[J-166 A & B-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

PATRICIA QUINBY, EXECUTRIX OF THE ESTATE OF JOHN QUINBY, DECEASED	: No. 20 MAP 2005
v.	: Appeal from the Order of the Superior Court entered on April 23, 2004, at No. 2382 EDA 2003, reversing the Order entered on June 17, 2003 by the Court of Common Pleas of Bucks County, at No. 98-0000-32-20-2 and remanding for further proceedings.
PLUMSTEADVILLE FAMILY PRACTICE, INC. D/B/A PLUMSTEADVILLE FAMILY PRACTICE, AND CHARLES BURMEISTER, M.D., AND MILLIE WELSH, R.N.	: 850 A.2d 667 (Pa. Super. 2004)
	: ARGUED : May 18, 2005
	: RESUBMITTED: September 28, 2006
APPEAL OF: MILLIE WELSH, R.N.	:

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APPEAL OF CHARLES BURMEISTER, M.D.	:

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED: October 18, 2006**

In some cases where the plaintiff cannot present direct evidence to establish every element of a cause of action for negligence, the doctrine of res ipsa loquitur may support an inference of negligence on the defendant's part. See, e.g., Toogood v. Rogal, 824 A.2d 1140 (Pa. 2003)(plurality); Jones v. Harrisburg Polyclinic Hospital, 437 A.2d 1134 (Pa. 1981); Gilbert v. Korvette, Inc., 327 A.2d 94 (Pa. 1974). It may be inferred that the plaintiff's harm is caused by negligence of the defendant if the plaintiff has presented evidence showing: (1) the damaging event does not normally occur absent negligence; (2) all other responsible causes have been sufficiently eliminated; and (3) the asserted negligence is within the scope of the defendant's duty to the plaintiff. See Restatement (Second) of Torts § 328D(1)(a)-(c); Gilbert, at 100-02. "Where there is no direct evidence to show cause of the injury, and the circumstantial evidence indicates that the negligence of the defendant is the most plausible explanation for the injury, the doctrine applies." D'Ardenne v. Strawbridge & Clothier, Inc., 712 A.2d 318, 321 (Pa. Super. 1998) (citing W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 40, at 257 (5th ed. 1984)). Thus, the doctrine relieves the requirement that a plaintiff present direct evidence of each element of a cause of action for negligence in those cases where it is obvious negligence has occurred, but cannot be directly proven.

Here, appellee presented direct evidence in support of the allegation that her husband's injuries and death were caused by specific acts of negligence by appellants. Appellee asserted appellants breached their duty of due care by failing to place Quinby in a stable position on a table with rails or restraints, and by failing to remain in the exam room with him. Majority Slip Op., at 4-5. In support of these allegations, appellee presented her husband's deposition testimony that he was left lying on his right side on the exam table, along with evidence that the exam table lacked rails or restraints and

that appellants failed to remain in the exam room with him. Appellee also presented the expert testimony of Dr. Bradley Fenton, who testified appellants' failure to "ensure that [Quinby] was left safely and securely on the examination table at all times" constituted a breach of the standard of care. Id., at 5-6. Appellee presented evidence to establish the duty, breach, causation, and damages elements of a negligence action; therefore, the evidence did not require that the jury infer any of these elements. As in any case of ordinary negligence, the evidence here required only that the jury weigh the evidence, make credibility assessments, and determine whether appellants were negligent. I would hold the doctrine is unavailable where, as here, the plaintiff makes specific allegations of negligence and presents direct evidence in support of each element thereof; granting the plaintiff an evidentiary bypass in such a case is not in accord with the doctrine's intended goal.

Even if res ipsa loquitur was available here, appellee failed to satisfy the three requirements set forth in § 328D(1).[1] Appellee was required to present evidence showing the damaging event would not have occurred in the absence of negligence. Stated differently, appellee had to show the fall would not normally have occurred if appellants had done what due care required. Dr. Burmeister had treated Quinby for 25 years prior to this fall, and was familiar with Quinby's abilities and limitations. Appellants presented the expert testimony of Dr. Joseph Bender, who opined their actions were consistent with the applicable standard of care since, under the circumstances, appellants had no reason to expect Quinby would experience a

[1] In Lonsdale v. Joseph Horne Company, 587 A.2d 810, 815 (Pa. Super. 1991) and Neve v. Insalaco's, 771 A.2d 786, 792 (Pa. Super. 2001), the Superior Court concluded that even if res ipsa loquitur is available in theory, the plaintiff must also be able to satisfy § 328D(1).

movement that would result in his falling from the table. R.R., at 892a. Dr. Bender testified that under the circumstances known--and knowable--to appellants, their actions were not unreasonable. Id. In light of this evidence, I cannot agree that appellee presented sufficient evidence showing Quinby's fall would not have occurred absent some negligent act. If there is evidence appellants did what due care required, where is the support for an inference to the contrary?[2] Misfortunes can happen even when proper care and skill are exercised, and under the totality of the circumstances presented here, I do not believe appellee met her burden of presenting evidence which, if found credible, sufficiently established that Quinby's fall would not have occurred but for some negligence on the part of appellants.

In addition, I believe appellee failed to meet her burden of presenting evidence which sufficiently eliminated all other potential causes of Quinby's fall. Although appellants did not present evidence that something other than their own negligence caused the fall, the law does not require appellants to make such a showing to avoid the

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[2] This case is more akin to the facts presented by Lonsdale, supra, at n.1, wherein the plaintiffs filed an action against the defendant, who owned a store where one of the plaintiffs was injured due to a defective faucet in the defendant's restroom. The court stated:

> [T]here was no evidence presented at trial that, if found credible, would eliminate third parties (e.g., manufacturer and other store patrons) as possible causes of the accident. Futhermore, common human experience suggests some explanations for a faucet handle breaking (excessive, inordinate and improper use) which do not involve negligence. The totality of these circumstances cannot be viewed to raise an inference of negligence … and, as it is still the [p]laintiff's responsibility to advance some evidence to buttress her allegation, we find no justification for reversing the trial court's ruling ….

Lonsdale, at 816 (citation omitted).

application of res ipsa loquitur. Rather, the burden fell squarely upon appellee to show that all other responsible causes were sufficiently eliminated. Appellee failed to present any evidence eliminating the possibility that a third party entered Quinby's room during the time in question and caused the fall. Instead, the evidence showed the exam room door was left open and unguarded. R.R., at 768a.

Furthermore, appellee failed to present evidence eliminating the possibility that Quinby experienced a muscle spasm or seizure which caused him to fall from the table. Quinby's father testified his son experienced leg spasms that were strong enough to "throw his foot out of the wheelchair at times. Or even if he was on the edge of the bed, it would throw it off the edge of the bed if we weren't there controlling it." Id., at 177a. Quinby's father also testified, "it wouldn't really matter on these narrow [examination] tables which way he was laying, he could easily have triggered a fall off the table." Id., at 179a. The only evidence that addressed this possibility was appellee's expert's statement that he was personally unaware of any muscle spasm strong enough to throw a person, lying on their back, from an examination table. Thus, appellee failed to present evidence sufficiently eliminating the possibility that Quinby was properly situated on the table, but experienced a spasm that shifted his balance on the table and caused his fall. Because I believe appellee failed to present evidence sufficiently eliminating all other responsible causes, I would hold she was not entitled to an inference of negligence.[3]

The doctrine is applicable where it is clear there is no other explanation for the injury short of the defendant's negligence; here, other possible explanations were

[3] It is noteworthy that while I believe the above scenarios are possible, I do not believe either were foreseeable occurences under the circumstances. As such, I do not believe appellants can be said to have breached their duty of care to Quinby by failing to prevent such unforeseeable events.

presented and were not eliminated by the party bearing the burden of doing so. As such, the trial court properly declined to instruct on the doctrine.

A trial court has wide latitude in instructing a jury, and whether the jury should be instructed on a given point of law depends upon the facts and issues in the case. Ferrick Excavating & Grading Company v. Senger Trucking Company, 484 A.2d 744, 748 (Pa. 1984). It is well established that in examining a trial court's charge, our scope of review is to determine whether the trial court committed a clear abuse of discretion or error of law controlling the outcome of the case. Williams v. Philadelphia Transportation Company, 203 A.2d 665, 667 (Pa. 1964) (citation omitted). An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will. Coker v. S.M. Flickinger Company, Inc., 625 A.2d 1181, 1184-85 (Pa. 1993) (citation omitted). A finding by an appellate court that it would have reached a different result than the result reached by the trial court does not support a finding that the lower court abused its discretion. Morrison v. Commonwealth, Department of Public Welfare, Office of Mental Health (Woodville State Hospital), 646 A.2d 565, 571 (Pa. 1994). "The inquiry is strictly directed at determining whether the trial court's stated reasons and factual basis can be supported." Coker, at 1187.

Based upon the evidence, I cannot agree that the trial court committed an abuse of discretion when it failed to instruct the jury on res ipsa loquitur. There was conflicting evidence on whether appellants' actions constituted a breach; as this is a question of fact and credibility, it is a question for the jury. If the trial court had instructed the jury that appellee was entitled to an inference of negligence, the court would have deprived the jury of its essential function in a case where there were clearly questions requiring a jury's consideration. The trial court applied the appropriate law, and determined the

evidence did not warrant a res ipsa loquitur charge since appellee failed to establish the necessary requirements under § 328D(1). See Trial Court Opinion, 8/15/03, at 6-7. While the Superior Court and the majority reach a different result than that of the trial court, a difference of opinion does not warrant a finding that the trial court abused its discretion. The trial court's stated reasoning is amply supported by the record, and appellee does not present adequate grounds to overrule it.

Accordingly, I would hold the trial court did not commit reversible error in failing to instruct the jury on res ipsa loquitur, and I would reverse the Superior Court's holding in this regard.

Mr. Justice Castille joins this dissenting opinion.