

IN THE COURT OF APPEALS OF IOWA

No. 6-1036 / 06-0672
Filed January 31, 2007

**CASANDRA LOBBERECHT and DAVID L.
LOBBERECHT, Individually and as Next Best
Friends of KEIFFER LOBBERECHT, ADAM
LOBBERECHT, and OLIVIA LOBBERECHT,**
Plaintiffs-Appellants,

vs.

**AKELLA CHENDRASEKHAR, M.D. and THE IOWA
CLINIC , P.C.,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Plaintiffs appeal from a summary judgment ruling dismissing their petition for lack of standing. **AFFIRMED.**

Alfredo Parrish and Tammy Westhoff Gentry of Parrish, Kruidenier, Moss, Dunn, Boles, Gribble & Cook, L.L.P., Des Moines, for appellants.

Robert D. Houghton of Shuttleworth & Ingersoll, P.L.C., Cedar Rapids, for appellees.

Heard by Zimmer, P.J., and Miller and Baker, JJ.

MILLER, J.

Plaintiffs Casandra and David Lobberecht, both individually and on behalf of their children Keiffer, Adam, and Olivia Lobberecht, appeal from the summary judgment ruling in favor of defendants Akella Chendrasekhar, M.D. and his employer, the Iowa Clinic, P.C., dismissing their petition for lack of standing. The court determined the plaintiffs' claims accrued prior to their filing a bankruptcy petition, and thus it was the bankruptcy estate that was the real party in interest rather than the individual plaintiffs. We affirm the district court.

I. Background Facts and Proceedings.

Casandra Lobberecht underwent gastric bypass surgery on December 18, 2002. The procedure was performed by Dr. Chendrasekhar. Sometime after Lobberecht was able to recommence eating solid food, she began to experience abdominal pain. The pain worsened, and Lobberecht sought treatment from Dr. Chendrasekhar. Dr. Chendrasekhar suspected cholecystitis, or inflammation of the gallbladder. He performed surgery to remove Lobberecht's gallbladder on February 22, 2003. However, when Lobberecht once again began to eat solid food, she again experienced abdominal pain.

Lobberecht continued to experience pain and nausea. On March 29, 2003, she sought treatment for severe pain at the Mahaska Hospital Emergency Room. She was transferred to Iowa Methodist Medical Center (IMMC), where tests revealed a fistula, an opening between the gastric pouch and the remnant stomach. According to Lobberecht Dr. Chendrasekhar informed her "that there was a leak, that they could see material going from the pouch into the remnant stomach," but not to "worry about it, it's not going to hurt anything"

Lobberecht was discharged from the hospital on April 2, 2003. She continued to experience pain and nausea. In addition Lobberecht, who has a nursing background, diagnosed herself as suffering from a hernia. Dr. Chendrasekhar confirmed the presence of a hernia, and scheduled Lobberecht for another surgery to repair the hernia and close the fistulous connection between the gastric pouch and the remnant stomach.

On April 26, 2003, Lobberecht presented to the Mahaska Hospital with severe pain and vomiting. She was again transferred to IMMC. She was immediately scheduled for surgery to repair the hernia and close the fistulous connection. Prior to surgery a resident explained to Lobberecht that during the initial gastric bypass surgery her “stomach was not divided all the way.” During surgery, the hernia was repaired but the fistula was not. Following surgery, Dr. Chendrasekhar informed Lobberecht that “[t]here was a lot of scar tissue . . . and he had not fixed” the fistulous connection. As of that time Lobberecht understood “that there was something else that had to be fixed.” Lobberecht was discharged from the hospital on May 1, 2003. She continued to experience pain, nausea, and vomiting.

On May 28, 2003, Lobberecht and her husband filed a Chapter 7 bankruptcy petition. The petition did not list any claim against Dr. Chendrasekhar or the Iowa Clinic. The bankruptcy proceeding resulted in a discharge on August 26, 2003.

On January 9, 2004, Lobberecht again presented to the Mahaska Hospital Emergency Room in acute pain. She was seen by Dr. Tim Breon, who identified the fistula as well as an anastomotic stricture. He attempted to correct that latter

with a balloon dilation. Lobberecht subsequently underwent six esophagogastroduodenoscopy procedures. Dr. Breon performed a revision of Lobberecht's gastric bypass on August 31, 2004, in which he closed the fistulous connection between the gastric pouch and remnant stomach.

In December 2004 the Lobberechts, individually and on behalf of their children, filed a petition against Dr. Chendrasekhar and the Iowa Clinic, alleging claims for medical malpractice and loss of consortium. Specifically, the plaintiffs alleged that Dr. Chendrasekhar negligently performed Lobberecht's gastric bypass surgery, negligently assessed and treated Lobberecht's post-operative complications, and performed unnecessary gallbladder removal surgery.

Dr. Chendrasekhar and the Iowa Clinic moved for summary judgment on the grounds the plaintiffs (1) were judicially estopped from filing the claims because they failed to list them in the bankruptcy petition, and (2) lacked standing to bring the claims because the bankruptcy estate was the real party in interest. The plaintiffs filed a resistance and the matter proceeded to hearing. In a February 1, 2006 order the court rejected the judicial estoppel argument but agreed the plaintiffs lacked standing to pursue the medical malpractice and loss of consortium claims. The court concluded that, under the undisputed facts, the causes of action had accrued prior to the filing of the bankruptcy petition, and accordingly belonged to the bankruptcy estate. It therefore granted the defendants' motion for summary judgment and dismissed the plaintiffs' petition.

The plaintiffs filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), which was resisted by the defendants. In an April 6 ruling, the court enlarged, amended, and clarified certain portions of its summary judgment ruling,

but declined to alter its conclusion that the plaintiffs lacked standing to pursue the claims in their petition and the case should accordingly be dismissed.¹

The plaintiffs appeal. They contend the district court erred in concluding that their causes of action accrued prior to the filing of the bankruptcy petition.

II. Scope and Standards of Review.

Summary judgment rulings are reviewed for the correction of errors at law. Iowa R. App. P. 6.4; *General Car & Truck Leasing Sys., Inc. v. Lane & Waterman*, 557 N.W.2d 274, 276 (Iowa 1996). Where no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate. Iowa R. Civ. P. 1.981(3); *City of West Branch v. Miller*, 546 N.W.2d 598, 600 (Iowa 1996). All facts are viewed in the light most favorable to the party opposing the motion for summary judgment. *Bearshield v. John Morrell & Co.*, 570 N.W.2d 915, 917 (Iowa 1997). However, a party resisting a properly supported summary judgment motion must “set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered.” Iowa R. Civ. P. 1.981(5).

III. Discussion.

The plaintiffs do not dispute that, if the causes of action asserted in their petition accrued prior to the May 28, 2003 filing of their Chapter 7 bankruptcy

¹ The plaintiffs assert their appeal is solely from the February 1 summary judgment ruling because at the conclusion of the rule 1.904(2) ruling the district court stated the plaintiffs’ motion was “DENIED.” However, it is clear from the body of the rule 1.904(2) ruling that the district court intended to enlarge, amend, and clarify certain portions of its summary judgment ruling without altering its ultimate determination. To ignore the clear intent of the district court is to elevate form over substance, and this we will not do. Accordingly, we will consider issues relevant to the February 1 summary judgment ruling, as modified by the April 6 rule 1.904(2) ruling.

petition, their interest in the claims passed to the trustee of the bankruptcy estate and their petition was properly dismissed for lack of standing. See *Collins v. Federal Land Bank of Omaha*, 421 N.W.2d 136, 138-39 (Iowa 1988) (noting the bankruptcy estate “includes causes of action *belonging to the debtor at the time the case is commenced*” (citation omitted)); see also *U.S. ex rel. Gebert v. Transport Admin. Servs.*, 260 F.3d 909, 913 (8th Cir. 2001) (“[T]he property of the bankruptcy estate includes all causes of action that the debtor *could have brought* at the time of the bankruptcy petition.” (emphasis added)). Accordingly, the sole question before us in this appeal is whether the claims asserted by the plaintiffs did, as the district court concluded, accrue prior to the filing of the bankruptcy petition.

In reaching its decision, the district court was guided by case law addressing accrual of causes of actions in the context of Chapter 7 bankruptcies. In such a context, our supreme court has held that a cause of action does not accrue until there is an “actual loss to the interest of another,” or until “the wrongful act produces injury to the claimant.” *Collins*, 421 N.W.2d at 139-40. Applying this standard, the district court determined that, under the undisputed facts, Lobberecht’s injuries occurred, and thus the plaintiffs’ causes of actions accrued, prior to the filing of the bankruptcy petition. The court did not believe the medical malpractice statute of limitations should be applied in this case, concluding that “the accrual of a cause of action for purposes of ownership in a bankruptcy proceeding is distinctly different from the accrual period with regard to the statute of limitations and the frequently used discovery rule.”

Nevertheless, at the urging of the parties, the court analyzed the matter under the medical malpractice statute of limitations, which allows a plaintiff to bring a claim “within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, . . . of, the injury . . . for which damages are sought” Iowa Code § 614.1(9)(a) (2003). Injury, as used in this section, refers to the physical harm suffered by the plaintiff and not the wrongful act that produces the physical harm. *Schlote v. Dawson*, 676 N.W.2d 187, 193 (Iowa 2004), *disavowed on other grounds by Christy v. Miulli*, 692 N.W.2d 694, 701 n.1 (Iowa 2005). Thus, the statute begins to run

when a person gains knowledge sufficient to put the person on inquiry. On that date, the person is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. Moreover, once a person is aware that a problem exists, the person has a duty to investigate even though the person may not have knowledge of the nature of the problem that caused the injury.

Langner v. Simpson, 533 N.W.2d 511, 518 (Iowa 1995). Applying these standards, the district court concluded the plaintiffs were on inquiry notice of Lobberecht’s injuries prior to the bankruptcy filing, and thus their causes of action accrued prior to this time.

We decline the plaintiffs’ invitation to decide whether section 614.1(9)(a) is applicable in this matter (and to consider the related questions of inquiry notice and the continuous treatment doctrine), because we agree with the district court that, pursuant to *Collins*, their claims accrued prior to the bankruptcy filing. Under the undisputed facts in the summary judgment record, the allegedly negligent gastric bypass surgery, relevant post-operative care, and gallbladder removal surgery all occurred prior to the filing of the bankruptcy petition. So too

did the allegedly injurious consequences of those acts, including the fistulous connection between the gastric pouch and the remnant stomach. In light of these undisputed facts, the only reasonable conclusion to be reached is that the alleged wrongful acts did produce the alleged injuries to Lobberecht prior to the bankruptcy filing. See *Collins*, 421 N.W.2d at 139-40.²

The plaintiffs' claims accrued prior to the filing of the bankruptcy petition. They accordingly passed to the bankruptcy estate, which became the real party in interest. The district court did not err in dismissing the plaintiffs' claims.

AFFIRMED.

² The plaintiffs assert that they should be allowed the benefit of the common-law personal injury discovery rule adopted in *Chrischilles v. Griswold*, 260 Iowa 453, 463, 150 N.W.2d 94, 100 (1967), because *Collins*, 421 N.W.2d at 139, cites to *Chrischilles* for the proposition that a cause of action does not accrue until the plaintiff has been damaged. *Chrischilles* provided that a malpractice statute of limitation did not begin to run until "the date of discovery, or the date when, by the exercise of reasonable care, plaintiff should have discovered the wrongful act" *Chrischilles*, 260 Iowa at 462, 150 N.W.2d at 100. We are not convinced the *Collins* court, in citing to *Chrischilles* for a limited proposition, also intended to implicitly adopt the common-law discovery rule. However, even if that were the case, the common-law rule has been statutorily abrogated in the context of medical malpractice. See *Langner*, 533 N.W.2d at 511. Moreover, we note that, contrary to the plaintiffs' assertion, nothing in *Collins* requires a plaintiff to have actual knowledge of an injury for a cause of action to accrue. See *Collins*, 421 N.W.2d at 139.