IN THE COURT OF APPEALS OF IOWA

No. 1-761 / 11-0142
Filed December 21, 2011

EDWARD J. HANSSEN and
CONNIE S. HANSSEN,
Plaintiffs-Appellants,

vs.

GENESIS HEALTH SYSTEM,
a Corporation,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, Paul Macek, Judge.

Edward and Connie Hanssen appeal the district court's grant of summary judgment based on the couple's failure to file the medical malpractice claim within the two-year statute of limitations. **REVERSED AND REMANDED.**

William J. Bribriesco of William J. Bribriesco & Associates, Bettendorf, for appellants.

Diane M. Reinsch and Joshua T. Mandelbaum of Lane & Waterman, L.L.P., Davenport, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

Edward and Connie Hanssen contend the district court was wrong in finding they waited too long to file their medical malpractice lawsuit against Genesis Health Systems (Genesis or the hospital). The Hanssens ask us to reverse the grant of summary judgment, urging that a genuine issue of material fact exists regarding both the date they knew about Edward's injury and its cause, as well as whether the hospital should be equitably estopped from raising a statute of limitations defense based on the doctrine of fraudulent concealment.

Because the record contains evidence upon which reasonable minds might conclude Genesis affirmatively misrepresented the circumstances and cause of Edward's injury and that the Hanssens briefly relied on that misrepresentation to their detriment, we find summary judgment based on the two-year statute of limitations was inappropriate.

I. Background Facts and Proceedings

The facts viewed most favorably to the Hanssens reveal the following events significant to our consideration of this summary judgment appeal. *See generally Christy v. Miulli*, 692 N.W.2d 694, 698 (Iowa 2005) (viewing entire record in light most favorable to nonmoving party and indulging every legitimate inference the evidence will bear on behalf of nonmoving party).

Edward Hanssen underwent knee surgery on September 25, 2007. On that same date, orthopedic surgeon Matthew Lindaman prescribed post-

operative medications for Hanssen. Specifically, he ordered Oxycontin[1] and Oxycodone[2] to help manage Edward's pain.

During morning rounds on September 27, 2007, Dr. Lindaman learned from Edward that he had not slept well and was experiencing pain. The surgeon ordered twenty milligrams of OxyContin orally three times a day, as well as Xanax. Genesis nurses administered the first dose of Oxycontin at 9:40 a.m. and the second dose at 2 p.m. Connie grew concerned that her husband acted very lethargic. After consulting with a family member, Connie asked a nurse not to give Edward any more pain medication. A nurse reported Edward's lethargy to Dr. Lindaman, who issued new orders at 3:15 p.m. The doctor discontinued the twenty milligrams of OxyContin and substituted a ten-milligram dose, along with one to two tablets of Oxycodone every four to six hours as needed.

At 11:25 p.m. on September 27, 2007, a nurse assessed Edward as being "not oriented to time" and "lethargic." His oxygen saturation dropped to 55 percent on room air. The nurse placed Edward back on oxygen and encouraged him to take deep breaths, increasing his saturation level to 92 percent. The nurse reported Edward's condition to the on-call doctor, who ordered the nurse to administer Narcan and discontinue the pain medications.

When Connie returned to the hospital at 6:30 a.m. September 28, 2007, she learned from a nurse's aide that Edward fell twice in the bathroom during the night. About an hour later, Dr. Lindaman assessed Edward with narcotic

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[1] The doctor's faxed order prescribed Oxycontin in an amount of "10 mg orally every 8 hours x's 3 doses."

[2] The order prescribed Oxycodone in an amount of "5 mg orally for pain scale 3-5 or 10 mg for pain scale of 6 or more every 3 hours p.r.n. 'break-through' pain."

aspiratory depression. Dr. Andrew Edwards, the family's physician, also stopped by the hospital room that morning and told the Hanssens he believed that Edward had a narcotic overdose.

Genesis discharged Edward around 6 p.m. on September 28, 2007. But shortly after he arrived home, his heart began racing and he experienced severe sweating. Connie called Dr. Edwards, who recommended they return to the hospital. Connie drove her husband to the emergency room (ER) at Genesis East. The ER doctor looked up Edward's records on the computer and told the Hanssens that Edward had been overmedicated. During the night of September 28, 2007, Edward became confused and agitated.

On the morning of September 29, 2007, Edward commented to a nurse: "I used to be a contributing member of society and now because of that medicine I was double dosed on, I feel like a vegetable." Both the nurse and Dr. Edwards assured Edward he was "not a vegetable" and just needed some undisturbed sleep.

On October 1, 2007, Dr. Edwards ordered an MRI and CT scan for Edward because the doctor was concerned about potential memory loss. In recording the "relevant clinical history," the MRI technician wrote that Edward stated: "2 oxycodone overdoses within 4 hrs, last OD on 9/27/07." That same day, Dr. Edwards completed his clinical summary of Edward's diagnoses, including tachycardia, a racing heart rate, and hypoxemia, a low oxygen level—both due to the pain medication he received. Connie acknowledged that Dr. Edwards explained these conditions before discharging her husband.

Before Edward's discharge from Genesis East on October 1, 2007, the Hanssens met with patient advocate Lori Crane. The Hanssens told Crane they were unhappy with the nursing care Edward received at Genesis West. Crane's documentation of the conversation including the following note:

> Pt & wife upset that staff did not tune into pt's lethargy after receiving OxyContin & wanted to give him more – pt says I received 2 days of dosing in 4 hours. Pt & wife also upset that pt fell and did not feel safety was a main concern – wife was upset that staff did not inform her of the fall nor of pt's change in condition.

On October 9, 2007, the Hanssens received a letter written by Jackie Anhalt, the nurse manager for Genesis Medical Center's Orthopedic Unit. The letter, dated October 8, 2007, responded to the Hanssens' complaints to the patient advocate. One of the letter's six paragraphs provided the following:

> You expressed concerns about the pain medication you received and how it made you feel. It appears from your medical records that you were sensitive to the narcotics that you received. Medications were given as ordered by the Physician based on the level of pain you stated at various intervals. When the nurse completed your assessment at 2300 and found your pulse oximetry to be low the physician was contacted and orders carried out.

The Hanssens requested Edward's hospital records from Genesis and received an initial set on October 9, 2007. The Hanssens received a more complete set, including pharmacy records, on October 27, 2007.

Both Edward and Connie have noticed ongoing problems with his memory. Edward has trouble remembering driving directions and worries about the impact of memory lapses on his employment.

On October 6, 2009, the Hanssens filed a petition at law and jury demand alleging that employees of Genesis Health System acted negligently in

"improperly giving [Edward] medication that caused him harm." The petition also alleged loss of spousal consortium. Genesis filed an answer, alleging, among other defenses, that the Hanssens' claims were barred by the statute of limitations.

Genesis moved for summary judgment on November 10, 2010. The hospital argued that the Hanssens knew of their injuries and the cause in fact of their injuries before Edward's discharge from the hospital on October 1, 2007, but did not file their claims until October 6, 2009.[3] The Hanssens resisted the summary judgment motion, alleging that fraudulent misrepresentations in the Anhalt letter prevented them from knowing the cause in fact of Edward's injuries until they received a more complete set of his medical records on October 27, 2007.

The district court granted Genesis's motion for summary judgment on December 20, 2010. The court found:

> [N]o genuine issue of material fact exists as to when the Hanssens knew of their injuries and the cause in fact of their injuries. The Hanssens allege Mr. Hanssen suffered injuries from two events, the medication overdose and falling in the hospital bathroom. The Hanssens knew of both these injuries and the cause in fact of the injuries by October 1, 2007.

The district court also rejected the Hanssens' claim of fraudulent concealment. The Hanssens now appeal from the summary judgment ruling.

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[3] Genesis also contended that it was entitled to summary judgment because the Hanssens did not identify an appropriate standard of care witness. The district court rejected this ground for summary judgment and the issue is not raised on appeal.

II. Standard of Review

We review a summary judgment ruling for correction of legal error. *Rathje v. Mercy Hosp.*, 745 N.W.2d 443, 447 (Iowa 2008). If the pleadings, depositions, admissions on file, and answers to interrogatories, together with the affidavits, if any, show no genuine issue as to any material fact, then the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Rock v. Warhank*, 757 N.W.2d 670, 672 (Iowa 2008). We will find a question of fact "if reasonable minds can differ on how the issue should be resolved." *Walker v. Gribble,* 689 N.W.2d 104, 108 (Iowa 2004). The party resisting summary judgment "should be afforded every legitimate inference that can reasonably be deduced from the evidence." *Warhank*, 757 N.W.2d at 673. "A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Wilkins v. Marshalltown Med. & Surgical Ctr.*, 758 N.W.2d 232, 235 (Iowa 2008).

Application of a statutory limitations period to undisputed facts involves a "pure question of law" subject to a summary judgment ruling. *See Diggan v. Cycle Sat, Inc*., 576 N.W.2d 99, 102 (Iowa 1998). When construing statutes of limitations, we must adhere to the "bedrock principle" that between two possible interpretations, the one extending the time for filing suit is "to be preferred and applied." *Warhank*, 757 N.W.2d at 676. Appellate courts observe this default position because "statutes of limitations are disfavored." *Id*.

III. Analysis

A. Discovery Rule

Medical malpractice claims must be brought within two years of the date when the plaintiffs "knew, or through the use of reasonable diligence should have known," of the existence of the injury for which they are seeking damages. Iowa Code § 614.1(9). Under section 614.1(9), "injury" means the mental or physical harm incurred by the plaintiff. *Warhank*, 757 N.W.2d at 673. The statute of limitations begins to run when the plaintiff has an actual or imputed knowledge of both the injury as well as its cause in fact. *Rathje*, 745 N.W.2d at 461.

In this case, the Hanssens rely on *Rathje* and *Warhank* in asserting that the statute of limitations for their lawsuit was not triggered until October 27, 2007, when they received a full set of Edward's medical records and were able to determine that the cause in fact of his injury was an overdose of pain medication. Genesis counters that the district court was correct in holding that the Hanssens knew of Edward's injury and its cause in fact by October 1, 2007, when he was discharged from Genesis East. The court determined the suit filed on October 6, 2009 was outside the two-year limitations period under section 614.1(9).

It is not necessary for us to decide whether the discussion in *Warhank* concerning inquiry notice—which extended the triggering date for the limitations period from the start of an investigation into the existence of an injury to the investigation's conclusion—applies to the Hanssens' situation. Because we determine in the next section that the hospital is equitably estopped from asserting a statute of limitations defense, we do not express an opinion on

whether the statute was tolled until the Hanssens discovered their cause of action.

B. Equitable Estoppel

Separate and distinct from the discovery rule is the doctrine of fraudulent concealment, a species of equitable estoppel. *Christy*, 692 N.W.2d at 701. While the discovery rule focuses on the knowledge of the plaintiffs, equitable estoppel concentrates on the defendant's conduct. *Id*. If the defendant's fraud induces the plaintiffs to refrain from bringing a timely action, the defendant cannot plead the statute of limitations as a defense. *Id*. It does not matter what material fact the defendant has concealed, so long as the defendant's conduct prevents the timely filing of the claim and the plaintiffs can establish the other prerequisites for equitable estoppel. *Id.* at 702.

This form of equitable estoppel requires the plaintiffs to prove, by clear and convincing evidence, four foundational elements: (1) the defendant falsely represented or concealed a material fact, (2) the plaintiffs did not know the true facts, (3) the defendant intended for the plaintiffs to act on the falsehood or concealment, and (4) the plaintiffs in fact relied on the misrepresentation or concealment. *Id*. To establish the first element, the Hanssens must show Genesis took an affirmative step to conceal their cause of action "independent of and subsequent to the liability-producing conduct." *Id*.

The district court determined the Hanssens satisfied the first and third elements of equitable estoppel.[4] For the first element, the court identified nurse

[4] On appeal, Genesis does not challenge the district court's findings on the first and third elements, but endorses the district court's ruling that there was "no genuine issue of

Anhalt's deceptive representations in her October 8, 2007 letter. The letter stated Edward was "sensitive" to the narcotics he received, but that the medications were given "as ordered by the Physician." The court also determined that Genesis intended the Hanssens to rely on Anhalt's representations, satisfying the third element. But the district court did not believe the Hanssens lacked knowledge of the true facts or actually relied on Anhalt's representations to their prejudice, the second and fourth elements of the test.

The Hanssens dispute the district court's conclusion they knew the "true facts" by October 1, 2007. They also contend they did rely on Anhalt's misrepresentations—at least from October 9, 2007, until October 27, 2007—when they obtained the pharmacy records and "could see in black-and-white that the medications were *not* administered correctly."

Genesis characterizes the Hanssens' claim they did not know the true facts until they received a second set of records as a "red herring." The hospital urges that the district court correctly determined "between September 27 and October 1, 2007, the Hanssens repeatedly acknowledged they knew Mr. Hanssen's symptoms were caused by the medication overdose." The hospital asserts that the Hanssens' conduct "plainly demonstrates they did not believe Ms. Anhalt's statement that the medications were given as ordered. If they had reasonably relied on Ms. Anhalt's letter, there would have been no reason to request a second set of records."

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material fact concerning the second and fourth elements of the Hanssens' fraudulent concealment claim."

We believe that the Hanssens have the better argument. In *Christy*, our supreme court clarified that fraudulent concealment does not combine with the discovery rule to toll the statute of limitations. *Id.* at 702. Rather, as an equitable doctrine, it prevents the defendant from the protection of the statute of limitations when by its own fraud it prevented the other party from timely seeking redress. *Id*. Genesis claims we should gauge the Hanssens' detrimental reliance by examining when they were on discovery notice of Edward's injury and its cause. But the equitable estoppel doctrine requires us to focus not on the Hanssens' knowledge, but on the hospital's deceptive conduct. The hospital's nurse manager for the orthopedic unit responded to the Hanssens' concerns expressed to the customer relations specialist about the pain medication Edward received "and how it made [him] feel," by assuring them that the medications were given "as ordered by the Physician" and appeared to blame Edward's sensitivity to the narcotics for his difficulties. As the *Christy* court held:

> if a patient on inquiry notice investigates by asking questions of his physician, who then misrepresents the facts that would give rise to a cause of action, the physician is in no position to subsequently fault the patient who reasonably relies on the truth of the physicians statements and as a consequence delays filing suit.

Id. at 703.

Similarly, Genesis is in no position to fault the Hanssens for relying on the truth of Anhalt's representations, and as a consequence, delaying—however briefly—their decision to file suit. We also find it curious that Genesis would invoke the Hanssens' due diligence in requesting Edward's pharmacy records as proof they did not, in fact, rely on Anhalt's misrepresentation. Such an argument

runs counter to our supreme court's caution that "a patient's knowledge of pertinent facts and circumstances may affect the reasonableness of his continued reliance on a tortfeasor's representations." *Id.* at 703. This observation in *Christy* suggests that a patient's continued reliance is judged on a sliding scale: the more facts are available to the patient, the greater his or her obligation to investigate the would-be tortfeasor's representations. In this case, the Hanssens were exposed to sufficient facts about the possible overdose of painkillers that continued reliance on Anhalt's representation about Edward's sensitivity to the medication might not have been reasonable. But it would be an odd result if the Hanssens' persistence in seeking the cause of Edward's injury sabotaged their argument that they timely filed suit.

Because fraudulent concealment focuses on the acts of the defendant, we must look to the plaintiffs' knowledge of particular facts only at the time the deceptive conduct occurred, and not their subsequent request for additional information. Had the Hanssens received Anhalt's letter after they possessed Edward's complete medical records, reliance on her statements may have been unreasonable. But as of the Hanssens' receipt of Anhalt's letter, any knowledge of the alleged dosing errors by the hospital staff was based on their own theories, the opinion of their doctors, and an ER doctor's review of Edward's records. While these sources of information identified that Edward suffered from overmedication, it does not follow that the Hanssens definitively knew his reaction to the medication was attributable to improper dosing, and not Edward's personal sensitivities.

Therefore, a reasonable fact finder could believe the Hanssens considered Anhalt's letter, not on the question whether Edward suffered an adverse reaction to the medication, but to determine if the reaction was caused by Edward's own sensitivities rather than hospital error. At that time, either theory could have plausibly explained Edward's resulting injury. The Hanssens were operating on an incomplete backdrop of information until they received the medical and pharmacy records.

We agree with the district court that the Hanssens satisfied the first and third elements of the equitable estoppel test, but we disagree with the court's evaluation of the second and fourth elements. While the Hanssens received information by October 1, 2007, from both Dr. Edwards and Dr. Lindaman that Edward's symptoms may be related to an overdose of pain medication, the letter from nurse manager Anhalt dated October 8, 2007, represented that it was not the dosage of the medication, but his "sensitivity" to it that resulted in the harm. At that point, given the conflicting opinions, the Hanssens lacked knowledge of the "true facts" concerning his injury. The Hanssens relied on Anhalt's assurances to their prejudice to the extent that they did not consider their action to have accrued until they were able to review a complete set of medical records that revealed the misrepresentation in the letter. *See Wendt v. White Pigeon Mut. Ins. Ass'n*, 418 N.W.2d 374, 376 (Iowa Ct. App. 1987) (finding the plaintiff relied on the defendant's assurances to his prejudice because he took no action to assert his rights and his inaction resulted in the late filing of his petition).

We think there is a genuine issue of material fact as to whether the Hanssens knew of the hospital's alleged misrepresentation more than two years before they filed suit. *See Christy*, 692 N.W.2d at 703 (calculating statute of limitations from the date that patient is on notice of alleged fraud or when her continued reliance on misrepresentation is unreasonable). A fact finder might reasonably conclude Anhalt's statements about Edward's medical records were calculated to throw the Hanssens off their guard and cause them to refrain from making additional inquiries into the cause of his injury. The fact that the Hanssens did not refrain for long before asking for more complete medical records goes to their reasonable diligence and does not defeat their claim of estoppel. A fact finder might reasonably conclude the Hanssens had no reason to believe that their cause of action accrued until they received the pharmacy records on October 27, 2007, which contradicted Anhalt's statements in the October 8, 2007 letter.

Because the question of the hospital's fraudulent concealment is not capable of summary adjudication in this case, we reverse.

REVERSED AND REMANDED.

Vaitheswaran, J., concurs; Sackett, C.J., dissents.

SACKETT, C.J. (dissenting).

I must respectfully dissent. I would affirm the district court as I agree there is no issue of material fact as to elements number two and four of the fraudulent concealment defense to the statute of limitations. As stated by the majority, in order to establish a claim of fraudulent concealment, the plaintiff must prove,

> (1) The defendant has made a false representation or has concealed material facts; (2) the plaintiff lacks knowledge of the true facts; (3) the defendant intended the plaintiff to act upon such representations; and (4) the plaintiff did in fact rely upon such representations to his prejudice.

Christy, 692 N.W.2d at 702. While there is a factual question regarding whether Genesis made a false representation, and whether Genesis intended for the Hanssens to rely on that representation, there is no dispute that the Hanssens knew the true facts regarding his medication overdose by October 1, 2007, and there was no evidence to support that the Hanssens relied on Genesis's false representation.

Both Edward and Connie Hanssen stated in their depositions that Dr. Edwards and the emergency room physician indicated Mr. Hanssen was overmedicated on or before October 1. Mr. Hanssen told the emergency department nurse he felt like a vegetable because of the medication he was "double dosed on." He also told the technician who performed the MRI that he had two overdoses in four hours. I agree with the district court that the undisputed evidence demonstrates the Hanssens were told on multiple occasions that Mr. Hanssen's problems were caused by a medication overdose

and the Hanssens acknowledged several times that they knew of the medication overdose.

In addition, I do not believe there is any evidence to support the element that the Hanssens actually relied on the representations made in Jackie Anhalt's letter, which delayed the filing of their lawsuit. Therefore, I would affirm the ruling of the district court granting summary judgment to Genesis because the Hanssens failed to file their lawsuit within the applicable statute of limitations, and the Hanssens failed to offer evidence to support their assertion fraudulent concealment applied to estop Genesis from raising the statute of limitations defense.