IN THE COURT OF APPEALS OF IOWA

No. 2-936 / 12-0347
Filed December 12, 2012

JACINTO RODRIGUEZ CRUZ,
BELEM HERNANDEZ TONIL,
JOSE G. RODRIGUEZ-SALDANA,
AND ESTHER REYES ACOSTA,
Plaintiffs-Appellants,

vs.

CENTRAL IOWA HOSPITAL CORPORATION d/b/a IOWA METHODIST MEDICAL CENTER,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson, Judge.

The plaintiffs appeal from the district court's grant of summary judgment dismissing their lawsuit for false imprisonment. **AFFIRMED.**

Thomas J. Duff of Duff Law Firm, P.L.C., Des Moines, for appellants.

Eric G. Hoch and Thomas A. Finley of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

DOYLE, P.J.

This case presents the "little-known but apparently widespread" problem of medical repatriation, or the process of extrajudicially deporting seriously ill immigrants by hospitals,[1] and the tort of false imprisonment. Based on the undisputed facts in the record, we agree with the district court that the hospital that repatriated the plaintiffs is entitled to judgment as a matter of law on the claims against it.

I. Background Facts and Proceedings.

On a summer night in May 2008, Jacinto Rodriguez-Cruz and Jose Rodriguez-Saldana went fishing with some friends. Their car was struck by a semi-truck on the way home. Both men were thrown from the car, causing them to suffer traumatic brain injuries. They were life-flighted to Iowa Methodist Medical Center for treatment.

A social worker at the hospital located the patients' families in Vera Cruz, Mexico. She informed them about the men's conditions and began working with them on a discharge plan. Due to the severity of their injuries, both Cruz and Saldana needed long-term rehabilitation services after their release from the hospital. But two different facilities in Iowa refused to accept them as patients "due to their undocumented status," although both were insured. The social worker turned her focus to a plan to repatriate the men to their native Mexico.

After contacting the United States embassy in Mexico, the social worker located a hospital in Vera Cruz that was willing to accept the men as patients.

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[1] *See* Lori A. Nessel, *Disposable Workers: Applying a Human Rights Framework to Analyze Duties Owed to Seriously Injured or Ill Migrants*, 19 Ind. J. Global Legal Stud. 61, 64, 65 n.11 (2012) [Nessel].

She discussed this facility with the families. The hospital chartered a plane and flew Cruz and Saldana to Mexico. They were in stable condition at the time, though both were semi-comatose and mostly unresponsive. The men remained hospitalized for about a month in Vera Cruz before being released into the care of their families.

Cruz and Saldana sued the hospital, alleging it had violated the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, which requires all Medicare-participating hospitals with emergency rooms to treat any individual, "whether or not eligible for benefits," who has a medical emergency. They further alleged the hospital had falsely imprisoned them by transporting them to the hospital in Mexico without consent. Finally, Cruz and Saldana's wives sought recovery for loss of consortium.

The hospital filed a motion for summary judgment, arguing it had satisfied "its EMTALA stabilization requirement" and asserting it did not detain or restrain Cruz and Saldana against their will. In response, the plaintiffs dismissed their EMTALA claim, but argued they had generated genuine issues of material fact on the false imprisonment claim. The district court disagreed after a hearing on the matter.

Assuming a confinement had occurred, the court determined "it was Cruz's and Saldana's severe injuries that caused their 'detention' or 'confinement' not the Defendants." The court further determined Cruz and Saldana were not harmed by any alleged confinement, reasoning that the inadequate rehabilitative care at the hospital in Vera Cruz could not be attributed

to Iowa Methodist. The court accordingly dismissed the false imprisonment and concomitant loss of consortium claims against the hospital. This appeal followed.

II. Scope and Standards of Review.

We review the district court's summary judgment ruling for the correction of errors at law. *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Mueller*, 818 N.W.2d at 253. We review the record in the light most favorable to the party opposing the motion. *Mueller*, 818 N.W.2d at 253.

III. Discussion.

A. Overview of Medical Repatriations.

Before discussing the merits of this case, we believe it is necessary to first discuss what appears to be the increasingly common use of medical repatriations by hospitals in the United States—a practice that is driven by financial considerations. One commentator has explained that medical repatriations "exist at the confluence of several conflicting federal authorities," the result of which leaves a gap in funding for services hospitals are legally mandated to provide. Philip Cantwell, *Relevant "Material": Importing the Principles of Informed Consent and Unconscionability to Analyze Consensual Medical Repatriations*, 6 Harv. L. & Pol'y Rev. 249, 252 (2012) [Cantwell].

The first of these conflicting federal authorities is EMTALA which, as mentioned in the background facts, requires hospitals that receive Medicare

funding to treat and stabilize all patients with emergency medical conditions, including uninsured immigrants. *Id.* at 249-50; *see also* 42 U.S.C. § 1395dd(b)(1)(A). "Federal funds reimburse this emergency treatment." Cantwell, 6 Harv. L. & Pol'y Rev. at 250. But once the patient's condition is stabilized, the funding ceases and the patient's care becomes the responsibility of the treating hospital. *Id.*

Federal regulations then step in to require patients who need continuing care to be discharged to "appropriate" facilities. *Id.*; *see also* 42 C.F.R. § 482.43(d). Unfortunately, as in this case, the "appropriate long-term care facilities, to which stabilized Medicare or Medicaid eligible patients would routinely be transferred, are generally not required to accept uninsured immigrants." Cantwell, 6 Harv. L. & Pol'y Rev. at 250. "Hospitals are stuck; appropriate facilities will not accept uninsured immigrants, but hospitals must transfer patients to appropriate facilities." *Id.* Out of this regulatory quagmire was born the idea of medical repatriations, through which hospitals, "on their own or through a third-party company," arrange for the uninsured immigrant to be repatriated outside the formal structures of immigration law. *Id.*

Though there is only one other known case that has considered the legality of medical repatriations, *see Montejo v*. *Martin Memorial Medical Center*, *Inc*., 935 So. 2d 1266, 1268 (Fla. Dist. Ct. App. 2006),[2] anecdotal evidence

[2] In that case, Luis Alberto Jimenez, an undocumented immigrant, was seriously injured in a car crash. *Montejo*, 935 So. 2d at 1267 [*Montejo II*]. The hospital that treated him after the crash sought court permission to discharge Jimenez and have him transported to his native country for further care. *Id.* The court granted the hospital's request over Jimenez's guardian's protestations. *Id.* The guardian appealed the decision and filed a motion to stay the order. *Id.* But before that motion could be heard,

suggests repatriations occur relatively frequently, both consensually and forcibly (without patient or guardian consent). Cantwell, 6 Harv. Law & Pol'y Rev. at 250 n.11; *see also* Nessel, 19 Ind. J. Global Legal Stud. at 62 (discussing stories of forced medical repatriations). For individuals who are forcibly repatriated, commentators have suggested that tort law may provide an adequate method of redress through causes of action such as false imprisonment. *See* Cantwell, 6 Harv. L. & Pol'y Rev. at 250 n.11; *see also* O'Connell, 87 Wash. U. L. Rev. at 1453-55. That is the avenue pursued by the immigrants in this case. We must decide, however, whether the undisputed facts of their case fit within the framework of the tort.

C. Elements of False Imprisonment Claim.

"The tort of false imprisonment involves 'an unlawful restraint on freedom of movement or personal liberty.'" *Ette ex rel. Ette v. Linn-Mar Cmty. Sch. Dist.*, 656 N.W.2d 62, 70 (Iowa 2002). In order to prove the tort, two essential

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"the hospital took Jimenez to the airport via ambulance and transported him by private plane to Guatemala." *Id.* at 1268. At that point, the hospital had spent over one million dollars caring for Jimenez but had been reimbursed only $80,000. *See Montejo v. Martin Mem'l Med. Ctr., Inc.*, 874 So. 2d 654, 656 (Fla. Dist. Ct. App. 2004) [*Montejo I*].

The Florida Court of Appeals reversed the district court order, finding not only that there "was insufficient evidence that Jimenez could receive adequate care in Guatemala, but also . . . 'the trial court lacked subject matter jurisdiction to authorize the transportation (deportation) of Jimenez to Guatemala.'" *Montejo II*, 935 So. 2d at 1268 (quoting *Montejo I*, 874 So. 2d at 658). Following this decision, Jimenez's guardian filed a lawsuit against the hospital, alleging its confinement of Jimenez "in the ambulance and on the airplane amounted to false imprisonment." *Id.* The trial court granted the hospital's motion to dismiss the claim, finding the guardian could not show the detention was unreasonable and unwarranted because it was done pursuant to a then-valid court order. *Id.* The appellate court did not agree with this argument given its first decision that found the order was entered in the absence of subject matter jurisdiction. *Id.* The trial court's order was accordingly reversed, and the case was remanded for a trial on the claim. *Id.* at 1272. On remand, a jury found for the hospital, concluding that its actions were not "unreasonable and unwarranted under the circumstances." Caitlin O'Connell, *Return to Sender: Evaluating the Medical Repatriations of Uninsured Immigrants*, 87 Wash. U. L. Rev. 1429, 1454 (2010) [O'Connell].

elements must be established: "'(1) detention or restraint against a person's will, and (2) unlawfulness of the detention or restraint.'" *Id.* (citation omitted). Because the detention or restraint must be against a person's will, consent to the confinement may nullify a claim of false imprisonment. *See*, *e.g.*, *Zohn v. Menard*, *Inc.*, 598 N.W.2d 323, 329 (Iowa Ct. App. 1999) (discussing issue of implied consent with false imprisonment claim); *see also* Restatement (Second) of Torts § 35 cmt. f (1965) (referring reader to sections 892–895 of the Restatement for "what constitutes consent to a confinement").

1. Consent to confinement. Cruz and Saldana argue their confinement during the transfer to the hospital in Vera Cruz "was without consent and therefore unlawful." The social worker for Iowa Methodist testified in a deposition that after learning rehabilitation facilities in Iowa would not accept Cruz and Saldana, she reviewed the families' options with them, which included discharging the men to the care of a friend or family member or transferring them to a facility in Mexico. She stated both families verbally consented to the transfer of the patients to Mexico. The families contested this testimony after the social worker's deposition, stating in separate, but essentially identical, affidavits, "I was never asked for my consent to the transfer and did not give my consent to the transfer because I wanted him to stay in the United States."

These affidavits are notable for what they do not state, specifically that the families protested the transfer to Mexico. In *Ette*, our supreme court considered a false imprisonment claim brought by the father of a ninth grade boy who was caught with cigarettes while on a school band trip in Texas. 656 N.W.2d at 64. He was returned home alone on a Greyhound bus, though his father claimed to

have asked the school to send him home on an airplane or with a chaperone on the bus. *Id.* at 65-66. The court upheld the trial court's grant of directed verdict on the claim because the student willingly accompanied the school official "to the bus station and boarded the bus without objection. The record yields no evidence that [he] put up a fight to stay on the trip or even asked the directors for some other punishment." *Id.* at 70; *see also* W. Page Keeton, *Prosser & Keeton on Torts* § 11, at 49 (5th ed. 1984) ("[T]he restraint [must] be against the plaintiff's will; and if one agrees of one's own free choice to surrender freedom of motion, as by remaining in a room or accompanying another voluntarily . . . then there is no imprisonment."); Restatement (Second) of Torts § 892 cmt. c ("Even when the person concerned does not in fact agree to the conduct of the other, his words or acts or even his inaction may manifest a consent that will justify the other in acting in reliance upon them.").

The same reasoning applies here. Although the families say they never consented to the patients' transfer to the hospital in Vera Cruz, neither did they object to it. The social worker testified the United States embassy provided her with the names of several different facilities in Mexico. She passed the names of those facilities onto the families. They narrowed down their choices to two hospitals—the one in Vera Cruz and another one the social worker could not remember the name of. She contacted both facilities and spoke with them about Cruz and Saldana's situation. The social worker told the families about her conversations with the hospitals, and they decided the hospital in Vera Cruz was the best choice. The families also involved the governor of Vera Cruz in the

process of transferring the men and securing funding for their continuing care in Mexico.

Cruz and Saldana do not contest any of the foregoing. They nevertheless argue that even assuming the social worker "did obtain consent, it was procured by misrepresentation and therefore cannot be lawful." Their argument in this regard is based on the social worker's acknowledgement that

> as of the time that these individuals were transferred to Vera Cruz, they could have stayed at this hospital? A. Yes.
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> Q. Okay. You just don't know how long they could have stayed at the hospital? A. That's correct.
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> Q. And you never asked anybody about that? A. No.
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> Q. That never seemed like a viable option to you to allow these individuals to stay at the hospital for as long as they possibly could, until other arrangements or other plans could be made? A. That's correct.

Relying on this testimony, Cruz and Saldana contend this case is like *Scofield v. Critical Air Medicine, Inc.*, 52 Cal. Rptr. 2d 915, 920 (Cal. Ct. App. 1996), which affirmed a jury's award on a claim of false imprisonment accomplished by fraud or deceit.[3] However, we agree with Iowa Methodist that although this argument was tangentially raised by the plaintiffs at the summary judgment hearing, it was not ruled upon or even mentioned by the district court. Error was thus not preserved on the issue. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we

[3] The plaintiffs in *Scofield* were three children who were injured in a car accident in Mexico, one of whom later died. 52 Cal. Rptr. 2d at 917. With the help of the American Consulate, their father arranged for their transfer to the United States by an air transportation company. *Id.* A competing company learned of the arrangements and arrived to pick the children up before the other company could. *Id.* at 917-18. The children nevertheless safely arrived in the United States, only later learning they had been brought there by the wrong company. *Id.* at 918.

will decide them on appeal."); *cf*. *Lamasters v*. *State*, 821 N.W.2d 856 (Iowa 2012) ("Where the trial court's ruling, as here, expressly acknowledges that an issue is before the court and then the ruling necessarily decides that issue, that is sufficient to preserve error.").

***2*. *Harm from confinement*.** Putting aside the issue of consent, we agree with the district court that Cruz and Saldana's claim must fail because they are unable to establish another element of their false imprisonment claim—that they were harmed by their confinement.

Under the Restatement, an actor is subject to liability to another for false imprisonment if "(a) he acts intending to confine the other or a third person within boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it." Restatement (Second) of Torts § 35; *see also Nelson v*. *Winnebago Indus*., *Inc*., 619 N.W.2d 385, 388 (Iowa 2000) (quoting this section with approval).

The parties agree that because neither Cruz nor Saldana were conscious of their confinement, they must prove they were harmed by it.[4] Cruz and Saldana argue they were harmed by the confinement because they received inadequate rehabilitative care at the hospital in Vera Cruz, which "negatively affected their outcome potential and increased their permanent, irreversible deficits." The district court rejected this argument, stating it failed "to see how this is the responsibility or fault of Methodist." The court reasoned there was

[4] For an exhaustive discussion of this element, on which there is a dearth of case law, see the California appellate court's opinion in *Scofield*, 52 Cal. Rptr. 2d at 921-24.

> no way Methodist could be legally liable for false imprisonment once the men's care was officially taken over by Hospital General. . . . Methodist had more than adequately met its duty of care to Cruz and Saldana when it successfully transferred them in stable condition to a care facility that provided all the services these men medically required. Any alleged failure or dissatisfaction with the rehabilitation services subsequently provided to Cruz or Saldana at Hospital General is not attributable to Methodist.

We agree.

Our supreme court has recognized that "a physical injury is not an element of false imprisonment." *Nelson*, 619 N.W.2d at 388. Indeed, the principal element of damages in an action for false imprisonment "is frequently the disagreeable emotion experienced by the plaintiff." Restatement (Second) of Torts § 905 cmt. c. However, that type of damages appears to be available only where the plaintiff was aware of the confinement. The Restatement explains,

> Where, however, no harm results from a confinement and the plaintiff is not even subjected to the mental disturbance of being made aware of it at the time, his mere dignitary interest in being free from an interference with his personal liberty which he has only discovered later is not of sufficient importance to justify the recovery of the nominal damages involved. Accordingly, no action for false imprisonment can be maintained in such a case.
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> . . . .
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> . . . There may, however, be situations in which actual harm may result from a confinement of which the plaintiff is unaware at the time. In such a case more than the mere dignitary interest, and more than nominal damages, are involved, and the invasion becomes sufficiently important for the law to afford redress.

Restatement (Second) of Torts § 42 cmts. a, b.

As an example of the latter situation, the Restatement sets forth the following scenario:

> A, a diabetic, is suffering from shock brought on by an overdose of insulin. B believes A to be drunk, and without any legal authority to do so arrests A and locks him up over night in jail. In the morning A is released while still unconscious and unaware that he has been

> confined. On learning what has occurred A is greatly humiliated, and suffers emotional distress, with resulting serious illness. B is subject to liability to A for false imprisonment.

Id. cmt. b, illus. 5. Seizing on this scenario, Cruz and Saldana argue their poor recovery was a consequence of their confinement. While this argument is appealing at first blush, it cannot withstand closer scrutiny.

The serious illness suffered by the diabetic in the Restatement illustration was brought on by his discovery of the confinement and resulting emotional distress. Here, Cruz and Saldana's poor recovery resulted from the inadequate rehabilitative services they received in Mexico, not their supposed confinement by the hospital or resulting emotional distress from learning of the confinement. We agree with the district court that

> once the men were at Hospital General, if their families were not satisfied with the care they were receiving they were certainly free to transfer them to one of the facilities noted by [their expert]. While it is unfortunate if they could not afford such private, expensive accommodations, it does not create a cause of action against Methodist. Any duty Methodist had ended when it stabilized the patients for transfer. However, Methodist went beyond such duty in assisting Cruz and Saldana in finding an adequate care facility in their home country and providing safe medical transport at no cost.

Even in *Scofield*, which allowed nominal damages in contravention of the Restatement's position on the issue, the plaintiff presented expert testimony that the children's relationship with authority figures had been undermined by the defendant's deception. 52 Cal. Rptr. 2d at 919, 924. That crucial link between the confinement and the claimed harm is missing here. *See id.* at 923 ("[T]he relevant factor is whether the unlawful restraint or confinement resulted in *harm*.").

We also do not understand Cruz and Saldana to be seeking damages for the confinement itself. *Cf*. *id*. at 922 (noting that in Prosser and Keeton's treatise on torts, Prosser "took issue with the Second Restatement on this point, arguing it was unduly restrictive for disallowing a cause of action where the victim was unaware and solely nominal damage was sustained. Prosser reasoned 'it is not necessary that any damage result from [the false imprisonment] other than the confinement itself, since the tort is complete with even a brief restraint of the plaintiff's freedom'" (quoting Prosser & Keeton, *Torts* § 11, at 48 (5th ed. 1984)).

For these reasons, we affirm the district court's grant of summary judgment on the false imprisonment claim and the related loss of consortium claims. In doing so, we note the wives of Cruz and Saldana do not contest the court's conclusion that their loss of consortium claims were dependent on their husbands' false imprisonment claims. *Compare Ziegler v*. *U*.*S*. *Gypsum Co*., 102 N.W.2d 152, 153 (Iowa 1960) ("Where the defendant is not guilty of a tort which would give a right of action to the wife the husband cannot maintain an action for consequential damages."), *with Fuller v*. *Buhrow*, 292 N.W.2d 672, 675 (Iowa 1980) (noting the "'injury incurred (referring to loss of consortium) can neither be said to have been 'parasitic' upon the husband's cause of action nor can it be properly characterized as an injury to the marital unit as a whole. Rather it is comprised of [the spouse's] own physical, psychological and emotional pain and anguish which results when her husband is negligently injured. . . ." (citation omitted)).

AFFIRMED.