IN THE COURT OF APPEALS OF IOWA

No. 7-088 / 06-1053
Filed August 22, 2007

DEBORAH BERGSTROM,
Plaintiff-Appellant,

vs.

IOWA HEALTH SYSTEM, CENTRAL IOWA HOSPITAL CORPORATION, d/b/a IOWA METHODIST MEDICAL CENTER, and IOWA LUTHERAN HOSPITAL, and DENNIS WEIS, M.D.,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

Plaintiff appeals a district court summary judgment ruling dismissing her medical malpractice action against defendants. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

G. Stephen Walters and Mark L. Smith of Jordan, Oliver & Walters, P.C., Winterset, for appellant.

Steven Scharnberg and Thomas J. Joensen of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellees.

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

MILLER, J.

Deborah Bergstrom appeals a district court summary judgment ruling in favor of Iowa Health System, Central Iowa Hospital Corporation, d/b/a Iowa Methodist Medical Center (IMMC) and Iowa Lutheran Hospital (Iowa Lutheran), and Dennis Weis, M.D., dismissing her medical malpractice action as barred by the statute of limitations set forth in Iowa Code section 614.1(9)(a) (2005). We affirm in part and reverse in part. We remand for further proceedings.

I. BACKGROUND FACTS AND PROCEEDINGS.

The summary judgment record reveals the following undisputed facts. Bergstrom suffers from chronic pain syndrome for which she takes a variety of prescription pain medications. In July 2003, she sought treatment at IMMC for seizures, disorientation, and hallucinations. She was placed in the Powell Chemical Dependency Unit (Powell), a department of Iowa Lutheran, for detoxification.

Bergstrom was discharged from Iowa Lutheran on August 15, 2003, after a disagreement with her physician, Dr. Weis. She went to the IMMC emergency room shortly after her discharge complaining that "on the ride home she began experiencing uncontrollable shaking and tremulousness in association with nausea, vomiting, and diarrhea." She was also disoriented and hallucinating. She was admitted to IMMC and treated there until August 18, 2003.

Bergstrom filed a petition against the defendants on August 16, 2005. Her petition contained claims for "medical battery," "outrageous conduct," violation of the federal Emergency Medical Treatment and Active Labor Act, 42 U.S.C. §

1395dd, and "medical malpractice - - negligent treatment" arising out of her discharge from Iowa Lutheran on August 15, 2003.[1]

The defendants moved for summary judgment, contending the petition should be dismissed because it was filed one day after the applicable statutes of limitations had run. The district court granted the motion, finding the "injuries complained of herein all occurred on or before August 15, 2003," and none of the grounds Bergstrom alleged for tolling the statute of limitations in Iowa Code section 614.1(9)(a) applied. The district court accordingly dismissed all of Bergstrom's claims.

Bergstrom appeals. She claims the district court erred in dismissing her medical malpractice claims because genuine issues of material fact exist as to (1) whether her physical and mental condition on August 15, 2003, prevented her from knowing of her injuries, and (2) whether the continuous treatment doctrine tolled the running of the statute of limitations on her claims.[2]

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). 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); *Grinnell Mut.*

---

[1] Bergstrom's petition alleges she was discharged from Iowa Lutheran on August 16, 2003. However, the record reveals she was discharged on August 15, 2003. Bergstrom acknowledges the allegations in her petition to the contrary "were obviously incorrect."

[2] Bergstrom does not raise as issues on appeal the dismissal of her federal claim or the district court's finding that the fraudulent concealment doctrine did not apply to toll the statute of limitations.

Reins. Co. v. Jungling, 654 N.W.2d 530, 535 (Iowa 2002). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Grinnell Mut. Reins.*, 654 N.W.2d at 535. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *Id.*

III. MERITS.

Iowa Code section 614.1(9)(a) mandates the filing of medical malpractice actions

> within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, . . . of the existence of, the injury . . . for which damages are sought in the action, whichever of the dates occurs first . . . .

Section 614.1(9)(a) contains "the legislature's discovery rule and means the statute of limitations 'begins to run when the patient knew, or through the use of reasonable diligence, should have known of the injury for which damages are sought.'" *Ratcliff v. Graether*, 697 N.W.2d 119, 124 (Iowa 2005) (quoting *Langner v. Simpson*, 533 N.W.2d 511, 517 (Iowa 1995)). "Injury" means "physical harm rather than the wrongful act that caused the injury." *Ratcliff*, 697 N.W.2d at 124. Section 614.1(9)(a) does not require "that the plaintiff be aware of the defendant's wrongful conduct before the clock starts to run." *Schlote v. Dawson*, 676 N.W.2d 187, 194 (Iowa 2004), *disavowed on other grounds by Christy v. Miulli*, 692 N.W.2d 694, 701 n.1 (Iowa 2005).

A. Knowledge of Injury.

Bergstrom does not dispute that the injuries "for which damages are sought in this action" occurred on or before August 15, 2003, the date she alleges she was negligently discharged from Iowa Lutheran. Instead, she argues "she was in a very impaired physical and mental condition on August 15, 2003,

which moves forward . . . the period" when she knew or should have known of her injuries to "at least . . . August 16, 2003 . . . ." The district court resolved the question of whether Bergstrom's physical and mental condition prevented her from being aware of her injuries under Iowa Code section 614.8(1), which extends the statute of limitations when a person suffers from a mental illness. The district court did not "find sufficient evidence, as a matter of law, to show that [Bergstrom] was disabled because of mental illness to such an extent that she was unable to file her lawsuit."

We initially observe Bergstrom did not contend in district court, nor does she contend on appeal, that section 614.8(1) applies to toll the running of the statute of limitations in this case. Rather, she argues there is a genuine issue of material fact as to whether she knew, or through the use of reasonable diligence, should have known of her injuries due to her impaired physical and mental condition on August 15, 2003. Viewing the evidence in the light most favorable to Bergstrom,[3] we believe reasonable minds could differ regarding whether her physical and mental condition prevented her from knowing of or discovering her injuries on August 15, 2003.[4]

The record contains evidence of the following facts. Bergstrom was disoriented and experiencing hallucinations when she arrived at the IMMC

[3] Bergstrom argues the district court failed to view the evidence in the light most favorable to her. This contention is cured by our standard of review because we, like the district court, are required to view the record in the light most favorable to the nonmoving party. *Campbell v. Delbridge*, 670 N.W.2d 108, 109 (Iowa 2003).

[4] In dealing with the section 614.8(1) extension of the statute of limitations for persons with mental illness, our courts have held that the issue of whether a person is mentally ill is factual. *Borchard v. Anderson*, 542 N.W.2d 247, 249 (Iowa 1996) (citing *Altena v. Altena*, 428 N.W.2d 315, 317 (Iowa Ct. App. 1988)). We conclude the issue of whether a person's physical and mental condition was such as to prevent the person from knowing of or discovering injuries is similarly factual in nature.

emergency room on the afternoon of August 15, 2003. She reported experiencing "tremulousness in association with nausea, vomiting, and diarrhea." She also reported "she may have . . . experienced a seizure" en route to the emergency room. After arriving at the emergency room, she continued to hallucinate with "brief orientation to place." She remained "spastic" and "disoriented" until she received "IV Demerol and IV Valium." By that evening, her medical records indicate she was "much more alert," "responsive," and oriented to person, place, and time.[5] She was then admitted to IMMC with "acute withdrawal syndrome."

On the morning of August 16, 2003, however, she was not oriented to place or time and believed she was "at a parade with pres Bush." Bergstrom's affidavit submitted in support of her resistance to the summary judgment motion states she "recalls very little of what occurred on August 15, 2003," because she was "substantially impaired with regard to her comprehension and cognitive ability . . . until . . . August 18, 2003 . . . ." *See Eaton v. Downey*, 254 Iowa 573, 577, 118 N.W.2d 583, 585 (1962) (noting "summary judgment should not be granted if the affidavit shows a substantial issue of fact" even if the "affidavit is disbelieved."). We conclude a genuine issue of material fact exists as to whether

---

[5] An affidavit from Anita Hoch, R.N., B.S.N., C.C.R.N. was attached to the defendants' reply to Bergstrom's resistance to the summary judgment motion. Ms. Hoch's affidavit included a definition of "oriented x3" with which Bergstrom disagrees. She argues the district court erred in relying on Ms. Hoch's affidavit due to lack of foundation and lack of personal knowledge. She did not raise these objections at the summary judgment hearing. We do not consider issues raised for the first time on appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Furthermore, although Bergstrom argues "oriented x3" does not mean "the patient is generally aware of their circumstances," she agrees "oriented x3" indicates the patient is oriented to person, place, and time.

Bergstrom's physical and mental condition on August 15, 2003, prevented her from knowing of or discovering her injuries.

Defendants contend Bergstrom's husband's knowledge of her injuries should be imputed to her because he was operating as her attorney-in-fact on August 15, 2003. Defendants point to an "Assignment of Insurance and Agreement to Pay" signed by Bergstrom's husband on the day of her admission at IMCC as evidence he was acting as her attorney-in-fact. The document indicates he signed it as the "Patient's . . . spouse, or person with legal authority to agree on behalf of Patient." We do not believe this is uncontroverted evidence he was acting as her attorney-in-fact. Thus, we need not and do not reach the question of whether his knowledge should be imputed to Bergstrom.

We conclude the district court erred in granting summary judgment in favor of the defendants.

B. Continuous Treatment Doctrine.

The "continuous treatment" doctrine provides that

> if the treatment by the doctor is a continuing course and the patient's disease or condition is of such a nature as to impose on the doctor a duty of continuing treatment and care, the statute does not commence running until treatment by the [doctor] for the particular disease or condition involved has terminated, *unless during the course of treatment the patient learns or should reasonably have learned of the harm, in which case the statute runs from the time of knowledge, actual or constructive.*

Ratcliff, 697 N.W.2d at 124-25 (citation omitted). Although our supreme court has not rejected the doctrine "outright in all circumstances," it has declined to adopt it on three separate occasions. *Id.* at 125; *McClendon v. Beck*, 569 N.W.2d 382, 385 (Iowa 1997); *Langner*, 533 N.W.2d at 519. The court in *Ratcliff*, recognized "that the continuing medical treatment doctrine is merely a

particularized application of the discovery rule" in that the "rule presumes . . . a patient has not discovered an injury during the time medical treatment continues." *Ratcliff*, 697 N.W.2d at 125 (citation omitted). Thus, the doctrine does not toll the statute of limitations "[i]f there is actual proof that the patient *knows or reasonably should know of the injury or harm before termination of medical treatment* . . . ." *Id.*

Assuming without deciding that the continuous treatment doctrine is recognized in Iowa, we find the district court was correct in concluding the "single act" exception would preclude its application in this case. "According to the single act exception, if there is a single act of malpractice, subsequent time and effort to merely remedy or cure that act does not toll the statute of limitations." *Langner*, 533 N.W.2d at 521. Bergstrom alleged a single, identifiable act by the defendants, the events involved in her discharge from Iowa Lutheran on August 15, 2003, as the basis for her malpractice claims. "No continuing course of treatment could undo" her allegedly improper treatment on that date. *Id.* at 522 (concluding the single act exception applied to a counselor's inappropriate statements made to a patient during her seven-day hospital stay because they "were complete at the precise time" the statements were made and "no continuing course of treatment could undo them.").

IV. CONCLUSION.

We conclude a genuine issue of material fact exists as to whether Bergstrom knew, or through the use of reasonable diligence should have known, of her injuries on August 15, 2003, because of her physical and mental condition. Therefore, the district court erred in dismissing Bergstrom's "medical battery,"

"outrageous conduct," and "medical malpractice - - negligent treatment" claims against the defendants. However, we conclude the district court was correct in concluding the continuous treatment doctrine did not apply to toll the running of the statute of limitations. The district court's summary judgment ruling is accordingly affirmed in part and reversed in part. We remand for further proceedings not inconsistent with this opinion.

Costs on appeal are taxed one-half to Bergstrom and one-half to defendants.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.