FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

SHERRY MORFORD,

Plaintiff-Appellant,

vs.

JACK L. CRAIN, DON O. NEWLAND, and NEWLAND, BONE & CRAIN, P.C.,

Defendants-Appellees.

Filed November 26, 1980

0-267
2-64252

Appeal from Polk District Court - Theodore Miller, Judge.

Plaintiff appeals from judgment entered on jury verdict for defendants-doctors in a medical malpractice action. AFFIRMED.

Joseph B. Joyce of Adler, Brennan, Joyce & Steger, Des Moines, Iowa, for plaintiff-appellant.

John A. McClintock of Hansen, McClintock & Riley, Des Moines, Iowa, for defendants-appellees.

Heard by Oxberger, C.J., Snell, and Carter, JJ. Donielson and Johnson, JJ., take no part.

CARTER, J.

Plaintiff appeals from judgment entered on a jury verdict for defendants-doctors in this medical malpractice case. The sole issue on appeal concerns whether the prerequisites for application of the doctrine of res ipsa loquitur were established so as to require the trial court to give an appropriate instruction under that doctrine. We affirm the trial court.

In plaintiff's petition, it is alleged that defendant Crain, as associate of defendant Newland, in an obstetrical practice, had negligently catheterized her following surgery performed by defendant Newland. It is alleged that the catheter punctured the wall of her urethra, causing an urethrovaginal fistula. As a result, it is alleged that plaintiff suffered mental and physical pain, medical expenses, and loss of earnings.

The case was tried to a jury. At the close of plaintiff's evidence, the trial court directed a verdict for the defendant hospital. In submitting the matter to the jury on the claim against the defendants-doctors, the trial court refused a request to instruct on the doctrine of res ipsa loquitur. The trial court's stated reason for refusing to so instruct was because "the rule does not apply to cases where other than the negligence of defendant can be the cause." The jury returned a verdict for the defendants-doctors. This appeal involves only plaintiff and the defendants-doctors.

The issue in the present case is not whether plaintiff, on the evidence presented, was entitled to go to the jury on the issue of defendants' negligence without the aid of expert testimony. The trial court submitted plaintiff's case against the defendants-doctors to the jury on the issue of specific negligence alleged. What we are asked to decide is whether plaintiff was entitled to have her jury submission on defendants' negligence aided by an instruction on a presumption of negligence under the doctrine of res ipsa loquitur. We hold that she was not.

In reaching this conclusion, we agree with plaintiff's contention that the possibility that acts other than defendants' negligent acts might have been the cause of her injury does not necessarily render the res ipsa doctrine inapplicable. It has been recognized in Reilly v. Straub, 282 N.W.2d 688, 694 (Iowa 1979), that the res ipsa doctrine may relate to either (a) the cause of an injury or (b) whether a particular cause was the result of negligence. A conflict in the evidence as to potential causes does not preclude application of the doctrine to determine whether one or more of the causes which find support in the evidence was a result of negligence.

Applying these principles to the present case, the evidence supports a finding that the act of defendant Crain in inserting a catheter caused the puncture of plaintiff's urethra. If the requisite elements of the res ipsa doctrine exist with respect to this potential cause of plaintiff's injury, the jury should have been instructed to apply the res ipsa inference in the event it found that the acts of defendant Crain were the cause of the puncture.

We must conclude from the present record, however, that the requisite elements for the res ipsa inference are lacking as to a catheterization-caused puncture. To render the inference of negligence applicable, it must appear from common experience of lay persons or from common experience of experts that in the ordinary course of things this puncture would not have happened if defendant Crain had used reasonable care. Reilly, 282 N.W.2d at 694. We deem it clear that lay persons possess no common experience with respect to the matter of inquiry. Perhaps of more significance is the fact that the expert testimony in the record fails to indicate that the puncture would not have occurred had ordinary care been employed. Indeed, this expert testimony suggests the contrary.

Based on the foregoing considerations, the plaintiff was not entitled to an instruction on the res ipsa loquitur doctrine, and the trial court did not err in failing to give one. We have considered all issues presented and find no basis for reversal.

AFFIRMED.

Snell, J., concurs and Oxberger, C.J., concurs in result.