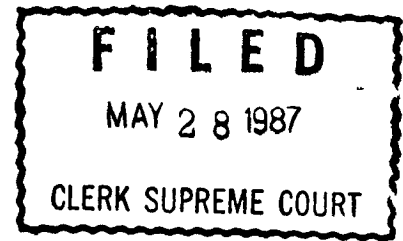
Plaintiff-Appellant,)

vs.)

TRINITY REGIONAL HOSPITAL OF)
FORT DODGE, IOWA,)

Defendant-Appellee.)

Filed May 28, 1987



6-506
86-674

404

Appeal from the Iowa District Court for Webster County (No. 50568),
R. K. Richardson, Judge.

The plaintiff appeals from the district court's order granting a directed
verdict in favor of the defendant. **AFFIRMED.**

Maurice C. Breen of Price, Goode, Breen & Breen, Fort Dodge, for
plaintiff-appellant.

Francis Fitzgibbons of Fitzgibbons Brothers, Estherville, for defendant-
appellee.

Heard by Oxberger, C.J., and Donielson and Snell, JJ.

OXBERGER, C.J.

In this appeal, plaintiff Ella Mae Windelow challenges the trial court's order sustaining the defendant's motion for a directed verdict. The record discloses that in May of 1981, the plaintiff fell and suffered a broken hip. She was subsequently hospitalized for treatment of the fracture at Trinity Regional Hospital in Fort Dodge. On June 5, 1981, one day before she was scheduled to be released, Mrs. Windelow fell while in her hospital room and sustained a back injury. She then commenced the underlying action against Trinity, alleging that her injury was proximately caused by the negligence of the hospital nursing staff. After the plaintiff had presented her evidence, Trinity moved for a directed verdict. The trial court found that Mrs. Windelow had failed to present evidence sufficient to establish that the defendant had breached its duty of care, and granted the motion. We affirm.

The legal principles governing the evidentiary showing that must be made in order to withstand a motion for a directed verdict are well established. A directed verdict or a judgment notwithstanding the verdict is properly granted if each element of a claim is not supported by substantial evidence. Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986). If, however, reasonable minds could draw different conclusions from the evidence presented, the issue should be submitted to the jury. Id.; see also Henkel v. R & S Bottling Co., 323 N.W.2d 185, 188 (Iowa 1982). In evaluating the propriety of such a motion, it is incumbent upon us to consider the evidence in the light most favorable to the party against whom the motion was made. Kurth, 380 N.W.2d at 695; Iowa R. App. P. 14(f)(2). With these principles in mind, we now turn to the merits of this appeal.

The evidence presented by the plaintiff indicates that at approximately 4:00 p.m. on June 5, she rang for a nurse to request help in going to the rest

room. Both the plaintiff and another witness testified that the nurse who answered the call told the plaintiff that she should go to the rest room by herself because she was going home the next day; the record does not indicate whether the nurse then helped the plaintiff or whether she went to the rest room without assistance. Although the plaintiff has no recollection of the occurrence, it is apparent that at approximately 10:00 p.m. that evening she got out of bed to go to the rest room; the plaintiff did not request a nurse's assistance. As she was walking in her room, the plaintiff fell and sustained the back injury for which she currently seeks recovery.

Notably absent from the evidence adduced by the plaintiff is any indication that the hospital breached its duty of care in failing to prevent the fall. The plaintiff argues that the nurse's directive that she go to the rest room by herself contravened Mrs. Windelow's doctor's order that she not be allowed to walk without assistance, thus establishing the defendant's negligence. Although Jim Good, the administrator of the hospital, testified that the hospital staff was obligated to follow a doctor's orders, the record does not support the plaintiff's contention that her doctor had issued an order requiring that she not be allowed to walk without assistance. Quite to the contrary, Mrs. Windelow's doctor testified that, "In the early phase of her postoperative course, [the plaintiff] required assistance in getting out of bed she was not independent during that phase period." (Emphasis added.) Similarly, when asked whether he had ordered restraints on Mrs. Windelow, her doctor testified that he couldn't recall having done so and that restraints are not normally applied absent a doctor's order. Cf. Shorer v. Iowa Lutheran Hospital, 252 Iowa 706, 713, 107 N.W.2d 85, 89 (1961) (duty of care violated where hospital staff permitted patient to walk by herself despite doctor's order that she stay in bed).

Nor has the plaintiff produced substantial evidence indicating that, irrespective of the existence or nonexistence of the doctor's order, the hospital staff violated its duty of care in telling her that she could walk to the rest room by herself. The hospital's administrator testified that a determination made by the hospital staff concerning a patient's ability to move by himself is a professional decision made after a number of factors are considered, including the patient's physiological condition, strength, mobility and balance. Significantly, the plaintiff introduced no testimony indicating that the staff's decision in the present case violated either the hospital's standard of care or that extant in the medical community. See Kastler v. Iowa Methodist Hospital, 193 N.W.2d 98, 100 (1971).

The plaintiff argues that it was not necessary for her to introduce evidence concerning the practice in the medical community because the jury was competent from its own experience to determine whether the hospital had breached its duty to provide reasonable care. We disagree. In Kastler v. Iowa Methodist Hospital, 193 N.W.2d at 102, the supreme court differentiated between questions concerning a hospital's professional decisions and those concerning nonmedical or routine activities. Kastler, 193 N.W.2d at 102. With regard to the former, the court held that the applicable standard of care is that practiced by the profession or trade in similar communities. The court further stated that, because laypersons are not ordinarily apprised of the prevalent standard of care, expert testimony is required. Id. By contrast, where questions of routine, nonmedical care are at issue, the applicable standard of care is one of reasonableness; in such cases, expert testimony is not required because the jury is able to use its own knowledge and good sense in evaluating the conduct in question. Id. As stated above, the hospital's decision in the present case concerning a patient's mobility was a professional question; absent expert testimony

indicating that the hospital's policy or the decisions of its staff failed to comply with the prevalent standard of care in the community, the question could not be submitted to the jury.

In short, we find no error in the trial court's order granting the defendant's motion for a directed verdict. Even viewing the evidence in the light most favorable to the plaintiff, we are persuaded that the trial court properly concluded that the plaintiff failed to present substantial evidence establishing that the defendant had breached its duty of care. Moreover, we do not think that the evidence was such that reasonable minds could draw different inferences therefrom.

The plaintiff additionally argues that the trial court erred in sustaining the defendant's objection when the plaintiff was asked why she didn't refuse to obey the nurse's directive to go to the rest room by herself. The basis of the defendant's objection was that the question called for an opinion and a conclusion. In addition, the defendant stated that the proffered testimony was inadmissible because the plaintiff had previously testified that she had no recollection of the fall. Without ever having made an offer of proof as to the substance of her answer, the plaintiff argues on appeal that her "thoughts, mental reactions and intentions . . . may well have materially influenced the evidence in this case."

It is well settled that an alleged error resulting from the exclusion of evidence is not properly presented and preserved for appellate consideration unless "the substance of the evidence was made known to the court or was apparent from the context within which [the question] was asked." Iowa R. Evid. 103(a)(2). In the present case, the plaintiff made no offer of proof, nor can it be said that the context of the question reveals the substance of her answer. All that can be gleaned from the context of the question is that the

plaintiff had no recollection of the facts surrounding her fall. As such, we find nothing in the record supporting the plaintiff's assertion that the context of the question reveals what her answer would have been, or that it would have influenced the outcome of the case. See Grosjean v. Spencer, 258 Iowa 685, 695, 140 N.W.2d 139, 145 (1966) (An appellate court "cannot predicate error upon speculation as to the answer . . . [and] where the record fails to show what counsel expects to prove by a witness no prejudice is shown and none will be presumed.").

AFFIRMED.