IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOANNE HAMBLETON, Executrix of the Estate of FRANCES ALBANESE, and JOANNE HAMBLETON,	§	
	§	No. 380, 1999
Plaintiffs Below, Appellants,	§	Court Below Superior Court of the State of Delaware, in and for New Castle County
v.	§	C.A. No. 97C-12-044
CHRISTIANA CARE HEALTH SERVICES, INC., f/k/a THE MEDICAL CENTER OF DELAWARE, INC., and KAY TAYLOR,	§	
Defendants Below, Appellees.	§	

Submitted: June 13, 2000
Decided: September 25, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices.

O R D E R

This 25th day of September 2000, it appears to the Court that:

1) This is an appeal by the plaintiffs from a final judgment in favor of the defendants entered by the Superior Court in a medical malpractice action. The action was filed by Joanne Hambleton, personally and in her capacity as Executrix of the estate of her mother, Frances Albanese. The complaint alleged that an employee of the defendant, Christiana Care Health Services, Inc. ("Christiana Care"), the defendant Kay

Taylor ("Nurse Taylor"), was negligent in rendering care to the decedent, Frances Albanese ("Albanese"). The circumstances giving rise to this action occurred on December 30, 1995 when Albanese was a patient on the Step-Down Unit at the Wilmington Division of Christiana Care.

2) The appellants have raised three issues on appeal. First, the appellants contend that the Superior Court erroneously denied the plaintiffs' motion for a directed verdict on the issue of negligence. Second, the appellants argue that the Superior Court erroneously precluded the plaintiffs' attorney from arguing that Nurse Taylor acted negligently subsequent to the time that she left the decedent's room at approximately 1:30 p.m. Finally, the appellants argue that the Superior Court erroneously directed a verdict in favor of the defendants on the issue of punitive damages.

3) Seventy-year-old Albanese was taken to the emergency room of the Wilmington Division of Christiana Care on December 20, 1995. The emergency room doctors concluded that Albanese was experiencing severe respiratory distress. The emergency room physicians intubated Albanese, placed her on a ventilator, and admitted her to the Intensive Care unit. Apparently, Albanese was concurrently suffering from kidney failure and congestive heart failure.

4) After several days, the attending physician moved Albanese to the Step-Down Unit and replaced the tube and ventilator with an oxygen mask. While in the Step-Down Unit, Albanese was placed on a pulse oximeter. This is a machine which continuously monitors a patient's blood oxygen level and pulse rate through a sensor placed on the patient's finger. The pulse oximeter emits a loud alarm and flashes if the blood oxygen level rises or falls below a pre-programmed level. The pulse oximeter alarm is pre-set to be audible at the nurse's station. It was audible on December 30, 1995.

5) On December 30, 1995, Nurse Michele Tuel ("Nurse Tuel") was assigned to provide nursing care to Albanese. When Nurse Tuel went to lunch, she transferred responsibility for her patients, including Albanese to Nurse Taylor.

6) Albanese's pulse oximeter alarm sounded at approximately 1:15 p.m., Albanese's daughter, Joanne Hambleton ("Hambleton") and her husband, Ben Hambleton ("Ben"), were in the room when the alarm sounded. The alarm rang for five minutes before Ben walked to the nurses' station and asked Nurse Taylor to provide assistance to Albanese. According to Ben, the alarm was audible at the nurses' station. Nurse Taylor agreed to respond.

7) When Nurse Taylor failed to respond to his request, Ben activated the nurse's call button. The signal is received at the nurses' station. Nurse Taylor, upon hearing the call signal, "remembered" that she had been asked to provide nursing assistance to Albanese. Nurse Taylor testified she "forgot" about the request because she was asked to help with another patient by the other nurse on duty.

8) Nurse Taylor entered Albanese's room approximately ten minutes after Ben's initial request for assistance. Ben testified that Nurse Taylor appeared agitated. Prior to trial, Nurse Taylor testified that she entered the room, looked at Albanese, turned off the alarm, saying "that will take care of that noise," and then left the room. Nurse Taylor also testified prior to trial that she did not recall checking or noting Albanese's blood oxygen level, and admitted that she did not follow the procedures mandated by the clinical practice guidelines published and provided by defendant Christiana Care.[1]

9) The alarm began to sound again approximately one minute after Nurse Taylor left the room, shortly after 1:30 p.m. After the alarm sounded the second time, Ben activated the nurse's call button on two separate occasions to obtain nursing assistance for Albanese. The call was

[1] The guidelines were printed and distributed prior to December 30, 1995.

disconnected without any response by the nurse located at the nurses' station. Albanese was left unattended by the nursing staff until 1:55 p.m., during which time the pulse oximeter alarm sounded continuously at the nurses' station.

10) Nurse Taylor admitted that she was present at the nurses' station at some points between 1:30 p.m. and 1:55 p.m. When Nurse Tuel returned from lunch at approximately 1:55 p.m., she entered Albanese's room. Nurse Tuel admitted that the pulse oximeter alarm was sounding and Albanese had a low blood oxygen level. Nurse Tuel immediately called for assistance. As a result of the oxygen loss she suffered between 1:15 p.m. and 1:55 p.m., Albanese sustained brain damage that contributed to her death a year later.

11) Because it was undisputed that Albanese's brain injury was caused by the oxygen deprivation between 1:15 p.m. and 1:55 p.m. on December 30, 1995, the Superior Court granted Hambleton's motion for a directed verdict on the issue of proximate cause. The Superior Court denied Hambleton's motion for a directed verdict on the issue of negligence, and also ruled that Hambleton could not argue and the jury could not consider Nurse Taylor's conduct between 1:30 p.m. and 1:55 p.m. in determining whether the defendants acted negligently. The Superior Court also granted

the defendants' motion for a directed verdict on Hambleton's claim for punitive damages.

12) The jury found that the defendants were not negligent. The Superior Court entered judgment in favor of the defendants. Hambleton then filed a timely direct appeal to this Court.

13) The first issue raised by the appellants is a contention that the Superior Court erroneously denied the plaintiffs' motion for a directed verdict of the issue of negligence. "[Q]uestions as to the existence of negligence are reserved for the trier of fact."[2] In a medical malpractice action, a directed verdict on the issue of negligence is warranted only where there is no dispute as to whether a defendant health care provider violated the standard of care.[3] In this case, the experts disagreed on the question whether Nurse Taylor violated the applicable standard of care. The Superior Court properly submitted the issue of negligence to the jury.

14) The appellants' second contention is that the Superior Court improperly limited the arguments of the plaintiffs' attorney. We agree. The Superior Court erroneously ruled that there was insufficient evidence to support an argument or conclusion that Nurse Taylor acted negligently after

[2] *Trievel v. Sabo*, Del. Supr., 714 A.2d 742, 745 (1998).
[3] *Russell v. Kanaga*, Del. Supr., 571 A.2d 724, 732 (1990).

she left the decedent's room at approximately 1:30 p.m. and before Nurse Tuel requested assistance for the decedent at approximately 1:55 p.m.

15) The record reflects that there was credible evidence including expert testimony that would have supported a finding that Nurse Taylor acted negligently during that period of time. The testimony of Ben Hambleton established that Albanese's pulse oximeter alarm began sounding within one minute from the time that the defendant left the decedent's room at approximately 1:30 p.m.

> Q. After Miss Taylor hit the re-set button on the pulse oximeter alarm, and after she left the room, what happened next?
>
> A. After the alarm started sounding again in one minute, approximately, I hit the call button again. It was canceled from the desk.

The testimony of Ben Hambleton also established that the pulse oximeter alarm was sounding continuously and was audible at the nurses' station between 1:30 p.m. and 1:55 p.m.

> Q. . . . You hit the call button alarm sometime after 1:30 p.m.?
>
> A. Yes.
>
> Q. For the second time?
>
> A. Yes.

Q. And you made some number of trips down to the nurses' station to try and find someone?

A. Right.

Q. On each occasion that you would walk to the nurses' station to try and find somebody, were the alarms still audible from your mother-in-law's room?

A. Yes.

Nurse Taylor admitted that she was present at the nurses' station at some points between leaving Albanese's room at 1:30 p.m. and Nurse Tuel's return from lunch at 1:55 p.m.

Q. After you left Mrs. Albanese's room, after you simply hit the re-set button, had a conversation and left, you remained on the floor, isn't that correct?

A. Yes.

Q. Did you return to the nurses' station at some point?

A. I probably did.

The testimony of the defendant's expert, Kathleen Murray, R.N., established that the standard of care required a nurse to respond to a pulse oximeter alarm.

Q. . . . Do you agree that the standard of care requires a nurse to respond to a pulse oximeter alarm which sounds continuously?

A. Yes.

16) Accordingly, when viewed in a light most favorable to the plaintiff, the evidence established that the following events occurred after the Nurse Taylor left Albanese's room and before Nurse Tuel returned from lunch and requested assistance for the decedent: first, Albanese's pulse oximeter alarm sounded one minute after Nurse Taylor left the room; second, Albanese's pulse oximeter alarm was audible at the nurses station during the subject period of time; third, Nurse Taylor was present at the nurses' station during the subject period of time and should have heard the alarm; and finally, there was expert testimony that the failure to respond to a pulse oximeter alarm constitutes a violation of the standard of care.

17) The appellants' final argument is that the Superior Court erroneously directed a verdict in favor of the defendants on the issue of punitive damages. The Superior Court's decision not to submit the issue of punitive damages to the jury appears to have been related to its erroneous ruling that there was no evidence of negligence by Nurse Taylor between 1:30 p.m. and 1:55 p.m. This Court has held that multiple violations of the standard of care, combined with knowledge that such violations will expose a patient to an imminent danger of serious injury, is sufficient to support a finding of wanton conduct and a claim for punitive damages.[4] This Court

[4] *Strauss v. Biggs*, Del. Supr., 525 A.2d 992, 1000-01 (1987).

has also held that evidence that a health care provider acted with an evil motive is sufficient to support a finding of willful conduct and a claim for punitive damages.[5] Accordingly, when this matter is remanded for a new trial, if there is evidence that Nurse Taylor committed multiple acts of negligence with knowledge that such acts could cause injury to the decedent, the Superior Court must reconsider whether the jury should be allowed to consider the issue of punitive damages.[6]

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Superior Court is REVERSED. This matter is remanded for a new trial in accordance with this decision.

BY THE COURT:

/s/ Randy J. Holland
Justice

[5] *Id*.
[6] *Id*.