

IN THE SUPREME COURT OF THE STATE OF DELAWARE

SHIRLEY A. SAVAGE,)
)
 Plaintiff-Below,) No. 245, 2000
 Appellant,)
)
 v.) Court Below: Superior Court
) of the State of Delaware in
 HARRY J. ANAGNOSTAKOS, D.O.,) and for Sussex County
)
 Defendant-Below,) C.A. No. 97C-06-018
 Appellee.)

Submitted: November 14, 2000

Decided: December 13, 2000

Before **WALSH, HOLLAND** and **STEELE**, Justices.

ORDER

This 13th day of December 2000, upon consideration of the briefs of the parties, it appears to the Court that:

1. The Sussex County Superior Court granted a motion for a directed verdict in favor of Dr. Anagnostakos concluding that plaintiff Savage failed to demonstrate in her own case that any alleged negligent act or omission of defendant Dr. Anagnostakos proximately caused her harm.

2. “This Court's standard of review of a Superior Court ruling on a motion for judgment as a matter of law is ‘whether the evidence and all reasonable inferences that can be drawn therefrom, taken in a light most favorable to the non-moving party, raise an issue of material fact for

consideration by the jury.” *Mazda Motor Corp. v. Lindahl*, Del. Supr., 706 A.2d 526, 530 (1998).

3. Between January 3, 1996 and January 6, 1996, Dr. Anagnostakos treated Savage for sepsis at Beebe Medical Center. During that time, Anagnostakos and other doctors aggressively treated Savage’s infection, ruling out several possible sources and concluding that the infection was probably a thrombophlebitis¹ that was likely caused by a prior IV administration.

4. Although normally surgically removed within 48 to 72 hours, the thrombophlebitis was not removed until approximately January 8th, four days after the initial diagnosis and two days after Anagnostakos stopped treating Savage. Savage remained bed-ridden following the surgery, and developed foot drop, a neurological condition that prevents a patient from raising either leg.

5. Delaware law requires a plaintiff to present expert medical testimony “as to the alleged deviation from the applicable standard of care in the specific circumstances of the case and as to the causation of the alleged personal injury or death....” 18 *Del. C.* §6853.

¹A blood clot in a vein.

6. Savage argues that she presented sufficient evidence of a “deviation from the applicable standard of care.” Savage further argues that while she did not produce direct expert medical testimony of causation, a reasonable trier of fact could infer causation from the particular circumstances of her case.

7. In examining all evidence in a light most favorable to the non-moving party, the Superior Court correctly determined that a reasonable trier of fact could find “a deviation from the applicable standard of care.” There is, however, no testimony that her condition would have improved had the surgery been performed sooner. Even assuming Anagnostakos deviated from the standard of care, Savage must still show that the deviation caused her injuries; to show that, Savage needed a medical expert to conclude that the injuries, more likely than not, would have diminished sooner but for the delay in surgery. Therefore, the Superior Court did not err in concluding that no expert medical testimony as to “causation of the alleged personal injury or death” was presented, nor did the Superior Court err in granting a directed verdict based upon the absence of this testimony.

NOW, THEREFORE, it is HEREBY ORDERED that the judgment of the Superior Court is **AFFIRMED**.

By the Court:

/s/ Myron T. Steele
Justice